

Edited by Michael Asch

Aboriginal and Treaty Rights
in Canada:
Essays on Law, Equity, and
Respect for Difference



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be recognized for what they are – a discourse that dispossesses First Nations of their rights.

7 Understanding Treaty 6: An Indigenous Perspective

Sharon Venne¹

Introduction

For an understanding of the relationship between the Treaty Peoples and the Crown of Great Britain and later Canada, one must consider a number of factors beyond the treaty's written text. First, the written text expresses only the government of Canada's view of the treaty relationship: it does not embody the negotiated agreement. Even the written versions of treaties have been subject to considerable interpretation, and they may be scantily supported by reports or other information about the treaty negotiations. Fortunately, Treaty Nations have also kept a record of the treaties in their oral histories, and these can provide another understanding of treaty agreements.

A second factor is critical to understanding treaty relationships: the authority given to the negotiators. Each nation in treaty negotiations delegated certain members of their citizenry to negotiate the treaty, and empowered them to make a certain kind of agreement with negotiators from the other nation. Neither the Crown nor the Indigenous² nations gave their negotiators free and unfettered authority to negotiate, although negotiators from both sides may have been uncertain about the mandate of the other nation's negotiators.

The authority structure on the Crown's side is fairly well known. However, on the Indigenous side, the authority, responsibilities, and mandate of negotiators, as well as of Chiefs and other members of society, are not clearly understood. An appreciation of the authority to negotiate treaties on the Indigenous side is essential to understanding the treaty relationship.

This article will discuss these two factors – the oral basis for interpreting the treaties, and the authority vested in Indigenous negotiators – focusing on Cree society and Treaty 6, signed in 1876. The paper looks at the authority structures developed generally by Indigenous peoples and practised in

Cree society. It also examines the international context in which treaties were made. Finally, based on all these factors, the paper looks at the Cree version of Treaty 6, and the Elders' understanding of the treaty's importance for all peoples (Indigenous and non-Indigenous). As the paper draws extensively on oral history taught by Cree Elders, it begins with a discussion of the oral tradition, its context, and its reliability.

Oral History

This is a story about Plains Cree Peoples, their traditional selection of their leadership, and the role of their leadership in entering into Treaty 6 with the British Crown. It is a story about the Cree Peoples' understanding of the promises made in Treaty 6. It is based on what the Elders have passed on in their teachings. In an oral culture, the means of passing on information is via story telling. That is not to say someone makes up a story, but a story is the manner in which the information is told.³

When the Elders come together, the stories begin to flow. One Elder alone has many stories, but when a number of Elders are placed in the same room, the stories multiply. One Elder may know part of a story and another will know the rest of the story. Together, the Elders tell the history of the nation. Narrative is a powerful method for teaching many things, including the history of an oral people. The key is to listen and learn.

From early childhood, an Indigenous person learns to listen to the Elders, and eventually listening becomes an acquired skill. It takes a lot of patience to learn to listen. The Elders watch the young people to look for good listeners: it is the good listeners who will learn the stories. When a child is young, he or she is allowed to stay when Elders are speaking, but if the child becomes noisy, then the child must leave the room. If a child wants to learn the stories, then learning to be quiet and listen becomes important. The Elders see which children have the patience to learn.

Storytelling is an art and a skill among the Cree Peoples, as it is for all peoples who use the oral method to convey stories. A skilled storyteller is a master of the language and of the history of the peoples. It is through telling stories that the histories of the peoples, as well as important political, legal, and social values are transmitted.

The Use of Detail

When Elders begin to tell a story, they will describe in great detail the history which gave rise to the story. For example, Elder Charles Blackman of the Cold Lake Reserve begins: 'I'm 68 years old. Of what has been said, I will elaborate some things too, regarding the first signing of Treaty 6. I have heard in many places that I have been, and I've heard a lot the time the Elders assembled at Duck Lake, Saskatchewan. Elders were called up

from many parts of the country. The expression the Elders gave then was the same as to what we have been saying.'⁴ If the listener wants to verify the words of the Elder, they are made welcome to check with persons who were present at the meeting in Duck Lake, Saskatchewan. Another Elder from the same Cold Lake community, who was interviewed at the same time, said the following about learning the history of the people:

I have attended quite a few meetings such as All Chiefs' Conferences. The reason why I go to these is I am concerned about the young people and at the same time, trying to understand what the Indian people are doing. And as I have heard what the old people said. The reason I'm saying this is because no matter where you are, a person will always find something that is good, traditions that are good and also find something that could be useful. This is where a young person could get a lot of ideas. But, then again a lot of these people don't attempt to follow these [teachings] ... you must not forget the Elders.⁵

The Elder began his story with the following words:

He was my close relative. He was my grandfather, this old man Bear. And also Bighead was my grandfather. These were the people I used to hear talked about those things. They would tell these stories to the peoples. When I was small, I was one of those kids that liked to listen to everything. I guess that's why I'm telling you these things and today as we are sitting here ... I would appreciate very much if you could put these interviews out so the people could hear them all over and the things you are doing. Even though I will say we are past over seventy years of age. Still it would nice.

When I was a young child, I remember my grandmother describing a meeting which she attended as a young woman. The meeting was to discuss the land and whether land should be surrendered from the reserve. She told me the exact location of the meeting, pinpointing the hill where the meeting took place. My grandmother told of all the persons present at the meeting, including the clothing the women were wearing, right down to the colour of their head scarves. Her telling of the story occurred about fifty years after the meeting had taken place. She neither read nor wrote, but her mind was strong and sharp.

Why would she spend so much time describing what was said by each person and what kind of clothes they were wearing? That kind of detail gives life to the historical event. The description of people, speeches, and clothing puts breath into the story. It is also a way of verifying the story. These details can be checked by other people present at the meeting,

Recounting the smallest details indicates the memory is accurate. The way of mentally recording that meeting would be critical in later years when issues related to lands were discussed by the citizens of the community. The detail held by my grandmother's mind about the meeting served to ensure that future generations could listen to the story and feel and hear the context and texture of the discussions.

Collective Memory

No one Elder knows the complete story. The information is spread among a wide group of people for a variety of reasons. For one thing, the only one who knows the complete story within one mind is the Creator. No person could ever claim to be the Creator. So, the stories are spread among the people, and only through repeated and continuous contact with Indigenous communities can the complete stories be known. In addition, with stories spread over a number of people, the accuracy of the story is constantly open to review. If one Elder is changing their part of the story, then the parts held by other Elders will not fit together.

To a listener, sometimes the stories do not make sense. Often this is a way the Elders communicate the story: they tell a piece and wait to see if there is interest in the whole story. The story is then like a puzzle. Are the Elders making a puzzle? No, this is only the perception of the listener. The Elder wants the person to want to learn more. There is one piece in this corner, then another piece given at another time. It remains to the listener to put the pieces together and sort out the complete picture. If there are more questions, then the listener must make return visits to the Elders.

Learning is an individual experience and responsibility. One will never find Elders chasing after a listener; that is not their role. Their role is to remember and recount when asked the right question. The key is the question and how to ask it. Sometimes, it is difficult to understand the words of the Elders, but with patience and time, the meaning comes clear. The Elders do not operate like instant pudding. There is no 'add water, mix, and wait five minutes' for the pudding to set. It may take years to understand the lesson being taught. Many people have said that a story told to them made sense only after they heard another component of the story years later.

There are positive benefits to having many Elders keep the stories. The Elders with their age and wisdom have the time and patience to teach. Each Elder keeps the stories like a sacred trust to be handed down to the next generation. It is through continuous contact with the Elder that one will hear the complete story known by that Elder. It is not a process of sitting for one hour or an afternoon. The history of Indigenous peoples is learned over many years, as the depth of an Elder's knowledge is immeasurable.

In approaching Elders, there is a protocol. First, it is customary to ask an Elder to help you. Your request should be accompanied by a gift of tobacco and cloth. Sometimes, the Elder will tell you to see another person they believe to have more information. That is not to say that Elder does not know the subject area, but he or she may feel another is more knowledgeable. Patience is important. An Elder does not always answer on the day the question is asked. Sometimes, you are requested to return a few days later. Not only does one learn about listening, but one learns about patience. In her book *Poundmaker*, Norma Sluman writes: 'Poundmaker was surprised with the Treaty Commissioner who was upset that he had been with them four days without an answer to the issue of Treaty making. This was following on his [Poundmaker's] mission to the Blackfoot Confederacy to make peace which took him all winter to negotiate. Four days to him seemed such a short time when discussing the future of his children's children. Time becomes irrelevant when the issues are related to Treaty. Time must be taken to ensure that everything is done right.'⁶ If the Elder wants a person to know a story and not just part, they take time so the person remembers it, rather than rushing and letting some parts be forgotten.

The Elders have within their memories a collective history. No one Elder has all the information about a particular event; each has a personal memory which embraces their parents' or grandparents' memory of the details and circumstances of events that took place: 'My grandfather was the one who provided this testimony to me. I am sure that he was telling the truth. If my grandfather was a liar, I am a liar also by stating that what I have stated today.'⁷ The stories are solemnly recalled by the Elders, as memory is a gift of the Creator. Many times, the Elders will say that the Creator has given a person a mind to use: do not waste the gift.

When the Elders talk about history, they never refer to non-Indigenous judicial or political considerations. The Elders refer only to the jurisdictions and political rights of our own people. It is from the Elders that we learn how to operate our governments and the standards to which our leaders must aspire in order to maintain a strong Indigenous government. The Elders have been taught about inheritances in the oral traditions. Their knowledge has been discussed, pondered, and reflected upon. The Elders, then, hold the inherited collective body of knowledge that transcends time and space.

The Selection of Chiefs

Some of the most instructional stories told by the Elders concern the position of Chiefs and the way a Chief is to be respected. When speaking of a Chief, the Elders change their tone of voice. They lower their voice to

almost a hush, and there is a lot of respect shown even in the mentioning of a Chief's name. The Chief is looked to for guidance and leadership. Many times, people would say that we should talk to the Chief about such and such difficulty or tell the Chief about the good news of such and such. The Chief and the Headmen were placed in positions of honour and respect. Even today, people will refer to a person who is no longer Chief as the 'old Chief,' a place of honour among the peoples.

A Chief was chosen by the people to assume the leadership role. The position was not bestowed lightly by the people. The Chief and Headmen were an extension of the community to be respected and loved by their followers: 'The *okimaw* or leader of a group or band was always well looked after by his followers. They gave him the choicest cuts of their kill, and his larder was supposed to be amply supplied at all times so that he in turn could treat his many visitors to the best.'⁸ The selection of a leader was not a competition. There was no such thing as a term of office. By their actions, the people made known their wishes to be led by a certain person. If another person aspired to the position, he would probably move away with some followers and form his own group. The process of leaving to form a new band was lost after the treaty was signed. The government of Canada unilaterally imposed a law against forming new bands. There is now a provision in the Indian Act, as amended by Bill C-31, for forming new bands. This provision has been used twice, when the minister of Indian affairs created the Woodland Cree Band and the Loon River Band in an attempt to undermine the rights of the Lubicon Cree in northern Alberta.

A story circulated in Indigenous country not long ago about a traditional selection process in northern Saskatchewan, where one man wanted to be Chief but was a mean person. In that community's selection process, the supporters of a person go and stand behind their choice. In this particular case, no one stood behind the man, not even his wife. This is one example of the process used to select the best person to be the leader.

A leader held his position as long as he had the respect of the people. If the time came to replace the leader, a person was selected who had been observed by the people for many years.

No matter how brave a man is and no matter how many horses he brings back [from raids], if he has nothing, he can't be a chief. It happened many times that a man would be brave and bring back many horses. But he would trade the horses for clothes and would be too lazy to get hides for a tipi cover and so he could never be chief. When a young man showed [by his deeds] that he would be a chief some day, the old men would go

to see him and say, 'Now young man, you are climbing higher and higher and are on the way to become a chief. It is for your own good [that we speak]. It is not an easy thing to be chief. Look at this chief now. He has to have pity on the poor. When he sees a man in difficulty he must try to help in whatever way he can. If a person asks for something in his tipi, he must give it to him willingly and without any bad feeling. We are telling you this now because you will meet these things and you must have a strong heart.'⁹

This was the place of the Chief prior to the signing of the treaties, and remains so to the present day.

At the arrival of the non-Indigenous peoples into Indigenous territories, these Indigenous governmental structures were well established and functioning. The political structure of the Indigenous peoples is best described as a democracy, in the full sense of the word.¹⁰ The leaders were selected by and accountable to the citizens of the communities. No one was excluded from the process. The leader chosen was always the 'bravest' man.¹¹ Citizens had access to their leaders, and if a leader was not performing as expected, he would be replaced.

Indigenous Peoples Are the Boss of the Chief

In a Cree Indigenous community, the *okimaw* (Chief) and Headmen¹² are only empowered to implement decisions made by their citizens. An individual who is chosen as a Chief or a Headman does not have any prerogative to make unilateral legal or political decisions binding the citizenry without their express consent. The Indigenous peoples who selected the Chief and Headmen are the boss. If the community has previously given direction, then the leaders are obligated to follow that direction. Chiefs cannot change the direction to suit the occasion, and they do not make decision isolated from their people. Community members ensure that they are involved in all decisions given to their leadership. This is not to say that the Chiefs and Headmen are not consulted about the direction of the communities. But the people have the political and legal authority, and the Chiefs carry out decisions, not the reverse. Chiefs should not and cannot order their people to do things in contravention of the peoples' wishes.

In a traditional Indigenous community, selection for a leadership position does not mean an end to the process; it is only the beginning. The leadership is under constant review and scrutiny by the members of the community. If you were to visit a Chief at his or her office or home, you would see community members and other Indigenous peoples arriving from early in the morning to late at night. In an Indigenous community, the Chief is a person to see on all matters, good and bad.

War Chiefs

One of the most interesting facets of the traditional government of the Cree was the role of the War Chief, which was usually different from that of a political leader. The War Chief occupied a very integral role within the community. He was the leader of the soldiers' lodge, which was comprised of young men under his direction:

The Warrior's lodge was erected in the centre of the camp circle when the band came together in the spring. The societies did not function during the winter, except on those rare occasions when plentiful food and fuel made a large winter encampment possible. Their lodge was an enlarged tipi and was erected by the wives of the Warriors ... The members were seated in the order of their prestige, the place of honour behind the fire being reserved for the Warrior Chief ... This official was chosen by the Warriors; his authority was confined to those activities performed by the Warriors as a group ... The Warrior Chief was distinct from the Chief proper ... he was always one of the boldest and ablest of the fighting men ... When the Cree were gathered in large encampments, individual hunting could not be tolerated lest the game be driven away from the vicinity in a short time. When a herd was sighted, the Warriors went on guard to see that no one disturbed the buffalo before adequate preparations for the hunt were made. When all the hunters were ready, they were allowed to approach the herd slowly until the signal for the charge was made.¹³

The Warriors' tent was always placed behind the political Chief's tipi in the centre of the camp. In times when their enemies were far away, the Chief had undisputed control of the village. The soldiers carried out his edicts without complaint, controlling the hunts, dispensing justice to those who broke the laws, and acting as the police force of the camp.

However, if the village was in danger of attack, the leader of the soldiers' lodge immediately became the War Chief and ruled with complete authority. This custom was rooted in the logic of survival, for the political Chief of a camp was often an old man, interested only in peace and harmony. The delicate balance between the Chief and the leader of the soldiers' lodge was recognized by everyone in the camp, so it was rarely the source of conflict or jealousy. However, as the story of Chief Big Bear reveals, the settlers' government did not understand or choose to recognize the distinction between the two kinds of leadership.

Traditional Chiefs: The Case of Big Bear

The Elders talk about the qualities of Big Bear as a Chief. During his time, he was a well-known medicine man who had great powers. Big Bear also

possessed many qualities of a good Chief, including being a great hunter, with proven abilities during times of battle. He was known to be warm-hearted, with a good sense of humour. There are many accounts of his ability to speak in a loud, booming voice for long periods of time.

As was the custom, Big Bear was selected as Chief by consensus in 1865. When Big Bear first assumed the position of Chief, his following was small, but near the end of his life his camp was one of the largest. Big Bear had been groomed for the job: his father had been Chief. As a result, Big Bear had sat in council meetings from a very young age and had listened to the Elders making decisions. He grew up observing the role of the Chief and thus, when selected as Chief, he stepped easily into the position.

Once I went with an Elder to the area known as Sounding Lake, which is in the eastern part of present-day Alberta. The Elder spoke about Big Bear and his ability to lead people. During one huge gathering of over a thousand, Big Bear was the main Chief of the camp and all the other Chiefs deferred to him. There was a dispute over a horse, which could have led to violence in the camp, but Big Bear rode among the fighting men and spoke to them. They stopped their fighting at the request of Big Bear. He was a kind and fair man, which is the reason he receives such respect from the Cree People to this day.

Big Bear did not sign Treaty 6 in 1876 because he was not invited by the representatives of the Crown to the original treaty negotiations in Fort Carlton. Poundmaker was concerned that the old man was not present at the treaty signing: 'Poundmaker was still a young man, not a Chief ... he had nothing like the real influence that the old medicine man Big Bear had with his people. [Big Bear] would see the negotiations in a clear light. It was hard to understand his absence. He had served his people long and faithfully, it was unthinkable that he would knowingly have been absent on this crucial occasion. Big Bear later confirmed this opinion: he had not been notified to attend.'¹⁴ It is easy to see that other leaders among the Cree looked up to Big Bear. He was one Chief among many, but his influence was widespread among the Cree Peoples. Though his failure to attend the treaty negotiations did not stop the other Chiefs from negotiating, clearly the leaders felt Big Bear's presence would have helped the process.

There are a number of reasons for Big Bear's not being invited to the treaty negotiations. First, it seems clear that the government's agents were afraid of his influence. In addition, Big Bear did not subscribe to the Christian faith which was being spread among the Cree at the time, and the priests were active in trying to persuade the Indigenous peoples to accept less in the negotiations. Most importantly for the Cree, Big Bear, not being a signatory to the treaty in 1876, could ensure that the treaty commitments undertaken by the Crown were honoured.

When Big Bear did arrive at the treaty encampment, the treaty was already signed. He was then asked to sign but declined. He was concerned that the Crown would not live up to its obligations, and wanted to see how the treaty would be implemented. Big Bear's people did not sign Treaty 6 until 1884, a full eight years after the initial treaty was negotiated. During that time, he continued to live on the plains, following the buffalo herds and conducting his camp in the manner handed down to him by his ancestors. He watched the implementation of the treaty, keeping in mind that as long as he did not sign, he was a free agent to negotiate his own camp into the treaty. His camp was the largest, with traditional territory extending from north of the North Saskatchewan River down to the American border and beyond. He moved his camp within this territory and refused to share that land with the Crown.

As Big Bear followed the buffalo across the plains, he could see that the Indigenous peoples were beginning to suffer with settlement on reserves. As he saw that the treaty was not being implemented, Big Bear talked with Poundmaker and other Chiefs about the treaty and what could be done to ensure that it was implemented. Discussions were undertaken with the Blackfoot Confederacy. Poundmaker was an adopted son of Crowfoot, so Big Bear sent Poundmaker to the Blackfoot to canvas them on their feelings about the implementation of the treaty. Big Bear had the ability to mobilize the whole of the Indigenous population in what is now Western Canada against the government for their violations of the treaty. It is no wonder the government was afraid of Big Bear.

Initially, Big Bear wanted to settle in the Cypress Hills in the southern part of present-day Alberta and Saskatchewan. But, the government of Canada did not want Big Bear so near the American border. There was concern that Big Bear would lead the Indigenous peoples against the government. As a result of the government of Canada's refusal to recognize Big Bear's request for land in the Cypress Hills, the Chief moved his camp north towards Sounding Lake, south of the present-day town of Provost, Alberta.

At Sounding Lake, Big Bear was the main Chief of the camp. A marker at Sounding Lake commemorating a visit from the governor general of Canada indicates that over 5,000 Cree were camped there. This camp was under the control of one Chief: Big Bear. David G. Mandelbaum describes the meeting structure that would have governed the encampment:

When several bands gathered in large encampments, the Chiefs would meet in one of the Warrior lodges. The hierarchy of rank among the Chiefs would be tacitly recognized or, in any case of doubt, settled by a word or hint from a respected old man. The highest ranking Chief sat

directly behind the fire at the back of the lodge, the next highest on either side of him and so around the lodge, with the least esteemed near the door. On such occasions the status accorded to a Chief did not depend on the size of his following, but hinged largely on his war record. His fame as an open-handed person also was considered.¹⁵

It must have frightened the government to see such a large encampment under the jurisdiction of one Chief. As a result of that meeting, the government told Big Bear's people that they could not have their reserve set aside at Sounding Lake. Once again the followers of Big Bear moved north as winter approached.

Big Bear's people camped near Frog Lake in the winter of 1884, which led to his eventual imprisonment for crimes he did not commit. The colonizer's agents had told Big Bear that at Frog Lake food would be provided to his people. Under the treaty, Indigenous peoples were to be taken care of during times of famine and need. The followers of Big Bear were in need of food. There was not much game, and hunting was poor. The War Chief – not the old Chief – went to the Indian agent and asked for food. It must be stressed that requesting food for his people was an action not lightly taken by a War Chief. The War Chief was a proud man, and it would have been humiliating to request food when the food should have been given under the treaty.

The agent told them that they could have food if they brought wood for the camp. The men, weak from hunger, agreed to gather wood. They chopped and brought the wood but were denied food by the agent. Again, the War Chief requested food for the people, and again he was denied. He then went to his camp and got the men to come and ask for food. Again he asked and was denied. At this time, Big Bear was not present; he was north of the camp hunting for food and did not return until after the events described below.

For the Cree, there is no fourth time to make a request. The War Chief and his men killed the Indian agent and other men at Frog Lake and took the food for the people. For this action of enforcing their treaty right, Big Bear and his people were hunted by the government. They were not captured, even though they were chased by a large force. In the end, Big Bear and his people surrendered to the government forces to save the women and children from further hardship. The War Chief and others were hung at North Battleford, and Big Bear was sent to prison. Big Bear should never have been imprisoned, but the Canadian government would not or could not understand the difference between a Chief and a War Chief.

The Indigenous Peoples' Basis for Treaty-Making

Indigenous Chiefs dealt with the arrival of the non-Indigenous settlers into Indigenous territory in the same manner as they dealt with others entering their jurisdiction. There was a protocol to be followed. The Chiefs had requested that all who came into their territory follow this protocol. Prior to entering into treaty, the Chiefs requested that the Crown and its settlers not enter their territory without concluding an agreement. It was the Indigenous peoples who had the jurisdiction in this area and told the Crown that their jurisdiction must be respected.

A number of significant events occurred prior to the signing of Treaty 6 in 1876. The Indigenous peoples heard that the Hudson's Bay Company had sold lands to the British Crown. The Chiefs could not believe that the trading company could have acquired their lands. In present circumstances, it would be tantamount to Pepsi Cola or another such company gaining title to the lands of another country merely by engaging in trading. The Indigenous peoples never recognized that the company had any jurisdiction over them. Trading beaver pelts was one thing, but having the land given to someone else was quite another.

In order to clarify the situation, the Chiefs sent a message to the representative of the Queen to inform her of the true situation. They stated that the Hudson's Bay Company could not gain control of their lands through its trading activities. These lands belonged to the Indigenous peoples who demanded that the Crown respect their rights before moving into their territory. They wanted the jurisdictional issue settled as soon as possible. They wanted the Crown to determine the exact nature of its agreement with the Hudson's Bay Company, which was undertaken without the consent of Indigenous peoples. They considered such an agreement to be invalid as a means of gaining access to their lands.

All over the West following 1870, Indigenous Peoples prevented surveyors and other people – including the builders of the telegraph – from coming into their territory without a treaty. The Indigenous peoples were protecting their jurisdiction. If the Crown wanted to have access to their territories, the Crown would need an agreement from the Indigenous peoples. This is no different than the request that Chief Sitting Bull of the Sioux People placed before the Cree when the Sioux moved north. The treaty between the Cree and the Sioux remains in force: a number of Sioux communities are spread among the Cree communities within the areas covered by Treaties 4 and 6.

Sharing the land through treaty-making was a known process. The treaty-making process with the British Crown and others followed the Cree laws. The only way to access the territories of the Cree, Assiniboine, Saulteau, and Dene was to enter into a treaty.

The Crown's Obligation to Make Treaties

In 1492, Christopher Columbus arrived on the shores of the Americas to exploit the lands for his own wealth and the wealth of the Spanish Crown. To accomplish this task, Spain, as well as other imperial European nations, tried to divest Indigenous peoples of any international legal status by developing the legal concept of *terra nullius*. According to this myth, the land belongs to no one, and the colonizers could occupy the lands of Indigenous peoples without their consent. 'From this it followed that such territories would vest automatically in the first civilized power which chose to occupy them, regardless of the wishes or resistance of the Indigenous population.'¹⁶ Thus European colonizers established their own framework in law, which allowed them to kill, maim, and dispossess the Indigenous inhabitants of the land.

However, this was not the case in North America, where the British needed the Indigenous peoples as allies against the French. After Britain's war in America against the French and Indigenous nations (1755-63), the British monarch George III reconfirmed boundaries between the colonies and the Indigenous territories in the Royal Proclamation of 1763.¹⁷ Nearly one-third of the text is devoted to British relations with Indigenous nations. The Proclamation recognized Indigenous peoples as 'Nations,' as distinct societies with their own forms of political organization, with whom treaties had to be negotiated. It also enshrined the protection of Indigenous lands by the British Crown, and a process of seeking Indigenous consent to European settlement through treaty-making. Finally, the Royal Proclamation clearly spelled out that Indigenous nations had an inalienable right to their lands.¹⁸

The Royal Proclamation was never binding upon Indigenous peoples: it bound the British Crown and its colonial agents to follow certain rules in relation to Indigenous peoples and lands. In fact, the Proclamation was a codification of the norms of customary international law for entering into treaties. International law required that a sovereign enter into formal agreements with another people's sovereign prior to entering lands occupied by those peoples.¹⁹ The Royal Proclamation extended this norm of international law to Indigenous peoples in the British colonies in America.

However, because of the doctrine of discovery, treaties with Indigenous nations did not ensure a place for Indigenous peoples within the family of nations under international law. The discovery doctrine allowed competing European powers to define their respective spheres of influence in the colonies. Joseph Story wrote that, in the nineteenth century as a conventional rule, discovery might 'properly govern all the nations which recognised its obligations, but it could have no authority over the Aborigines of America, whether gathered into civilised communities or scattered in

hunting tribes of the wilderness.²⁰ According to Lindley, discovery was 'adapted to regulate the competition between European Powers themselves, and it had no bearing upon the relations between those Powers and the natives. What the discoverer's State gained was the right, as against other European powers, to take steps which were appropriate to the acquisition of the territory in question. What those steps were would depend on whether there was already a native population in possession of the territory.'²¹ Consequently, discovery only gave an inchoate title.

Treaty-making served as a double-edged sword for the colonizing state. In order to claim international legitimacy, the state must be able to claim the land – but through what means? Can a state lay claim to lands through a treaty process with Indigenous peoples while at the same time denying the rights of the Indigenous peoples as international subjects? This is exactly the conundrum that Indigenous peoples have seized upon to nip at the heels of state legitimacy.

In the case of Canada, the British Crown asserted its jurisdiction over the lands of the Indigenous peoples and enacted various proclamations to regulate its agents in their dealings with Indigenous peoples. The Proclamation of 1763 set out the obligations of the Crown of Great Britain and its successor states for the acquisition of the right to enter into Indigenous territory, and it specified the treaty method to be used when dealing with Indigenous peoples.

There is a further amplification of the treaty-making obligation of the British Crown in relation to Indigenous peoples under the Imperial Order in Council of 1870. That law set out the Crown's powers to negotiate treaties with those Indigenous peoples occupying the lands west of the colony of Canada which had been established in the eastern part of Great Turtle Island. The international law norm to enter into treaties was confirmed by a 1975 International Court of Justice (ICJ) which looked at the doctrines of *terra nullius*, discovery, and conquest.²²

In an advisory opinion, the Court found that *terra nullius*, discovery, and conquest were not legitimate doctrines to assert sovereignty over a territory. The ICJ stated that land occupied by a group of people having some political and social organization was not *terra nullius*. The Court pronounced that the only way for a foreign sovereign to acquire any right to enter into territory that is not *terra nullius* is through an agreement with the original inhabitants who have given their freely informed consent. In coming to this decision, the ICJ reviewed the colonial history of the settlement of the Western Sahara and the ties that existed between Spain and the leaders of the land in question. The ICJ determined that the treaties entered into with the Western Sahara leaders were sufficient to form a legal tie that excluded the states of Morocco and Mauritania from claiming the lands.

The settlement of the Western Sahara took place in the same period that the British Crown entered into Treaty 6. And the International Court of Justice is clear in its 1975 judgment that, at the time Treaty 6 was made, the international community no longer accepted the concept of *terra nullius*: 'Whatever difference of opinion there may have been among jurists, the State practice of the relevant period [at the time of colonization] indicates that territories inhabited by tribes or peoples having a social and political organization were not regarded as *terra nullius*. It shows that in the case of such territories the acquisition of sovereignty was not generally considered as effected unilaterally through "occupation" of *terra nullius* by original title but through agreements concluded with local rulers.'²³

The only way for the British Crown to have access to the lands of the Indigenous peoples was to enter into agreements with the rulers, in this case Chiefs and Headmen, who were in possession of their lands.

The Process of Making Treaty 6

The Elders relate the history of the treaty commissioner who came to the Chiefs and Headmen to negotiate a treaty. The Chiefs and Headmen did not travel to London, England, or another place to enter into a treaty: it was the Crown and its agents who wanted a peaceful settlement of the territory. In order to accomplish this, they would have to make a treaty with the Indigenous peoples, so the treaty commissioner came to the Chiefs and Headmen. The commissioner requested that, for the future security of settlers, a Peace and Friendship Treaty be entered into with the Cree, Assiniboine, Saulteau, and Dene Peoples in the western part of present-day Canada. Those Indigenous nations formed an alliance and entered into Treaty 6 with the British Crown in 1876, to last as long as the sun shines and the waters flow.

At their meeting with the treaty commissioner, the Indigenous peoples did not immediately agree about the nature of the treaty. 'The Indians²⁴ also were having meetings for seven days trying to work some arrangement that would be suitable for them. When they were through discussing, the Indians were ready to present their side of the bargain.'²⁵

The late Elder Fred Horse spoke often about the treaty, as he was taught by this father, John Horse: 'My father listened to these things. He said that when I was growing up. Many times at night, he would lift the big pipe, light it and proceed to talk to me of these matters ... When the Commissioner arrived, he was not agreed with right away but time and deliberation was made ... The Commissioner stated that the Queen's subjects were being overcrowded where they were and they wanted land so they could make a living.'²⁶ Elder Toussait Dion, also from the community of Frog

Lake, stated: "What the old man used to tell me was, he use [sic] to say he was there [at the Treaty signing] himself, when the Queen's representative came to make the negotiations. The Queen, herself, never came across the ocean to negotiate. It was her representatives that came, and this Queen's representative said that the Queen has sent me to come here on her behalf. The old man used to say, there I've heard and listened to the negotiations when the big gathering took place."²⁷ The Elders have kept alive the events which occurred at the treaty signing for the younger generations to know their history.

The Chiefs and the treaty commissioner followed both Cree and international laws concerning treaty-making: the two equal parties negotiated in good faith, at arm's length without external pressure, and arrived at a meeting of the minds. Negotiations took place over a number of days: "The progress of the negotiations was slow because there was a lot of discussion going on, a lot of deliberations took place. And, then, there the Treaty Commissioner made the strong statement. The sun and the water, if these exist, the terms would always be the same. As long as the sun shines and the water flows. [This the father used to say.] Consequently, the negotiators figured that they had finished their business then."²⁸ The treaty commissioner accepted that the treaty would be concluded with the smoking of the pipes according to Cree custom:

[The Chiefs] told the officials that they were using their greatly respected power for a legal transaction [peace pipe]. With the promises made by the Queen, they did not want them to ever come to an end. These promises were made with the smoking of the pipe. [The treaty commissioner's] lips touched the stem of the pipe. [This wasn't done ordinarily for no reason. If one puts a pipe stem to his lips, that was a highly honoured agreement ... He smoked the pipe stem ... The Indians didn't use only one pipe either is what my father told me. They sang their sacred songs.]²⁹

The smoking of the pipes was acceptable for the Cree and the treaty commissioner for the conclusion of the agreement within Cree territory. Smoking the pipe would signify to the Creator the intention of the parties to keep the terms of the agreement in a strong binding manner. The Indigenous peoples wanted this treaty to last as long as the earth would exist; this is the reason they smoked the pipe with the commissioner.

It was more than a pipe ceremony: it was a solemn undertaking by both sides before the Creator that this agreement would last into the future. Often, the Elders speak of a third party at the negotiations. They are speaking of the Creator, who was a witness to the process. In the face of the Creator, it is not possible for the Indigenous peoples to break the agree-

ment undertaken with the Crown's representative. The honour and pride associated with this solemn agreement bind future generations.

Whose Treaty Is It?

When Treaty 6 was entered into in 1876, Canada was a colony of Great Britain. None of the Elders who know the Treaty 6 process acknowledge the state of Canada as being a party to the treaty. Even the written version of Treaty 6 acknowledges that the treaty was entered into with the Queen of England, Scotland, Ireland, and Wales – without mentioning the colony of Canada. Thus, the government of Canada, which is not a party to the treaty, does not have the authority to change the treaty.

In one instance, an Elder questioned the government of Canada's ability to overrule the Chief who had signed the treaty with the Queen: "As long as the sun walks, as long as the river flows, you will not have liquor," that is what the Commissioner said. Today, even when the Chiefs don't want liquor, it is still legalized. It looks like they don't have any authority at all after the Commissioners had decorated them as Chiefs. So they try to stop the liquor without success. I wonder if the people in Ottawa have overruled the Queen to be able to do that.³⁰ The Elder understands that the Chief and the Queen were on the same footing.

The Elders are entirely correct in their understanding of a traditional international treaty. Colonies could not enter into treaties without the authority of the Parliament that created them. Canada did not have the authority to enter into treaties in its own right until the Statute of Westminster was enacted by the British Parliament in 1932. Canada could not become a party to the treaty without the consent of both parties. The Indigenous peoples never gave their consent for Canada to be a party to the treaty, and Canada did not sign Treaty 6.

The signing of the treaty was not a mere formality on the part of the British Crown to save 'the pride' of Indigenous peoples. The Crown had a legal obligation to enter into formal agreements with Indigenous peoples prior to settling on their lands. The signing of a treaty had international legal significance for the colonizer.

The Treaty Chiefs' Authority Regarding the Treaty

The legal and political capacity of the Indigenous peoples to enter into treaty is clear. It flows from the traditional laws which govern the role of the Chiefs and Headmen: "I always ask the Creator to help our people to help our leadership when they go and speak for us, that they may return safely, and the Creator might look upon them, so that they could be successful in what it is they are trying to do for their people."³¹ The Chiefs were trying to do something for their children's children. The role of the Chiefs and

Headmen was to ensure that the agreement entered into with the British Crown did not destroy their relationship to the land and their citizens.

Treaty 6 begins and ends with a succinct declaration of the authority given to the Chiefs and Headmen by their people to enter into treaty with the Crown. In the preamble to Treaty 6 is the following: 'And whereas the Indians of the said tract, duly convened in council, as aforesaid, and being requested by Her Majesty's said Commissioners to name certain Chiefs and Headmen, who should be authorized on their behalf to conduct such negotiations and sign any Treaty to be founded therein, and to become responsible to Her Majesty for their faithful performance by their respective Bands of such obligations as shall be assumed by them.'⁴² At the conclusion of the Treaty 6 document, the Chiefs 'on their own behalf and on behalf of all other Indians inhabiting the tract,'⁴³ were recognized by the treaty commissioner as having authority to enter into treaty. The treaty process acknowledges and accedes to the jurisdictional authority of the Chiefs and Headmen as the legitimate government of the Indigenous peoples.

The Chiefs and Headmen were accustomed to being recognized as leaders in their interactions with others, including the Hudson's Bay Company. Political alliances were validated by the exchange of gifts. Early in trading relationships, European traders realized that they must give gifts.⁴⁴ Trading relations did not change the political authority of the Chiefs and Headmen. The factor at the Hudson's Bay Company trading posts gave presents to the Chiefs as an acknowledgment of their position.

The position of the Chief was also secured and acknowledged by the treaty process. In recognition of the position of the Chiefs and Headmen, the treaty document specifically stated that the Chiefs and Headmen would receive annual payments of money, though a dispute continues to this day as to the amount of monies that were to be received. The Indigenous peoples agreed to share some of the lands with the settlers; in return, there must be a gift. The annuity monies were to ensure that each year the alliance was validated through the gift process.

The Crown's Authority Regarding the Treaty

At the time of treaty-making, the Chiefs did not ask the Crown to submit any documents which demonstrated their authority. The Chiefs and Headmen accepted the commissioner's word that he was the legitimate representative of the Crown: '[Alexander] Morris⁴⁵ was well into his speech. The Great Mother in sending him to them was demonstrating her concern for her red children and her desire for them to be happy and secure in the changing times ahead. As he expanded on this theme, many of his listeners were truly moved by this picture of the Queen's great power, compassion and

generosity, traits the Crees admired in their own leaders.'⁴⁶ Each party accepted the other as equals capable of concluding a binding agreement.

Women's Authority in Relation to the Treaty

There has been much misunderstanding and inaccurate writing about the role of Chiefs and women in the treaty-making process. This is often the result of applying a Eurocentric model to historical material, which fails to recognize and understand the role of the Chief and Headmen in the treaty-signing process. In addition, there is no understanding of the role of the women in Cree society, nor of why Indigenous women did not sign the treaties. It is sometimes assumed that Indigenous women held the same inferior status as non-Indigenous women of the same time period. Nothing could be further from the truth.

One of the strongest teachings of the traditional Elders concerns the women. When the Elders speak about the role of women at the treaty, they talk about the spiritual connection of the women to the land and to treaty-making. The Creator gave women the power to create. The man is the helper to the woman, not the other way around. Women are linked to Mother Earth by their ability to bring forth life. The women sit beside the Creator as a recognition of their role and position.

Once there was a story of a young man who criticized a woman at a meeting. After the meeting was concluded, an old man went to speak to the young man. The old man asked the young man to hold out his hand and make something grow. The young man replied that he could not make something grow in his palm. The old man told him that a woman could make things grow. Until the young man could make something grow in his hand, he should not speak against women.

Because of this spiritual connection with the Creator and Mother Earth, it is the women who own the land. Man can use the land, protect and guard it, but not own it. Women can pass on authority of use to the man, but not the life of the earth. When a man hunts, the women come along and claim the meat. If a woman is the Chief's wife, she distributes the choice meat in the village after the hunt, because the women own the meat and the hide.

To comprehend the role of women is to understand the limits placed upon the Chiefs in the negotiation of the treaty. The Chiefs did not go to the treaty table with unlimited authority to negotiate with the representatives of the Crown. Just as the Queen's commissioner was limited by the Crown's legislative authority, so too were the Chiefs limited.

The Chiefs who entered into treaty only had the authority to share the lands, never to sell or surrender it. One of the reasons women did not take on political roles such as Chief, or participate in the treaty-making

process, was to protect their jurisdiction and possessory rights. Women never signed the treaties: they never signed away possession of the lands to the Crown. This is the main reason that the Elders and Chiefs can say with such authority that the land was never sold in the treaty process.

The role of women within Indigenous society also helped the British treaty commissioner, Alexander Morris, conclude Treaty 6. The fact that Great Britain had a Queen made it easier for the Indigenous peoples to accept the request for 'land to be set aside for settlement.' The Queen was a powerful object who wanted to enter into a treaty – a woman who knew the role and importance of the laws of the Creator. When Morris was appealing to the Indigenous peoples to enter into treaty, he spoke of the poverty and starvation of the Queen's people who wanted to farm the lands of the Indigenous peoples. The Queen was appealing on behalf of her children for the use of the land to the depth of the plough. The Queen did not want to own the land, the fish, the animals, the plants, the water, or the birds. Her people had their own animals (cattle, pigs, sheep) and their own birds (chickens, ducks, geese). All these things were to remain under the jurisdiction of the Indigenous peoples as intended by the laws of the Creator. This was acceptable.

Alexander Morris also spoke of the Queen as the 'Great White Mother' who lived across the great waters to the east. He described her as having arms big enough to look after all the Indigenous people who made treaty. Because of the role of women in the Indigenous world, Indigenous people accepted the idea that a woman wanted to make a treaty to share the land with her people. This concept of sharing was acceptable. One of the Elders whose grandfather had been in attendance at the treaty confirmed the story about an Elder who stood up and asked if the Queen had breasts big enough to care for all the Indigenous peoples.³⁷ Other Elders have repeated the same story, indicating the importance placed upon the role of the Queen in the treaty-making process.

As one Elder stated: 'That is why they were agreeable to treaty because the promises were so good. The government official was always making references to a woman who had sent them. The Indians sympathized with the woman, the Queen, through her representatives.'³⁸

The Elders' Version of Treaty 6

The Elders have long disputed many aspects of the government of Canada's version of Treaty 6. The main criticism of the written version has to do with the language used about the lands. The written version contains the wording 'cede, surrender and forever give up title to the lands.' The Elders maintain that these words were not included in the original treaty. The Chiefs and Elders could not have sold the lands to the settlers as they

could only share the lands according to the Cree, Saulteau, Assiniboine, and Dene laws.

When the Elders were told of the written words, they had difficulty understanding them. These words do not exist in their languages. The Elders give an account of the original treaty being written on the back of a buffalo hide: 'It will also be written on the raw hide, never to be erased. Once again, the Commissioner said, "these things as it will be written on the hide. What is written on the hide, one will be given to your Chief and one will be kept in England where the Queen is. All the Chiefs in the future when any trouble arises between the white man and you, Indians will be able to see the agreement made today." Today, we find the Treaty is written different as it has been said. The way it was written originally should be the same today.'³⁹ This hide was hidden from the government's forces during the Poundmaker and Big Bear troubles in 1885. There are Elders within the Treaty 6 area who know about the existence of this hide. At some point in the future, this hide will be produced by the Elders for people to see the actual articles of the treaty.

The following discussion refers to the terms of the treaty as understood by the Elders, without reference to the document claimed by Canada to be the treaty.

Three Things Requested by the Treaty Commissioner

The treaty commissioner requested three things at the time the treaty was signed: use of the land to the depth of the plough for the Queen's subjects to farm, trees to construct houses, and grass for the animals brought by the settlers.

The Commissioners said he wanted three things. He only wanted the pine to make houses, grass for his animals and land to the depth of six inches to break and plant crops. Anything underneath remained under the jurisdiction and the property of the Indigenous peoples. The Indian people would never be in want as they had ensured their future good life by sharing their lands. [The Commissioner] stated that he had not bought the water nor the fish in it. All the creatures that flew or walked were the Indian's property ... The Queen had promised that the wealth of the land would be ours.⁴⁰

The treaty rights of the Queen's subjects were that they could live in peace and share the lands of the Indigenous peoples. In return, the Indigenous peoples were to receive certain benefits for as long as the sun shines and the waters flow.

A true test of a person's knowledge of the treaty is to listen to his or her description of how long the treaty is to last. Those who learned their history of the treaty from sources other than the Elders say the treaty will last 'as long as the sun shines, the grass grows and the rivers flow.' In the Cree legal system, it is inaccurate to put the treaty in those terms. First, the Elders would not want to tie the treaty to the grass growing because the medicines for the people came from the lands. Our medicines were not tied to the treaty, as the Elders did not want to give their medicines to the non-Indigenous people. Second, the Elders did not tie the treaty to the rivers flowing because they knew that the rivers could change direction or dry up. What would become of the treaty if the rivers ceased to flow? The correct phrase is as follows: the treaty will last 'as long as the sun shines and the waters flow.' What waters? The water is from a woman, which breaks just before the birth of a child. As long as Indigenous women were giving birth to Indigenous children, there would be a treaty.⁴¹ Therefore 'as long as the sun shines and the waters flow' means that the treaty will last as long as there is life on Mother Earth. The Crown entered into an agreement for the future generations of both parties to the treaty agreement.

The Promises Made to Indigenous Peoples

Health Care

The Chiefs and Headmen successfully negotiated universal health care for all Indigenous peoples within Treaty 6. Treaty 6 is the only numbered treaty that includes a 'medicine chest' provision. The Chiefs knew about the diseases of non-Indigenous people that were destroying their populations, and needed to have the non-Indigenous medicine to fight them. The far-sightedness of the Chiefs and Elders to include health care was a result of their concern for future generations. (The non-Indigenous population of Canada did not have universal health care until the 1960s.)

The leaders did not give up their traditional health care and medicines to the non-Indigenous people in this process. This was a gift from the Creator which they were not prepared to share with non-Indigenous people.

Education

There was also successful negotiation of universal access to education for all Indigenous peoples without discrimination by age or sex. A school house was to be built in each community for all children. The Chiefs and Elders wanted their young people to be able to cope with the newcomers, and believed the most successful way would be for the children to understand their ways: 'In the future and today you Indians see that the white man

speaks different languages. At the school, the people could learn the language, so we can speak with the white man.'⁴² (In Alberta, universal access to education for the non-Indigenous population was not achieved until the 1920s, a full fifty years after education was guaranteed in the treaty.)

What the Elders and Chiefs did not count on was the forced education of their children into a foreign value system, and the introduction of residential schools where the language and spirituality of the Indigenous peoples were beaten out of them. The successor government of Canada, hand in hand with the Christian churches, began the systematic destruction of the children through the residential school system, in complete violation of this provision of the treaty. 'The Commissioner never mentioned that the children would be taught outside of the reserve.'⁴³ People resisted this type of education and refused to allow their children to attend such schools – the children were not to be stripped of their identity by church-run schools.

However, the government of Canada used the pass system, introduced in 1886, to force children into the residential schools. With the pass system, Indigenous peoples could not travel outside the reserves to hunt, and starvation became a reality among the people for the first time in their history (the Elders often speak of starvation as coming with the settlers). The people were forced into dependence on the Ottawa-appointed Indian agent for food rations or a pass. If the people refused to send their children to school, there was no food and no pass. It became a choice between allowing the children to starve or sending them to school where they would be fed.

The residential school system was in place until the late 1960s. The destruction of the Indigenous family and community by the residential schools is felt to this day. What culture has been able to withstand a continuing and unrelenting assault upon its weakest members, the children? Canadian society would like to turn a blind eye to this treaty violation, but as long as Indigenous peoples are affected by it, there is a debt owed to Indigenous peoples. Education was a right secured through the treaty process, a right that was consistently violated.

Water

When the treaty was negotiated, the Chiefs and Elders never gave up their rights to water, or to the fish, animals, or other things that lived in the water. 'The water is not what she [The Queen] wants.'⁴⁴ Many of the communities within the Treaty 6 area are located on or near a lake. Prior to signing the treaty, Indigenous peoples made a good living from trapping fish and animals that lived in the water. Since the commissioner specifically stated that the Queen did not want the waters or the living things within the waters, the Indigenous peoples could finalize an agreement.

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stating that since the mountains could not be used for agriculture, the Queen was not interested in them. The Elders say the lands that were four days' travel from the foot of the mountains were not included in the treaty.

There is a strong spiritual reason for the mountains to be excluded from the treaty. The pipe bowl is made from rock which comes from the mountains. Anything included in the pipe – the stone, the wood, the medicine, and the fire – was not included in the treaty. The mountains were not included as they were spiritual places of the ancestors where people went to pray and fast. There are places in the mountains where Indigenous peoples go on a yearly basis to participate in various ceremonies. The mountains, the forests, and the medicines were withheld during the negotiation process and are not in the treaty.

Birds

The treaty commissioner assured the Indigenous peoples at the treaty signing that the Queen was not interested in the birds. The Queen's subjects would be bringing their own birds, such as chickens, ducks, and geese. The non-domestic birds would remain within the jurisdiction of Indigenous peoples. When the Canadian government entered into the Migratory Birds Convention Treaty with Mexico and the United States, Indigenous peoples had never agreed that birds could come under the jurisdiction of the state of Canada.

The lakes and rivers used by birds have been increasingly damaged by settlers, harming water fowl and other species. "Canada" means in Cree a pure state. The old people used this term of how perfect this was one time. Now the white man has greatly destroyed our proud land. Pollution, he has polluted lakes and rivers. He doesn't realize this because he is too busy looking for ways how he could rob the Indians. He has forgotten the promises.⁴⁸ Settlers were to share the lands with Indigenous peoples, not pollute and destroy the lands. The land used to be clean; the Indigenous peoples agreed to share clean land which was to be kept clean. Land and water which is polluted hurts all living things. 'All the creatures that flew or walked were the Indian's property.'⁴⁹ The Creator gave the responsibility to Indigenous peoples of caring for their relatives. Indigenous peoples consider themselves to be part of the circle of life that includes the animals, the birds, the fish, and all other living things. These are all interconnected and, thus, all related. Indigenous people cannot carry out their responsibility because of pollution of the water, land, and air. The Elders consider pollution a violation of the treaty.

Social Assistance

At the time of the treaty-making, there was a growing realization that the

buffalo herds were being diminished by over-hunting in the south of the territory. Each year fewer buffalo made their way north. The Chiefs and Headmen were concerned about the future without access to a good supply of food. As a result, they requested that a provision be included in the treaty for the distribution of food during times of need. This was the first negotiated agreement that included the provision that people would be taken care of in times of famine.

When the peoples wanted to know how this was going to be accomplished, the commissioner said that the 'Queen's breasts were big enough and could last that long to feed and care for all the Indian peoples. You could never exhaust the supply of them to feed you all. This was the answer the Elder got from the Commissioner.'⁵⁰ As the people pressed the commissioner for more information, he said the Queen had long arms which would stretch across the ocean to help care for Indigenous peoples if the need arose in the future. The Elders wanted to ensure that in the future the young people would always be looked after. (The social welfare state did not develop in Canada until the 1930s, a full fifty years after the signing of the treaty.)

One of the Elders, John B. Tootoosis, who was very knowledgeable about the treaty, often told the story about starvation. He reminded people never to believe that we were starving at the time of the treaty-making. This was a story made up by the government after the treaty was signed, to try to change the treaty and make Indigenous peoples look weak. But all Indigenous people had to do was go outside their tents. There was food all around them – roots, berries, animals, birds, and fish, in addition to the buffalo. John B. Tootoosis said, 'Never let anyone tell you that we were starving before the treaty. We never knew starvation. After the Treaty things changed and there was starvation because of the rules and regulations passed against us.'⁵¹

It was as a result of the Indian agent's failure at Frog Lake to provide rations as stipulated in the treaty that Big Bear's Warrior Chief took things into his own hands in order to feed Big Bear's people. When the Indian agent refused to provide rations, even after the people cut wood for him, he and others were killed because they failed to live up to the terms of the treaty.

The worst food was given to the people. As a child, I remember getting hard, dark biscuits (referred to as dog biscuits) from the Indian agent as part of the rations given to Indigenous peoples. As the settlers grew rich and prosperous from the lands of Indigenous peoples, these dog biscuits replaced buffalo, moose, deer, ducks, geese, roots, and berries. In the present day, rations have come to be understood as social assistance. Though many non-Indigenous people protest this 'handout,' the

Indigenous peoples view such assistance as a treaty obligation. It is unfortunate that Indigenous peoples are sometimes made to feel small or worthless for receiving a treaty benefit.

Minerals

As has been discussed earlier, Indigenous peoples agreed to share the topsoil 'to the depth of a plough' (meaning six inches deep). There was no mention in the treaty agreement of the minerals below the six inches. The Elders are quite firm on this point: 'Although the white man is cunning and smart. And these that are under the ground, they've never mentioned them. But the white people had just taken those without the consent of the Indians. They just went ahead and started drilling, which they should not have done.'⁵²

The extraction and sale of minerals without the consent of the Indigenous peoples is a violation of the treaty. The Natural Resources Transfer Act, whereby the federal government transferred the minerals to the provinces, further violates the treaty. Indigenous peoples had never given jurisdiction over minerals to the state of Canada, and certainly had not agreed that the provinces, which did not even exist at the time, could benefit from minerals that belong to Indigenous peoples.

The Indian Agent

The Crown was to appoint an Indian agent, paid by the Crown to be a servant to the Indigenous peoples. If the people wanted to send a message or proposal to the Crown, the Indian agent would write and transmit it. The agent was supposed to be the Indigenous peoples' servant, but turned out to be the keeper of the federal system. Gradually, the Indian agent came to run the affairs of the community completely. Chiefs were not allowed to direct their people, and the Indian agent could replace a Chief who did not cooperate with him. The Indian agent determined what cattle, wood, hay, and other items could be sold. Without an agent's permit, Indigenous peoples could not dispose of their goods.

As an employee of the government of Canada, the Indian agent took his direction from the Indian Act and officials in Ottawa. Neither the Indian Act nor the government in Ottawa were part of the treaty, yet Indian agents controlled access to food and rations, and had a great deal of influence. To this day the minister of Indian affairs uses his authority, the Indian Act, and the monies voted from Parliament, to control Indigenous peoples in violation of the treaty.

A Farm Instructor

The Indigenous peoples wanted to learn agriculture, and the Crown

promised to appoint a farm instructor. In order to allow Indigenous peoples to become self-sufficient in agriculture, the Crown also promised to supply equipment on a yearly basis. Indigenous peoples became so successful at farming that the government of Canada, pressured by non-Indigenous farmers, restricted the sale of Indigenous produce.⁵³ This treaty right was violated by the jealousy of non-Indigenous people who did not believe that Indigenous peoples should become successful farmers. The farm instructor had done a good job – too good to allow the treaty right to continue.

Treaty Money

At the signing of the treaty, the commissioner handed out money to the Indigenous peoples. There was no knowledge among the people about the money. The people did not know why they were given money. The Elders asked the reason for the money, the commissioner said the money was a gift from the Queen for entering into the treaty.

The Elders recall that the treaty annuities given initially were \$50 for the Chief and \$25 for the Headmen, but later were reduced to \$25 and \$15 respectively. After two years, the payment to the ordinary people dropped from \$15 to \$5 a year, where it remains to this day. The Indigenous peoples were told that some of these monies would be set aside for them in Ottawa for their future use. 'In the future, schools and hospitals, we could use some of the money; that was cut to be used towards these. That's how I've heard.'⁵⁴

The \$5 which is given on treaty day each year in the various communities is seen by the Indigenous peoples as a symbol of the treaty commitment, even though the payment was reduced. The Elders wonder how much money is kept by the government and for what purpose that money is kept. Once in a while an Elder will refer to the money and instruct the Chiefs to inquire as to the amount of money in the trust fund. There has never been an accounting of this fund by the federal trustee.

Citizenship

At the time of the treaty-making, it was a recognized right that Indigenous peoples would control their citizenship: the commissioner asked the Indigenous people to point out their people. The commissioner himself did not place people within the various communities. Over the years, the state of Canada has tried to get Indigenous peoples to relinquish their rights to determine their own citizenship. All kinds of methods have been used to get Indigenous peoples to give up this treaty right. One method recently introduced in Parliament is Bill C-31. Through this legislation, the government of Canada tried to gain control of citizenship.

The legislation was seen by the Chiefs, Headmen, and Elders as a direct attack on fundamental aspects of the treaty. If Indigenous peoples cannot determine who is a citizen within the treaty, the treaty would soon be broken for future generations.

Indigenous Responsibility to the Treaty

Through a non-Indigenous education process that promotes a Eurocentric view of life, the treaty is diminished, and the role of the Indigenous peoples within the treaty is not stressed. Indigenous men and women begin to think that they can live like non-Indigenous people and still maintain the treaty relationship. The identity of Indigenous peoples is destroyed in the process, and the perpetuation of Indigenous identity becomes unimportant. The very important roles of women, men, and children become confused and easily influenced by the non-Indigenous society. In this way, Indigenous children are being taught not to carry on the treaty. It is crucial at this time to put the record on the treaty process in the proper light.

When Elders speak of Indigenous people breaking their own treaty, their interpretation is as follows: We are to coexist and share our rich country with the non-Indigenous people. At the time that the treaty was entered into, it was the understanding of the Elders that we were not to take non-Indigenous people as spouses. When Indigenous men and women take on this partnership with one of another race, that is one of the ways, according to the Elders, in which they are breaking the treaties. It has already happened and continues to happen, as people do not know about the meaning of the agreement entered into with the British Crown.

In addition, women had a very important task to perform in perpetuating, teaching, and instilling cultural values, ways, language, etc., in the children. This responsibility is not to be taken lightly, for it is the women who socialize the children into Indigenous societies by the way they teach them.

Further Lessons from the Elders About the Treaty

There are additional lessons the Elders have given regarding the treaty, as well as prophecies about the future of Indigenous peoples. They were told to me by an Elder, and are recounted here as he told them.⁵⁵ The Elder gave permission to tape-record his words. In fact, he wanted this information passed on to the Indigenous peoples. He requested that a book be written, with pictures, to record his teachings, because he feels they might get lost. With the influences upon the young people and the direction present leaders are taking, it is important for this information to reach the wider Indigenous community, for if we do not record it or pass it on, our people will lose it. The teachings are invaluable and need to be reinforced

for leaders and Indigenous youth. In fact, from these teachings come the direction, authority, and leadership that Indigenous leaders need to practice and reinforce in order to reaffirm their treaty.

After I approached the Elder with tobacco and flags and he accepted the gifts, he smudged his bundle and then asked, what did I really want to know? At this point, with the Elder's bundle sitting on the table in front of him, with the smudging that had cleansed negative energies, and with the atmosphere of balance and harmony, it did not seem appropriate to ask about treaty. The Elder began to unwrap the blue bundle. Inside the bundle were sacred objects which were as old as the treaty. But they had been kept wrapped for the last twenty-one years, since he last opened the bundle to teach someone else who had been interested in learning about the treaty. He picked up each object and talked about its significance in the treaty process.

After he completed his teachings of the bundle, he left out a set of ten sticks. The ten sticks represented the ten promises which had been given by the commissioners at the signing of the treaty. But he did not go into the teaching at that time. His teachings were as follows:

On Learning

As people, leaders, and learners who want to do what is proper for their people, when you see something that looks appealing to you and you want to learn it, do not copy that teaching or song from anybody, but rather learn it from that teacher. For then you have earned the right to use the teaching, and therefore you also have the responsibility of passing it on. Otherwise it is not yours to pass on, you have only stolen it. If this information is passed on to you, you sit there and learn. Do not rely on anyone else to get the work done for you. You do it yourself.

The Ten Sticks

At the treaty signing, the white man made ten promises stating that they would never be broken as long as the sun shines and the waters flow. The commissioner said that he could never pay for the land. In addition, no two-legged person could ever break those promises. An Elder by the name of Pakan (who was one of the signatories of Treaty 6, and a Chief of the Whitefish Lake Reserve) expressed concern about how Indigenous peoples could preserve the same information. He stated that the white man had a way in which he could preserve his knowledge about the treaties by writing them on paper, and therefore he could retrieve the information whenever he required it, but Indigenous peoples did not have that gift.

He pointed to the land, which was full of buffalo, and at the animals. He stated, 'Our Father gave all that to us. Are you sure that you will fulfil

your promises? I will make ten sticks.' He directed the statement to the commissioner, 'You say that no two-legged can break the promises. We will keep the sticks to signify your promises.' As a result, ten sticks were whittled to represent the ten promises made at the treaty signing. Those were the ten sticks that this Elder had been given to preserve – to be taught and honoured by the generations of Indigenous peoples whose forefathers had signed the treaty.

These are the values that the Elder stressed: Believe in the Creator. Practise your spirituality. Be loving, caring, and nurturing. Care for and respect your Elders as you would orphaned children.

Initially, there were pressures from white people to sell the land, but Indian people did not want to sell land. They respected it and therefore could share, but not sell it. The Elders stated that white men can never repay or ever pay in full, the cost of this land. Finally people agreed to lend it out. Land was never sold.

The commissioners stated that soil six fingers deep only, trees for building houses, and grass for their animals, that was what the Queen was asking to use, but they will pay you money, and money will be kept for your use later on. Taxes that the white man pays are supposed to be for your use, yet we do not see it.

The Queen's commissioner made these promises to the people:

As Indians, you will never be sorry. You will never be in want if transaction [treaty] takes place with the Queen. It is your land, your animals, all for your use. Continue to do so and also in the future. No one will ever bother you for they are your animals. Reserves were to have been for Indians. Inside there, no one will bother you. White man cannot walk into your reserve unless by your permission. You will have your law, your rule. Everything will be provided [education]. You will wear clothes like the Queen. If you travel anywhere, you will pay half the fare only. You will never pay for your medical needs. If you agree to transaction, and if riches are found, you will never have to work. You will never starve. My arms [the Queen's] are full enough to look after all Indians.

The treaty talks continued for three days. The Chiefs' words were based on Creation, respect, and use of the pipe. Today we still respect. Where are the white man's promises? Treaties were made between two nations. Now he is pushing us aside. The treaty is still there and the white man owes us a great deal.

Grandfather's Prophecies

When Margaret Quinney was speaking about the treaty as she learnt the

story, she started to talk about the prophecies handed down to her.⁵⁶ She was told that white men will fill this place. There will be wires everywhere. Religions will be as numerous as branches on a tree. The road will look glittery and will be shortened by the use of vehicles. White man's road will poison your land. The land will be full of poison. Even the food and the water you drink will be impure. White man is killing himself. He is no longer thankful. Instead he wants more, goes everywhere, digs deeper, turns away Indian people from whom he had taken land. Yet he used to depend on them for their livelihood. White man used to sit with us before. Now he discriminates. His bible sat there too! [as part of the treaty process, yet he did not honour the word of God].

He will influence your children by drugs, alcohol, and even with the spoken word. Your grandchildren will not be able to speak their language. White man is never satisfied. He will begin to look to your reserve and will break it up.

The Elder expressed her observations and concerns that leaders of today are lacking in a sense of direction and are not strong enough. Nor do they believe they have their own authority, and therefore they do not stand up to issues they are confronted with, in particular with the white man (the government). That is where they go wrong. They have no concept of the value of the treaty, and are becoming more influenced by today's almighty dollar and other physically gratifying influences which are temporary.

Decisions are made without considering how Indigenous peoples or future generations are affected, as if our cultural and spiritual ways are no longer of any value. Leaders are no longer listening to Elders, nor are they interested in our treaties, or learning the significance of the treaties, but are more interested in keeping up with the dictates of today's influences.

The Elder encouraged treaty work, for it is these teachings and this information that need to be passed on to future generations. Her grandfather taught her everything about the treaty-making process and drilled this information into her, so that somewhere farther down the road, it could be utilized and prove invaluable.

Conclusion

Elders who have been interviewed in both the distant and recent past continue to repeat and validate the same historical information – the same values of respect and sharing, and the same concept and understanding of the treaty as an agreement in which land and resources were never sold, but only loaned. In the Eurocentric academic community, history is validated if two separate sources confirm the same information. The information passed on from the Elders has been validated over and over again. Elders have spoken the truth, for they

believe they are governed by a universal principle to do so. It is a part of their spirituality.

In any analysis or teachings of the treaty, it is up to Indigenous peoples to represent themselves, to indicate their understanding from within their cultural and spiritual context. For no one can truly represent an Indigenous person or claim to understand the significance of their treaties unless they have the understanding from within that cultural and spiritual context. It requires a perspective that encompasses the total picture, and an understanding of the cultural values, beliefs, and philosophy that have been practised for many generations – a view from within.

If only one aspect or one perspective of the treaty-making process is represented, how can it be the truth as Indigenous peoples see it? It is like telling a story as two people see it. If one tells only his side of the story, it is only half the truth. If both people tell the story, then we get a more complete truth. If history is to be validated, Indigenous peoples will not only have to represent themselves, but ensure that their story is told, recognized, recorded, and sanctioned.

But Indigenous peoples ourselves have to believe in that story first of all, and practise that belief. We must keep in mind, as we tell our story, that we are of one mind, we are unified. We acknowledge our God-given right and authority as Indigenous nations by understanding, affirming, and practising our rights. This perspective needs to be taught to youth, to Indigenous communities, and, first and foremost, to leaders, in order to regain that right and authority as given by the Creator and as understood, practised, and taught by our spiritual Elders.

It was within the spirituality of Indigenous peoples, their belief and practice of respect, kindness, honesty, and sharing, that the treaty-making process took place. But now it is by the abuse of those same values by the state of Canada that this great country is slowly being destroyed by pollution and other environmental degradation. It is by Indigenous peoples reinforcing and practising these values and spiritual principles that the treaties will be understood and honoured.

Our system of leadership saw the Indigenous peoples through the first five hundred years after Columbus. If the state of Canada wants to claim use of the lands of Indigenous peoples, it must recognize that the traditional governments of the Indigenous peoples are the only governments which lend legitimacy to the state of Canada. The International Court of Justice was very clear in its decision concerning *terra nullius* and the role of treaty-making with Indigenous peoples. Only agreements entered into with the Indigenous peoples of the territory can give any legitimacy to the use and occupancy of the lands. Canada must recognize the position of the traditional governments that entered into treaty with the British

Crown. To discount the legitimate governments of Indigenous peoples is to discount Canada's own legitimacy.

presented in this paper suggests that the resolution of justiciable issues related to treaties should involve both the particular history of the local band and the Crown, as well as the global nature of the promises agreed to at Niagara.

Chapter 7: Understanding Treaty 6: An Indigenous Perspective

- 1 This essay was written with the permission of the Elders who were kind enough to share their knowledge and time with the author over a period of years. There is still much to be learned from the Elders. The information in this essay is only a portion of the knowledge of the Elders on this issue. Days have passed as the Elders spoke about matters related to the treaty. This essay merely exposes the 'box': we see the box, we know its size and shape, and now we must learn its contents. A glimpse has been provided. Learning is an individual obligation but a collective responsibility.
- 2 In this document, I am using the term 'Indigenous peoples' as it best describes the relationship of the people to the lands. Indigenous peoples came from these lands. The Elders say that the Creator placed Indigenous peoples on Great Turtle Island. Indigenous peoples did not travel from any place to get to these territories. Increasingly, at the international level, the acceptable term is Indigenous rather than Native, Aboriginal, Indian, or savage.
- 3 See H. Elizabeth Dallam, who argues in her article, 'The Growing Voice of Indigenous Peoples: Their Use of Storytelling and Rights Discourse to Transform Multilateral Development Bank Policies' (1991) 8 *Ariz. J. Int'l. & Comp. L.* 117, that the use of narrative discourse is a powerful tool for transforming legal thinking: 'The very telling of stories is an expression of power' (121).
- 4 Elder Charles Blackman, Cold Lake Reserve, Treaty 6 territory. Interviewed 14 May 1974. Mr. Blackman is now in his eighties and alive at the time of this writing. He is a well-known Elder within Treaty 6 territory.
- 5 Elder Alexander Mechtwals, Cold Lake Reserve, Treaty 6 territory. Interviewed 18 February 1974. These interviews were obtained from the office of Specific Claims and Research, Winterburn, Alberta.
- 6 Norma Sluman, *Poundmaker* (Toronto: Ryerson Press 1967), 14.
- 7 Elder Henry Gadwa, Long Lake Reserve, Treaty 6 territory. Interviewed 1989.
- 8 Joseph F. Dion, *My Tribe the Crees* (Calgary: Glenbow-Alberta Institute 1979), 8.
- 9 Elder Fineday quoted in David G. Mandelbaum, *The Plains Cree: An Ethnographic, Historical and Comparative Study* (Regina: University of Regina, Canadian Plains Research Centre 1979), 106.
- 10 *Black's Law Dictionary*, 5th ed. (St. Paul, MN: West Publishing Company 1979), defines 'democracy' as that form of government in which the sovereign power resides in, and is exercised by, the whole body of free citizens directly or indirectly through a system of representation, as distinguished from a monarchy, aristocracy, or oligarchy.
- 11 The Cree adjective which has been translated into English as 'bravest' cannot be exactly translated, although 'bravest' best approximates the Cree meaning.
- 12 Under the customary law of the Cree, each family within the community selects their own spokesperson, known as a Headman. Decisions are transmitted from the family to the community via the Headman. At the council meetings, the Headman speaks for the family, but only on the areas about which decisions have already been made. If a Headman needs to consult the family, he communicates that to the meeting. After meetings, a Headman reports to the family as to results of the meeting. The advent of the Indian Act, which stated that there can be only one councillor per one hundred people, played havoc with the traditional system. Families were forced by circumstance to join together for the purposes of representation. This was not always productive.
- 13 Mandelbaum, *The Plains Cree*, 113-15 n. 8.
- 14 Norma Sluman and Jean Goodwill, *John B. Tootoonis* (Winnipeg: Pemmican 1984), 49 n. 5.
- 15 Mandelbaum, *The Plains Cree*, 108 n. 9.
- 16 Gordon Bennett, *Aboriginal Rights in International Law* (London: Royal Anthropological Institute of Great Britain and Ireland 1978), 5.
- 17 The British Crown issued the Royal Proclamation of 1763 to set out the obligations of the

Sovereignty and Imperial Claims' (1991) 29 *Osgoode Hall L.J.* 681.

- 116 *Supra* note 3.
- 117 See Canada, *Indian Treaties and Surrenders*, 3 vols. (Toronto: Coles 1971).
- 118 For example, the Supreme Court of Canada has recognized that the procedures to be followed in First Nations land surrender have their origins in the Royal Proclamation, see *Si. Ann's Island Shooting & Fishing Club Ltd. v. R.*, [1950] S.C.R. 211 [Exch.].
- 119 Literally translated, it means 'of its own kind or class.' *Black's Law Dictionary*, 5th ed. (St. Paul, MN: West Publishing Company 1979), 1286.
- 120 Peter Hutchins, 'International Law and Domestic Aboriginal Litigation,' in *Aboriginal Rights and International Law: Proceedings of the 1993 Conference of the Canadian Council on International Law* (Ottawa: Canadian Council on International Law 1993), 11.
- 121 See Sebastian Grammond, 'Aboriginal Treaties and Canadian Law' (1994) 20 *Queen's L.J.* 57 at 60.
- 122 M.P. Furnston, ed., *Cheshire, Fijott and Furnston's Law of Contract* (London: Butterworth's 1986), 116-17.
- 123 A lone note of caution in proceeding with extrinsic evidence in treaty interpretation is expressed in *Sioui*, *supra* note 8:
As this court has recently noted in *R. v. Horse* (1988), 39 C.C.C. (3d) 97 at 108, extrinsic evidence is not to be used as an aid to interpreting a treaty in the absence of ambiguity or where the result would be to alter its terms by adding words to or subtracting words from the written agreement... However, a more flexible approach is necessary as the question of the existence of a treaty within the meaning of s. 88 of the Indian Act is generally bound up with the circumstances existing when the document was prepared.
'The impact of the call for the restricted use of extrinsic evidence may be reduced by the approach in the *Sioui* case itself. Lamer J., despite the restrictive finding of *Horse*, was generally willing to find ambiguity in the treaty in dispute which allowed him to examine extrinsic evidence.
- 124 There is an argument about whether British Columbia is included in this agreement, though the First Nations were not personally represented at the Treaty of Niagara. 1) The terms of the Proclamation are prospective and declaratory: the Proclamation/Treaty was regarded as a line of policy meant to follow the flag of England and would therefore apply to British Columbia when the Crown met with First Nations there: *Callder*, *supra* note 3, 205, 2). The words of the Proclamation show that the framers were well aware that there was territory to the west of the sources of the rivers which ran from the west and north-west: *ibid.* Therefore, the Proclamation/Treaty covered British Columbia First Nations at the 1764 agreement. 3) When the First Nations of British Columbia heard of the Proclamation, they acceded to it and agreed to abide by its terms. See the expression of British Columbia First Nations in the British Columbia Commission Appointed to Enquire into the Conditions of Indians of the North-West Coast, *Papers Relating to the Commission* (Victoria: Government Printer 1888). Many of the expressions of First Nations leaders were for a treaty process similar to that started under the procedures of the Royal Proclamation.
- 125 Most treaty negotiations in Canadian history have reference to these terms in their oral documentation, though these promises often do not find their way into the text.
- 126 David Elliot, 'Aboriginal Title,' in Bradford Morse, ed., *Aboriginal Peoples and the Law: Indian, Métis and Inuit Rights in Canada* (Ottawa: Carleton University Press 1989), 56.
- 127 The Supreme Court of Canada sought to reduce some of the inconsistencies between First Nations rights in different areas in the *Sparrow* case, *supra* note 114 at 396-7. The court's concern with harmonizing rights between First Nations could be applied with similar results in this area of the law.
- 128 This would overcome Dickson J.'s concern expressed in *Kruger v. R.* (1978), 75 D.L.R. (3d) 434 at 437 (S.C.C.): 'Claims to Aboriginal title are woven with history, legend, politics and moral obligations. If the claim of any Band in respect of any particular land is to be decided as a justiciable issue and not a political issue, it should be so concluded on the facts pertinent to that Band and to that land, and not on any global basis.' The evidence

British Crown vis-à-vis Indigenous peoples, and the process of gaining access to their lands, which required the fully informed consent of Indigenous peoples. As reflected in the Proclamation of 1763, this imperial discourse accepted the necessity of peaceful purchase of frontier Indian lands under strict imperial supervision in order to avoid costly, needless wars. Despite this programmatic approach to Indian Affairs, imperial policy ultimately rested on the ancient legitimating formulation of the superior rights of Christian Europeans in lands held by the normatively divergent, non-Christian peoples: Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford: Oxford University Press 1990), 229.

18 The Proclamation says in part:

And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds: We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions.

19 Mark E. Lindley, *The Acquisition and Government of Backward Territory in International Law: Being a Treatise on the Law and Practice Relating to Colonial Expansion* (New York: Negro Universities Press 1926), 307.

20 Joseph Story, *Commentaries on the Constitution of the United States with a Preliminary Review of the Constitutional History of the Colonies and States Before the Adoption of Constitution*, vol. 1 (New York: Da Capo Press 1833, reprint 1970), 6.

21 M.E. Lindley, *The Acquisition and Government of Backward Territory in International Law: Being a Treatise on the Law and Practice Relating to Colonial Expansion* (New York: Negro Universities Press 1926, reprint 1969), 26-7.

22 International Court of Justice, *Western Sahara: Advisory Opinion of 16 October 1975* (The Hague, Netherlands: ICJ Reports 1975), 6.

23 *Ibid.*, 39.

24 The word for 'the Cree People' has been loosely translated to the term 'Indian.' The Cree word used translates literally to 'people.' In this document, I am using the term 'Indigenous peoples,' as it better describes the peoples' relationship to this territory. But in these interviews, undertaken over twenty years ago, the translation from Cree to English was 'Indian.' The texts of the interviews have not been changed, hence the article moves between the terms 'Indigenous' and the translator's original 'Indian.'

25 Elder Fred Horse, Frog Lake Reserve, Treaty 6 territory. Notes of an interview done with Rick Lightning. The interview took place in 1973 when Fred Horse was sixty-four years old. The old man passed to the spirit world in the spring of 1989 at the age of eighty. At many meetings held on the treaty, Elder Fred Horse would often bring the Union Jack - a gift given by the treaty commissioner at the time of the treaty signing.

26 The 'big pipe' that Elder Fred Horse refers to is the original pipe used at the treaty signing. This pipe has been carefully kept and handed down to different keepers over the years since the treaty signing in 1876. With this pipe the stories of the signing are also handed down. The pipe is kept by a citizen of the Frog Lake Reserve within the Treaty 6 territory. There are special ceremonies attached to the keeping of the pipe and its use.

27 Elder Toussait Dion, Frog Lake Reserve, Treaty 6 territory. He was interviewed in 1974 at the age of seventy-five years. The record of his interview is in the office of Treaty and Aboriginal Rights, Winterburn, Alberta. He was born on 11 August 1899 and would have grown up listening to the Elders who were present at the treaty signing in 1876. He clearly states who gave him the information about the treaty (his uncle).

28 *Ibid.*

29 Elder Fred Horse.

30 Elder John Buffalo, Ermineskin Reserve, Treaty 6 territory. Interviewed 18 April 1975, for

an Indian history film project. A record of the interview is in the office of Treaty and Aboriginal Rights, Winterburn, Alberta.

31 Elder Marie Smallface, Beaver Lake Reserve, Treaty 6 territory. Taken from a transcript of an Elders' meeting held in Saddle Lake in October 1983.

32 Extract from Treaty 6 document in Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the Northwest Territories Including the Negotiations on Which They Were Based, and Other Information Relating Thereto* (1862, reprint Toronto: Coles Publishing 1979), 351.

33 *Ibid.*, 355.

34 G.T. Hunt, *Wars of the Iroquois: A Study in Inter-Tribal Trade Relations* (Madison: University of Wisconsin Press 1960), 20.

35 Alexander Morris was the lieutenant-governor of Manitoba who was asked by the Crown to negotiate Treaty 6 in 1876. He travelled to Fort Carlton and Fort Pitt in the summer of 1876 to meet with the chiefs in council.

36 Surman and Goodwill, *John B. Tootoosis*, 13 n. 5.

37 Elder Margaret Quinney, Frog Lake Reserve, Treaty 6 territory. Interviewed at her home in the spring of 1993. Her grandfather, Simon Gadwa, and Fred Horse's father were present at the signing of the treaty. 'My grandfather used to tell us quite a bit of the time of the treaties. And I've listened to these stories closely enough to remember them what he used to say ... I used to listen to my grandfathers with great interest, of what he used to tell us.'

38 Elder Charles Blackman.

39 Elder Fred Horse.

40 *Ibid.*

41 Elder Margaret Quinney.

42 Elder Fred Horse.

43 *Ibid.*

44 *Ibid.*

45 *Ibid.*

46 *Ibid.*

47 Elder Capoyapit, Joseph Bighend Reserve, Treaty 6 territory. Interviewed 1989.

48 Elder Margaret Quinney.

49 Elder Fred Horse.

50 Elder Lazarus Roan, Small Boy's Camp. At the time of the interview on 30 March 1974, he was seventy years old. His father and two of his uncles were present at the signing. 'My father Shortback and his uncles Rabbit Eye and Policeman ... This is what they used to tell us when the Treaty was signed.'

51 Elder John B. Tootoosis, Poundmaker Reserve, Treaty 6 territory. This Elder dedicated his life to the teachings of the treaty and working for the protection of the treaty. He passed on to the spirit world in February 1989. The General Assembly of the United Nations passed a resolution in May 1989 to study the place within international law of Indigenous treaties signed with governments. It was this Elder's lifelong work to ensure that the treaties would be recognized as international agreements which are binding on the state of Canada.

52 Elder James Cannepotatow, Onion Lake Reserve, Treaty 6 territory. Interviewed in the spring of 1992 at his home in Onion Lake.

53 There is a recent book written on this subject: Sarah Carter's *Lost Harvests: Prairie Indian Reserve Farms and Government Policy* (Montreal/Kingston: McGill-Queen's University Press 1990). Ms. Carter catalogues the actions by the federal government against Indigenous peoples in their attempt to become self-sufficient.

54 Elder Charles Blackman.

55 Elder James Cannepotatow. The subsequent information in this section is told in the words of the Elder. The Elder passed on to the Spirit World in August 1996. His teachings remain with his students, who have the responsibility to carry on his work.

56 The teachings in this section are given in the words of Elder Margaret Quinney.