

PART ONE: Treaty Essential Learning #1

The Treaties

Treaties between the First Nations peoples and the British Crown are the building blocks in the creation of the country of Canada (Aboriginal Affairs and Northern Development Canada (AANDC), 1997), and provide for peace and good order for all people in Canada (Office of the Treaty Commissioner (OTC), 1998).

The Treaties are agreements, voluntarily entered into by both parties, which provide for peaceful relations between the two nations. For First Nations peoples, the Treaties are more than a simple written document; they are sacred agreements between the First Nations peoples and the British Crown with the Creator as witness. They are “living,” permanent, foundational agreements based on the synthesis of two worldviews: the oral traditions (values & natural laws) of the First Nations peoples and the written traditions and common law of the Crown who represented the Newcomers.

The Treaties were based on the First Nations peoples’ natural laws which guided the spirit and intent of the Treaties. These natural laws rested on balance, harmony, and reciprocity. The First Nations peoples’ intended that the Treaties would result in a sharing of the land; and they understood according to natural laws, the Crown would provide them with an exchange for sharing the land. The Crown’s exchange of rights came in the form of obligations that they promised to provide, such as the right for First Nations to retain their own way of life, and other benefits that would preserve their existence.

Treaties were to provide both sides with the means of achieving survival and socio-economic stability, anchored on the principle of mutual benefit (OTC, 1998). Treaty-making was a process that allowed for the peaceful creation of Canada.

HISTORY OF TREATIES

It is important to understand the nature and significance of the Treaties:

- The Treaty parties, why, when and where they were entered into;
- Pre-Treaty developments;
- The intended benefits; and
- International Law that defines, protects and recommends achievable ways of implementing Treaties.

1. **The Treaty Partners:** There are two Treaty partners: the First Nations peoples and Canada (formerly the British Crown); with the Creator (God) as witness.

The Indigenous Peoples/First Nations peoples are the original inhabitants of North America. They were sovereign nations who exercised their powers to negotiate and agree to international arrangements. For thousands of years prior to contact, the land that is now Manitoba was occupied by diverse groups of First Nations peoples. They are known as the Anishinaabeg (Ojibway), Anishiniwak (Oji-Cree), Dakota, Dene and Nehowak/Ininiwak (Cree). These were the original inhabitants of the lands that make up Manitoba.

At the time of Treaty negotiations in Manitoba, beginning in 1871, Canada (Crown) appointed representatives known as Indian Commissioners to negotiate Treaties with the First Nations peoples. In Manitoba, these negotiations included the Lieutenant-Governor, and other individuals such as members of the Legislative Assembly of Manitoba and officers of the Hudson's Bay Company (Morris, 1991, pp 25 and 43). The Treaty negotiations in Manitoba with the First Nations peoples were consistent with principles of The Royal Proclamation of 1763 which required the Crown (Canada) to have a public meeting with First Nations peoples to acquire lands from them, essentially recognizing that the First Nations peoples lived on traditional lands, held title to their land unless they surrendered it, and would come under the protection of the Crown (Canada) once a Treaty was signed.

The Creator or God is considered witness to the Treaties. It is to the Creator that the promises were made, therefore; they continue to be considered sacred.

2. **Definition of Treaties.** A Treaty is "an agreement, especially one between nations, signed and approved by each nation" (DeWolf et al., 1997, p.1560). The Supreme Court of Canada defines Treaties as: "What characterizes a Treaty is intention to create obligations, the presence of mutually-binding obligations and a certain measure of seriousness" (R. v. Sioui, 1990, p.18).
3. **First Nations Peoples Treaty-Making.** Prior to Treaty-making between the First Nations peoples and the Newcomers, First Nations entered into agreements with other First Nations to share lands for trapping, hunting or gathering purposes. They were prepared to enter into a similar agreement with the Crown that would allow for "agowidiwin" (Treaty) meaning bringing things together, sharing what each other has (Assembly of Manitoba Chiefs, Council of Elders, Elder Bone, 2011). The primary reason for the internal Treaties was to allow for equitable and fair access to resources. Therefore, when the First Nations peoples entered into Treaty with the British Crown they assumed that the same type of relations would follow (R. v. Sioui, 1990).

- 4. First Nations Peoples of Manitoba Treaty Concepts in the Oral Tradition:** The Treaties or Agowidi'iiana (Anishinaabeg) or Asitamakewin (Anishiniwuk) (Flett et al, 2010) or Yunize tsabanalya dene elelot'ine eleltsi ni erehtl isi (Dene – the time people built relationships and dispersed funds and documents) (Herman & Toutsaid-Gordon, 2010) or Okadakchiyapi (Dakota) (Assembly of Manitoba Chiefs, Doris Pratt, 2010) were based on the First Nations peoples' principles of: “kitagi'inan (Nehow/Ininiw – our land belongs to all of us), “magi'aski (Nehow/Injniw – we all make a living from the land) (Assembly of Manitoba Chiefs, Darcy Linklater, 2011). Treaty making or Onak'go'nagewin (Anishinaabeg) or Sooniyaka awesjikewin (Anishiniwuk) or Okadakchiyapi kaghapi (Dakota, meaning relationship making, friendship) included the spiritual and ceremonial concepts of the Treaty making process: “sagasedewin” (Anishinaabeg – smoking the pipe), and “sagasedewag asho'da'mayewinan (Anishinaabeg – Treaty promise) (Assembly of Manitoba Chiefs, Council of Elders, 2010). Appendix 2 provides a listing of additional Treaty related terms in the First Nations peoples' languages in Manitoba.
- 5. Royal Proclamation of 1763.** In 1763 King George III issued The Royal Proclamation which established certain legal and political principles upon which the Treaty making process was founded from the Crown's perspective (R.v.Sioui,1990).

The Royal Proclamation of 1763 recognized that:

- First Nations peoples lived on traditional lands;
- Interest in those lands belonged to groups and nations, not individuals;
- The Crown (Canada) required an agreement with First Nations peoples to acquire lands from them through a public meeting of their peoples;
- First Nations peoples held title to their land unless they surrendered it;
- First Nations peoples were under the Crown's (Canada's) protection.

These directives, for the colonies and later Canada, formed the founding principles of all future Treaties for lands. The Royal Proclamation of 1763 protocols and the First Nations peoples established Treaty making process came together in all future Treaty making processes.

- 6. Pre-Confederation Treaties.** Prior to Confederation in 1867, the First Nations peoples and Newcomers had a long history of diplomacy that resulted in different types of peace and friendship, military, and economic agreements or Treaties. The early pre-Confederation Treaties from 1781 to 1862 were primarily peace and friendship Treaties and those involving land negotiations. The Upper Canadian Treaties of 1818 to 1862 'reflected a shifting nature of Native-Newcomer relations in British North America. Most noticeably after 1840, the personnel that the government sent to make Treaty with First Nations peoples were representative of the settler government, and not the earlier military-diplomatic tradition' (Miller, 2009, p. 117). The terms of the Robinson Treaties were significant because they dealt with large territories of

land, recognized First Nations hunting and fishing rights, and included provisions for annuities. All these elements became important elements to Treaty-making in western Canada after 1867 (Ibid., p. 118).

The Selkirk Treaty of 1817 is an example of a pre-Confederation Treaty in Manitoba which was negotiated by The Earl of Selkirk, also known as the Lord Selkirk and Thomas Douglas, with the Anishinaabeg (Ojibway) and Nehowak/Ininiwak (Cree) First Nations peoples residing along the forks of the Red and Assiniboine Rivers in the territory of Rupert's Land. Lord Selkirk negotiated this Treaty for the purposes of establishing a colony at the Red River using the guidelines outlined by The Royal Proclamation of 1763. Not all the historic Treaties that were negotiated with the First Nations peoples are recognized by Canada. Approximately seventy historic Treaties are recognized by Canada (Leslie, n.d.).

7. **First Nations Peoples (Aboriginal) Custom Law Rights.** First Nations peoples have custom law rights which are specific to them because of their historical occupancy of the lands. First Nations custom law is the law of the land, their traditional territories. The Royal Proclamation of 1763 recognized First Nations as sovereign nations with their own rights and required newcomers to negotiate Treaties with the First Nations before occupying their lands. The Crown acknowledged these rights and required Newcomers to respect these rights as a rule of law before First Nations land was obtained and opened up for settlement. The Crown was required to make Treaties with First Nations to deal with First Nations peoples' rights.
8. **Canadian Confederation 1867.** At the time of Confederation, the union to be known as the Dominion of Canada was created by the British North America Act. At this time, the Canadian government had control over internal (domestic) affairs. Confederation included terms relevant to western Treaty-making: one was the provision for entry of new territories such as Rupert's Land and the North-western Territories; and the second was the assigned jurisdiction over "Indians and lands reserved for Indians" to the Parliament of Canada (Miller, 2009, p.129).

The new government launched two waves of Treaty making:

- (a) the first opened the prairies for farming and the railway; and
- (b) the second opened the north for mining and logging.

From Canada's perspective, land was the central impetus for negotiating the Treaties (OTC, 2007).

9. **Treaty Adhesions.** Treaty adhesions were signed because some First Nations were not present at the original Treaty negotiations. The Treaty adhesion process was just as significant as the Treaty

Treaty Adhesions are sacred agreements that created an ongoing relationship with the Crown, just as the original Treaties.

(OTC, n.d.)

negotiation process. Adhesions were signed with First Nations peoples throughout the areas that were dealt with in the initial Treaty negotiations and often continued for several years, sometimes decades, following the negotiations. First Nations peoples who adhered to existing Treaties are subject to the same conditions as the original signatories. Likewise, the Crown is also subject to the same conditions and obligations. For example in Manitoba, Treaty 5 Adhesions were negotiated and signed between June 1908 and 1910. This Adhesion included a significant number of First Nations peoples from Fort Churchill, Fox Lake, Garden Hill, God's Lake, God's River, Island Lake, Nisichawayasihk, Oxford House, Red Sucker Lake, Shamattawa, St. Theresa Point, Tataskweyak, Wasagamack and York Factory.

- 10. The Numbered Treaties.** From 1871 to 1921, a series of eleven Treaties were negotiated by various Indian Commissioners with First Nations peoples who occupied lands covering the western provinces and northeastern British Columbia, northwestern Ontario, northern Ontario and the western portion of the Northwest Territories. The Numbered Treaties contained numerous provisions: one-time payments to Chiefs and Headmen; a census; clothing; annuity payments; education; prohibition of intoxicants; creation of reserves; farm stock; agricultural equipment; ammunition; twine for nets; and flags. Treaty 6 included provision for a medicine chest, as well as food in case of pestilence and famine (Leslie, n.d.).

The Numbered Treaties are held in high esteem by the descendants of the original signatories and serve to define the historical Treaty relationship between First Nations peoples and the Crown (Canada). Treaties 1, 2, 3, 4, 5, 6 and 10 cover areas in what is now Manitoba.

Treaty 1 (1871), Treaty No. 1 was negotiated and signed in August 1871 at Lower Fort Garry. Current First Nations that are part of Treaty No. 1, are: Brokenhead, Long Plain, Peguis, Roseau River, Sagkeeng, Swan Lake and Sandy Bay. The Dakota people within Manitoba do not have Treaties with the Crown; however, their land is considered reserve land under Canada's Indian Act. The Dakota Oyate communities within the Treaty No. 1 area include: Dakota Tipi and Dakota Plains (Treaty Relations Commission of Manitoba, 2010).

Treaty 2 (1871), is primarily in the province of Manitoba but also covers a small area of Saskatchewan, although no Treaty 2 First Nations peoples reside in Saskatchewan. This Treaty was negotiated in Lower Fort Garry and agreed to in 1871 at Manitoba House. The First Nations that are part of Treaty No. 2 are: Dauphin River, Ebb and Flow, Keeseekoowenin, Lake St. Martin, Lake Manitoba, Little Saskatchewan, O-Chi-Chak-Ko-Sipi, Pinaymootang, and Skownan. Riding Mountain National Park and Duck Mountain Provincial Park are within the Treaty No. 2 area.

Treaty 3 (1873) was negotiated and signed in October 1873. Treaty 3 area lies mostly within the borders of Ontario; however, Buffalo Point First Nation is part of Treaty No. 3. Although Sagkeeng First Nation is a Treaty 1 nation; it is also a member of the Grand Council of Treaty 3. Both First Nations are located in present day Manitoba. Much of the Whiteshell Provincial Heritage Park is within the Treaty No. 3 area.

Treaty 4 (1874) was negotiated and signed in September of 1874 at Fort Qu'Appelle, Saskatchewan. The larger portion of the Treaty area can be found in Saskatchewan; however, a small part of western Manitoba is covered by Treaty No. 4. First Nations that are part of Treaty No 4 include: Gamblers, Pine Creek, Rolling River, Tootinawaziibeeng, Waywayseecappo and Wuskwi Sipiik.

Treaty 5 (1875) was negotiated and signed by the largest number of First Nations communities within Manitoba at different locations and times. The first negotiation and signing of Treaty No. 5 occurred at Berens River in 1875. The First Nations that entered into Treaty No. 5 include: Chemawawin, Berens River, Black River, Bloodvein, Pimicikamak, Fisher River, Misipawistik, Hollow Water, Kinonjeoshtegon, Mosakahiken, Norway House, Opaskwayak and Poplar River.

Treaty 5 Adhesion (1908 - 1910) was negotiated and signed between June 1908 and 1910. The First Nations that entered into Treaty No. 5 through adhesions include: Sayisi Dene, Fox Lake, Garden Hill, God's Lake, Manto Sipi, Nisichawayasihk, Bunibonibeee, Red Sucker Lake, Shamattawa, St. Theresa Point, Tataskweyak, Wasagamack and York Factory.

Treaty 6 Adhesion (1876) was signed and negotiated in August and September of 1876. The bulk of Treaty No. 6 exists within present day Saskatchewan. With the disappearance of buffalo herds, the declining fur prices and the introduction of new diseases, First Nations peoples acknowledged the need for education and agriculture as a new means of ensuring an adequate livelihood for future generations; therefore they agreed to share their lands in exchange for the Queen's benevolence and protection. The First Nations that entered into Treaty No. 6, within Manitoba, are Mathias Colomb and Marcel Colomb.

Treaty 10 (1906) was negotiated and signed in August 1906 in northern Saskatchewan primarily due to the declining fur prices and game. This Treaty covers the First Nations within Manitoba known as Barren Lands and Northlands. The majority of Treaty 10 exists in northern Saskatchewan. Since the land was largely unsuitable for agriculture, the government was not interested in making Treaty until the discovery of gold in the Klondike. The discovery of gold brought an influx of miners, leading to hostilities between First Nations peoples and the miners. The negotiation of Treaty 10 was important to bring stability to the region.

11. **Modern Treaties.** After the Numbered Treaties were agreed to, there were still many First Nations groups that were not included in any Treaties. This prompted the parties to formulate modern Treaties in other parts of Canada. The modern Treaties include the 1975 James Bay and Northern Quebec Agreement, the 1993 Nunavut Treaty and the British Columbia Nisga'a land claim settlement. In Manitoba, the Dakota were not signatory to any of the numbered Treaties.
12. **The Treaty Making Process.** Both the Crown and First Nations peoples practiced their own customs in sanctioning the Treaties. The Crown had lawyers and government officials and the First Nations peoples had Chiefs, headmen, spiritual women, and Elder advisors and spiritual leaders. Most were authorized to carry out a process of negotiation and consultation; however, there was some resistance to Treaty negotiations from some First Nations peoples who were skeptical of the Crown's promises. For First Nations peoples, it is customary to approve important matters through spiritual ceremonies. During the Treaty signing process, the First Nations peoples conducted spiritual ceremonies because they believed the Creator must be part of the arrangement in order for the Treaties to be validated.

The following are important elements to the Treaty-making process. Some of these elements are shared with the Crown and others are not.

- **Treaties Are More Than Promises.** Both the Crown and the First Nations peoples agreed to and entered into solemn promises, vowing to provide socio-economic stability and physical and cultural survival. These solemn agreements were based on the assumption of mutual respect for all aspects of life, including the spiritual, political, economical, traditional and social values of one another. Both parties acknowledged the Creator (God) as witness to the ceremony of Treaty making and the promises that were made by each party to each other.
- **Treaty Obligations.** Treaties create obligations for the Treaty partners. After negotiations, both the Crown and First Nations peoples had agreed to obligations in the Treaties. The First Nations peoples agreed to share their land with the Newcomers; the government agreed to deal with the changes that First Nations peoples encountered as a result of the Newcomers influx and agreed to protect their existence as distinct societies. The Treaty-making process was a means for the Crown (Canada) to continue the vision of uniting the East coast of the Dominion of Canada with the West coast.

When [Treaty 6 First Nations] finally agreed to the Treaty, the Commissioner took the promises in his hand and raised them to the skies, placing the Treaties in the hands of the Great Spirit.

(Cardinal & Hildebrandt, 2000, p. 7)

- **The Treaties Are A Legal Undertaking.** The Treaties are recognized by Canadian law as a legitimate way of reconciling the interests of First Nations peoples with the interests of the immigrating Newcomers. The Treaties are recognized as solemn, sacred and lasting agreements that create legally enforceable obligations. Since 1982, Treaty rights are protected by the Canadian Constitution (the supreme law of the land) in Section 35 which recognized and affirmed “existing Aboriginal and Treaty rights” (Canada, Constitution Act, 1982, s.35).
- **Treaties Are Sui Generis.** From the First Nations peoples’ perspective, Treaties are *sui generis*, which is a legal term that refers to the fact that something is unique or different (McNeil, 2006). First Nations peoples maintain that they were sovereign nations at the time of Treaty-making; they had laws predating the Crown’s sovereignty which meant they had jurisdiction over the lands that they occupied. The guidelines from The Royal Proclamation of 1763 stated that First Nations peoples’ lands could only be acquired by purchase or Treaty. From the First Nations peoples’ perspective, the Royal Proclamation of 1763 recognized First Nations peoples’ jurisdiction over their lands and their sovereignty as nations. The Crown protected their interests in First Nations peoples’ land by entering into Treaties with First Nations peoples, which First Nations peoples believe are *sui generis*, unique on to themselves.
- **The Benefits for Treaty-Making to Newcomers and First Nations.** Both parties to the Treaty-making process benefited from The Numbered Treaties. The Crown represented the Newcomers and the First Nations were represented by their respective leaders.

(a) Treaty Benefits to the Newcomers (as represented by the Crown):

As a Treaty settlement, the Crown believed they were to receive:

- peaceful access to lands for settlement, farming, railways, and development;
- peaceful settlement in the west;
- minimal costs for westward expansion and prevention of costly wars with the First Nations peoples; and
- protection for western lands by creating a barrier to American expansion.

These benefits became a reality as the Crown settled the land from sea to sea, eventually building the nation now known as Canada.

(b) Treaty Benefits to the First Nations:

As a Treaty settlement, First Nations peoples believed they were receiving:

- physical survival of their nations;
- peaceful relations with the Newcomers through ongoing equitable relations;
- respect for cultural and spiritual survival as distinct nations by the preservation of their distinctive traditions and institutions; and
- a transition to a new lifestyle by learning different technologies within education, economics, health and other benefits.

Some of these benefits became a reality and others remain outstanding matters yet to be settled between the impacted First Nations communities and the Crown, now represented by the Government of Canada. This is the reason such processes as the Treaty Land Entitlement (TLE) Framework Agreement was signed between Canada, Manitoba and 27 Manitoba First Nations as a means of addressing the shortfall of land allocations under Treaties.

- 13. The Provisions of Treaty.** In contemporary terms, Treaties are considered *evergreen*. The Treaties are not frozen in time and are understood to be evolving to suit the conditions of the day and they are also unchangeable. In matters of interpretation Canada's Supreme Court has ruled that legislation is "subject to accommodation of the Aboriginal peoples' interests, in accordance with honour and good faith of the Crown" (Delgamuukw v. British Columbia, 1997, p.242).

The most common provisions of the written Treaties for First Nations peoples and the Newcomers in present-day Manitoba can be found in the following charts:

TREATY 2 (21 AUGUST 1871) MANITOBA POST

Treaty 2 was signed at Manitoba Post on the 21st of August 1871, as part of a previous promise the Crown had made to treat with the First Nations peoples in their own localities.

The signing of Treaty 2 followed the same suit as Treaty 1 with the First Nations peoples and Crown agreeing to the same terms and conditions.

Provisions for First Nations Peoples	Provisions for Newcomers
<ul style="list-style-type: none"> • Initial annuities in 1871 (\$3/per person); • Amended annuities in 1875 (\$5/per person, \$20 to Chief & Headmen and a suit of clothing every 3 years); • Reserves land equal to 160 acres for each family of 5; • Schools (education); • Mutual obligation of peace and goodwill; • “Outside promises” dealt with in 1875 resulted in amendments that included farming implements, stock and seed, a buggy for each Chief (Daugherty, 1983). <p>Outstanding claim disputes continue to be addressed by Canada in consultation with First Nations peoples.</p>	<ul style="list-style-type: none"> • Westward expansion and settlement of land, beginning at the mouth of the Winnipeg River, running along the eastern shore of Lake Winnipeg to the mouth of Beren’s River; to Dauphin River; to St. Martin’s Lake, and along the north bank of the stream from Lake Manitoba; to the eastern and northern shores of Lake Manitoba to the Waterhen River; to Waterhen Lake; across Lake Winnipegosis; to Shell River; crossing the Assiniboine River; to Fort Ellice; to the Moose Mountains, to the United States frontier; to the mouth of Winnipeg River. • Established a strong British presence in the West as settlement was quickly organized; • Mutual obligation of peace and goodwill; • Avoided war with First Nations peoples and created an alliance with them; • Alleviated some of the threat of US expansion by settling on the land.

TREATY 6 (1876) AT FORT CARLTON, FORT PITT AND BATTLE RIVER

The settlers were moving and encroaching further putting a strain on the game that First Nations peoples were reliant upon. The Canadian government wanted to construct telegraph lines, however the First Nations peoples resisted the developments until a Treaty was signed. They needed assurance that if they were to give up their way of life, they would be assisted in their transition to a new way of life.

The area covering Treaty 6 is primarily in Saskatchewan, and includes provisions for Mathias Colomb Cree Nation and Marcel Colomb First Nation in northwestern Manitoba.

This was the first Treaty making where the North West Mounted Police had provided escort to the Commissioners, prior to this time it had been provided by the militia (Taylor, 1985).

Provisions for First Nations Peoples	Provisions for Newcomers
<ul style="list-style-type: none"> • Annuities (\$12 per person at the signing and \$5/person, \$15/headmen, \$25/Chief annually); • Chief & Headmen clothing every year; • Each Chief a suitable flag and medal for signing the Treaty; (AANDC, 2007) • Reserves of 1 square mile (640 acres) per family of 5; • Agricultural implements, stock and seed; • Schools for instruction (education); • Hunting and fishing (livelihood); • Relief from famine and pestilence; • A medicine chest (health); • Mutual obligation of peace and goodwill. 	<ul style="list-style-type: none"> • Government right to appropriate reserve lands with compensation to First Nations peoples; • Construction of telegraph lines; • Peaceful settlement and development further west; • Mutual obligation of peace and goodwill.