

A photograph of a bridge over a river. The bridge's side is painted with the words "THIS IS INDIAN LAND" in white, block letters. The bridge is supported by a stone pillar in the water. The surrounding area is lush with green trees and vegetation. The sky is overcast and grey. The water of the river is calm, reflecting the bridge and the surrounding landscape.

THIS IS INDIAN LAND

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The 1850 Robinson Treaties

Edited by Karl S. Hele



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Acknowledgements

This book and the idea behind it originated from discussions with family, friends, and Garden River First Nation community members concerning the 150th anniversary of the signing of the 1850 Robinson Treaties. The very existence of the treaties has left an indelible mark upon the Anishinaabeg and settler relationship. The wisdom of the Anishinaabeg leadership to enter into a treaty with the settlers has allowed our nation to remain within its ancestral homelands and given us a future. The treaties are and remain foundational documents for the Canadian colonial settler state. Within this context I acknowledge those who have past and are yet to come, who have and will continue to influence and learn from the treaties. I also wish to thank my ancestor—John Bell—for having the wisdom and forethought to sign the 1850 Robinson-Huron Treaty, as well as all of our leaders who fought for and signed the treaties. Additional thanks are extended to Dr. Tanya Gogan for her advice, support, and continued lessons on style and grammar. On behalf of the contributors, it is necessary to acknowledge all those unnamed individuals who offered support and advice. Lastly, I would like to thank all the contributors for bearing with me along the long road to publication, the editors of Aboriginal Issues Press at the University of Manitoba, the anonymous reviewers, and Concordia University, as well as the Anishinaabekwek of the North Shore—Ontario Native Women's Association Local, who contributed funds to ensure the publication of this volume.

Introduction

Karl S. Hele

Father

... These lands where our fathers and their fathers' fathers lie buried, you must know it as every Red Skin does know it, that long, long before your White Children crossed the waters of the rising sun to visit us....

Father

Can you lay claim to this land? If as, by what right? Have you conquered it from us? You have not; for when you first came among us your children were few and weak, and the warriors of the Chippewas struck terror to the heart of the pale face. But you came not as an enemy, you visited us in the character of a friend, you have lived as our guest and your children have been treated as our brothers. Have you purchased it from us, or have we surrendered it to you? If so, when? and how? and where are the treaties?

Shingwaukonse, together with seven other Anishinaabeg leaders from the north shores of the Upper Great Lakes, presented these words to Lord Elgin, governor general of the Canadas, on 7 July 1849. The petition was subsequently published in the *Montreal Gazette* and the Aborigines Protection Society's publication, *The Colonial Intelligencer, or, Aborigines Friend*, in the late fall of 1849.² These men were demanding to know, albeit politely, why the government of Upper Canada/Canada West had issued mining permits on untreated lands. While Lord Elgin promised

to “use every exertion in [his] power to the end that no injustice shall be done to you,” the elected colonial government continued to deny, stall, and sidestep demands for a treaty until the Anishinaabeg took action to enforce their ownership of the lands in question. These actions led directly to the signing of two treaties, the Robinson-Superior Treaty and the Robinson-Huron Treaty, in Sault Ste. Marie in late August and early September 1850.

Together, the 1850 Robinson Treaties are unique and important documents in the history of Canada. At the time of their signing, they were the largest land surrenders in British North America. Moreover, unlike earlier treaties, those signed with the Lake Superior and Lake Huron Anishinaabeg encompassed more land than what the colony of Canada West needed for settlement or resource extraction. These treaties were also unique for their perpetual annuity with an escalator clause,³ reservation of lands from surrender by the Anishinaabeg, and right to hunt and fish over Crown land not subject to government regulation. Or, in the words of Alexander Morris, former lieutenant governor of Manitoba, and later the North-West Territories and the District of Keewatin, William B. Robinson succeeded in making “two treaties, which were the forerunners of the future treaties, and shaped their course.”⁴

On the eve of the 160th anniversary of the Robinson-Huron Treaty signing, 159 years later, Garden River First Nation Community Trust⁵ undertook the development and performance of a play—*Treaty Daze*—that would not only celebrate these events but hopefully generate knowledge and discussion surrounding the 1850 treaties. While preparing for a workshop, for which I was to provide the playwright, director, crew, and cast with background information as well as salient documents and studies, two events took place that led directly to the creation of *This Is Indian Land*. First, Shingwaukonse’s petition referred to above, while known and frequently referred to by academics (including myself), was relatively unknown amongst members of the Anishinaabeg, Métis, and non-Anishinaabeg communities. The transcription, provided to the student cast, struck a cord. Thus, the document became enmeshed in the play, thereby reaching a larger audience. In 2010, the document became part of a community-academic conference held in Sault Ste. Marie, where it was read as we stood on the beach at Mica Bay, the site of



Image 1: Reading the 1849 Petition at the 9 September 2010 annuity payment at Garden River First Nation. Photo: Margaret Hele.

Anishinaabeg resistance in 1849. Its symbolic import once again came to the fore during the 2010 annuity payment, when a community member dressed in Anishinaabeg ceremonial clothing read it to those gathered to accept their four dollars as guaranteed by the 1850 Robinson-Huron Treaty. After the reading, copies were distributed.⁶ Thus, the 1849 petition's words found purchase amongst a new generation of Anishinaabeg seeking to reconcile the present with the past and continue the efforts to have our rights acknowledged and respected.

The second event leading to the creation of this edited collection was the discussion generated during the workshop, which focused on the lack of local knowledge about the treaties and their importance. This lack of overall knowledge spanned the entire group of Anishinaabeg, Métis, and non-Aboriginals involved with the play. This is not to say that individuals had not heard of the treaties or did not know that the lands were covered by treaty, but rather that they rested upon distinct misrepresentations common in popular knowledge—"treaties were forced on Indians," "treaties ripped off Indians," and "treaties were no longer valid"—as well



Image 2: Rail bridge spanning the Garden River. Photo: Karl S. Hele.

as more specific knowledge of the players and events. As the discussion broadened to queries concerning why so little was known, it became readily apparent, aside from the lack of educational instruction on the matter, that there were not a great deal of materials readily available to anyone interested in learning more.

Both the ready acceptance and incorporation of the 1849 document into “popular” Anishinaabeg discourse at Garden River First Nation, as well as the obvious lack of easily available materials, led directly to this volume. After discussing the idea of creating an edited collection to begin filling the silence, I approached several scholars about the possibility of contributing to a volume on the 1850 treaties. As such, *This Is Indian Land* is the direct result of these requests and attempts to reawaken a dialogue begun long before the 1849 petition or the signing of the treaties.

Similarly, the collection’s title—*This Is Indian Land*—comes from a landmark found on the Garden River First Nation Reserve. Painted on a rail bridge that spans the Garden River is a simple yet bold political statement that everyone passing along Highway 17E to or from Sault

Ste. Marie sees. The bridge and its statement served as a childhood marker, indicating that we were leaving or nearing our home. Although I was not necessarily aware of its political meaning as a child, the words stuck in my memory with their powerful message. It was only after high school that I came to discover the true meaning behind these remarkably comforting and familiar words. For many others, the bridge is making an obvious statement that “you are on a reserve.” Like my younger self, these individuals are missing the larger context that the entire region is “Indian Land.” Others, who realized the statement’s breadth and intent, have attempted over the years to deface or blot out the words. Symbolically, no one has ever managed to fully obscure, cover, or remove the phrase from the bridge.⁷ It has stood proudly, declaring and reminding all who see the phrase that “This Is Indian Land” and will remain so as long as the rail bridge crosses the river. It is this powerful and yet simple phrase that stirs passion among locals—Anishinaabeg, Métis, and non-Aboriginals—whether or not they know the reason why, that I have chosen it as a title. Through this title, I hope to stir debate and thereby generate understanding—but importantly remind readers that “This Is Indian Land.”

The Silence: The 1850 Treaties in History

Between 1849 and 1850, news of the Anishinaabeg efforts to garner a treaty and the results spread across eastern Canada, the United States, and Britain. Various newspapers took up the story, condemning the 1849 “attack” on Mica Bay, demanding a treaty be signed, and extolling the treaties as ending Indian difficulties in the region. The demands for justice reached the Aborigines Protection Society, which added its voice to the calls to uphold British honour and justice through the negotiation of a treaty. Once the ink dried on the treaties, the newspapers dropped their interest in the story of Anishinaabeg rights.

For locals, the treaties soon became part of the distant past. Local histories are of many minds when it comes to the 1850 treaties. The first mindset comprises those works that ignore the treaties and related events. This missing history cannot be found in books written between the late nineteenth and late twentieth centuries. For instance, both Walpole Roland’s 1887 work, *Algoma West*, and Eda Green’s 1915 monograph, *Pioneer Work in Algoma*, fail to mention the treaties.⁸ Similarly, *The Border*

at *Sault Ste. Marie* (1995) is silent on the 1850 treaties and their connections on both sides of the Canadian-American border.⁹ The second mindset examines the events leading up to the treaties but misinterprets them, often ignoring one or both. Edward H. Capp's detailed work on the Sault, *The Story of Baw-a-ting* (1904), portrays the events negatively. The Indians and Allan Macdonell (Capp spells it McDonald) are represented as a "horde" evicting the miners at Mica Bay. Similarly, the Anishinaabeg claims to the region are represented as misguided.¹⁰ He does not mention the 1850 treaties or the negotiations that took place at the Hudson's Bay Company (HBC) post in Sault Ste. Marie.

A third mindset that occurs more uniformly across the various monographs is the misinterpretation of the treaties as simply land deals and nothing more. In Frances M. Heath's *Sault Ste. Marie: City by the Rapids* (1988), for instance, the author states that the treaties "were land agreements: the native people were given reserves and annuities in return for rights to the land."¹¹ Heath's idea that the Anishinaabeg were "given" our reserves is completely contrary to the reality that the settlers were given or allocated rights to use the land while we reserved key sections of territory for ourselves. Simply, it was not the settlers' land to give. Another author, while agreeing with the notion that the treaties were simply about land, erroneously states that the Indian signatories to the Robinson-Huron Treaty were paid "a sum of two thousand pounds gold ... and a further perpetual annuity of 600 pounds gold."¹² There are many other examples of misrepresentation of the treaties, all of which mention the surrender as giving the government the authority to settle the land by extinguishing Indian claims.¹³

These works have served as the main basis of local knowledge in the treaty area on the part of non-Aboriginals. They are readily accessible in local public libraries and, when first printed, graced the shelves of local bookstores. Many can now be purchased as reprints, thanks to the print-to-order services that digital scanning has made possible. Academic works are less likely to be read, often being more difficult for locals, Aboriginal and non-Aboriginal, to find.

Materials by academics fall mostly into two broad categories. The first consists of unpublished materials that the average person and university undergraduate rarely reads or sees. Making up a substantial portion of

this grouping are research reports written for court cases, royal commissions, and land claims.¹⁴ Unless distributed online, these reports are not accessible. Robert J. Surtees' 1986 report for the Department of Indian Affairs on the Robinson Treaties is one example of a document readily available on the Web. His report details the background to the treaties and the treaties themselves.¹⁵

Sadly, many of these reports and their authors' research are silenced not only by their unavailability but through non-disclosure agreements. Researchers working on a land claim or court case involving treaties are normally required to keep all materials they find confidential; they may only be discussed and divulged to the lawyers, other researchers, and clients involved—provided you are on the same side, of course. Only once the court case or land claim is resolved can the public, in theory, gain access to the documents—provided one knows how to access the various files held in myriad government repositories.

Another set of materials that contain information on the treaties but are rarely read consists of master's theses or research papers and doctoral dissertations.¹⁶ While the MA research papers are generally lost knowledge, unless you know the student or their supervisor, theses and dissertations are accessible through databases at university libraries or by purchase online.¹⁷ Though more available than research reports, these works are rarely read other than by academics with a specific interest in the area. Furthermore, the authors of these documents rarely distribute copies to communities or make them aware of their existence.

The second category of works includes all published accounts of the treaties readily available through most libraries. This category can be divided into two subsets: the first includes authors writing about other treaties or general survey texts that include a few pages on the importance of the Robinson-Huron and Robinson-Superior Treaties, while the second focuses on the treaties specifically. The first subset encompasses the various works written about the post-confederation Numbered Treaties (1871–1921), which contain some reference to the 1850 treaties. This inclusion, typically brief, owes itself to the claim by Alexander Morris, lieutenant governor and Numbered Treaty negotiator, that the Robinson Treaties established a series of precedents that informed all subsequent ones.¹⁸ These authors variously note that the 1850 treaties established

annuities, granted the right to hunt and fish on Crown land perpetually, and created a precedent for acquiring more land than was immediately needed. Additionally, it is noted that the Anishinaabeg brought the government to the treaty table and that the treaties were about more than just land. These short discussions can be seen as formulaic references to a precedent-setting document, not an outright analysis of the 1850 treaties themselves. Nonetheless, some of the summaries are quite nuanced.

In the first subset is Janet Chute's 1998 study of *The Legacy of Shingwaukonse*, which examines the 1850 treaties within the context of Shingwaukonse's leadership.¹⁹ Contained within the monograph is a nuanced study of the events, negotiations, goals, outcomes, and leadership that contributed to the making of the 1850 treaties. Chute presents Shingwaukonse as an inspired leader who sought to exert Anishinaabeg control over the region's resources in the face of settler demands in an effort to ensure a place for his people at Bawating. Chute also addresses government efforts to avoid and then encourage a treaty for its own benefit, while attempting to exert its imperialist and colonial claims to the region and all the lands and waters. Though a wonderful study of Shingwaukonse's leadership until his death in 1854, and of his sons' until the late nineteenth century, the work stops short of a thorough examination of the 1850 treaties. In a sense, Chute's monograph is a "great man" history that neglects the myriad other stories relating to the Robinson Treaties. Nevertheless, Chute's work is an excellent place to start reading about the region, the period of the treaties, and an insight into one leader's vision.

The second subset consists of outright studies of the Robinson Treaties of 1850. These, unfortunately, are few—there have been but eight articles published since 1987, as well as a handful of others that discuss the treaties in association with other topics, such as biography.²⁰ Once again, community members may find it difficult to access these works. Scholars rarely send off-prints of their articles to the concerned communities—largely due to logistics and expense. Moreover, the journals that publish the articles fail to advertise them in the communities. Unless you subscribe to a particular journal or have access to a university library, it is difficult if not impossible to find and read these studies. While students, academics, and researchers have ready access to these papers, most public

libraries do not house copies of academic work, which thus limits public access to the information.

It is to these works that I will now turn a more detailed eye. Since no single article can examine the entirety of the treaties, the authors have chosen to discuss a specific event or individual. Two articles examine the 1849 incident at Mica Bay—one by Nancy M. Wightman and W. Robert Wightman (1991), the other by Rhonda Telford (2003). Of the two, Telford's work is more nuanced in its approach and examination of the events leading up to the eviction of the illegal mine. Unlike the Wightman and Wightman article, Telford nicely contextualizes Anishinaabeg actions in terms of their culture and rights, and how they chose to enforce their claims against a recalcitrant government. The Wightman and Wightman article, by comparison, focuses solely on the rousing events of 1849 with little understanding of Anishinaabeg actions.²¹

Three more articles focus on boundary-related issues under the terms of the 1850 treaties. In "Who is on Trial?" (1998), David McNab examines the record, contained within the George Ironside papers, that indicates why the Teme-Augama Anishinaabe were not included within the Robinson-Huron Treaty. Joan Lovisek (2001) examines how the boundaries of the treaties evolved over time, often in favour of the Canadian state. Michael Marlatt (2004) presents a broad overview of the calamitous survey of the reserves immediately following 1850. Together, all three authors show how reserves and communities were affected by non-Aboriginal manipulation of the boundaries created by the treaties.²²

Lise Hansen (1987) explores questions surrounding those claiming leadership of the Anishinaabeg for the purposes of treaty negotiation. Using anthropological theory concerning how hunting-gathering bands are constituted, she argues that some leaders, such as Peau de Chat, may have overstated their leadership roles, yet were readily accepted by the treaty commissioner for the sake of convenience. Since leadership roles in bands were often task-dependent and transitory, Hansen calls into question, and, rightly so, how much authority various signatory chiefs could claim when agreeing to a treaty over such vast landscapes.²³ This issue of "leaders" has been noted by the Anishinabek Nation as an area of concern.²⁴

Janet Chute's 2009 article spans the years from 1850 to 1896 in its examination of the escalation clause in the Robinson Treaties. She looks at why it was included and the consequences for Ontario, Canada, and the Anishinaabeg. She concludes that the escalation clause was likely included in 1850 for the sake of expediency—to get the Anishinaabeg to agree to the treaty and lower annuities than being paid in the United States—and that some politicians and scholars have applied a liberal interpretation to it. This liberal interpretation, as seen by Chute, was voiced by Simon J. Dawson, Member of Parliament for Algoma, who saw no ultimate upward limit on the annuity insofar as resource extraction revenue would permit its increase. This “unlimited” potential for annuity increases is presented by Chute as a modern improbability. According to Chute, lack of political will, “lingering ideological perspective that regards ‘Indians’ as obstructions” to development, and general ignorance of the treaty among the public, prevented “the full legal and economic potentialities of the escalation clause.”²⁵ The potentialities of this clause have been brought to light with recent efforts to increase the annuity by the Robinson-Huron Treaty Chiefs.²⁶

While not dealing specifically with the 1850 Robinson-Superior Treaty, Steven High's 1994 study follows the increases in white encroachment on Anishinaabeg lands that brought about the treaty. High's examination of the Robinson-Superior Ojibwa's response, from 1880 to 1914, to the wage-labour economy concludes that it was selective and consistent with their way of life. Simply, High argues that the Anishinaabeg used the growing wage economy in northwestern Ontario to supplement their traditional economy. This eventually led to a transformation of the relationship between Anishinaabeg and non-Anishinaabeg in the treaty region at the turn of the century. The shifting relationship presented by High represents a decline and eventual loss of a shared work ethic created by both communities' participation in the fur trade through the growth of industrial capitalism. Specifically, the Anishinaabeg preference for day labour, which melded better with their desire to maintain their way of life, led to a “diminished ... status within the larger community,” particularly as the non-Anishinaabeg community moved away from day labour toward salaried employment. High effectively argues that academic conclusions, which present the

Anishinaabeg way of life as declining and disappearing due to increased white encroachment, are incorrect. In fact, High sees the “traditional” economy as hanging on tenaciously.²⁷

In larger terms, the published body of literature surrounding the two treaties mainly examines the Robinson-Huron Treaty. As a matter of fact, High’s and Hansen’s are the only two published articles that deal directly with issues arising from the Robinson-Superior Treaty. This significant hole in our understanding of these documents is the result of two interconnected issues. The first is the simple nature of the history of the two treaties. Both were negotiated and signed at Sault Ste. Marie, which lies within the Robinson-Huron Treaty boundaries. The stirring events of protest and armed eviction of squatters or trespassers in 1849 took place within the same boundaries as the negotiations. The Chief most familiar in the records and to government officials was Shingwaukonse. In fact, most of the published work written about the treaties, from my perspective as a Garden River Band member, is about my band and its inspired leadership during a difficult phase in our history. Yet, I also know and realize that each signatory community has its own history with the treaty. It is these histories that are largely silent. The second reason for this neglect is the treaty litigation process. Since a number of bands from Lake Superior were not properly consulted or present at the treaty signing in September 1850, a number of land claims and court cases have arisen. While people are writing about the Robinson-Superior Treaty, their reports remain subject to confidentiality until the claim or court case has been resolved. Only when the researchers are free to write about the treaty publicly will we see many of these studies published.

With few readily accessible studies, a great silence exists surrounding the 1850 treaties. It is this silence that has led to the misunderstanding and misrepresentation of the nature of the treaty relationship for everyone living within these treaty boundaries. *This Is Indian Land* contributes to the small but growing body of literature surrounding the 1850 Robinson Treaties, thereby continuing to break the silence.

Views of Treaties: A Brief Outline

First Nation signatories, Canadian governments, courts, and non-Aboriginal citizens all hold different views of the treaties. Many of these

differences are cultural. For instance, throughout the Robinson Treaty area (and, indeed, all treaty areas) many non-Aboriginal Canadians fail to see these historic documents as valid or currently binding. They are simply seen as land-surrender documents that, once signed, became irrelevant to the modern world. Historical treaties signed before 1923 are oft dismissed and even seen as a not-so-subtle joke about what to avoid in modern treaties.²⁸ This opinion, of course, ignores the failure of the government to ensure that the land provisions within the treaties were properly enforced. Various Canadian governments have held a myriad of slightly differing views of the treaties, often seeing them as expedients to ensure swift and peaceful settlement of the land or to open it up for resource extraction. The negative views held by many Canadians can easily be found on the webpages of the CBC, where individuals are allowed to comment on stories. It is shocking but not surprising to read the racist and stereotypical views being expressed by many as common sense and truths.²⁹ Even media pundits dismiss what they call “historic grievances.” For instance, unable to grasp the importance of Canada’s failure to live up to its obligations, John Iverson states in his *National Post* column of 24 January 2012 that for “Mr. Atleo [Chief of the Assembly of First Nations] and too many of the chiefs, it’s all about the airing of historic grievances—the implementation of treaty rights and the inherent right to self-government.... All the chiefs talk this language of lament.”³⁰ Iverson’s comments portray Aboriginal leaders as stuck in the past, lamenting what could have been instead of looking forward to a new future in Canada. He seemingly fails to understand that these “historic grievances” are merely historic due to the utter failure of the federal and provincial governments of Canada to live up to their treaty obligations. Rather than writing about “Aboriginal lament,” Iverson should be describing the lamentable policies, centered on civilizing, assimilating, and integrating Aboriginal peoples, created by the colonial Canadian state to avoid its obligations.

During the 2014 Ontario election, racism directed at First Nations came to the fore on the pages of Thunder Bay’s *Chronicle-Journal* when a Libertarian candidate, Tamara Ward Johnson, published a broadside attacking Aboriginal people’s rights and demanding that the “rule of law” be applied equally. Johnson’s claims evince the general ignorance and racism directed at First Nations, as well as an abject failure to understand

history and law. While claiming “free speech” and a “business relationship,” the *Chronicle-Journal* contributed to the ongoing dissemination of misinformation and encouraged hatred and racism directed at First Nations.³¹ By dismissing treaties and their ensuing obligations as historic, many Canadians are hoping that the “Indian Problem” will disappear through the magic wand of “common citizenship” and liberal policies of sameness. After all, according to writer John Ralston Saul, Canada is a “Metis nation.”³² Similarly, many politicians, like the people they represent, fail to see or to believe in the ongoing validity of treaties.³³

Unlike a great many Canadians, however, the colonial court system and the Canadian Constitution have largely embraced the legality and continued existence of the treaties. In 1982, the repatriation of the Constitution, with its inherent political and legal squabbles, led to the inclusion of a section dealing with Aboriginal and treaty rights—Section 35(1). This section states that, “the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”³⁴ The wording of section 35(1) does little to protect or entrench treaty rights. The inclusion of “existing” has led to various court challenges and rulings concerning treaty rights. Overall, the Supreme Court of Canada (SCOC) determined that both Aboriginal and treaty rights that existed as of 1982 are generally protected. Treaty rights can be sidestepped as long as the governments of Canada—federal and provincial—can justify the infringement and have consulted and accommodated Aboriginal interests.³⁵ Importantly, the Canadian courts have recognized or claimed that all “Indian treaties” are *sui generis*—internal documents to Canada that contain elements of both a “proper” treaty and a contract.³⁶ Additionally, the courts have recognized that Canada and its provinces have a fiduciary obligation as well as a duty to uphold the honour of the Crown. The most recent SCOC decision on treaty issues took place in July 2014 concerning the rights of Ontario to take up land under the terms of Treaty 3. In its decision, while fallaciously claiming that the Anishinaabeg never resisted or contested the right of the Crown to take up land, the court upheld the status quo.³⁷ It concluded that Ontario, while having the right to take up land under the terms of the treaty, has a duty to consult and accommodate while upholding the honour of the Crown. Furthermore, the court determined that, in the taking-up of land,

the treaty rights of the Anishinaabeg must be respected. And, “if the taking up leaves the Ojibway with no meaningful right to hunt, fish or trap in relation to the territories over which they traditionally hunted, fished and trapped, a potential action for treaty infringement will arise.”³⁸ With this decision, the court essentially carried forward the legalistic framework concerning provincial rights under the Constitution of Canada and the St. Catherine’s Milling case, while affirming Anishinaabeg treaty rights and Crown fiduciary obligations. The 2014 Grassy Narrows ruling, while affirming Crown rights and duties under Treaty 3, affects the 1850 Robinson Treaties, in terms of resource extraction and land use by companies licenced by the Province of Ontario operating on the surrendered lands, insofar as our rights to hunt and fish are not adversely affected. As such, the SCOC has affirmed that the federal and provincial interpretations, as well as duties under the treaties, are not the same as those of the First Nations signatories. Simply, the Crown (federal or provincial) has the ultimate authority over a treaty, while the First Nations are subordinate.³⁹

Aboriginal Canadians, however, view these documents as the foundation of our ongoing relationship with the Canadian state and its constituent provinces. These documents are not paradoxes, anachronisms, or irrelevant to modern Canada, nor are the treaties to be confined to the dustbins of history. Moreover, the Anishinaabeg—and all First Nations, for that matter—see the treaties as international documents between independent nations. Land treaties, including the 1850 Robinson Treaties, are viewed as sharing the land with the newcomers rather than absolute surrenders of rights and privileges. In terms of the Robinson Treaties, one can wonder if the Anishinaabeg signatories agreed to share the land with settlers or merely agreed to share their resources with miners. Nonetheless, all treaties are viewed as living, spiritually based agreements that bind both sides equally. Harold Cardinal, political activist and Aboriginal writer, summarizes these ideas in his statement that treaties, “to the Indians of Canada ... represent an Indian Magna Carta. The treaties are important to us, because we entered into these negotiations with faith, with hope for a better life with honour.”⁴⁰ Simply, the Anishinaabeg, like all Aboriginal people, continue to view their treaties not only as sacred agreements that contain promises from the Crown

or President, but for what each agreement represents: “solemn agreements and commitments among groups of independent and sovereign peoples.”⁴¹ While Aboriginal leaders use the Crown’s failure to implement or follow treaty promises to extract concessions from Canada, such as limited recognition of rights and payment of monies, this pales beside the vision of treaties as nation-to-nation agreements. In the end, many Aboriginal people maintain that, “We [Aboriginal and non-Aboriginal] Are All Treaty People.”⁴²

Giving Voice

The essays collected in this volume explore various aspects of the 1850 treaties. Unfortunately, the majority of the collected papers only speak to the Robinson-Huron Treaty. This hole, which is not intentional, reflects current trends in the literature and the nature of working on Aboriginal treaties that are often subject to litigation. It is hoped that with the publication of this volume more studies will come forth that examine the Robinson-Superior Treaty. Nonetheless, the interconnected nature of the two treaties, and the shared experience with colonialism, makes the studies contained herein valuable to all living within the Robinson Treaty boundaries and beyond.

This Is Indian Land can also be said to form part of the decolonization effort being undertaken by Indigenous and non-Indigenous peoples around the globe. Additionally, by generating knowledge about the 1850 treaties, this volume is participating in the reconciliation process within Canada. By studying how nineteenth-century British Canada imposed itself upon Anishinaabeg lands, the contributors to this volume are acknowledging the complexities of colonialism, which in turn works toward decolonization and reconciliation. Moreover, each paper exists within the knowledge that the relationship between British-Canadian, and later, Canadian governments, and Indigenous Peoples remains an ongoing process.⁴³ It is within this context that each contributor’s chapter was written. It is only through the dissemination of knowledge about Canada’s colonial past, no matter how uncomfortable, that decolonization and reconciliation between settler and original inhabitant can be achieved. *This Is Indian Land* is informed by the vision of reconciliation and decolonization, but not dominated by it.

My Chapter 1 offers a brief contextualization of the Robinson Treaties of 1850. The following four chapters seek to broaden the understanding of the Treaties' borders.

Chapter 2 by David Calverley argues that there are multiple treaties contained within the two Robinson Treaties. He deftly shows that in 1850 the Anishinaabeg signatories would have viewed their authority from the perspective of the traditional family hunting territory. The leaders at the negotiations would have been able to speak only for their immediate families and the lands upon which they hunted. As such, the nature of family hunting territories, combined with Robinson's promise that the "tribes [would enjoy] the full and free privilege to hunt over the territory now ceded by them, and to fish in the waters thereof, as they have heretofore been in the habit of doing," assured the bands and their leadership that their traditional mode of life would not be negatively affected by treaty. For Calverley, the decline in family hunting territories began in the 1930s due to increased resource extraction and Ontario implementing laws restricting Anishinaabeg hunting and fishing rights despite treaty promises to the contrary. In the end, family hunting territories were largely destroyed. Nevertheless, Calverley's notion that there are dozens of Robinson Treaties, as many as there are hunting grounds, raises a series of issues concerning Anishinaabeg rights and compensation for their breach. In Chapter 3 following the idea of multiple understandings of the 1850 treaties, David T. McNab warns of the dangers of expansive interpretations of treaty signatories based solely on written records. He argues that the Teme-Augama never signed or agreed to the 1850 treaties despite their inclusion within its bounds. Relying heavily on the oral tradition of the band and placing the written record within that context, McNab makes it apparent that government agents, in an effort to hide their own wrongdoing, made it appear as though the Teme-Augama agreed to the Robinson-Huron Treaty. Unfortunately for the Teme-Augama, McNab points out, the governments of Ontario and Canada have simply believed this and acted as if the Teme-Augama were part of this treaty. In the end, despite oral traditions to the contrary, the Supreme Court ruled that the Teme-Augama were part of the Robinson Treaties, thereby leaving "no place for fairness" for the band. I argue, in Chapter 4, that another understanding of the 1850 treaties must occur

within the context of the borderlands. The 1850 treaties were signed by a representative of the British Crown vested with its full authority and in full knowledge that the Anishinaabeg signatories were both “British” and “American” Indians who had claims to the north shores of Lake Huron and Lake Superior. Hence, the Treaties are international documents with serious implications for their various signatories’ border rights, particularly “American” Indian rights in Canada. Thus, I present the Robinson Treaties not as *sui generis* documents but as international agreements. Through her examination of the internal and external factors in Chapter 5, Rhonda Telford shows how the reserves created under the 1850 treaties were continually eroded. Telford’s internal factors are associated with the Department of Indian Affairs and her external ones with the Department of Crown Lands. These departments were (and remain) locked in a rivalry over who has the right to initiate, manage, and eventually profit from Indian lands and resources. With the British government seeking to transfer the costs of Indian presents and expenses associated with the Department of Indian Affairs to the colony, a new source of funds had to be found. By the 1830s, according to Telford, the solution was to take a portion of the monies from the surrender and sale of Indian lands and resources to fund Indian department activities. Essentially, the Indians were paying for their own civilization and gifts through the sale of their lands. The Crown Lands department, meanwhile, believed it had the right to retain monies to fund its and the government’s activities through the sale of all resources within the province. In turn, this department was influenced by developers seeking to access the mining and timber resources found throughout the Robinson Treaties. Thus, neither department was acting for the benefit of the Indians. When the two departments were combined in 1860, it briefly resolved the rivalry between Indian Affairs and Crown Lands, but created a situation where the very agency responsible for protecting the Indians was also responsible for developing resources. Regardless, the need for money to fund the various schemes of Indian Affairs or Crown Lands, Telford maintains, led to the government seeking further land surrenders in the late 1850s and 1860s. Furthermore, she points out that the taking of surrenders to fund the Indian Affairs and Crown Lands departments was contrary to the spirit of the 1763 Royal Proclamation. In the end, the Anishinaabeg lost

a great deal of their land base, which severely hindered their ability to enjoy economic stability and prosperity, as well as negatively affected their culture. Together, all the above authors—Calverley, McNab, Telford, and myself—argue for a more nuanced interpretation by expanding the treaty “borders” to take into account the context of the Anishinaabeg in the mid-nineteenth century and their efforts to protect their rights, lands, and waters for generations to follow.

Chapters 6 through 9 are case studies of specific communities within the Robinson-Huron Treaty region. McNab undertakes another case study in Chapter 6, showing how the boundaries of Shawanaga and Naiscoutaig were surveyed contrary to Anishinaabeg wishes and treaty descriptions. He reveals that the system of measure understood by the Anishinaabeg was not the one used by the government surveyors. The Anishinaabeg understood that their reserves were to be measured in leagues—a French measurement with which they were familiar—yet the distance measure contained within the description of reserves in the Robinson-Huron Treaty (it is the same in the Robinson-Superior Treaty) was miles. A French league is approximately three miles, which means that, when measured in miles, the Shawanaga and Naiscoutaig reserves are significantly smaller than the Anishinaabeg intended. Additionally, McNab argues that even with the mile as the form of measure, the surveyors failed to take into account the treaty description when surveying. Together, these two errors, and the failure to correct them despite Anishinaabeg protests, has resulted in many outstanding issues and claims. Chapter 7, by Karen Travers, argues that under the terms of the 1850 treaties the Anishinaabeg did not surrender their rights to the water, the land under the water, and islands. This fact, however, has not stopped the governments of Canada from overstating the surrenders by claiming that the treaties did include these things. Since the 1850 treaties were about protecting resources, Travers argues that the Anishinaabeg deliberately sought to protect their fishing rights under the terms of the treaties. Travers also gently reminds us that while a great deal has been made about the precedent-setting nature of the 1850 treaties, these surrenders were part of a larger treaty-making tradition in Upper Canada/Canada West, many of which sought to protect resources such as water and fish. As such, Travers sees the 1850 treaties as representing

a continuum of Anishinaabeg efforts to protect their resources and a British failure to secure surrenders for all that modern Canada claims. Peter Krats, in Chapter 8, offers a detailed examination of three generations of the Whitefish Lake or Atikameksheng Anishnabek community's experience with settler encroachment upon their lands. Throughout the chapter, Krats makes it apparent that the Atikameksheng Anishnabek dealt resiliently with changing economic circumstances from before contact to modern tourism. Despite these many changes, the people fought to protect their right to pursue a secure economic future as evidenced by their signing of the 1850 Robinson-Huron Treaty. Finally, despite their lifestyle having evolved since contact with Europeans, the Atikameksheng Anishnabek retained a distinct identity that maintains Anishnabek values at its core. With Chapter 9 Victor Lytwyn shifts our focus from questionable survey practices to a questionable land claim by the HBC during and after the treaty process. In his examination of the HBC's efforts to secure land around its forts, Lytwyn argues that the company violated oral agreements with the First Nations throughout the treaty area. These oral agreements held that the company would only retain the right to use the land as long as it operated a trading post for the benefit of the Indians, and once the post closed the land was to revert to Indian control. The HBC broke the various oral agreements because it sought ownership of its leased lands to enable the exploitation of timber and mining resources, as the fur trade declined throughout the Great Lakes. After detailing HBC involvement in the 1850 treaties and Governor George Simpson's efforts to secure land, Lytwyn turns to examine how the company obtained title to the lands around the LaCloche Post, which was inside the Sagamok reserve boundaries. Lytwyn then follows the history of the land until the band assumed control of it in 1993 and filed a claim with the Government of Canada six years later. As a group, these four chapters by McNab, Travers, Krats, and Lytwyn, offer a glimpse into the effects of settler encroachment on Anishinaabeg territory. They show how, despite signing a treaty that was to protect their rights, lands, waters, and way of life, British-Canadians managed continually to whittle away at the lands, thereby endangering the cultures and nations that had existed in the region for eons. Nevertheless, each author shows that despite this continued encroachment, the Anishinaabeg

responded to the challenge through protest and collective action, which illustrates that despite adversity, the culture remained resilient.

The final two chapters, by Stephanie Pyne and Margot Francis, offer a look at contemporary efforts to come to terms with the treaty legacy. In Chapter 10 Pyne discusses her and others' efforts to bring the Robinson-Huron Treaty into the cyber-age. The cybercartographic atlas, according to Pyne, will help everyone, settler and Aboriginal, understand both the apparent and hidden knowledge within treaty documents. This will be achieved by overlaying historic and modern maps in association with various documentary records—oral, written, and images—of the 1850 Treaty and area. The entire project is critical of the colonial project exemplified by the extinguishment clause and decades of denial by settlers and their governments of treaty rights and obligations. For Pyne, the cybercartographic atlas, like this book, is part of the effort to bring about reconciliation between “native and newcomer.” Chapter 11, by Francis, examines an attempt in 2009, through youth community theatre, to come to terms with the treaty legacy. On the one hundred and sixtieth anniversary of the Robinson-Huron Treaty, the Garden River First Nation Trust sponsored a play titled *Treaty Daze*, undertaken to bring a voice to Garden River's participation in the treaty. Francis discusses the impact of the performance toward achieving its goal—to help bring about decolonization. Throughout her chapter Francis examines how *Treaty Daze* explored the treaty legacy for the Anishinaabeg and how this in turn affected both the audience and the actors. The legacy and its ongoing effects are then discussed in the context of how people are coming to terms with the issues raised by the play. Both Pyne and Francis ably show how the treaty legacy and efforts to promote awareness about it are parts of the process of decolonization and reconciliation.

Taken together, these eleven chapters constitute a unique exploration of the legacy of the 1850 Robinson Treaties. While the majority of the chapters examine the Robinson-Huron Treaty, perhaps reflecting the nature of the records, the state of current research, and the silence engendered by the land claims process, the implications and conclusions are applicable to all First Nations across Canada. The actions and activities of the state and its agents, as well as Anishinaabeg resilience, are stories that illuminate the complexities of Canadian colonialism and its continued

place at the centre of Canadian identity and nationhood. While the desire to help move Canada toward decolonization and reconciliation did not form the premise for the creation of *This Is Indian Land*, it does move us toward these desirable ends. As a study of how Canada in the nineteenth century imposed itself upon Anishinaabeg land, the collection adds to our collective knowledge of this process, as well as about how contemporary Anishinaabeg are attempting to work with the legacy of the treaties. This volume is by no means the last word on the 1850 Robinson Treaties, but it does represent a point of departure for future discussions. It is also part of a renewal of interest in the Canadian treaty legacy in general, and a definite contestation of the characterization of our treaties as simply historic relics best confined to the past. From our perspective—that is, the Anishinaabeg perspective—the treaties are contemporaneous to whatever generation lives under their spirit and intent. These are living documents that re-inform each generation about its rights, obligations, and relationships. In short, these constitutional documents cannot be dismissed as historic relics, for the treaties are crucibles that have shaped and continue to shape all local and national communities, as well as all of our relations, for generations to come.

Endnotes

- 1 *Montreal Gazette*, 25 November 1849.
- 2 “The Chippewa Indians and the Huron Lake Mining Companies,” *The Colonial Intelligencer, or, Aborigines Friend*, XVIII–XIX, new series (October–November 1849), 287, 286–90; and *Montreal Gazette*, 25 November 1849.
- 3 For instance, in drafting Treaty 3 in 1873, an escalator clause similar to the clause in the 1850 Robinson treaties was considered, but not included, in the final document. Public Archives of Manitoba, Alexander Morris Papers, Lieutenant-Governor’s Collection, MG 12, B1, no. 511, Unsigned and undated draft articles of Treaty 3.
- 4 Alexander Morris, ed., “Robinson Treaties [William B. Robinson’s Report, Sept. 24, 1850],” in *Treaties of Canada with the Indians of Manitoba and the North-West Territories including the Negotiations on which they are based* (1880; reprint, Saskatoon: Fifth House Publishers, 1991), 17.
- 5 The Garden River First Nation Community Trust was created in 1994 as part of a series of agreements that addressed issues surrounding the

- “highway easement,” the 1859 Pennefather Treaty, and the construction and maintenance of the new Highway 17 bypass through Garden River. The Trust “preserves and protects the \$4.9 million settlement received from Ontario in 1994. Interest is generated to pay for the Trust office expenses and projects that the Band members approve by way of vote.” Since its creation, the Trust has funded \$1.5 million in community projects. *Garden River First Nation Community Trust* [pamphlet] (Garden River, ON: Garden River First Nation Community Trust, n.d.); and Karl Hele, *An Overview of Garden River First Nation’s Lands* (Garden River, ON: Garden River First Nation Community Trust, 2011), 43–44.
- 6 Hele, *An Overview*, 49.
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 - 11 Frances M. Heath, *Sault Ste. Marie: City By the Rapids* (Burlington, ON: Windsor Publications, 1988), 45.
 - 12 The actual statement in the treaty reads “two thousand pounds of good and lawful money of Upper Canada to them in hand paid, and for the further perpetual annuity of six hundred pounds of like money.” *Laird Chronicles* (Bruce Mines, ON: Words Unlimited, 1991), 3.
 - 13 For other examples, see J. E. MacDonald, *This Point of Land* (Sault Ste. Marie: Sault Star Commercial Printing Department, 1979); *Shantymen and Sodbusters* (1966; reprint, n.p.: Creative Printing House, 1982); E. Iona Robbins, *Glancing Through Rydal Bank and Plummer Township* (Sault Ste. Marie: Tyro Publishing, 1995); Dan Douglas, *Northern Algoma: A People’s History* (Toronto: Dundurn Press, 1995); and Derek J. Coleman, Jim Waddington, and D’Arcy O’Neill, *La Cloche Country: Its History, Art and People* (Espanola: OJ Graphics, 2009).
 - 14 For instance, see Victor Lytwyn, “Historical Report on the Métis Community at Sault Ste. Marie” Manuscript Report, 1998, <http://www.metisnation.org/registry/citizenship/historicresources/> (accessed 22 Feb. 2016); and James Morrison, “The Robinson Treaties of 1850: A Case Study. Prepared for The Royal Commission on Aboriginal Peoples, Treaty and Land Research Section. Final Draft,” 31 August 1996.
 - 15 Robert J. Surtees, “The Robinson Treaties (1850),” *Treaties and Historical Research Centre*, Indian and Northern Affairs Canada, 1986, www.aadnc-aandc.gc.ca/eng/1100100028974#ft21b (accessed 27 July 2012).

- 16 For instance, see Carolyn Jane Harrington, "The Influence of Location on the Development of an Indian Community at the Rapids of the St. Mary's River" (master's thesis, University of Western Ontario, 1979); Grahame Alexander MacDonald, "The Saulteur-Ojibway Fishery at Sault Ste. Marie 1640–1920" (master's thesis, University of Waterloo, 1977); Deborah Anne Montgomerie, "Coming to Terms: Ngai Tahu, Robeson County Indians and the Garden River Band of Ojibwa, 1840–1940. Three Studies of Colonialism in Action" (PhD diss., Duke University, 1993); and Karl Hele, "'By the rapids': the Anishinabeg-missionary encounter at Bawating (Sault Ste. Marie), c. 1821–1871" (PhD diss., McGill University, 2002).
- 17 The ProQuest database makes available various master's theses and doctoral dissertations undertaken in Canada and the United States. <http://www.proquest.com/en-US/products/dissertations/disexpress.shtml>.
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- 21 Wightman and Wightman, "The Mica Bay Affair," 196.
- 22 See Note 19.
- 23 Hansen, "Chiefs and Principal Men," 40, 47, 56–59.
- 24 "Robinson-Huron Treaty Rights, 1850 and Today," report, Anishinabek Nation, <http://www.anishinabek.ca/download/Robinson%20Huron%20Treaty%20Rights.pdf>.

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- 26 Mary Laronde, "Last raise in 1874 for Robinson Huron," *Anishinabek News* 27, no. 7 (2012): 1; "Chiefs of Ontario Firmly Support Robinson-Huron Treaty Chiefs Serving Notice of Annuity Claims on Ontario and Canada," *Chiefs of Ontario*, <http://www.chiefs-of-ontario.org/node/395> (accessed 29 July 2014); and David P. Ball, "Unchanged treaty annuity is 'weight of injustice' on Anishinabek," *Ontario Birchbark* (2012), <http://www.ammsa.com/publications/ontario-birchbark/unchanged-treaty-annuity-%E2%80%98weight-injustice%E2%80%99-anishinabek> (accessed 29 July 2014).
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- 31 "Internal (Mis)understandings: The Politics of Canada," Canadian Political Opinions Blog, <http://canadianpoliticalopinions.blogspot.ca/search?updated-min=2014-01-01T00:00:00-08:00&updated-max=2015-01-01T00:00:00-08:00&max-results=5> (accessed 29 July 2014); "Tamara Johnson election ad 'shocks' Anishinabek Nation," *CBC News*, <http://www.cbc.ca/news/canada/thunder-bay/tamara-johnson-election-ad-shocks-anishinabek-nation-1.2671822> (accessed 29 July 2014).
- 32 See John Ralston Saul, *A Fair Country: Telling Truths About Canada* (Toronto: Viking Canada, 2008), which makes the claim, based on poor history and romanticism, as well as a general liberal political philosophy, that Canada's institutions, politics, and people are a result of hybridity or *métissage*, hence the notion of a "Metis nation." Such arguments, while perhaps speaking to how the North American experience has influenced settler colonialism, serve to deny settler obligations undertaken through treaty with Indigenous peoples. It also serves to indigenize a colonial population, thereby disenfranchising any competing claims to aboriginality and rights.
- 33 Sadly, the Canadian government continues to fail to live up to its treaty obligations for both historic and modern treaties. For instance, it has failed to follow the terms of the settlement that led to the creation of Nunavut, in 1999. "Feds ordered to pay \$15M in damages to Nunavut group: Judge says

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- 36 Isaac, *Aboriginal Law*, 74–75.
- 37 *Grassy Narrows First Nation v. Ontario (Natural Resources)*, 2014, SCC 48, *Judgements of the Supreme Court of Canada*, <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14274/index.do> (accessed 28 July 2014); and Hayden King, "Land ruling's message to First Nations: You have no place in Confederation," *Globe and Mail*, 14 July 2014, <http://www.theglobeandmail.com/globe-debate/land-rulings-message-to-first-nations-you-have-no-place-in-confederation/article19584153/> (accessed 29 July 2014).
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- 40 Harold Cardinal, *The Unjust Society: With a New Introduction by the Author* (1969; reprint, Toronto: Douglas and McIntyre, 1999), 28–29; and Isaac, *Aboriginal Law*, 74.
- 41 Isaac, *Aboriginal Law*, 74. See also Harold Johnson, *Two Families: Treaties and Government* (Saskatoon: Purich Publishing, 2007); and Robert A. Williams, Jr., *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600–1800* (New York: Routledge, 1999).
- 42 See Office of the Treaty Commission, www.otc.ca/ABOUT_TREATIES/We_Are_All_Treaty_People/ (accessed 30 April 2010); and Roger Epp, *We Are all Treaty People: Prairie Essays* (Edmonton: University of Alberta Press, 2008).
- 43 At the Creating Canada Symposium in October 2013, Bernard Valcourt, Minister of Aboriginal Affairs and Northern Development, erroneously claimed that Canada was not founded nor currently relies on the doctrine of discovery. Like Prime Minister Stephen Harper's 2009 comments that Canada was not a colonial nation, Mr. Valcourt's statement reflects the ongoing legacies of colonialism and mythologies of western superiority. "The Royal Proclamation, Treaties and Federal Policy," Creating Canada Symposium, 7 October 2013, <http://www.landclaimscoalition.ca/creating-canada-symposium/> (accessed 29 July 2014); David Ljunggren, "Every G20 nation wants to be Canada, insists PM," *Reuters*, 25 September 2009, <http://www.reuters.com/article/2009/09/26/columns-us-g20-canada-advantages-idUSTRE58P05Z20090926>; and Derrick O'Keefe, "Harper in denial at

G20: Canada has 'no history of colonialism,'" rabble.ca, <http://rabble.ca/blogs/bloggers/derrick/2009/09/harper-denial-g20-canada-has-no-history-colonialism> (accessed 29 July 2014). For a discussion of the ongoing processes of reconciliation and decolonization, see Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed Books, 1999), 64; Celia Haig-Brown and David A. Nock, "Introduction," in *With Good Intentions: Euro-Canadian and Aboriginal Relations in Colonial Canada*, eds. Celia Haig-Brown and David A. Nock (Vancouver: University of British Columbia Press), 6–7; and Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada* (Vancouver: University of British Columbia Press, 2011).

CHAPTER 1

The Robinson Treaties—A Brief Contextualization

Karl S. Hele

Their claim it appears continued unmolested from time immemorial to the present day. They do not admit that it can be owned by any power under pretext of the right of conquest because the French were admitted into their country on terms of friendship as traders and when the English waged war against the French the Indians at the instance of the Commander of the British Forces became their allies and have acted in the capacity in all subsequent wars in which the English have been engaged....

—Thomas G. Anderson, 1848 (LAC, RG 10, vol. 534)

For more than five thousand years, the Indigenous people living in the Great Lakes region knew of, utilized, and told stories about the resources of the region, including its minerals. Generally, the Anishinaabeg believed that the *maemaegawaehnssiwuk* (little people(s)) and *michipicou* (underwater panther(s)/lynx(es)) protected mineral deposits. If one did not seek or obtain permission to utilize the copper, some sort of retribution would follow. By the nineteenth century, the Anishinaabeg were very reluctant to reveal mineral deposits to settlers. While the spiritual and cultural aspect concerning the general fear of revealing mineral locations cannot be dismissed, there was also a political and economic dimension to Anishinaabeg reluctance. Many feared that should the deposits' locations be revealed, the Anishinaabeg would be overwhelmed by settlers and dispossessed of their lands. Some leaders, such as Shingwaukonse, hoped to use Anishinaabeg knowledge and ownership of the mineral resources to benefit their people.¹

Scholars refer to the first Indigenous group known to have made use of minerals in the Upper Great Lakes as the Old Copper Culture. People collected copper nuggets on the surface, and mined the ore. Craftsmen and artisans then turned the copper into “socketed dart and lance heads, socketed knives, awls, chisels, punches, bossed bracelets, disc pendants,” as well as scrapers and axe heads.² These copper tools and decorations were traded throughout the Great Lakes, west onto the Plains, north to Hudson’s Bay, east to the Gulf of St. Lawrence, and south into the Mississippian Mound Builder region.³ Settlers were so astounded by the extent of ancient Indigenous copper work that tall tales were concocted, and still circulate, which centre around some past European civilization accessing Lake Superior to mine and ship the copper across the Atlantic. Nevertheless, such tall tales, while representing nothing more than inherent racial bias in settler mindsets, do indicate the extent and complexity of Indigenous mining.⁴ By the late Woodland/early contact period—around the 1560s—the people who would become known as the Anishinaabeg were using these minerals.

In addition to making copper tools and decorations, the Anishinaabeg used copper plates to record sacred and historical events. Samuel de Champlain learned of this use in 1610 from an Algonquin chief, while Anishinaabeg historians, such as George Copway and William Warren, writing in the nineteenth century, discussed the existence of these plates. Similarly, Edward Benton-Banai, current spiritual leader of the Midewiwin, describes the creation of one such plate in the fourteenth century.⁵ While these plates have not been “seen” since the late nineteenth century by outsiders, the spiritual significance of minerals remains a key component of modern Anishinaabeg beliefs.

Stories of the valuable mineral riches of the Upper Great Lakes led to numerous attempts to exploit the region’s wealth, first by the French and then the English. Jacques Cartier, in his efforts to claim the discovered lands for his French masters in 1534, learned of a great Kingdom of the Saguenay from his Iroquoian hosts.⁶ It is likely that the St. Lawrence Iroquoians at Stadacona (present-day Quebec City) were speaking of the copper deposits and people in the Upper Lakes. Over a century later, a 1632 map drawn by Champlain noted the presence of copper on Lake Huron. Missionaries, fur traders, and military personnel all heard of or

supposedly obtained samples of copper. This information spurred Pierre Le Sueur in 1698 to apply for permission from the French crown for mining rights on Lake Superior. While La Sueur failed to obtain permission, Louis Denis, Sieur de la Ronde managed to operate a copper mine in the vicinity of the former Jesuit mission at Sault Ste. Marie from the 1720s to the 1730s. His death, along with the French-Indian Wars, led the French to abandon further attempts to exploit the region's mineral potential.⁷

With the signing of the 1763 Treaty of Paris, the colony of Québec passed to the British Empire. Drawing upon French knowledge of minerals in the Great Lakes region, English adventurers sought to open new mines. Alexander Henry, fur trader, and Sir William Johnson, Indian superintendent of the Northern Department, entered into a venture to open a mine in the mid-1760s at Mamance on Lake Superior. To support this venture, Henry built two ships at Pointe au Pins to transport ore, furs, and supplies from around Lake Superior to Sault Ste. Marie. While Henry pushed ahead, his partner, Johnson, stated that the minerals and territory belonged to the Anishinaabeg and needed to be purchased or leased from them. Perhaps Johnson's reminder led Henry, along with Major Robert Rogers and Jean-Baptiste Cadot, to sign a "treaty" with the Anishinaabeg of the Sault region in the 1760s for land on both the north and south shores of the St. Mary's River.⁸ Nonetheless, after a series of setbacks, including the death of three men who attempted to remove the Ontonogan boulder,⁹ Henry abandoned his attempts to extract copper from the region by 1775. The eruption of the American Revolution that same year, together with the efforts of the Western Confederacy, prevented further settler efforts to exploit Anishinaabeg mineral resources until the end of the War of 1812.

Renewed interest in the minerals located throughout the Upper Lakes is believed to have begun with the 1820 expedition sent to discover the source of the Mississippi River, exert American sovereignty, and determine potential areas suitable for agricultural and resource extraction.¹⁰ The expedition was a direct response to two previous US attempts to venture past Sault Ste. Marie in 1815 and 1816, when American troops were fired on, as well as continued British interaction with US Indians from a military post on Drummond Island in the St. Mary's River.¹¹ Henry R. Schoolcraft, employed as the expedition's mineralogist, noted the presence

of copper along Lake Superior and visited the Ontonogon boulder. Wabishkeepenas, an Anishinaabeg from the Ontonogon region, offered to guide Schoolcraft and the expedition's leader, General Lewis Cass, to the boulder. While searching for the boulder, Wabishkeepenas became disoriented and proved entirely unable to guide Cass and Schoolcraft to the site. For his cooperation with the expedition, Wabishkeepenas was shunned by the Anishinaabeg, thereby becoming an outcast until his death.¹² Nonetheless, the expedition reawakened settler knowledge and interest in Lake Superior's copper resources.

In addition to working as a mineralogist on the Mississippi expedition, Schoolcraft became an amateur Indian linguist and folklorist, as well as the American Indian Agent and treaty negotiator at Sault Ste. Marie.¹³ Schoolcraft's role in the 1820 expedition, as well as his connection through marriage to a prominent mixed-blood family—the Johnstons—and conversations with Anishinaabeg, provided him with information about potential “unexploited” resources in the Upper Lakes region. Thus, when the American government entered into negotiations for all the lands from Sault Ste. Marie west to the Mississippi River in 1825–26, a clause granted the government the “right to search for, and carry away, any metals or minerals from any part of their [the Ojibwa's] country.”¹⁴ This article may have been inserted into the Treaty without Native knowledge, “misexplained,” or was simply seen as non-threatening by the Anishinaabeg since the *maemaegarwaehmssiwuk* protected mineral deposits from transgression.¹⁵ Beyond a few forays to locate copper deposits shortly before and during treaty negotiations, non-Natives proved unable or unwilling to venture into the area *en masse*. This reluctance, according to historian Rhonda Telford, can be explained by Anishinaabeg insistence, despite the apparent surrender of their mineral rights and promises made in 1826, that they continued to own the resources.

Between 1830 and 1841, geologist Douglas Houghton surveyed the southern shores of Lake Superior on behalf of the State of Michigan. His 1841 report to Michigan's legislature initiated a rush of speculators and prospectors staking mineral claims in the region. These “discoveries,” largely impossible without Native assistance, led to the negotiation of two more treaties with the Chippewa in 1836 and 1842.¹⁶ With the ratification of the 1842 Treaty of La Pointe, the Chippewa of western Lake

Superior, including those at the Sault, not only surrendered a vast tract of land but opened up the natural resources for exploitation by Whites.

With the 1842 ratification of the Treaty of La Pointe, exploration for and extraction of the Upper Peninsula's resources began in earnest. By 1843, large numbers of fortune-seekers began flocking to the Sault.¹⁷ With the granting of the first mineral licenses in 1844, the copper bonanza had officially begun.¹⁸ From 1845 to 1860, 116 copper-mining companies operated between Sault Ste. Marie and the western end of Lake Superior. The extraction of iron ore, in 1846, only increased the number of people heading west through the Sault.¹⁹ Reflective of the Upper Peninsula's prosperity, the American federal government stopped selling mining permits and started selling land in 1846. The Pittsburgh and Boston Company paid the first mineral dividend in 1848.²⁰ By 1853, approximately twenty-two companies had reached full production of copper, which flooded the market and dropped the price from fourteen to ten cents a pound. The only break on copper production was the inability of companies to transport the mineral easily to market without offloading and reloading ships at Sault Ste. Marie. Hence, by the 1850s, a canal connecting Lake Superior to Lake Huron became a matter of national importance.²¹

To encourage a company to undertake construction of a canal and lock system, 750,000 acres of public land in Michigan was promised as compensation by Congress in 1852. With this incentive, the Fairbanks Scale Company began construction of two locks in 1853. The canal and lock system completed in 1855 saw the destruction of the Anishinaabeg campground and many fishing sites, as well as their cemetery, despite guarantees contained in the 1820 Treaty of St. Mary. To calm, or at least compensate, the Anishinaabeg for this violation, the US negotiated and signed the last US treaty in the Sault region in 1855.²² With completion of the canal, millions of tons of copper, iron, wood, and other resources stripped from lands once controlled by the Anishinaabeg passed to the industrialized eastern United States.²³

While the US expanded its imperial vision northward and westward, the British colony of Upper Canada was pre-occupied with settling the southern portion of its claimed territories, not to mention its internal political disputes. Prior to the 1840s, to many Upper Canadians the northern

Great Lakes region was simply a land where Indian and beast roamed freely, unfettered by civilization. The region was even referred to by outsiders as the “New Siberia.”²⁴ The local economy of the Upper Lakes was dominated by fur trade companies (e.g., Hudson’s Bay Company, North West Company, American Fur Company) and small traders (e.g., John Bell, Jean-Baptiste Cadot, Charles Oakes Ermatinger) on either side of the border. By the 1830s, a small albeit growing commercial fishery, largely based on the US shore, had commenced along the bays and islets of Lake Huron and eastern Lake Superior, as well as in the St. Mary’s River. Fish were dried and salted before being packed into barrels for the markets in the east, such as New York, and in the south, such as Chicago. Nonetheless, the region remained dominated by the fur trade until the 1860s, when resource extraction, canal construction, and eventual industrialization opened the region for new investment capital—much of which came only after the signing of Indian treaties in the 1850s.

The overall lack of interest among Upper Canadians and the apparently limited opportunities for investment also translated to an overall lack of knowledge. For instance, in a rare spark of interest in the northern region, which likely stemmed from concern over American influence rather than the Anishinaabeg population, Lieutenant-Governor Colborne and the Society for Converting and Civilizing the Indians, and Propagating the Gospel, Among Destitute Settlers In Upper Canada in 1832 appointed an Indian agent-missionary to the Sault Ste. Marie region—William McMurray. McMurray’s dubious role saw him promoting loyalty to Great Britain, countering American expansionism, and ensuring that the Anishinaabeg would establish a village on the north shore to act as a military deterrent in the event of a future war with the US. Eager to assume his role and unfamiliar with the Sault’s location, McMurray asked the surveyor-general of Upper Canada for assistance. However, unable to locate the Sault or answer the young man’s questions, the surveyor-general directed McMurray to make inquiries in Detroit, Michigan. After his arrival at Detroit, McMurray ascertained the location of his mission and made arrangements to travel to the Sault via the United States.²⁵

Such woeful knowledge about and lack of interest in the region, however, did not last long. With the attainment of responsible government (meaning that settler politicians were now responsible to the settler electorate)

and political union in 1841, the Canadians and their capital were poised to move north.²⁶ By the 1840s, Upper Canada had experienced significant population growth and matured into an agricultural-commercial colony on the cusp of industrialization. Increased government intervention in the economy and society, beginning in the 1830s and designed to facilitate commerce combined with continued immigration, helped bring these changes. By 1846, Upper Canada was experiencing vibrant economic times, more fully developed public institutions, and growth in government revenues.²⁷ Specifically, the English Corn Laws encouraged significant growth in agricultural products and timber being shipped to England, generating wealth within the colony. The subsequent repeal of these laws in 1846 due to the ongoing famine in Ireland abruptly altered the economic landscape, signalling the end of mercantilist policies and the opening of trade. The grain trade suffered immediately, as exports fell. So did the tolls on canals, which, being heavily leveraged by the colonial government, brought fears of state bankruptcy to the fore. With the arrival from 1846 to 1851 of Irish refugees fleeing famine, as well as immigration from England and continental Europe, more than a million people came to the Canadas. These events placed stresses upon the colonial economy; yet despite such stresses, by 1851 the economy of the Canadas had posted a recovery, largely due to the staples trade.²⁸

Importantly, in terms of the Upper Lakes, regular shipping connections from Sault Ste. Marie to the south were established, enabling easy access to the region by steamship. The ease of access was seen not only in the movement of speculators and capital north, but through the advent of tourism. Beginning in the 1840s, tourists from southern Upper Canada visited the Upper Lakes to view the St. Mary's Rapids and cruise Lake Superior, basking in the region's sublime and picturesque natural wonders.²⁹ The first steamer, *Walk-in-the-Water*, which entered service in 1818, was the first steamer to reach the Sault, in 1821. By 1833, there were "eleven steamboats on the upper lakes carrying more than sixty thousand people per season."³⁰ Additionally, the apparent decline of the agricultural sector in the mid-1840s led investors to seek other venues for their capital. The potential mineral bonanza on the British North American shores of Lake Huron and Lake Superior appeared to be one such lucrative opportunity. Other financial opportunities in this period included a growing

commercial fishing industry on Lake Huron, as well as markets for Upper Lakes timber. Thus, the mining boom in northern Michigan along Lake Superior's south shore, sparked by the 1841 report by Douglas Houghton on the region's potential, left British-Canadians casting wistful glances at the apparent success of mineral exploration and extraction in Michigan.³¹ Two years after Houghton's report, W. E. Logan, geologist for the United Provinces of Canada,³² speculated that similar possibilities for mineral discoveries existed on the British shore. These revelations, combined with Michigan's 1841 mineral report and information printed in the *Lake Superior News and Miners Journal*,³³ led to a smaller speculative boom in the north in 1845–46.

Another indication of growing interest in the region involved the enumeration of the Anishinaabeg of the Upper Lakes by British authorities. From the 1820s to 1846, the numbers of Indians in the Upper Lakes appear to be estimates of the total population; simply, all Indians west of the British establishment at Manitowaning, on Manitoulin Island, were labelled Lake Superior Indians. In 1846, the first attempt was made to distinguish the various bands in the Upper Lakes. Garden River, Batchewana, and Pumpkin Point, the three identifiable bands near the British Sault in 1846, were estimated to consist of 338 individuals, while the settler population was approximately 6. The Anishinaabeg population on the North Shore fluctuated between 481 and 628 individuals from 1863 to 1869. Fluctuations were caused by poor enumeration on the part of Indian Affairs, disease, the Indian Affairs department reducing membership rolls, and some outmigration. Comparatively, the population of Sault Canada reached 770 individuals according to the 1871 census, up 446 from the start of the 1860s. Thus, by the end of the 1860s, the North Shore Anishinaabeg became and would remain a minority within their homeland, much like the Indigenous population in southern Upper Canada/Ontario.³⁴

Logan's speculation spurred the United Canadas to assert their claim of sovereignty over the area. In 1843, the Canadas asserted greater control with the appointment of Joseph Wilson as Crown Lands and Customs agent. The next such assertion followed two years later, in 1845, when the legislative assembly of Canada East and West passed legislation that extended its jurisdiction over all lands along the Upper Lakes that did

not fall under the control of Rupert's Land.³⁵ Immediately upon his arrival, Shingwaukose informed Wilson about Anishinaabeg rights and claims in the area,³⁶ but Wilson and his masters at York were determined to ignore the Anishinaabeg. The third step took place in 1846, when the province started the process of surveying the region, even though it had not yet obtained a land surrender as required under the terms of the 1763 Royal Proclamation.

These outward assertions of settler-claimed sovereignty led to the eventual issuance of mining leases in 1845. John A. Prince, mining and land speculator, and eventual presiding judge of the Algoma District, applied for a mining lease in 1845—the first in the British Sault region. Initially the Legislative Council rejected the association formed by Prince, A. D. McLean of the Western District, and Platt Card from Ohio on the grounds that their application was based on a lack of authority. Four days later, the Council felt it had the authority to grant Prince's request after he reapplied as an individual.³⁷ Once Canada West overcame its initial reluctance, many leases soon followed. In 1845, for instance, the Lake Superior Mining Company received three leases for mineral exploration along the North Shore of Lake Superior, and by 1846 a further 133 mining applications for Lake Superior and Lake Huron had been received and granted.³⁸ The following year, a former and corrupt Indian agent, William Keating, received a 6,400-acre mineral location, known as the Cuthbertson Location, near present-day Bruce Mines.³⁹ B. H. Lemoine's mineral location, granted that same year, included the entire Anishinaabeg village located at Garden River, which illustrates Canada West's contempt for Anishinaabeg claims and rights.

Such audacity on the part of the colonial government sparked protests immediately. In 1845, James Harper, who was in Sault Ste. Marie investigating whether or not Americans were illegally harvesting timber along the North Shore, noted in his report that the Indians claimed all the land in the region.⁴⁰ Similarly, that same year an experienced employee of the Indian Department, Thomas G. Anderson, advised the government that it needed to undertake immediate and direct action to end Anishinaabeg title and claims to the region.⁴¹ The following year, in 1846, Canada West sought to define the town plot of Sault Ste. Marie, as well as the various mining tracts, to bring order to various claims and present plot-holders

with deeds through the appointment of a surveyor. Shingwaukonse and followers confronted Alexander Vidal as he attempted to survey near their village at Garden River. They demanded to know what right and authority he had to mark their lands, and ordered him to cease his survey until such time as the lands had been treated.⁴² This incident, duly reported by Vidal, as well as the 1845 warnings, failed to rouse government interest in Anishinaabeg claims or the potential trouble that could result should they be ignored.

In seeking a treaty, the Anishinaabeg Ogima,⁴³ such as Shingwaukonse and Peau Du Chat, were doing more than simply asserting an Indigenous claim to land and resources. Rather, the Upper Lakes Anishinaabeg saw themselves as fully in charge (sovereign, in European terms) of their lands and waters within the region. British actions until the 1830s had done nothing to disturb this view.⁴⁴ In seeking a treaty, the Ogima sought to enhance their ongoing relationship with the British as friends and allies. In addition to reinforcing their control of the region, the Ogima sought to establish an up-to-date relationship with the settlers whereby both could benefit from the lands and waters of the Upper Lakes. Shingwaukonse, for instance, sought to secure British recognition of Anishinaabeg ownership of the mineral and timber resources, as well as the fishery. A treaty, he hoped, would provide the Anishinaabeg with land security and an economic future in a changing world.

The declining fur trade in the Upper Lakes was evidence of this changing world. By 1840, the fur trade along the shores of Lake Huron was largely unprofitable; the Lake Superior trade would continue to produce profit until the 1870s. The woodland caribou had also disappeared from the region by the 1830s. A small commercial fishery, largely based in the American Sault but fishing on both sides of the border proved a minor but growing threat to the Anishinaabeg economy.⁴⁵ Likewise—increased timber harvesting, for cordwood to feed steamers and for building materials—along the shoreline of Lake Huron threatened livelihoods. The fish market became glutted with cheap goods based on a statewide depression and the opening of new cheap farm lands in the west.⁴⁶ Even with the export market temporarily drying up, the Ojibwa continued to rely on whitefish as a main dietary staple, as well as a restricted source of trade or income.⁴⁷

This depression also affected income levels derived from the fur trade. By 1830, the depletion of fur-bearing animals in the vicinity of the Sault had spread east and west along both the northern and southern shores of the St. Mary's River. The woodland caribou, a staple of the Anishinaabeg diet, vanished during the 1830s, although the appearance of white-tailed deer supplemented the loss of the caribou. The failure of the American Fur Company by 1841 and the temporary closing of the Hudson's Bay Company Post further reinforced the economic decline of the Sault region.⁴⁸ Mineral leases and potential mines owned and operated entirely by settlers only added to the further economic marginalization of the Anishinaabeg. Importantly, all of this was being done without compensation being paid to the Anishinaabeg.

With knowledge of the changing economic climate in mind, Shingwaukonse and others determined that a treaty would best protect their rights to chart a new course for their people, while ensuring that settlers would pay for the resources being taken. Shingwaukonse's efforts to secure economic prosperity for his people can be seen through his leasing of mineral rights to his ally and lawyer Alan Macdonell. The lease agreement ensured that Macdonell would employ Anishinaabeg, some of the profits would return to the band, and the lease would not be held for speculation. Shingwaukonse also sought to retain control of mineral deposits that would be contained within the reserve selected under the terms of the treaty. The Crown, of course, rejected the Anishinaabeg ability or right to lease lands of their own accord.⁴⁹ Nonetheless, the effort to retain control of or access a portion of the wealth from the current and future mines formed a significant aspect of the 1850 Treaty negotiations, as well as the treaties themselves. Other efforts to secure an economic base for the Anishinaabeg were seen in the adoption of agriculture (mainly potatoes, peas, and beans) as well as efforts to contain American settlers south of the borderline.

By the 1840s, the Anishinaabeg along the Upper Lakes' northern shores were proving resilient at adapting to the changes being brought about by the settlers. While continuing to engage in hunting and gathering, the Anishinaabeg began to exploit new markets being opened by steamships. Logs for construction and cordwood for steamers provided a ready source of cash.⁵⁰ Other activities, including the construction of boats, coopering,

and carpentry, were undertaken by the Ojibwa to diversify their economic base. Native men, unable to cut their own logs because of government repression, found employment in non-Native sawmills and bush camps.⁵¹ Harvesting timber continued to play a role for the rest of the century, despite increasing government attempts to restrict Ojibwa participation in this sector of the economy in favour of non-Native entrepreneurs.⁵² Anishinaabeg determination to control access to their timber resources directly conflicted with the Crown's policy, established officially in 1849, of "the state permit[ing] the industry relatively free access to timber, and gave the lumbermen assurance of the security and permanence of their rights."⁵³ This was based on the Crown's assumption that it owned all forest resources, something that would directly clash with Anishinaabeg belief in the centrality of their ownership of the same resources.

In addition to lumber sales, the Anishinaabeg sold foodstuffs (i.e., potatoes, fish, game) to ship captains, while selling jam, fish, maple sugar, and handicrafts to passengers on the steamers. In 1841, for instance, the Ojibwa of the Sault agency sold 12,000 pounds (5443.11 kilograms) of sugar, in addition to 400 barrels of fish, USD \$3,000 in furs, and an unspecified amount of potatoes. Six years later, the Anishinaabeg at the Sault sold 8,000 pounds (3628.74 kilograms) of sugar and 400 barrels of whitefish. Maple sugar remained a valuable regional export until the end of the US Civil War. Shegud, a community leader at Tahquamenon, Michigan, operated a small commercial fishery that employed both Métis and Anishinaabeg in fishing and barrel making, as well as the drying and packing of the product.⁵⁴ Others hired on as porters, taking freight for the trading companies north over the height of land. Still more acted as guides for geologists, speculators, fishers, and tourists. Some hired themselves out to tourists interested in shooting the rapids. Significantly, the various revenue sources utilized by the Ojibwa melded into their normal seasonal subsistence rounds: logging, trapping, and hunting in the winter on family hunting territories; planting and fishing while producing maple sugar in the spring; fishing/tourism/guiding during the summer along the St. Mary's River; fishing during the autumn; and a return to the bush in late fall to begin logging once again.⁵⁵ This multifaceted economy allowed the Native community to support itself despite high-priced provisions, either

through cash sales, trade in kind, or merely by creating a store of food that reduced the amount of provisions purchased.⁵⁶

Moreover, the presence of the international border, and thus a choice, held off an outright collapse of the Anishinaabeg economy and living standards. This does not mean that the Ojibwa people living in the Sault region did not face harsh realities of poverty, racism, and unemployment; it merely shows that Indians could exploit opportunity when it arose, despite increasing marginalization in Canadian and American society. Poverty overcame the Anishinaabeg of Bawating in the post-1871 era only after industrialization destroyed the whitefish fishery of the St. Mary's River, Canadian controls were increased on Native people's production and marketing of goods, and in the context of the American government's lack of concern for a people it considered detribalized.⁵⁷ Nevertheless, while exploiting new potentials, the Anishinaabeg people and their leaders, knowledgeable of events further east and south, knew that their economy would be jeopardized without a treaty. Thus, by 1850 the Anishinaabeg leadership was seeking further to diversify their people's economy while attempting to ensure continued access to lands and resources.⁵⁸

With the potential economic and political benefits in mind, Shingwaukonse and Nebenagoching continued their efforts to enforce Anishinaabeg territorial rights and control by petitioning the government for a treaty and protection of their rights.⁵⁹ For instance, the *Colonial Intelligencer; or, Aborigines Friend* ran the text of an 1849 "Memorial," the same petition to the Governor General printed in the 7 July 1849 edition of the *Montreal Gazette*. The "Memorial" noted that for three years the Ojibwa requested justice and a treaty, but the government refused to negotiate or recognize their title to the land. Furthermore, the petition directly challenged British claims that they treated Indians with greater dignity and justice than the Americans. The Ojibwa represented by Shingwaukonse and Nebenagoching informed the Governor General that the "Long Knives ... have not taken from the Red Skins any lands, unless there was at least some kind of treaty entered into, and a purchase made," whereas the British had merely stolen the land.⁶⁰ This specific petition, as well as early Ojibwa actions, gradually stirred the government of the United Canadas to action.

Miners and missionaries added their voices to the Ojibwa petitions for a treaty. Both the Montreal and Quebec mining firms, for instance, requested that a treaty be negotiated in order to avoid difficulties with the Indians. Missionaries called for justice for the Indian based not on Aboriginal rights but on British honour.⁶¹ Nevertheless, the government continued to grant mining leases. The continued granting of mining leases without first securing a treaty, led mining speculator, lawyer, and publisher George Desbarats to write the Superintendent of Indian Affairs in 1847 requesting something be done about Indian claims.⁶² In response to continued Anishinaabeg pressure, William Keating, a mineral lessee, "expert on Indians," former Indian Agent, and speculator, claimed in his response to an 1849 petition, that the Sault region Anishinaabeg did not have any legitimate claim to the land or its resources because they were all American Indians. Moreover, he purposefully and misleadingly argued that the entire lands issue being raised was encouraged entirely by unscrupulous individuals taking advantage of the Indians.⁶³ Lieutenant James Harper's report on the Upper Lakes, while acknowledging Anishinaabeg claims to the region, was based on his limited observations that they could surrender the land because "none of the Indians in that quarter can be regarded as descendants of the Original Tribe who inhabited the Country in question."⁶⁴ Similarly, Commissioner of Crown Lands Denis-Benjamin Papineau, in a set of instructions given to Alexander Vidal in 1846 before beginning the town plot survey, claimed that "the Chippewa Indians were first settled on the Banks of the Mississippi ... were expelled by Sioux and ... emigrated to Green Bay on Lake Michigan.... About the same time they used to come and trade to Michlimackinac and then settled on the South Shore of Lake Superior whence they came to the North Shore. [T]he original Indians of the North Shore of Lakes Superior & Huron were of the Algonkin Nation." This led Papineau to assert that "the few Individuals now claiming Indemnity have no right to it; First, because they are not the original proprietors of the soil; secondly, because being only a small tribe they do not form a Nation and therefore cannot claim the Territory," all the while believing that "it is desirable that the Indians should be protected in the possession of any lands which they hold and occupy."⁶⁵

After a colonial election in 1848, Papineau was replaced by James

Hervey Price, who advised the new government that an investigation into Anishinaabeg claims be undertaken.⁶⁶ His advice was based on Anishinaabeg actions, as well as claims represented by Keating, Harper, and Papineau. As a result, the Crown established a commission to investigate Anishinaabeg statements of ownership along Lake Huron and Lake Superior.⁶⁷

Vidal, the surveyor confronted by Shingwaukonse in 1846, and Captain Thomas Anderson, Superintendent of Indian Affairs, were appointed to investigate the Anishinaabeg's claims. While waiting for Anderson to arrive, Vidal took the opportunity to investigate the United States' treaty records held at the sub-agency in Sault Ste. Marie, Michigan.⁶⁸ Through his investigations he learned that a head-chief could be coerced into agreeing to terms, provided the lesser chiefs and headmen had previously signed the treaty. Armed with this knowledge, Vidal and Anderson began their investigation among the Upper Lakes bands in September 1849. The seriousness of government intentions is questionable, since the two investigators set off late in the season when it would be difficult to actually meet with all the bands, as they would be moving inland for the coming winter season. Additionally, in 1849 the presence of a cholera epidemic led many bands to avoid the shores and non-Aboriginal populations in an effort to avoid catching the disease. Finally, the bands along the Upper Lakes had made it abundantly clear since the early 1840s that they claimed the land and demanded a treaty before any colonial activities took place in the region. Simply, there really was no need for an investigation, as the government was fully aware of Anishinaabeg rights and ownership, and of its obligations under the 1763 Royal Proclamation. Regardless, the investigators met with a few bands and chiefs, all of whom expressed interest in a treaty and demanded that their rights be recognized.

Leaving Sault Ste. Marie together on 15 September, Vidal and Anderson reached Fort William, where they began their inquiries, on 24 September. There they met with Anishinaabeg from 25–26 September. After these meetings, the two investigators began making their way eastward, visiting St. Ignace Island on 29 September, and Michipicoten on 9 October.⁶⁹ They finally returned to Sault Ste. Marie on 13 October. At the Sault, they spent three days, 15–17 October, engaged in debate with the region's Anishinaabeg. The remaining portion of the investigative journey

took Vidal and Anderson along the north shore of Lake Huron, ending their travels at Penetanguishene on 3 November. During this last leg of the investigation, the commissioners failed to meet with any bands or significant groups of Indians other than a few who assembled at Manitowaning on 26 October and a few chiefs on 3 November.⁷⁰ Importantly, during their investigation Vidal and Anderson refused to discuss any treaty terms, claiming that they had merely been appointed to discuss the specific claims of each band.

The most significant meetings—the ones, at least, that garnered the most attention at the time and in subsequent scholarship—took place at Garden River from 15–17 October. Here the commissioners met with a leadership well prepared to discuss treaty terms, something Vidal and Anderson claimed they could not do. The commissioners also recoiled at Shingwaukonse's appointment of Allan Macdonell, a lawyer and mining speculator, to represent the Anishinaabeg in all discussions with the government.⁷¹ Vidal had received instructions from the Commissioner of Crown Lands, Price, to avoid Macdonell because of the latter's supposed financial interests in mining.⁷² Finding the Chief adamant in his insistence that Vidal and Anderson talk to Macdonell, both commissioners resorted to threats before storming out of the meeting.⁷³ The commissioners claimed that neither the Métis nor the Ojibwa would receive compensation for their lands, and threatened to strip all the chiefs and their followers of government-granted ranks and presents should they continue to refuse to comply with government demands.⁷⁴ Moreover, both men felt that lawyers were unnecessary, since the government had the best interests of the Indians at heart.⁷⁵ After this attempt at intimidation, both commissioners left the region and began preparing their reports. The Anishinaabeg, however, faced with such ignorance and obstinacy, decided to enforce their territorial rights.⁷⁶

On 1 November 1849, Oshawano, Shingwaukonse, Nebenagoching, Allan and Angus Macdonell, Wharton Metcalfe, and thirty other Ojibwa and Métis boarded Macdonell's schooner, the *Falcon*, and headed for the Quebec and Lake Superior Mining Company's operation at Mica Bay, Lake Superior.⁷⁷ Upon their arrival, the Anishinaabeg requested that the miners, or trespassers, remove themselves from the land. It is claimed that Macdonell offered to make an agreement that would allow operations to

continue, provided John Bonner, superintendent at the mine, sign a lease that acknowledged Anishinaabeg rights and paid them a share of the royalties. Macdonell claims this idea came from Doctor Newton, who was in charge of the smelting operations. Regardless, rather than negotiate with armed “insurgents,” Bonner opted to close the mine and evacuate all personnel.⁷⁸ Rumours began to circulate in the eastern press, especially when the “refugees” or “survivors” of the Indian attack, including Rev. Gustavus Anderson (T. G. Anderson’s son), the Anglican missionary to the Indians at Garden River stationed in Sault Ste. Marie, arrived at Coburg.⁷⁹ Faced with an apparent “rebellion,” the government quickly dispatched troops. After a difficult passage, the soldiers reached Sault Ste. Marie on 1 December 1849, and a small detachment finally (although not everyone agrees with this assessment) reached Mica Bay shortly thereafter, only to find the mine site abandoned.⁸⁰ The troops returned to the Sault, where they remained for the winter, housed in the Hudson’s Bay Company post, with the intention of preventing further acts of rebellion.⁸¹ By 13 December, Shingwaukonse, Nebenagoching, and their co-conspirators had been arrested. All were transported to Toronto, where they were to stand trial. The initial charges were thrown out, because “the evidence (... is very unsatisfactory establishing ... hardly a riot),” and the warrants were deemed “illegal” by Chief Justice John B. Robinson.⁸² Nonetheless, new charges were laid. The chiefs were allowed to return home while awaiting trial, initially scheduled for October 1850 but postponed until 1851. After the signing of the 1850 Treaty, the various charges against the chiefs and Macdonell were dismissed. In fact, the Indian “ringleaders” of the Mica Bay Affair were officially pardoned by the Governor General in May 1851.⁸³ Finally, in response to Anishinaabeg “hostility,” Joseph Wilson, the customs and land agent at Sault Ste. Marie, formed a rifle company to aid in suppressing any future outbreaks.⁸⁴

These events finally forced the government of Canada West to negotiate a treaty. William B. Robinson, former mine manager at Bruce Mines, fur trader, 1843 treaty commissioner, and member of the ruling elite was appointed by Order in Council on 11 January 1850 to negotiate a treaty with the Indians of Lake Superior and Lake Huron for their lands or “portions of them as may be required for mining purposes.”⁸⁵ Robinson and Governor General Lord Elgin arrived in the Sault on 30 August



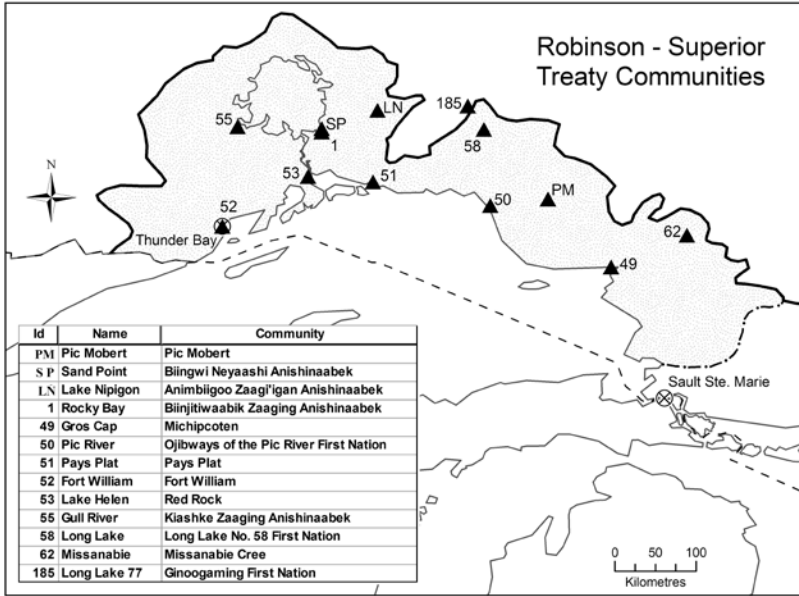
*Figure 2: Major Joseph Wilson, c. 1880s or 1890s.
Courtesy Sault Ste. Marie Museum.*

1850 to speak to the assembled Indians. Shortly after informing the chiefs that Robinson had the full confidence of the Queen and would come to a reasonable agreement with them, the Governor General departed. Also present throughout the negotiations and signing of the treaty were the troops initially sent to quell the “Indian Uprising.” While their uniforms and presence lent an air of pageantry and a sense of the picturesque to the treaty-signing, the presence of British troops in the region since December 1849 placed negotiations under a cloud of potential violence.⁸⁶ The resource treaties of 1850 were the first of several on the British side of the Upper Lakes, and established precedents that would be followed until the end of treaty-making in the 1920s.⁸⁷

Entering into treaty was not new to the Anishinaabeg of the Great Lakes. Many of their leaders had participated in recent American Indian Treaties and had ancestors who had participated in many of the famous

agreements (e.g., 1701 Peace, 1764 Treaty of Niagara) with the French and English. In the Sault region, the Anishinaabeg had leased land alongside the rapids to the North West Company in 1798 in exchange for annual presents.⁸⁸ Likewise, locals had participated in the 1798 treaty, relinquishing their claim over St. Joseph's Island to the British for 1,200 pounds of goods (cloth, tobacco, powder, shot, and weapons).⁸⁹ In the nineteenth century, Sault Anishinaabeg participated in treaties with the United States in 1817, 1818, 1820, 1832, 1836, and 1842, as well as with the British in 1827 and 1836.⁹⁰ Shingwaukonse, for instance, had signed the 1817 Treaty of the Maumee Rapids, the 1819 Treaty of Saginaw, and the 1820 Treaty of Sault Ste. Marie.⁹¹ Moreover, the Anishinaabeg maintained a long history of forming agreements with other First Nations long before Europeans set foot on Turtle Island. As such, it is apparent that the leadership that demanded and negotiated a treaty with Canada West in 1850 knew something of the nature of European claims and agreements. It is most definite that the Anishinaabeg sought a treaty to share their resources with the newcomers, but in no way felt that they were permanently alienating their lands or rights. Finally, these experiences with treaty and European negotiators meant that the leadership was well versed in the art of diplomacy, something that left the British-Canadians surprised and taken aback.

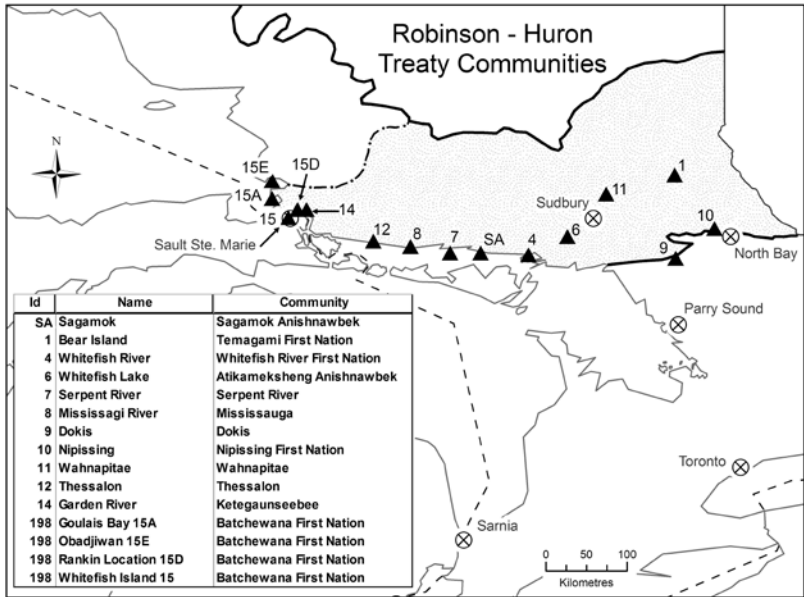
From 3–9 September, formal negotiations for the treaty took place. Robinson had been instructed to negotiate a single treaty for “the whole territory on the north and north eastern coasts of Lakes Huron and Superior,” or “that in case it be unattainable that he should negotiate for the North Eastern Coasts of Lake Huron, and such a portion of Lake Superior Coast as embraces the location at Mica Bay [and] Michipicoten.”⁹² Due to the tough bargaining of the Lake Huron chiefs, specifically Shingwaukonse and Nebenagoching, Robinson, following his instructions, decided that two treaties were necessary. Less affected by the presence of miners and colonial intrusions, as well as a fairly stable economy, the chiefs of Lake Superior proved more willing to come to terms quickly with the government. Robinson drew up a treaty on 6 September and presented it to the Superior Chiefs the following day. Peau de Chat, three other chiefs, and five principal men from Lake Superior all agreed and signed the document. Peau de Chat's quick acceptance may



Map 1: Robinson-Superior Treaty communities.

have been due to an illness that sparked a desire to return home as quickly as possible.⁹³ Thus concluded the negotiations for what became known as the Robinson-Superior Treaty of 1850. In the end, eleven Anishinaabeg Nations came to be included in the Robinson-Superior Treaty; however, not all the Lake Superior bands' chiefs included in the treaty knew about or were present at the negotiations, let alone signed the document. Some chiefs refused to attend the negotiations, fearing the Sault's ever-present diseases, such as cholera, or a trap.⁹⁴ As such, the Long Lake, Pays Plat, Pic Heron Bay, and Pic Mobart bands were non-parties to the 1850 Robinson-Superior Treaty and continue to claim lands within the Treaty boundaries.⁹⁵

The Lake Huron chiefs, particularly Shingwaukonse, who was more familiar with the American treaties, continued their “unreasonable demands.” On 6 September, Shingwaukonse had presented Robinson with a list of demands that included a \$10 annuity and the right to “retain [all lands] from Partridge Pt. below Sault to Garden River & thence to Echo Lake a reserve (abt. 15 mile front)” for a reserve, as well as inclusion of the



Map 2: Robinson-Huron Treaty communities.

Métis.⁹⁶ Once the Lake Superior Chiefs had signed their treaty, Robinson informed Shingwaukose that the government could not accede to his “extravagant terms.”⁹⁷ Additionally, based on the negotiations, Robinson told Shingwaukose that he would prepare a treaty for the Lake Huron chiefs to sign, since the majority appeared to be in agreement. Robinson then threatened Shingwaukose and other non-compliant chiefs, stating that those who did not sign would receive nothing;⁹⁸ thereby implying that the chiefs and bands most affected by the illegal mining leases would have no treaty to protect their lands or rights.

After giving the Lake Huron chiefs two days to reconsider their opinions, Robinson reconvened the treaty “negotiations.” While the Garden River and Batchewana chiefs, Shingwaukose and Nebenagoching, restated their positions, Robinson also refused to budge. It was only after additional reassurances concerning the size of the reserves, the inclusion of an escalator clause for the annuities, as well as hunting and fishing rights, that the chiefs reluctantly agreed to sign.⁹⁹ In the end, representatives from seventeen members of the Anishinaabeg Nation signed

the document. Thus concluded the Robinson-Huron negotiations and treaty.¹⁰⁰

After making treaty payments to the chiefs and bands, Robinson departed the region for Toronto and filed his report on 24 September 1850. Herein he noted that,

In allowing the Indians to retain reservations of land for their own use I was governed by the fact that they in most cases asked for such tracts as they had heretofore been in the habit of using for purposes of residence and cultivation, and by securing these to them and the right of hunting and fishing over the ceded territory, they cannot say that the Government takes from their usual means of subsistence and therefore have no claims for support, which they no doubt would have preferred, had this not been done.¹⁰¹

In exchange for reservations, preservation of hunting and fishing rights, granting of annuities, and assistance in becoming farmers, loggers, and Western-educated individuals, the Anishinaabeg surrendered the land from “Penetanguishene Bay to Sault Ste. Marie, and thence to Batchewanaung Bay on the northern shore of Lake Superior, together with the Islands.”¹⁰² The Anishinaabeg, however, remained generally unsatisfied with the outcome of the treaty, believing that the government acquired a vast territory for very little, which included great mineral, forest, and agricultural potential. Government negotiators argued that, despite obvious evidence to the contrary, the land was unsuitable for agriculture and the mineral wealth remained unproven.¹⁰³ This disagreement over the benefits and costs of the treaty continued to plague Anishinaabeg-government relations for decades.¹⁰⁴

The region’s mineral wealth would remain largely untapped for decades. Of the more than 133 mining leases issued by 1846, only one—Bruce Mines—actually became the site of mining operations. In its heyday, there were three to four mining operations around Bruce Mines, the original Cuthbertson location, where copper ore was extracted, separated from the rock largely by hand crushing, and then loaded onto ships bound for smelters in Great Britain. While producing profits for their investors in Canada, England, and the US, the various mines made the village of Bruce

Mines the largest settlement on the North Shore of Lake Huron from 1846 to 1876. When the pits collapsed in 1876, combined with a faltering global economy, the Canada Mining Company failed, thereby ending large-scale copper ore extraction until 1898.¹⁰⁵ Mines in the treaty region with which people are more familiar today, such as the nickel mines in the Sudbury basin, the now-closed iron ore mine in Wawa, and various gold mines, generally became operational as the railroad extended through the Canadian Shield in latter third of the nineteenth century.¹⁰⁶

Various mining companies held the remaining mineral leases, issued for the northern shores of Lake Huron and Lake Superior, in speculation over the years. Apparently frustration with the slow development of mining along the North Shore led the government to reduce the price per acre until all fees associated with leases were abolished. These efforts led to the removal, by 1865, of all royalties on copper by the Crown.¹⁰⁷ Such actions would leave the Upper Canadian government with reduced revenues, thereby hindering its ability to comply with government obligations under the terms of the 1850 treaties. The lack of revenue for treaty fulfillment was not rectified by Confederation in 1867, when treaty obligations were passed to the federal government, while Ontario (formerly Upper Canada) retained any and all mineral royalties.¹⁰⁸ Currently, the Anishinaabeg signatories and non-signatories to the treaties are planning to file a suit against Ontario and Canada in an attempt to recover mineral monies unpaid since 1867.

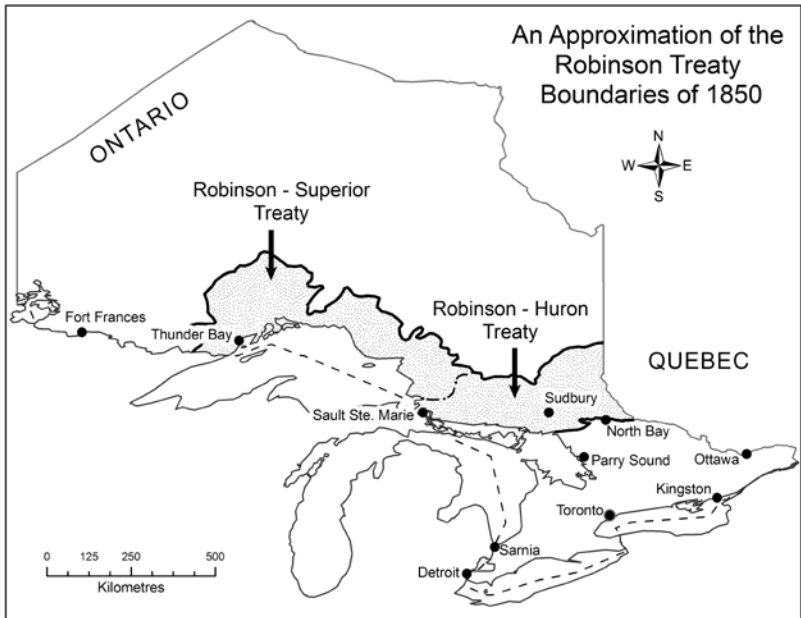
The unsettled nature of the Indian claims prior to 1850, combined with the slow and potentially inaccurate survey of the various reserves, led many speculators to forego their lease payments. Such nonpayment of lease dues eventually became a contentious issue for the Anishinaabeg and settler governments. Under the terms of the 1850 treaties, the sales of the various mineral tracts or leases claimed prior to 1849–50 could be completed, albeit with one condition, which stipulated that holders “shall have fulfilled all the conditions upon which such locations were made and the amount accruing shall be paid to the tribe to whom the reservation belongs.” Since the chiefs knew that none of the locations within their reserves, and many without, had not met the original conditions, they agreed to the clause. Unfortunately, the settler government determined that the treaty’s “spirit and intent” allowed patent holders more time to complete

the sales. Without consultation, by the 1860s the Crown had dropped the lease requirement that a claim be developed immediately.¹⁰⁹ This removal of immediate development proved problematic for enforcement of treaty terms. Shingwaukonse and Nebenagoching held that such unilateral actions by the settlers, as well as the extensions granted to lessees, violated the treaty.¹¹⁰

Boundary descriptions of the extent of land surrendered included within the treaties were vague. The Robinson-Superior Treaty claimed the land “from Batchewanaung Bay to Pigeon River, at the western extremity of said lake, and inland throughout that extent to the height of land within the said tract. And also the islands in the said lake within the boundaries of the British possessions therein.” This territory was surrendered by “Joseph Peau de Chat, John Ininway, Mishe-muckqua, Totomenai, Chiefs, and Jacob Wasseba, Ahmutchewagaton, Michel Shebageshick ... Manitosbanise and Chigenaus, Principal Men of the Ojibeway Indians inhabiting the northern shore of Lake Superior.”¹¹¹ Likewise the

Principal Men of the Ojibiway Indians inhabiting and claiming the eastern and northern shores of Lake Huron from Penetanguishene to Sault Ste. Marie, and thence to Batchewanaung Bay on the northern shore of Lake Superior, together with the islands in the said lakes opposite to the shores thereof, and inland to the height of land which separates the territory covered by the charter of the Honorable Hudson’s Bay Company from Canada, as well as all unconceded lands within the limits of Canada West to which they have any just claim.¹¹²

These descriptions fail to establish an internal boundary between the two treaties; leaving surveyors and others wondering where exactly on Batchewana Bay the two treaty boundaries met. Additionally, the location of the height of land dividing Canada West from the HBC lands was unknown when the treaty was signed, nor is it entirely clear whether or not the First Nations intended a watershed division of their claim or one extending from the highest set of northerly mountains. Moreover, the reserve boundaries in the treaty were stated to be in miles, in which distances were generally surveyed, whereas the Anishinaabeg argued that they wanted and negotiated the boundaries in terms of leagues—which



Map 3: An approximation of the Robinson Treaty boundaries of 1850.

are considerably longer than miles.¹¹³ Moreover, the eastern boundary is fuzzy, leaving the governments of Ontario and Canada claiming that the boundary ends at the provincial border with Quebec.¹¹⁴ The southeastern portion of the Robinson-Huron Treaty area is also problematic, as the Mississauga and Chippewa of southern Ontario claim land and rights north of the boundary. Attempts by the Mississauga and Chippewa to deal with this issue in 1923, under the Williams Treaty, were ignored by the Canadian treaty commissioners.¹¹⁵ While the larger Treaty boundaries were problematic, the more specific descriptions of lands withheld from surrender by the various Anishinaabeg bands proved even more problematic.

The year following the signing of the Treaties, the government appointed provincial land surveyor John S. Dennis to survey the reserves as described in the schedule of each treaty. He was to be assisted by John W. Keating, a former Indian agent and mineral and timber speculator, as well as an opponent of Anishinaabeg claims to the North Shore. In fact,

Keating had the authority to reconcile Anishinaabeg claims and understandings of their reserve's size and boundaries.¹¹⁶ He reported on the 1852 reserve surveys on Lake Huron, indicating his "successful" efforts in reconciling treaty descriptions with Indian understandings; his survey also included details about the fisheries, minerals, and timber. Keating was subsequently reappointed to assist with Lake Superior reserve surveys, identifying reserve locations and smoothing over difficulties. Without going into great detail about each reserve survey, it is sufficient to say that many of the boundaries laid out proved to be questionable. First and foremost, the boundaries described in Keating's attached schedule, which used the term "miles," contradicted Ojibwa memory. For instance, a petition from the Anishinaabeg to the government dated 17 August 1851 claimed they had discussed distances using the term "leagues" and had not agreed to the measuring of their reservation boundaries in "miles." This understanding was noted by Keating during both the Lake Huron and Lake Superior surveys.¹¹⁷ Additionally, in 1852 the Chief of Thessalon informed Dennis and Keating that the boundary was to be measured in leagues.¹¹⁸ While this difference in terminology may appear slight, a league is longer than a mile. This mis-measurement ensured that the tracts described in the Treaty document remained smaller than agreed to by Anishinaabeg delegates. When surveyed, in fact, all reserves under the Robinson-Huron and Robinson-Superior treaties contained smaller territories, which coincidentally excluded several mining tracts. Furthermore, some reserve boundaries were specifically gerrymandered to exclude mining locations. The Lemoine-Simpson Location, also known as the Rankin Location, rested within the Garden River band's reserve. Acting with the advice of local "entrepreneurs" and mining interests, however, the surveyor creatively drew the boundary to exclude most of the mineral location, running the boundary line at an angle instead of due north.¹¹⁹

In laying out these boundaries, the surveyors generally met with the community to determine the intended area of the reserve. When meeting with the survey party, some communities' leaders expressed dissatisfaction with the Treaty description of the reserve boundary. Thus, in consultations with the community, reserves were generally situated where the leadership had intended them, albeit with the boundaries measured in miles.

Nevertheless, not all communities had such opportunities; the Spanish River First Nation, for instance, was not consulted.¹²⁰

Another contentious issue related to the negotiations involved the status of Métis claims in the treaty area. Shingwaukonse and other leaders sought to include the Métis under the Treaty's terms and conditions, basing these demands on precedents set in the US where the Métis received a cash payment, land, and the option of joining a band.¹²¹ Similar concessions were regularly granted to Métis claimants under the terms of the US treaties, with which the Anishinaabeg were familiar.¹²² Robinson steadfastly refused to permit the Métis any rights under the 1850 treaties. According to Robinson, the Chiefs could accept individuals by placing them on their band lists, but warned that individual annuity monies would be reduced based on the distribution terms within the treaty. Shingwaukonse protested these terms and conditions, but found himself forced to sign the Treaty, as many of his fellow chiefs and headmen had already agreed to the terms. In the end, the Garden River and Batchewana bands incorporated many Métis families into their communities in the 1850s.¹²³ Nevertheless, inclusion on a band list secured neither Métis rights nor status as band members.

Finally, the escalator clause contained within the Robinson Treaties proved problematic for the Province of Ontario, the Government of Canada, and the Anishinaabeg.¹²⁴ The clause, inserted by Robinson in an effort to ensure acceptance of the Treaties, stated that

Her Majesty, Who desires to deal liberally and justly with all Her subjects, further promises and agrees that should the territory hereby ceded by the parties of the second part at any future period produce such an amount as will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound provincial currency in any one year, or such further sum as Her Majesty may be graciously pleased to order.¹²⁵

While sounding generous, the clause also noted that, "should [the bands] not at any future period amount to two-thirds of fourteen hundred and

twenty-two, then the said annuity shall be diminished in proportion to their actual numbers.”¹²⁶ This clause, based on the premise that the Ojibwa throughout the Treaty areas would either assimilate or disappear, appeared to government negotiators as a method to reduce their financial responsibilities in the long term. Fortunately, these predictions proved groundless, and the bands increased in population throughout the 1850s. For instance, in 1846 Garden River consisted of 127 individuals; by 1850 this number had increased to 266, and by 1857 the community reached a population of 346. Batchawana similarly grew from 121 people in 1846 to 227 in 1859.¹²⁷ The increase in band numbers may be more apparent than real, since undercounting and other issues affected initial population estimates. Dissatisfaction with the annuity among the Anishinaabeg, increased revenues, and economic hardship among the bands led to demands by the chiefs, and eventually to negotiations between Ontario and Canada over the issue of raising the annuity.¹²⁸ Complaints about the annuity began immediately following conclusion of the Treaties. For instance, Shingwaukose threatened to go to England and discuss the matter with the Queen,¹²⁹ and in 1873 the Anishinaabeg at Fort William petitioned the Governor General for an annuity increase.¹³⁰ By 1875, the two governments agreed to increase the annuity from \$2 to \$4 per person.¹³¹ Nonetheless, the Ontario government wanted to keep its costs to a minimum, and thus sought ways to reduce the numbers of “Métis” on the band lists—measures undertaken despite promises to the contrary by Robinson in 1850.¹³² The man appointed to carry out the investigation to reduce the lists, Edward J. Borron, largely refused to make any such cuts, and in 1896 the province finally agreed to pay arrears.¹³³ The overall issue of the annuity, as well as what effects the 1850 treaties’ escalator clause has on its calculation, remains.¹³⁴

By 1900, the Anishinaabeg in the Upper Lakes were largely confined to reserves and subject to the whims and vagaries of settler law. Reserves continued to be eroded through the surrender, confiscation, and leasing of lands by Indian Affairs with or without band permission. The Indian Act (1876 to the present) controlled economic development and removed band members from the treaty lists. Yet, the Anishinaabeg continued to seek a means to establish viable economies. Beginning with the First World War, increasing numbers of Anishinaabeg moved to regional



Image 3: Front of sign on old Highway 17E entrance to Garden River First Nation. Photo by Karl S. Hele.



Image 4: Back of sign on old Highway 17E entrance to Garden River First Nation.

centres in search of work—a population movement that has only accelerated in recent years. People continued to hunt and fish in pursuit of ancestral ways and in direct violation of provincial or federal legislation. Logging continued. Where possible, people—like the Anishinaabeg of Garden River—took up farming in increasing numbers to ensure subsistence. Garden River also undertook the performance of pageants, plays, and handicraft sales to supplement incomes. Nevertheless, regardless of their efforts to become economically self-sustaining, the Upper Lakes Anishinaabeg gradually saw their incomes decline, creating conditions of poverty on the reserves by the early twentieth century that persist to this day. A limited economic rebound on reserves has taken place since the 1960s, when the Canadian government began investing in community development. Despite the recent efforts of settler governments, however, the abject failure to abide by the 1850 treaties, as well as by their spirit and intent, continues to foil and limit attempts to develop sustainable communities on reserves.

Today, more than 160 years later, the Robinson Treaties remain two key founding documents of Canada. Failure by the various Canadian and provincial governments to enact legislation to enforce treaties, as well as concerted efforts to deny Treaty and Aboriginal rights since 1850, has led to many of the claims against Canada today that seem to anger so many non-Aboriginals. The Robinson Treaties are no exception to this collective Canadian failure. Hopefully, as Canadians become more aware of their past and its absolute relevance to the modern nation, we can move forward as a community that respects differences and commonalities. *This Is Indian Land* represents a step in this direction.

Endnotes

- 1 Janet E. Chute, *The Legacy of Shingwaukose: A Century of Native Leaderships* (Toronto: University of Toronto Press, 1998), 5, 106–24, 126–27; Basil Johnston, *The Manitous: The Spiritual World of the Ojibway* (Toronto: Key Porter Books, 1995) 151–52; and Rhonda Mae Telford, “‘The Sound of the Rustling of the Gold is Under My Feet where I Stand; We Have a Rich Country’: A History of Aboriginal Mineral Resources in Ontario” (PhD diss., University of Toronto, 1996), 35–37, 51–53.
- 2 J. V. Wright, *Ontario Prehistory: An Eleven-thousand-year Archaeological Outline* (Ottawa: National Museum of Man, 1972), 20–21, 33–36; Ronald J. Mason, *Great Lakes Archaeology* (Caldwell, NJ: Blackburn Press, 1981), 181–99; and J. V. Wright, *A History of the Native People of Canada, Volume 1 (10,000–1,000 B.C.)*, 261–97. See also Susan R. Martin, *Wonderful Power: The Story of Ancient Copper Working the Lake Superior Basin* (Detroit: Wayne State University Press, 1999).
- 3 See R. Cole Harris, ed., *Historical Atlas of Canada, Vol. 1, From the Beginning to 1800* (Toronto: University of Toronto Press, 1987), plate 14.
- 4 For instance, see William L. Traxel, *Footprints of the Welsh Indians: Settlers in North America Before 1492* (New York: Algora Publishing Ltd., 2004); and Betty Sodders, *Michigan Prehistory Mysteries* (AuTrain, MI: Avery Color Studios, 1990), 12–79.
- 5 Telford also notes that the Anishinaabeg use of minerals was not limited to copper. The location of both silver and gold deposits were known and used, as were surface pools of oil. Telford, “‘The Sound of the Rustling of the Gold,’” 37–38, 41–50; and Edward Benton-Bani, *The Mishomis Book* (St. Paul, MN: Red School House, 1988), 103–5.
- 6 The people who hosted Cartier have become known as the St. Lawrence Iroquois. These people occupied a series of settlements from around present day Quebec City (Stadacana) to Montreal (Hochelaga) and west along the shores of Lake Ontario. When the French returned to establish a fur post in 1608 on the St. Lawrence, these people had from all appearances vanished. While the “disappearance” of the St. Lawrence Iroquois remains debated, several modern First Nations claim descent from these peoples, specifically the Wendat and Mohawk. Others, such as the Algonquian peoples of the Ottawa River Valley, the Innu, Mi’kmaq, and Abenaki, claim to have adopted “survivors” into their nations.
- 7 Telford, “‘The Sound of the Rustling of the Gold,’” 54–79.
- 8 Theresa Schenck, “Who Owns Sault Ste. Marie?” *Michigan Historical Review* 28, no. 1 (2002): 109–20.
- 9 The Ontonogon boulder was a boulder of pure copper that once rested on the shores of the Ontonogon River in Michigan’s Upper Peninsula. Its presence was confirmed for settlers by Claude Dablon in the 1660s and again by Alexander Henry in the 1770s. Henry Rowe Schoolcraft claimed to have located the boulder in 1820. The boulder was finally removed from the region in the 1840s and made its way into the Smithsonian collections, where it now

resides. Over the eons leading up to its removal, Anishinaabeg people chiselled pieces from it, gradually reducing its overall size. The Ontonogon boulder is considered sacred by the Anishinaabeg. An attempt to have it repatriated in the 1990s failed under the terms of the Native American Graves Protection and Repatriation Act. Larry D. Lankton, *Beyond the Boundaries: Life and Landscape at the Lake Superior Copper Mines, 1840–1875* (Toronto: Oxford University Press, 1999); Bernard C. Peters, "Wa-bish-kee-pe-nas and the Chippewa Reverence for Copper," *Michigan Historical Review* 15, no. 2 (1989): 47–60; and Charles W. Smythe, *Assessment of Request for the Repatriation of the Ontonogon Boulder by the Keweenaw Bay Indian Community* (Washington, DC: National Museum of Natural History Repatriation Office, 2000).

- 10 Henry R. Schoolcraft, *Schoolcraft's Narrative of Travels, Through the Northwestern Region of the United States extending from Detroit through the Great Lakes to the Sources of the Mississippi River in the Year 1820*, ed. Mentor L. Williams (1821; reprint, East Lansing, MI: Michigan State University Press, 1992).
- 11 Karl S. Hele, "A Line Drawn by Fools': Life and Community in the Sault Ste. Marie, Ontario and Michigan Borderlands," in *Communities and Connections: Writings in North American Studies*, ed. Ari Helo (Helsinki: University of Helsinki, 2007), 89–98.
- 12 Peters, "Wa-Bish-Kee-Pe-Nas and the Chippewa Reverence for Copper"; and David J. Krause, "Henry Rowe Schoolcraft and the Native Copper of the Keweenaw," *Earth Sciences History* 8, no. 1 (1989): 4–13.
- 13 For more information, see Richard G. Bremer, *Indian Agent and Wilderness Scholar: The Life of Henry Rowe Schoolcraft* (Mt. Pleasant, MI: Clarke Historical Library, Central Michigan University, 1987).
- 14 "Article 3, Treaty with the Chippewa, 1826," in *Indian Affairs. Laws and Treaties: Volume II (Treaties)*, ed. Charles J. Kappler (Washington, DC: Government Printing Office, 1904), 269.
- 15 Often translated as fairies, the *Maemaegawaehnssiwuk* are the "little people." They are one group of many beings responsible for protecting natural resources. For more information, see Johnston, *The Manitous*, 151–52; and Telford, "'The Sound of the Rustling of the Gold,'" 35–37.
- 16 Telford, "'The Sound of the Rustling of the Gold,'" 70–72.
- 17 Bernard Lambert, "Mission Priorities: Indians or Miners?," *Michigan History* 51, no. 4 (1967): 323.
- 18 Telford, "'The Sound of the Rustling of Gold,'" 72.
- 19 Hon. Jos. H. Steere, Circuit Judge, *The Pioneers of the Upper Peninsula* (Sault Ste. Marie, ON: The Society, 1899), 9. For more information, see Lankton, *Beyond the Boundaries*.
- 20 Philip C. Bellfy, "Michigan's Upper Peninsula, An Internal Colony: The Sault Sainte Marie Experience" (master's thesis, Michigan State University, 1982), 13–14.

- 21 From 1845 to 1887, northern Michigan was the largest supplier of copper in the US, providing over three-quarters of this mineral to the national economy. The minerals from Lake Superior played a key role in the defeat of the Confederacy in 1865 and of the Axis powers during the 1914–18 Great War. Today, many of these early mines are now closed, but the resource industry continues to open new ones in northern Michigan.
- 22 Karl S. Hele, "'By the Rapids': The Anishinabeg-Missionary Encounter at Bawating (Sault Ste. Marie), c.1821–1871" (PhD diss., McGill University, 2003), 135–40; and "Treaties with the Chippewa of Sault Ste. Marie, 1855," and "Treaty with the Odawa and Chippewa, 1855," in *Indian Affairs: Laws and Treaties: Volume II (Treaties)*, ed. Charles J. Kappler (Washington, DC: Government Printing Office, 1904), 732, 725–31.
- 23 The *Lake Superior Journal* regularly carried reports on the prospects of the canal, as well as its progress from 1850 to 1855. Dwight H. Kelton, *History of the Sault Ste. Marie Canal* (Detroit: Detroit Free Press Printing Co., 1888); John N. Dickinson, *To Build A Canal: Sault Ste. Marie, 1853–1854 and After* (Columbus: Published for Miami University by the Ohio State University Press, 1981); William Ratigan, *Soo Canal!*, (Grand Rapids: W. B. Eerdmans, 1954); Irene D. Neu, "The Building of the Sault Canal: 1852–1855," *Mississippi Valley Historical Review* 40, no. 1 (1953): 25–46. For a history of mining in northern Michigan, see Lankton, *Beyond the Boundaries*; and Daniel Fountain, *Michigan Gold: Mining in the Upper Peninsula* (Duluth: Lake Superior Port Cities, 1992).
- 24 For instance, see Judge John Prince's diary, entries for 12 July 1861 and 14 December 1851, in *John Prince: A Collection of Documents*, ed. R. Alan Douglas (Toronto: Champlain Society, 1980), 179, 192. Also see Elizabeth Arthur, "Beyond Superior: Ontario's New-Found Land," in *Patterns of the Past: Interpreting Ontario's History*, eds. Roger Hall, William Westfall, and Laurel S. MacDowell (Toronto: Dundurn Press, 1988), 132–33.
- 25 *Centennial Commemoration: One Hundred Years of the Church of England in Sault Ste. Marie, Ontario* (Sault Ste. Marie: Cliffe Printing, 1932), 6; Karl S. Hele, "'Only calculated to captivate the senses': The Protestant Missionary Experience of Garden River First Nation" (MA research paper, University of Toronto, 1994), 34–37; and "'By the Rapids'" (PhD diss., McGill University, 2002), 207.
- 26 For an excellent description of the emergence of the Canadians, see Gerald M. Craig, *Upper Canada 1784–1841: The Formative Years* (Toronto: McClelland and Stewart, 1963).
- 27 Kenneth Norrie and Douglas Owrarn, *A History of the Canadian Economy* (Toronto: Harcourt Brace Jovanovich, 1991), 160–61; and Graham D. Taylor and Peter Baskerville, *A Concise History of Business in Canada* (Toronto: Don Mills, 1994), 140–92. Also see Douglas McCalla, *Planting the Province: The Economic History of Upper Canada, 1784–1870* (Toronto: University of Toronto Press, 1993), 45–198.
- 28 Norrie and Owrarn, *A History of the Canadian Economy*, 207–15; Taylor and Baskerville, *A Concise History of Business*, 140–92.

- 29 Hele, "'By the Rapids,'" 78; and Patricia Jasen, *Wild Things: Nature, Culture, and Tourism in Ontario, 1790–1914* (Toronto: University of Toronto Press, 1995), 7–28, 86–92, 95–99.
- 30 Theodore J. Karamanski, *Schooner Passage: Sailing Ships and the Lake Michigan Frontier* (Detroit: Wayne State University Press, 2000), 22; and Scott L. Cameron, *The Frances Smith: Palace Steamer of the Upper Great Lakes, 1867–1896* (Toronto: Natural Heritage Books, 2005).
- 31 Hele, "'By the Rapids,'" 129–66. For more information about the Michigan mining district, see Larry Lankton, *Hollowed Ground Copper Mining and Community Building on Lake Superior, 1840s–1990s* (Detroit: Wayne State University Press, 2010); and David J. Krause, *The Making of a Mining District: Keweenaw Native Copper 1500–1870* (Detroit: Wayne State University Press, 1992).
- 32 In 1841, the former distinct colonies of Upper and Lower Canada were united. Under the terms of the 1841 Act of Union, Upper Canada became Canada West and Lower Canada became Canada East.
- 33 This journal began as the *Lake Superior News*, from July to October 1846. In 1847 it was reincarnated as the *Lake Superior News and Miners Journal*, and ceased publication in April 1850. Afterward it was continued as the *Lake Superior Journal*, from May 1850 until 1867.
- 34 Hele, "'By the Rapids,'" 105–08, 546–09.
- 35 Chute, *The Legacy*, 103.
- 36 E. H. Capp, *The Annals of Sault Sainte Marie* (Sault Ste. Marie: Sault Star Presses, 1904), 175–76.
- 37 Nancy M. Wightman and W. Robert Wightman, "The Mica Bay Affair: Conflict on the Upper-Lakes Mining Frontier, 1840–1850," *Ontario History* 83, no. 3 (September 1991): 195.
- 38 Telford, "The Sound of the Rustling of the Gold", 123–25.
- 39 Rhonda Telford, "The Nefarious and Far-Ranging Interests of Indian Agent and Surveyor John William Keating, 1837 to 1869," *Papers of the Twenty-eighth Algonquian Conference* (Winnipeg: University of Manitoba, 1997), 384.
- 40 Library and Archives Canada (hereafter cited as LAC), RG 10, vol. 151, no. 998: 87, 759, "Report of Lieutenant James Harper."
- 41 LAC, RG 10, vol. 151, no. 998: 87, 758-87, 760, "Report of Thomas G. Anderson."
- 42 Janet Chute, *The Legacy*, 104–5; and Victor P. Lytwyn, "Echo of the Crane: Tracing Anishnawbek and Metis Title to Bawating," in *New Histories for Old: Changing Perspectives on Canada's Native Pasts*, eds. Ted Binnema and Susan Neylan (Vancouver: University of British Columbia Press, 2007), 56–57.
- 43 Ogima loosely translates as leader or chief. Frederick Baraga, *A Dictionary of the Ojibway Language* (1878; reprint, St. Paul: Minnesota Historical Society Press, 1992), 317; and Edward F. Wilson, *The Ojibway Language* (1874; reprint, Ottawa: Department of Indian Affairs and Northern Development, 1975), 188.

- 44 For instance, see the petition of 1849 printed in the *Montreal Gazette* on 7 July.
- 45 Grace Lee Nute, "The American Fur Company's Fishing Enterprises on Lake Superior," *Mississippi Valley Historical Review* 12, no. 4 (1926): 496. Also see Kenneth R. Lister, "Dip Nets and Jacklights: Paul Kane's Views of Fishing the Great Lakes Region," *Ontario Archaeology* 92 (2012): 13–26.
- 46 Nute, "The American Fur Company's Fishing Enterprises," 502.
- 47 "Missions in North America, Ojibwas," *American Baptist Magazine* 19, no. 6 (June 1839): 124.
- 48 The economic decline of the Sault region in the 1830s serves to contradict Robert E. Bieder's assumption that the appearance of people with "entrepreneurial and individualistic" outlooks created a new prosperity that forced the longtime residents out of the fur trade and other businesses. Bieder, "Sault Ste. Marie and the War of 1812: A World Turned Upside Down in the Old Northwest," *Indiana Magazine of History* XCV (March 1999): 1–13.
- 49 In southern Ontario, Iroquois leader Joseph Brant maintained that the Iroquois had the right to sell or lease land in the late 1700s. While Brant's actions remain controversial, they, together with subsequent settler actions, alienated thousands of acres of Six Nations land along the Grand River. See Charles M. Johnston, "Joseph Brant, the Grand River Land and the Northwest Crisis," *Ontario History* 55, no. 4 (1963): 267–82; John S. Hagopian, "Joseph Brant vs. Peter Russell: A Re-examination of the Six Nations' Land Transactions in the Grand River Valley," *Social History/Histoire Sociale* 30, no. 60 (1997), 300–33; E. Reginald Good, "Lost Inheritance: Alienation of Six Nations' Lands in Upper Canada, 1784–1805," *Journal of Mennonite Studies* 19 (2001), 92–102; and Elizabeth Elbourne, "Broken Alliance: Debating Six Nations' Land Claims in 1822," *Cultural and Social History* 9, no. 4 (2012): 497–525.
- 50 Rev. John Ryerson, *Hudson's Bay; or, a Missionary Tour in the Territory of the Hon. Hudson's Bay Company* (Toronto: G. R. Sanderson, 1855), 6.
- 51 Mr. Pendill would have been one such employer in the late 1840s and 1850s. Bingham Papers, Copies of Letters and Reports, Cor. Secy., Report, Rev. Bingham to Rev. Edward Bright, 31 December 1852; James H. Anthony to P. B. Barbeau, 21 December 1856; and Barbeau Letters, 1855–1858, Box 2, Anthony to Barbeau, 21 February 1857.
- 52 Janet Chute, "Shingwaukonse: A Nineteenth-Century Innovative Ojibwa Leader," *Ethnohistory* 45, no. 1 (1998): 75–76; and "Preservation of Ethnic Diversity at Garden River: A Key to Ojibway Strength," *Papers of the Twenty-Eighth Algonquian Conference*, ed. David H. Pentland (Winnipeg: University of Manitoba Press), 51. The forestry industry remains an important economic activity for Garden River First Nation.
- 53 H. V. Nelles, *The Politics of Development: Forests, Mines and Hydro-Electric Power in Ontario, 1849–1941* (Toronto: Macmillan of Canada, 1974), 13.
- 54 For information about Shegud and his fishing venture, see Records of the Michigan Superintendency of Indian Affairs Michigan Superintendent and Mackinac Agent, Letters Received, 1836–51, James Ord, subagent, to H.

- R. Schoolcraft, 16 November 1837; oath, Geo Johnston, to H.R.S. (?), 11 November 1837; oath, John M. Hulbert, 11 November 1837, Vol. 3: August-December 1837, 487–93; and J. Ord to H. R. Schoolcraft, 4 January 1838, 9; J. Ord to H. R. Schoolcraft, 5 June 1838, 363, Vol. 4: January-June 1838, 9, 363.
- 55 For references to the continued importance of seasonal movements, see Folder 1850, B782-S515: 639, Michigan Superintendency, 1824–1851, Rev. Abel Bingham, "Report for the year ending 30 Sept. 1846, Sault Ste. Marie Agency, 1824–1852"; and "Letter (B794), Annual Report," Charles P. Babcock, Acting Superintendent of Indian Affairs, to Luke Lea, Commissioner of Indian Affairs, 27 November 1850.
- 56 Folder 1847, C8-R110: 225–26, Michigan Superintendency, 1824–1851, "Annual Report" (R102), W. A. Richard, Acting Superintendent of Indian Affairs, Detroit, to W. Medill, Commissioner of Indian Affairs, 22 November 1847. Susan E. Gray also notes that the Indian populations in western Michigan utilized a variety of income sources. Gray, "Limits and Possibilities: White-Indian Relations in Western Michigan in the Era of Removal," *Michigan Historical Review* 20, no. 2 (1994): 71–91.
- 57 For more information on the development of the Sault from 1870 to 1900, see Philip C. Belfy, "Michigan's Upper Peninsula, An Internal Colony: The Sault Sainte Marie Experience" (master's thesis, Michigan State University, 1982); Stanley Newton, *The Story of Sault Ste. Marie and Chippewa County* (1923; reprint, Grand Rapids, MI: Black Letter Press, 1975); Francis M. Heath, *Sault Ste. Marie: City by the Rapids, An Illustrated History* (Burlington: Windsor Publications, 1988); Andrea Gutsche and Barbara Chisholm, *Superior Under the Gods* (Toronto: Lynx Images, 1997); Andrea Gutsche, Barbara Chisholm, and Russel Floren, *The North Channel and St. Mary's River* (Toronto: Lynx Images, 1997); Edith M. Cameron, *Pioneers in a Land of Promise* (Iron Bridge, ON: Rae's North County Printing Services, 1993); Duncan McDowall, *Steel at the Sault: Francis H. Clergue, Sir James Dunn, and the Algoma Steel Corporation, 1901–1956* (Toronto: University of Toronto Press, 1984), 8–22; Graeme S. Mount, John Abbott, and Michael J. Mulloy, *The Border at Sault Ste. Marie* (Toronto: Dundurn Press, 1995); and Marjorie McDonald, *Laird Chronicles* (Laird Township, ON: Laird Centennial Celebration Committee, 1991). Unfortunately, aside from McDowall there are no academic studies that deal with the industrialization of the twin Saults.
- 58 Karl S. Hele, "The Anishinabeg and Metis in the Sault Ste. Marie Borderlands: Confronting a Line Drawn Upon the Water," in *Lines Drawn Upon the Water: First Nations and the Great Lakes Borders and Borderlands* (Waterloo: Wilfrid Laurier University Press, 2008), 78–83; "By the Rapids," 76–170; and Chute, *The Legacy*, 44–46, 53–56, 59–65, 73–75.
- 59 For more information on this shameful episode in Canada's history, see Chute, *The Legacy*, 106–59; and Telford, "The Sound of the Rustling of the Gold," 117–220.
- 60 "The Chippewa Indians and the Huron Lake Mining Companies," *The Colonial Intelligencer; or, Aborigines Friend* XVIII & XIX, new series (October–November

- 1849), 287, 286–90; *Montreal Gazette*, 7 July 1849; and Chute, *Legacy*, 122–24.
- 61 “The Chippewa Indians and the Huron Lake Mining Companies,” 286–90.
- 62 National Archives of Canada (hereafter cited as NAC), RG 10, vol. 163, George Desbarats, Montreal, to T. E. Campbell, Civil Secretary and Superintendent of Indian Affairs, 10 May 1847; and Claude Galarneau, “Desbarats, George-Édouard,” *Dictionary of Canadian Biography, Vol. XII (1891–1900)*, http://www.biographi.ca/en/bio/desbarats_george_edouard_12E.html (accessed 10 June 2013).
- 63 William Keating, “To the Editor of the *Chatham Chronicle*,” *Chatham Chronicle*, 15 August 1849, found in the Wawanosh Family Papers, Box 4381, file no. I-1-1, Band History Correspondence, 1835–58, J. J. Talmun Regional Collection at Western University; and Chute, *The Legacy*, 123.
- 64 Chute, *The Legacy*, 279n82, quoting the “Extract of a Report from Lieu. Harper, R.N. Commanding H.M.S. Experiment, dated Penetanguishene, 1st Sept. 1845,” LAC, RG10, vol. 151, 87759-60.
- 65 LAC, RG 10, vol.163: 94982-6, Report of D. B. Papineau, Commissioner of Crown Lands, Montreal, 4 November 1847.
- 66 LAC, RG 1, L3, vol. 263, file 5: 4aa, Report, J. H. Price, Commissioner of Crown Lands, Montreal, 26 April 1848; and Lillian F. Gates, “Price, James Hervey,” *Dictionary of Canadian Biography, Volume XI (1881–1890)*, http://www.biographi.ca/en/bio/price_james_hervey_11E.html (accessed 17 July 2015).
- 67 Chute, *The Legacy*, 114–15, 138. According to Chute, there were many more parties, including the *Globe*, who claimed that the Ojibwa were squatters and had no claims, and that the Métis were the true agitators. Deborah Ann Montgomerie, “Coming to Terms: Ngai Tahu, Robeson County Indians, and the Garden River Band of Ojibwa, 1840–1940” (PhD diss., Duke University, 1993), 214.
- 68 Vidal Family Correspondence, Box 4437, Alexander Vidal to Catherine Vidal, 23 October 1849; Vidal, Catherine, from Vidal, Alexander (husband), 1847–1863.
- 69 Robert J. Surtees, “The Robinson Treaties (1850),” Treaties and Historical Research Centre, Indian and Northern Affairs Canada (1986), www.aadnc-aandc.gc.ca/eng/1100100028974#ft21b (accessed 27 July 2012).
- 70 Surtees, “The Robinson Treaties (1850).”
- 71 For more information on Macdonell and his involvement in Aboriginal rights, see Janet E. Chute and Alan Knight, “A Visionary on the Edge: Allan Macdonell and the Championing of Native Resource Rights,” in *With Good Intentions: Euro-Canadian and Aboriginal Relations in Colonial Canada*, eds. Celia Haig-Brown and David A. Nock (Vancouver: University of British Columbia, 2006), 87–105. Alexander Vidal to Catherine Vidal, 17 October 1849, Vidal Family Correspondence, Box 4437.

This incident is also illustrative of the Crown’s unwillingness to allow or recognize First Nations’ rights to hire legal representatives to defend their interests until the later part of the twentieth century. The government’s control

- of Indian band funds allowed the Department of Indian Affairs (DIA) to block a band from hiring legal representation; quite simply, the DIA used its power of the purse to block payment to lawyers hired by bands without government consent. Eventually the government, upon the DIA's recommendation, implemented a legislative blockade, which remained in force from 1927 to 1951, although limited legislative authority had been in place since 1910. Section 141, R.S.C. 1927, c. 98 [1927 Indian Act], *Indian Acts and Amendments, 1868–1975: An Indexed Collection*, ed. Sharon Helen Venne (Saskatchewan: Native Law Centre, University of Saskatchewan, 1981), 301. For another example of the DIA preventing the hiring of legal representation, see Dan Shaule, "The Disputed Boundaries of the 1923 (Williams) Treaties" (master's thesis, Trent University, 2003), 75–92.
- 72 Ontario, Ministry of Natural Resources, Peterborough, Letterbook of Instructions to Surveyors, vol. 5: 143–44, J. H. Price, Crown Lands Department, Montreal, to Alexander Vidal, Deputy Surveyor, Port Sarnia.
- 73 Chute, *The Legacy*, 124–30; Wightman, "The Mica Bay Affair," 199; and Surtees, "The Robinson Treaties (1850)."
- 74 Telford, "'The Sound of the Rustling of the Gold is Under My Feet,'" 154.
- 75 This denial or failure to recognize the necessity of legal representation for First Nations engaged in treaty negotiations was a long-running trend in Canada long before the government made the bands' hiring of lawyers officially illegal in 1927. Peggy J. Blair, *Lament for a First Nation: The Williams Treaties of Southern Ontario* (Vancouver: University of British Columbia Press, 2008), 98–104, 209; Shaule, "The Disputed Boundaries," 75–85; and S.141. R.S.C. 1927, c. 98, in *Indian Acts and Amendments 1868–1975: An Indexed Collection*, ed. Sharon Helen Venne (Saskatchewan: Native Law Centre, University of Saskatchewan, 1981), 301.
- 76 In a letter to his wife, Vidal claimed it was the perverseness of the Ojibwa that presented the greatest difficulty in concluding a treaty. Vidal Family Correspondence, Box 4437, Alexander Vidal to Catherine Vidal, 17 October 1849.
- 77 Chute, *The Legacy*, 132. Notably, Chute does not mention the significance of Oshawano, the Ogima (head chief) of the area, in the expedition, which, along with the presence of Nebenagoching, indicated that Shingwaukonse had consulted and operated with the Crane Clan's support. Letters Received by the Superintendent & Indian Agent at Mackinac, 1836–1851, Volume 23, April–December 1849J, Ord to Charles P. Babcock, 15 November 1849, 359; and Janet Chute, "Ojibwa Leadership during the Fur Trade Era at Sault Ste. Marie," *New Faces of the Fur Trade: Selected Papers of the Seventh North American Fur Trade Conference, Halifax, Nova Scotia, 1995*, eds. Jo-Anne Fiske, Susan Sleeper-Smith, and William Wicken (East Lansing: Michigan State University Press, 1998), 167.
- 78 Records of the Michigan Superintendency of Indian Affairs Michigan Superintendent and Mackinac Agent, Letters Received, 1836–51, Volume 23: April–December 1849, 359, Ord to Babcock, 15 November 1849; and Chute, *The Legacy*, 132–33.

- 79 Chute, *The Legacy*, 135–36. “War on Lake Superior between the Canadian Indians and the Quebec Mining Company,” *The Boston Daily Atlas*, 1 December 1849; “Troops for Lake Superior,” *Milwaukee Sentinel and Gazette*, 1 December 1849; “The Indian Troubles on Lake Superior,” *Daily National Intelligencer*, 7 December 1849; “Later from Lake Superior—Further Particulars of the Indian Troubles,” *North American and United States Gazette*, 1 December 1849; *Detroit Tribune*, November–December 1849; and Algoma University Shingwauk Collection, SP 195 1982 SHWAUK, Alan Knight, “Allan Macdonell and the Pointe Aux Mines-Mica Bay Affair” [1982], manuscript.
- 80 Rhonda Telford, “Aboriginal Resistance in the Mid-Nineteenth Century: The Anishinabe, Their Allies, and the Closing of the Mining Operations at Mica Bay and Michipicoten Island,” in *Blockades and Resistance: Studies in the Actions of Peace and the Temagami Blockades of 1988–89*, eds. Bruce W. Hodgins, Ute Lischke, and David T. McNab (Waterloo, ON: Wilfrid Laurier University Press, 71–84.
- 81 The presence of the additional troops in the Sault region increased the level of violence and provided a threatening backdrop to the upcoming treaty negotiations. For an example of the violence, see entry for 8 January 1850, *Journal* 5, August 1844–October 1864, Bingham Papers; and “Outrage at Sault Ste. Marie,” *The Boston Daily Atlas*, 27 June 1850.
- 82 Baldwin Room, Robert Baldwin Papers, L5, item A39, no. 80, Skeffington Connor (lawyer) to Robert Baldwin, Attorney General, Toronto, MTRL; and “The Indian Claims,” *Toronto Patriot*, 29 December 1849.
- 83 LAC, RG 10, vol. 188, 109892-3, Robert Baldwin, Attorney General, Toronto, to Robert Bruce, Superintendent General of Indian Affairs, Toronto; and LAC, RG 10, vol. 514, p. 224, Robert Bruce to Chiefs Shingwakonse and Nebenagoogin, and Pierre LeSage and Charles Boyer, 22 May 1851.
- 84 This rifle company evolved into the 49th Field Artillery militia unit.
- 85 Julia Jarvis, “Robinson, William Benjamin,” *Dictionary of Canadian Biography 1871–1880 (Volume X)*, http://www.biographi.ca/009004-119.01-e.php?&id_nbr=5234 (accessed 27 July 2012).
- 86 “Treaty with the Indians,” *Lake Superior Journal*, 4 September 1850. In *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009), on pages 122 and 184, J. R. Miller indicates that the Robinson Treaties broke with earlier treaty-making but failed to include or rely on ceremony and Aboriginal protocols. Local records indicate that there was ceremony surrounding the treaty, and oral history indicates that Aboriginal, or Anishinaabeg, protocols were followed as well, or at least to the satisfaction of the 1850 treaties’ signatories.
- 87 Olive Patricia Dickason, *Canada’s First Nations: A History of Founding Peoples from Earliest Times*, 3rd ed. (Toronto: Oxford University Press, 2002), 231–33, 255; and Joan Lovisek, “The Ojibway vs. the Gerrymander: The Evolution of the Robinson Huron and William Treaties Boundaries,” in *Actes du Trente-Deuxième Congrès des Algonquinistes*, ed. John D. Nichols (Winnipeg: University of Manitoba, 2001), 280–81.

- 88 Archives of Ontario (hereafter cited as AO), Peter Russell Fonds, F 46, "Transfer of lands by the Indians at Sault Ste. Marie to Simon McTavish, Joseph Frobisher, John Gregory, William McGillivray, and Alexander Mackenzie, directors of the North West Company, on the north side of the Falls of St. Mary's. August 10, 1798." Schenck, "Who Owns Sault Ste. Marie?", 109–20.
- 89 J. R. Miller, *Compact, Contract, Covenant*, 87. For more information about Fort St. Joseph, see John Abbott, Graeme S. Mount, and Michael J. Mulloy, *The History of Fort St. Joseph* (Toronto: Dundurn Press, 2000).
- 90 For information on the United States treaties, see Charles J. Kappler, ed., *Indian Affairs. Laws and Treaties: Volume II (Treaties)* (Washington, DC: Government Printing Office, 1904). For information about the British-Canadian Indian treaties, see *Canada: Indian Treaties and Surrenders, Volume 1: Treaties 1–138* (1891; reprint, Saskatoon: Fifth House Publishers, 1992).
- 91 Phil Bellfy, "Cross-Border Treaty-signers: The Anishinabeg of the Lake Huron Borderlands," in *Lines Drawn Upon the Water: First Nations and the Great Lakes Border and Borderlands*, ed. Karl S. Hele (Waterloo: Wilfrid Laurier Press, 2008), 32–41. Also see Bellfy, *Three Fires Unity: The Anishnaabeg of the Lake Huron Borderlands* (Lincoln: University of Nebraska Press, 2011).
- 92 NAC, RG 5, Vol. 290, No. 700, Order in Council, 16 April 1850.
- 93 Victor Lytwyn, personal communication, 10 August 2012.
- 94 Hele, "'By the Rapids,'" 158–61.
- 95 Russell Diabo [policy advisor], "Aboriginal Title/Rights vs. Federal Comprehensive Claims Policy," Algonquian Nation Secretariat Council of Chiefs and Grand Chief, 11 February 2013; Briefing Note in author's possession; and Barbara Chisholm and Andrea Gutsche, *Superior: Under the Shadow of the Gods* (Toronto: Lynx Images, 1998), 43.
- 96 AO, MU 5, 906, F44: 18–19, "Diary of William B. Robinson."
- 97 Alexander Morris, ed. "Robinson Treaties [William B. Robinson's report, 24 September 1850]," in *Treaties of Canada with the Indians of Manitoba and the North-West Territories including the Negotiations on which they are based* (1880; reprint, Saskatoon: Fifth House Publishers, 1991), 17.
- 98 Morris, "Robinson Treaties [William B. Robinson's report, 24 September 1850]," 18.
- 99 "Diary of William B. Robinson," 24–25.
- 100 W. Keating, an opponent to Anishinaabeg land claims on the Upper Lakes, served unacknowledged as Robinson's interpreter and recorder during the treaty negotiations. AO F44 MS 4, "Diary of W. B. Robinson, Treaty Commissioner," 7 September 1850.
- 101 Morris, "Robinson Treaties [William B. Robinson's report, 24 September 1850]," 19.
- 102 "No. 61 [Robinson-Huron Treaty (1850)]," *Canada: Indian Treaties and Surrenders, Volume 1: Treaties 1–138* (1891; reprint, Saskatoon: Fifth House Publishers, 1992), 149–50.

- 103 "Treaty with the Canadian Indians," *Lake Superior Journal*, 18 September 1850; and Morris, "Robinson Treaties [William B. Robinson's report, 24 September 1850]," 17.
- 104 In 1854, the Anishinaabeg, angry over the continued violations of the 1850 treaties, forcibly closed the mines on Michipicoten Island. Telford, "Aboriginal Resistance," 84.
- 105 Marla Adamson Barber, *The Formative Years of Bruce Mines: A Social History* (Bruce Mines: Bruce Mines Museum and Archives, 1991); and *A Mining History of Bruce Mines* (Bruce Mines: Bruce Mines Museum and Archives, 1991).
- 106 For instance, see Dan Douglas, *Northern Algoma: A People's History* (Toronto: Dundurn Press, 1995); C. M. Wallace and Ashley Thomson, eds., *Sudbury: Rail Town to Regional Capital* (Toronto: Dundurn Press, 1993); and Dianne Newell, *Technology on the Frontier: Mining in Old Ontario* (Vancouver: University of British Columbia Press, 1986).
- 107 Nelles, *The Politics of Development*, 20–21.
- 108 Karl S. Hele, *An Overview of Garden River First Nation's Lands* (Garden River, ON: Garden River First Nation Community Trust, 2011).
- 109 Nelles, *The Politics of Development*, 20–21.
- 110 Morris, "Robinson Treaties [William B. Robinson's report, 24 September 1850]," 20; and Chute, "Moving on Up," 63.
- 111 "No. 60 [Robinson-Superior Treaty, 1850]," in *Indian Treaties and Land Surrenders, Vol. 1: Treaties 1–138* (1891; reprint, Saskatoon: Fifth House Publishers, 1992).
- 112 "No. 61," 149.
- 113 A league is about 3.33 miles.
- 114 James Morrison, "The Robinson Treaties of 1850: A Case Study. Prepared for the Royal Commission on Aboriginal Peoples," Treaty and Land Research Section, final draft, 31 August 1996.
- 115 Dan Shaule, "The Disputed Boundaries", 120–24.
- 116 NAC, RG 10, Vol. 914, No. 5760, R. Bruce, Superintendent General of Indian Affairs, to J. Rolph, Commissioner of Crown Lands.
- 117 AO, RG 1 A-1-1, Vol. 66., No. 55, W. Keating to Col. Bruce, 2 December 1852.
- 118 David Shanahan, "Robinson treaties short-changed sizes of reserves," *Anishinabek News* (July-August 2012), 12.
- 119 Mary-Lynn Murphy and Jean Manore, "Draft Research Report: The Location of the External Boundaries of Garden River Indian Reserve #14" (Toronto: Ontario Native Affairs Secretariat, c. 1990).
- 120 Crown Lands Records, Ontario Ministry of Natural Resources, Peterborough, Ontario, Diary of Survey, Book 828, 49–50.
- 121 "The Robinson Treaties," 16.
- 122 See Hele, this volume.

- 123 Chute, *The Legacy*, 142–43. Victor Lytwyn, “Historical Report on the Métis Community at Sault Ste. Marie,” manuscript research report, 27 March 1998, from the submissions associated with the 2003 Powley Case [see Supreme Court of Canada, *R. v. Powley*, [2003] 2 S.C.R. 207, 2003 SCC 43: <http://scc.lexum.org/en/2003/2003scc43/2003scc43.html>], copy in possession of author.
- 124 The Province of Ontario was responsible for providing the funds for the annuity based on the revenue it derived from resource extraction in the region covered by the Treaties.
- 125 “No. 61,” 150.
- 126 “No. 61,” 150.
- 127 Appendix A: Table 3, in Hele, “By the Rapids,” 549.
- 128 Janet Chute, “Moving on Up: The Rationale for, and Consequences of, the Escalation Clause in the Robinson Treaties,” *Native Studies Review* 18, no. 1 (2009): 62.
- 129 NAC, RG 10, vol. 613: 659–61, George Ironside to Robert Bruce, 20 November 1850, Superintendency Records, Northern (Manitowaning) Superintendency Correspondence (Manitoulin Is.), 1822–1850.
- 130 NAC, RG10, vol. 1963, file 5045-1, S. J. Dawson, Ottawa, to the Governor General, 7 April 1873; and NAC, RG 10, vol. 1963, file 5045-1, “Translated Petition from J. P. Chone, on behalf of the Fort William Chiefs to the Governor General.”
- 131 Order in Council, 22 July 1875, in *Sessional Papers of Canada, Session 1879*, vol. 10, no. 127 (Ottawa: Queen’s Printer, 1879): 25–26.
- 132 Morris, “Robinson Treaties [William B. Robinson’s report, 24 September 1850],” 20.
- 133 Chute, “Moving on Up,” 63.
- 134 Mary Laronde, “Last raise in 1874 for Robinson Huron,” *Anishinabek News*, September 2012.

CHAPTER 2

Ojibwa Harvesting Rights and Family Hunting Territories:

Rethinking Treaty Boundaries

David Calverley

Signed in September 1850, the Robinson Treaties were the largest land treaties to date. From the Crown's perspective, the Ojibwa ceded thousands of square kilometres of land to make way for logging and mining operations. Boundaries were established for both the Robinson-Superior Treaty and the Robinson-Huron Treaty. They shared a common northern border: the height of land. The Robinson-Superior's western boundary was set at the Pigeon River. Its eastern edge was located at Batchewana Bay (exactly where in the bay is not clear). The Robinson-Huron Treaty is more ambiguous in the definition of its territory. The treaty text states that the Ojibwa ceded land:

from Penetanguishine to Sault Ste. Marie, and thence to Batchewanaung Bay, on the Northern Shore of Lake Superior; together with the Islands in the said Lakes, opposite to the Shores thereof, and inland to the Height of land which separates the Territory covered by the charter of the Honorable Hudson Bay Company from Canada; as well as all unseeded lands within the limits of Canada West to which they have any just claim....¹

Maps were drawn of both treaty areas, boundaries inked in, and matters settled.

Treaty boundaries, however, proved more fluid and mercurial than Robinson ever imagined. Treaty right portability has become a pressing issue in Ontario and other provinces/territories, as First Nations argue that their traditional harvesting territories extend beyond the boundaries of their treaty. Some historians have gone so far as to consider treaty boundaries largely irrelevant. James Morrison, for example, argues in his 1996 report for the Royal Commission on Aboriginal Peoples (RCAP) that the Robinson Treaties should be considered a single treaty. Morrison's rationale is that the Batchewana border between the treaties was irrelevant to the Ojibwa, who regularly crossed this fabricated boundary before it came into existence in 1850. Morrison also notes that William Robinson and other Crown officials often referred to the Robinson Treaties in the singular "treaty," indicating that they also considered the two agreements to be a single treaty.²

Determining treaty borders is complicated. Dismissing the boundaries as irrelevant (in Morrison's case) or inviolate (often the Crown's position in legal proceedings) overlooks the complexity of treaties. Historical context helps establish that treaty borders depend on the perspective of the observer. Crown officials, used to the precise lines of British property, had definite views about where treaties geographically started and stopped. For the Ojibwa, treaty boundaries corresponded to their conceptions of property and geography, which centred on traditional family hunting territories. When the Crown and the Ojibwa created the Robinson Treaties, the Crown promised the Ojibwa they could continue to hunt, trap, and fish as they had "heretofore been in the habit of doing." This promise encompassed more than the physical act of harvesting. It is hard to believe that the Ojibwa signed the Robinson Treaties in 1850 on the understanding that they kept their right to harvest while simultaneously abandoning the system of land tenure and management that supported their hunting and trapping. How they used the land is as important as how they organized the land. Accordingly, if a hunter's territory extended beyond the Robinson Treaties, the treaty recognized those boundaries; however, a hunter whose territory did not extend outside the treaty would not have expected similar consideration. A family or hunter that considered a portion of land to be their traditional or familial territory assumed that this land remained with them after 1850. The promise of continued

harvesting rights, therefore, was universal in action (all Ojibwa retained the right to hunt, trap, and fish), but particular as regards location; how the Ojibwa allocated land remained intact. Within this context, there are not two Robinson Treaties but potentially dozens, as the treaty *de facto* recognized family hunting territories and the Ojibwa system of organizing those territories.

The evidentiary record to support this interpretation is piecemeal and at times disparate and scattered. Drawing upon a variety of records and incidents permits one to see how hunting territories were not only a factor in the creation of the Robinson Treaties, but continued to inform Ojibwa understanding of the treaties into the twentieth century. Hudson's Bay Company (HBC) post records provide some insight into where Ojibwa hunted and trapped in the early nineteenth century. Records pertaining to the Robinson Treaties show that concern for hunting territories was present in 1849 and 1850, when Crown officials seriously discussed the treaty with the Ojibwa. Fur trade records and the work of anthropologist Frank Speck in the Temagami area provide evidence that family territories continued to exist in the late nineteenth and early twentieth centuries. Arrest records of Ojibwa hunters convicted of violating Ontario's game laws provide further evidence of the hunting territories' persistence, as do documents pertaining to the development of the province's trap line system in the 1930s. How the Ojibwa hunted continued to affect their interpretation of the treaties for decades after 1850.

Pre-Contact and Post-Contact Harvesting Territories

It is important to note that this paper does not engage with the debate about the origin of Ojibwa (or, more broadly, Algonquian) hunting territories.³ There is an older and much larger scholarly discussion regarding hunting territories and their genesis. Starting with Frank Speck and J. M. Cooper in the early to mid-twentieth century, the dispute evolved through several phases.⁴ It continued into the 1970s with the work of Charles Bishop and Edward Rogers.⁵ Bishop argues that the system of family hunting territories appeared in the late seventeenth century because of the fur trade.⁶ Family hunting territories surfaced as HBC post managers assigned land to specific families to exploit fur-bearing animals. Rogers believes that the system was prehistoric in origin. He argues that

the nature of the northern environment made hunting territories a more effective way for families to support themselves. Regardless of whether this system of land ownership developed before or with the fur trade, both men agreed that familial hunting territories existed by the nineteenth century. This is a conclusion substantiated by Henry Schoolcraft's observation in his 1848 work *The Indian in His Wigwam*—that land is divided so “each hunter has a portion of the country assigned to him.” On his land, the hunter has complete authority as regards the hunting and trapping of animals.⁷

Much like Toby Morantz's study of Cree harvesting territories on eastern James Bay, fur trade records for the Upper Great Lakes area supports the argument that hunting territories existed prior to the signing of the Robinson Treaties in 1850.⁸ The emergence of these territories (whether pre- or post-contact) and the manner of their organization were likely influenced by various factors (not least of which was the eventual arrival of the European fur trade); to call them purely Aboriginal, by 1850, is probably inaccurate given the cultural exchange that took place with the arrival of Europeans. However, their existence in 1850, such as they were, coloured the Ojibwa perception of the Robinson Treaties and the harvesting promises contained in them.⁹ Other evidence substantiates the argument that trapping/hunting territories continued to exist into the 1930s. Whether they existed as they did in 1850 is not relevant. There is sufficient evidence to substantiate both their existence and the Ojibwa belief that their loss of familial territories constituted a violation of their treaty rights. As stated earlier, it is difficult to imagine that the Ojibwa believed that the treaties protected the physical acts of hunting and trapping but ended the cultural practices surrounding that activity (specifically the allocation and regulation of land).

Hunting Territory Evidence in HBC Post Records

HBC post records are painfully imprecise. Some post managers left behind detailed daily observations, while others only mention the weather. This often results in a few years of detailed post records, when a more verbose post manager ran a post, followed by a roughly equal number of years with scant records. Detailed records often refer to hunters by name, where they came from, where they were going, and for what reason. Sometimes

the only appellation given to a hunter and his family is a location. A post journal may note that a family of “Long Lake Indians” arrived to trade at the Pic Post. References of this nature are interpreted to refer to the general geographic location of that particular hunter’s territory. Lastly, in the nineteenth century, HBC post managers began to engage in a practice known as “tripping.” Tripping was the practice of sending Company employees out to Ojibwa camps to secure their pelts before independent traders did. Post managers noted trippers’ destinations and recorded the names of Ojibwa families (generally referring to groups by the name of the elder male hunter). If men travelled to Lac La Flèche (Arrow Lake, on modern maps) near Fort William and returned with furs, this is an indication that Ojibwa trapped in that area. Finally, some post managers were sufficiently observant to note that the language spoken by the local Ojibwa population was an amalgamation of Ojibwa and Cree, further proof that families crossed the height of land and intermingled.

Lake Superior Posts

Several posts were scattered along the north shore of Lake Superior: Point Meurion/Fort William, Nipigon House, Pic Post, and Michipicoten Post.¹⁰ References to hunting outside the boundaries of the Robinson Treaties are scarce for some posts and more abundant for others. There is evidence, however, of both hunting outside of the Robinson Superior Treaty and intermarriage between the Ojibwa of Lake Superior and the Cree and Ojibwa who lived north of the height of land. There is also evidence of familial territories based on references to geographic locations and other journal entries.

Fort William

Numerous post entries indicate the existence of hunting territories. Post managers linked geographic locations either to nameless Ojibwa hunters or more often to specific people (almost exclusively male hunters). Based on the Fort William records, the general hunting territory of the families that traded at Fort William extended from Black Bay (northeast of the present-day city of Thunder Bay), north to Lake Nipigon, west as far as Milles Lac, and south to Lac La Flèche (Arrow Lake). Journal entries from approximately 1820 to the 1830s refer to Ojibwa hunters arriving

at the post to trade furs and then heading back to their trap lines. For example, in October 1820 a hunter arrived from Dog Lake to trade furs at Point Meurion (a two-day journey).¹¹ Lake Nipigon makes similar appearances, as hunters either travel to trap lines or visit relatives on their territories.¹² Several references to HBC “tripping” expeditions show that Lac La Flèche lay within the territories of several hunters known to the traders as Petit Corbeau, Peau de Chat, and the “Spaniard.”¹³ Some hunters (and their families) frequented the area regularly enough that the traders referred to them on one occasion as “the Indians of that place.” On one such trip, the traders noted that they had “not seen the Spaniard or [his] Band” at Lac La Flèche.

A common practice among traders was extending credit to hunters and their families to help them get through the winter. In the winter of 1828, the Fort William trader gave two bags of corn to a group of Ojibwa to “assist them to get to their hunting grounds, which is about six days march from hence.”¹⁴

Lake Nipigon Post

Annual reports for the HBC’s Nipigon House provide more detail as to the general boundaries of Ojibwa harvesting territories. One annual report (1828–29) to the Company’s London directors outlines the general boundaries of the Nipigon District:

the lands which the Indians who reside at this Post claims and hunts upon extends South to the boarders of Lake Superior, North to Sturgeon Lake, west to Lac de Chiens [Dog Lake, on current maps] and East to Long Lake.¹⁵

Further evidence supports the contention that the Nipigon Ojibwa hunted and trapped north of what would become the Robinson Treaties. Douglas Cameron, a North West Company employee, recorded a number of valuable observations in the winter of 1804–05, when he spent the season with an Ojibwa family. Cameron observed that the people of Lake Nipigon were a combination of Ojibwa from Lake Superior and Cree from Hudson’s Bay who migrated northward and southward respectively into one another’s territories approximately 150 years previously.¹⁶ Inter-marriage led to a mingling of their harvesting territories. He based

this assumption on two pieces of information. First, the language spoken around Lake Nipigon was a combination of both Cree and Ojibwa. Cameron also claimed that he spoke to “every old man” he met, “and from whom I made some enquiries on this subject.” They all reported Cree-Ojibwa intermarriage, and the earlier migration of the two nations.

Cameron also noted that the hunters did not travel great distances in the winter. After travelling to their winter territories, Cameron said families stayed in one area for about five days and then travelled about nine miles and re-established a camp. Such practices would indicate checking trap lines within a defined territory. George Sutherland, an HBC employee, observed the identical practice in the winter of 1777–78. Sutherland passed the winter with a family of six Nipigon Ojibwa to observe their winter hunting practices. Sutherland said the family would travel eight to ten miles at a time. When moving, the men left first, “with their Sleds and Left the women in the tents—and after the men had Traveled about 8 or 10 miles—they Left the Sleds at a proper place for the wemen [*sic*] to pitch the Tent—then the men set off and hunted all Day....”¹⁷

Pic and Michipicoten Posts

Pic and Michipicoten post journals contain numerous references both to hunting north of the height of land and to the existence of hunting territories. The HBC’s Pic Post was located at the mouth of the Pic River on the north shore of Lake Superior. Its trading territory was quite large. In 1828 the manager for the Pic District stated that the northern extent of his area “has never been exactly ascertained....”¹⁸ He estimated the distance extended back 120 miles (192 kilometres) from the shore of Lake Superior. The 1828 Pic report noted the strong relationship between the Ojibwa at Pic and those at Long Lake. Indeed, the post manager wrote that the two groups were so interrelated by marriage that “they look upon each others [*sic*] as kindred and relations; hence when they meet occasionally they are very friendly and sociable.” A number of hunters who frequented Pic Post had hunting grounds around Long Lake. In March 1828, several hunters (Carcajou, Ecrivain, Wiskejauck, and his son) left Pic Post and headed to their camp near Long Lake.¹⁹

Evidence of hunting north of the arctic watershed is clear in the Michipicoten Post records. Families that traded at Michipicoten had

harvesting territories near Dog Lake, Manitowik Lake, and Brunswick Lake. As early as 1800, “four canoes of New Brunswick Indians” traded at the North West Company Post at Michipicoten.²⁰ Both Manitowik and Dog Lake (not the same lake as the one near Fort William) also appear in the post records as areas that the Ojibwa hunted and trapped in.²¹ As with Nipigon House, the language at Michipicoten was a mixture of Cree and Ojibwa. Post manager George Keith noted in his annual district report that “the language spoken in this District is [both] the genuine Ojibwa and a corruption or mixture of the Ojibwa and Swampy Cree Tribe.”²²

Michipicoten hunters possessed strong title to their territories, and they understood the importance of borders and boundaries. Trespass on another hunter’s territory was a serious transgression. In November 1839, after trading a quantity of furs at the post, a hunter complained to the post manager that “an Indian belonging to the Pic Post ... poached upon his hunting grounds and killed some beaver....”²³ An earlier reference in the Michipicoten Post journal notes that families had clear territorial divisions, but that poaching was a common problem:

altho family territorial divisions seem to be long established and cherished they are very prone to poach upon anothers [*sic*] hunting grounds and the Beaver ... often falls prey to such depredation which sometimes occasions dangerous feuds between families.²⁴

Lake Huron

Similar evidence exists regarding familial hunting territories for the Lake Huron Ojibwa bands, although very few pre-1850 post records have survived. Documents from posts located on Lake Nipissing and the French River are scarce. Records for the Company post on Lake Temagami exist, but only for the post-treaty period. Some pre-treaty records are not at all useful for examining Ojibwa hunting territories. The Sault Ste. Marie Post journal, for example, contains no information pertaining to Ojibwa hunting grounds or camp locations. The La Cloche journals contain pertinent information. Luckily, La Cloche was responsible for a number of small posts east of the North Channel (including the Lake Nipissing Post) and contains references to both those areas and the Ojibwa who resided

there.²⁵ While references to hunting north of the height of land are not in the post journals, references to family hunting territories and geographic areas support the argument that family hunting territories were an important facet of Ojibwa harvesting in the region.

One key difference between the Lake Superior and Lake Huron journals is references to communal fishing sites. The La Cloche journals contain more references to fishing compared to those of the Lake Superior Posts. Families regularly occupied the islands in the North Channel, for example, for access to fish.²⁶ There are also several references to families spending time on Cockburn Island to fish, make maple sugar, or engage in farming. The Spanish River also appears in the La Cloche Post records, often in reference to spring/summer harvesting activity. "Frisee and his family with some of the White Fish Lake Indians came from Spanish River" to La Cloche in June 1828.²⁷ One-and-a-half months later, two other hunters visited La Cloche and then returned to the Spanish River.²⁸ In the spring of 1829, two La Cloche servants returned from the Spanish River with furs procured from Natives encamped there.²⁹ Two months later, two hunters came to La Cloche to get fish spears and returned to the mouth of the Spanish River.³⁰

One similarity with the Lake Superior post records is the La Cloche traders' habit of attaching geographic labels to Ojibwa who traded at or arrived at the post, indicating to some extent how families were closely linked to certain areas. Spanish River is noted above. White Fish Lake appears in the journal as both an autumn fishing location³¹ and the winter hunting territory of at least one Ojibwa hunter named Manawash.³² However, White Fish Lake may have lain at the convergence of several territories, as the traders refer to several hunters as "White Fish Lake Indians."³³ Traders attached similar geographic labels to Ojibwa from the French River.³⁴ On 8 June 1828, a large group of Ojibwa from the French River arrived at La Cloche.³⁵ In November 1828, "Old Serpent & [a] little boy made their appearance ... from [the] French River..."³⁶

Family territories related more directly with inland or winter hunting than the communal fishing sites along the coast of the North Channel. An Ojibwa hunter stopped at La Cloche on 9 July 1828, from Drummond Island, on his way inland.³⁷ There are many other references to hunters heading inland, the post manager noting that the Ojibwa intended to

hunt.³⁸ Families that traded around La Cloche were also protective of their hunting grounds. On 14 September 1828, “the Frisees 1st and 3rd sons arrived on there [*sic*] way to there [*sic*] lands.”³⁹ They left the next day with provisions, as they were “going after some Indians from Drummond Island who they suspect mean to hunt on their lands.”⁴⁰

While the evidence is scattered, the HBC records support what Edwards and Bishop argued: family hunting territories existed prior to 1850. They also support the contention that some Ojibwa families (but not all) hunted outside of the northern boundaries of the Robinson Treaties. Familial territories would have been foremost in the minds of those Ojibwa who met with Crown officials in both 1849 and 1850. A continued right to hunt and trap was only as good as the land that supported this practice. Ojibwa understanding of a continued right to hunt and trap would have been predicated on the belief that their traditional practices were protected.

Creating the Robinson Treaties: Ojibwa Territories and the Crown

William Robinson did not walk into a territorial vacuum when he negotiated the Robinson Treaties. The Ojibwa possessed both a well-defined concept of land ownership and a system that reflected this understanding. They also possessed a strong sense of their land rights. They knew treaties had to precede any settlement, mining, or logging. Furthermore, they knew that the Crown had to deal with the land’s rightful owners. Despite this, Crown officials initially chose to ignore the necessity of a treaty for almost a decade before the Robinson Treaties’ creation. Once the treaty process began, however, officials quickly learned that the land along the Upper Lakes was a complicated system of territories, not a simple, amorphous block of land.

In the early 1840s, the government of the Province of Canada began selling mining leases along the North Shore of Lake Huron to private companies even though no treaty existed between the Ojibwa and the Crown. Successive colonial administrations refused to recognize Ojibwa land rights to the region. Government ministers and politicians, such as Denis-Benjamin Papineau, the commissioner of Crown lands, were at the forefront of stalling Ojibwa demands for a treaty.⁴¹ During this period, the

Ojibwa sent petitions to the government and complained to Crown officials in the region. Leading chiefs and headmen, notably Shingwaukonce of Garden River and Nebenaigoching of Batchawana Bay, pressed for a treaty. A careful reading of these documents reveals that these leaders spoke only for the people in their immediate area. Some of them, notably Shingwaukonce, were clearly important people. However, in their petitions, letters, and statements to government officials they never claimed to speak for the entirety of the future treaty area. They only considered themselves representatives of the various families in their region. They did not claim ownership over any land their people did not occupy.

This first became apparent when the Crown sent land surveyor Alexander Vidal to survey mining leases around Sault Ste. Marie. Vidal's efforts several years earlier had resulted in several Ojibwa leaders confronting the surveyor; nothing changed during his second visit. Two chiefs, "Shing-gwâk [Shingwaukonce]" and a young, hereditary chief "Nabwa-qu-ghin" approached Vidal soon after his arrival at the Sault.⁴² Both men were angry over the government's actions, allowing mining and logging without their consent or a treaty. They claimed all the land around the Sault as theirs and their people's. Shingwaukonce went even further by telling Vidal that if he had more men he would drive all the surveyors and mining exploration parties off his people's land.⁴³

Approximately one month later, a group of chiefs sent a petition to the governor general.⁴⁴ These chiefs, like the ones who confronted Vidal at the Sault, were specific about the land their people occupied and the area they claimed to speak for. They stated that they represented the people "residing on the tract of land contained between Mishipocoton River on Lake Superior in the North and Teselon Point Lake Huron." They explained that they settled in the area after the war, at the invitation of the British. Before proceeding to their territorial claims, they spoke about how the arrival of prospectors caused a great deal of difficulty for them:

we seldom saw the face of an English whiteman now one, then another whiteman came stealing along our shores and entering into our wigwams told us in answer to our enquiries that they were come to look for metals which they heard were to be found in our land and asked us to show them the copper, but we refused.

The chiefs said they paid little attention to the prospectors until “several persons say that some of our land had been already sold to those explorers.” Since the Crown had never treated with them for the land, the chiefs expressed shock at this statement. They knew the Crown needed a treaty first, and drew the government’s attention to two earlier treaties:

When your ancestors wanted the Island of Michahlahmackinack [*sic*] to build a strong castle on, they assembled our fathers in council and asked them to let them have it, they did so and a treaty was drawn up on deer skin which you have in your possession still

Again when the English wanted St. Josephs [*sic*] Island they assembled the chiefs of the Indians who then inhabited it and purchased from them the whole of the Island....

The chiefs were also aware of treaties made with the Saugeen Ojibwa, and those at Rama, Rice Lake, and the Credit River. The chiefs requested a council “in the same form and manner as has always been the custom between our nation and the British Government.”

In a generalized sense, this document is important: the Ojibwa knew the Crown had to enter into a treaty to obtain access to Aboriginal land. However, this document is important in another manner: the Ojibwa knew that the Crown could only enter into a treaty with those Ojibwa who resided in a specific area and could rightfully claim it as theirs. The Crown did not sign the St. Joseph’s Island and Michilimackinac treaties with just anyone, but with the chiefs of those Ojibwa who possessed those islands. The treaties at Saugeen, Rama, Rice Lake, and Credit River were with the people who resided there. Treaties were specific, not just in terms of the land covered, but also the people who resided there and who could properly speak for and treat for that land.

Despite these efforts by the Ojibwa, the Crown did nothing to deal with their claims. Government officials, notably Denis-Benjamin Papineau, the commissioner of Crown lands, continued to grant mining and timber leases to private companies without any treaty. It was not until the arrival of Lord Elgin as Canada’s new governor general that they made a serious effort to create a treaty with the northern Ojibwa. Elgin was not happy about the state of affairs when he arrived in Canada. Writing to

the colonial secretary, Elgin expressed disgust with the previous administration. Calling them a “government of Jobbers,” Elgin was angry that he had to deal with the mess caused by the previous administration giving out “licenses to certain mining companies in that quarter [Sault Ste. Marie] without making any arrangements with the Indians.” It was not a simple problem to solve, and Elgin (likely preoccupied with reconciling Reformers and Tories) had already spent “the last two years in getting some compensation for [the Ojibwa].”⁴⁵

Elgin’s problem was determining what compensation was necessary. Crown officials knew a little about the north’s mineral and timber wealth, at least what was located on the shorelines of the Upper Great Lakes, but were ignorant of the people and what lay further inland. Even the Indian Department was ill-informed. The last significant “northern” treaties were the Saugeen Surrender and the Manitoulin Island treaties of 1836. The former had little to do with Sault Ste. Marie, while the latter was concerned primarily with settling bands on Manitoulin for purposes of both protection and acculturation. By the time Elgin arrived in Upper Canada, the Indian Department’s knowledge of the north had declined considerably, as its policies shifted away from cultivating Aboriginal friendship in case of war with the United States and instead toward acculturation and civilization. Accordingly, the Department focused its attention on those First Nations that resided in more settled parts of the colony. Those situated beyond the colony’s northern edge received little attention. Further limiting the Indian Department was a round of budget cuts in the 1830s that substantially reduced its field staff. Indian agents rarely travelled beyond the southern areas of the colony. Perhaps the best evidence of the Indian Department’s lack of information about the northern Ojibwa is located in the *Report on the Affairs of the Indians of Canada* commissioned by Governor General Bagot in 1845. Two paragraphs are devoted to the Ojibwa north of the Upper Lakes. All Indian Affairs “knew” about the Ojibwa was that they were “wandering Indians” and of little consequence.

Lacking intelligence, Elgin sent two men north: Alexander Vidal and Thomas Anderson. Their orders were to visit:

the Indians on the North shores of Lakes Huron and Superior, for the purpose of investigating their claims to territory bordering on those Lakes, and obtaining information relative to their

proposal to surrender their Lands to the Crown with a view to the final action of the Government on the subject.⁴⁶

Part of the information that the commissioners had to gather was the extent of each band's territory. To gather this information, the commissioners adopted a standardized approach to the people they met.⁴⁷ First, they explained the nature of their mission, and then proceeded to ask about each band's territory: its extent and boundaries, its nature (i.e., swampy, types of timber, evidence of mineral deposits), and the chief's expectations regarding compensation should a treaty be offered.⁴⁸

Several observations can be made about the commissioners' report and Ojibwa hunting territories. First, the commissioners had no interest whatsoever in the interior of the region. Both Vidal and Anderson thought any resources of value were along the lakeshore. For this reason, they recommended two possible strategies for the government. First, the government could treat with those bands with mines already operating on their territory and pay them a portion of the mines' annual profits.⁴⁹ This would permit existing mines to operate undisturbed; however, it posed problems if prospectors discovered deposits in other locations. The commissioners therefore favoured the second option: to obtain a cession of the entire territory. The bands, they reported, were generally unwilling to part with only their lake frontages, "as there was a general wish to cede the whole" and have reservations set aside.⁵⁰ By treating for all the land, the commissioners argued that the government would obtain "all that is known to be of value ... on the [lake] front," while the Ojibwa could "retain undisturbed possession of their hunting grounds."⁵¹ Both men concluded the solution benefitted all parties because

whatever may be given to them [the Ojibwa] for the surrender of their rights, they must be gainers, for they relinquished nothing but a mere nominal title, they will continue to enjoy all their present advantages and will not be poorer because the superior intelligence and industry of their white brethren are enabling them to draw wealth from a few limited portions of their territory which never were nor could be of any particular service to themselves.⁵²

This surrender could be only be accomplished, they said, by assembling all the chiefs and representatives of all the bands. Anderson and Vidal recommended “that all the Lake Superior bands and Chiefs should be assembled at Michipicoten River, and those of Lake Huron and the River St. Mary at Manitowanning [*sic*]” for the purposes of signing a treaty.⁵³

Setting aside the obvious condescension expressed by the commissioners, two important observations are necessary. First, the government had no interest in disturbing the Ojibwa system of hunting territories. As the report states, the Ojibwa would retain all of “their present advantages.” While the government did not care about familial territories, it was an issue of vital importance to the Ojibwa. A number of chiefs and headmen said they would sign a treaty provided they did not have to “[leave] their present place of abode [and] their hunting and fishing not interfered with.”⁵⁴ Second, Vidal and Anderson recognized that Ojibwa land was not a simplistic, amorphous section of land, but was broken up into “hunting grounds” (to use their words). They recognized the plurality of hunting territories, and the need to meet with multiple Ojibwa leaders to obtain a treaty.

In order to relay this information, the commissioners created an appendix to their report (see Appendix 1) and created a map (see Figure 1) detailing (albeit rather poorly) the rough boundaries of the various bands. Two of the commissioners’ observations in these documents are important. First, it is clear from both the appendix attached to their report and the map that the various bands they visited had defined territories. Vidal and Anderson expended some effort to determine territorial boundaries. This level of specificity was necessary to ensure that a band would not in the future contest that the Crown had overlooked it (something that nevertheless happened with the Temagami Ojibwa). Territory ascribed to the bands was a collection of the family territories of those men who traded at particular HBC posts. Therefore, the Pic Band’s territory was composed of the family territories of those men who traded at the HBC’s Pic Post. Second, several of the bands had territories that extended back to the height of land: Nipigon, Pic, and Michipicoten. Why Vidal and Anderson did not delve further into the northern territorial limits of these bands may have had more to do with the limits upon their authority than the limits of Ojibwa territory. The Crown could only treat for land

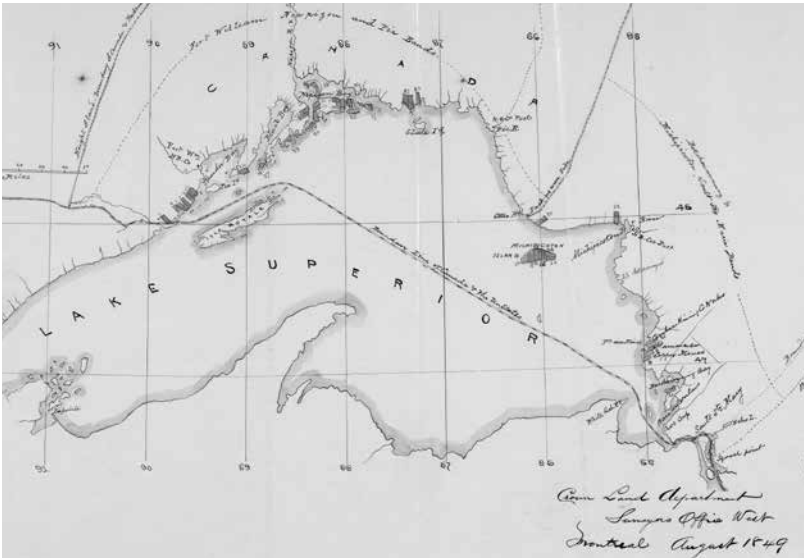


Figure 1: Map of the North Shore of Lake Superior showing locations of boundaries for land claim by Indian Bands, Hudson Bay Company Posts, and mining lands. F 1027, package 3, item 4, F008111, Archive of Ontario.

within the Province of Canada. North of the height of land, the Hudson's Bay Company had legal authority. However, what Vidal and Anderson found fits well with what the fur trade records describe: bands were composed of families that had defined territories, and the Nipigon, Pic, and Michipicoten bands had territory that extended back to the height of land and likely north of it.

When William Robinson arrived in August/September 1850 to begin negotiating with the Ojibwa, the assembled chiefs understood that the Crown would not interfere either with their hunting or their hunting territories. Despite reluctance on the part of Shingwaukonce and Nebenaigoching, Robinson convinced the assembled chiefs and headmen to sign the Robinson Treaties in early September 1850.

Hunting Territories after 1900

Familial hunting territories did not suddenly vanish following the creation of the Robinson Treaties. Evidence of such territories exists into the late nineteenth century and onward into the twentieth. Temagami Post

records contain numerous references to hunters either using lands that belonged to them, or attempting to prevent trespass onto their lands.⁵⁵ In October 1875, for example, the post manager Arthur Ryder noted that two hunters, Wabekegick and Masenekegick, had taken possession of another hunter's lands. Ryder was not happy with this since the other hunter, Sabawois, had passed away but still owed debt to the post. Ryder considered this an act of trespass upon Sabawois' lands and arranged for Windaban, a member of Sabawois' family, to trap on the land for a season to clear the debt off his account ledger. It may well be that Windaban had inherited the land from Sabawois, since Ryder considered Windaban (and another hunter, Cana Chinty) to be the executors of the old hunter's estate.⁵⁶ In this instance, ownership of a hunting territory was as strong as any concept of land ownership in British or Canadian law; when Sabawois passed away, he handed his land down to Windaban and Cana Chinty.

Concerns about hunting territories arose again in October 1877. Referring to it only as the "Chief's land," Ryder complained to the HBC manager at Timiskaming that other hunters might lay claim to it. Ryder was also worried about something similar happening to "McLean's lands," another hunter in the area. He worried that both the chief's and McLean's lands would "go to the dogs, just the same way that Sabawois' lands did."⁵⁷ While Ryder's concerns were purely selfish (he wanted debt paid off), the specificity of his remarks in relation to land ownership shows that the hunting territory system existed in northern Ontario more than twenty years after the creation of the Robinson Treaties.

Frank Speck's observations in the early twentieth century reveal that this division of land continued to persist amongst the Temagami Ojibwa and the other First Nations who resided in northeastern Ontario.⁵⁸ Speck notes that among the Ojibwa of the area, "the main bond of union or interest in these groups is the family hunting territory in which all male members share the right of hunting and fishing."⁵⁹ Speck noted that these territories were inherited paternally, and were "fairly rigid and permanent." Trespass led to punishments levied against the offender: death (occasionally) but more often shamanic conjuring (likely an attempt by the victim to make the offender ill with magic). Speck also observed that hunters shared territories, so long as one had the land owner's permission to trap. Sharing, Speck argues, occurred regularly as an act of courtesy,

but was limited in duration unless the hunter married into the family and acquired access to the territory. Speck relates how the chief of the Matachewan Band, Michael Batiste, allowed Aleck Paul (chief of the Temagami Ojibwa) to hunt on his lands. As Paul related it to Speck, Batiste gave him specific instructions regarding where he could hunt, and how much he could take:

[Batiste] gave me three miles on a river in his hunting territory, and told me I could hunt beaver there. I was allowed to kill any young beaver and one big one, from each colony. He told me not to go far down the river because another man's territory began there. Said he, "Don't go down there to where you see a big tract of cedars." And I did not go there. This grove of cedars was the measure of his boundary. Later he gave me another lake where I could hunt marten. I stayed with this chief several months and he wanted me to stay longer. Then I left and came back to my own country.⁶⁰

Over the course of more than fifteen pages, Speck outlines the hunting territories of the Temagami Ojibwa. Over two pages, by way of a chart, he delineates the territories of more than thirty families in the region.

Family hunting territories directed the nature of arrests following the creation of Ontario's first comprehensive (and enforced) wildlife conservation laws in 1892. Police and enforcement officers consistently arrested Ojibwa close to their reserves because their family territories were in the area. Numerous examples exist of hunters returning from their hunting territories, or from land in close proximity to their reserves, and being arrested for having game in their possession contrary to provincial regulations. Francis Commanda, for example, was arrested in 1910 for having partridge and beaver out of season. The local Indian agent reported that Commanda was "returning from his hunting grounds to his home" on the reserve when arrested.⁶¹

Perhaps one of the best examples is that of the Chapleau Game Preserve.⁶² As noted earlier, some Michipicoten Ojibwa had hunting territories north of the height of land. When the Ontario government created the Chapleau Game Preserve in 1925, the southern reaches of the preserve encompassed some of these territories. Running through

the preserve was the Missanabie River—a travel and fur-trade route for centuries, according to George Prewar, an Anglican missionary in the region.⁶³ For this reason, Prewar argued, some Michipicoten Ojibwa used the land now encompassed by the preserve. It certainly affected several Ojibwa from Michipicoten. Walter Soulier, for example, had a territory that extended into the preserve. Arrested in December 1927 for possessing moose hides, traps, and a gun within the preserve, Soulier wrote to Indian Affairs seeking protection for his treaty hunting rights, even though he was hunting outside the Robinson-Superior Treaty.⁶⁴ Soulier's winter camp was only one hundred feet inside the preserve (his territory likely extended much farther than that), but he refused to relocate. In 1928, game wardens arrested two other hunters for hunting moose: Albert Fletcher, in June 1928, and Thomas Kuskitchee, on 26 December 1928. Fletcher wrote to Indian Affairs and stated that his hunting and trapping grounds lay within the preserve. Now, however, they were off limits to him and his family.⁶⁵

Family territories persisted into the 1930s, but by this point they faced increasing pressure due to Ontario's increasingly strict (and discriminatory) wildlife conservation policies, the spread of logging and mining into northern Ontario, and larger numbers of unemployed (or underemployed) non-Aboriginals resorting to trapping to offset the social and economic impact of the depression. White trappers overran so many Ojibwa trap lines that some hunters abandoned their usual territories. Appearing before a special Game Committee of the Ontario government, Indian Affairs Superintendent General MacInness observed that:

From our experience and from reports of our officers, it is evident that the Indian is losing ground, and is rapidly being ousted by the white trapper ... who [will] use any methods to make money. They are not really trappers, they are fur miners, who go in to trap out an area and then move on.⁶⁶

Michael Christianson, general superintendent of Indian agencies, and Thomas McGookin, district superintendent of the Nipissing Agency, toured three reserves in the Nipissing Indian Agency in January 1937: Nipissing, Temagami, and Matachewan. Christianson noted in his report that trapping/hunting conditions were so bad that many hunters were

travelling away from their family territories. In the past, hunters in the region could rely on trapping as their primary source of income. However, the influx of white trappers resulted in serious game depletion and loss of trapping territory. Some Nipissing hunters, he wrote, were going as far as Chapleau to find game.⁶⁷ Several hunters at the Pic Reserve reported to the Ontario Provincial Police (OPP) that white trappers took animals from their traps and left messages behind on bits of wood stating that the Ojibwa hunters were poaching.⁶⁸

Indian Agents began recommending the creation of Ojibwa-only trapping and hunting territories—setting aside hundreds of square miles and banning all non-Ojibwa from hunting or trapping on that land.⁶⁹ It was an ironic solution, considering an indigenous system existed; both levels of government simply ignored it. Indians Affairs' departmental secretary, T. R. L. MacInnes, went so far as to meet with the deputy minister of the Ontario Department of Game in Toronto.⁷⁰ MacInnes brought Christianson's report with him and presented the evidence to Deputy Minister Taylor as proof that special hunting preserves be created for the Ojibwa. Taylor said his department would create such preserves as long as the Ojibwa understood that they were subject to all closed seasons and other conservation measures enacted by the province while hunting on the preserves. MacInnes raised the issue of the Robinson Treaties, and that the bands could hunt on all unoccupied Crown land. Taylor, however, "questioned the validity of the treaty as against the game laws of the Province, and intimated that his department proposes to prosecute Indians for infractions of the game laws even on unoccupied Crown lands in the Robinson treaty areas." Taylor claimed to be particularly concerned about the Indian slaughter of moose, deer, and other "sport game." MacInnes retorted that Indians killed this game to prevent starvation, but Taylor said that in light of the money made from hunting and tourism it would be cheaper for Indian Affairs to provide more relief to Indians in northern Ontario.

Protecting Ojibwa access to family territories was not at the forefront of the Department of Game's agenda when it implemented its trap line policy in the mid-1930s. Under the proposed system, a trapper would apply for a government-surveyed trap line. Each trap line was approximately the size of one township (thirty-six square miles). Initially the

Department of Indian Affairs favoured this new policy, even though Secretary MacInnes recognized that it would not completely address the issue of treaty harvesting rights. Officials hoped this system would at least allow Ojibwa families to get regular access to the hunting territories. If an Ojibwa family, for instance, could have their family territory recognized as their trap line, they could maintain control over it and the animal resources on it even if limited by provincial game regulations. With this in mind, MacInnes wrote to all the Indian agents within the Robinson Treaties to determine the locations of all Ojibwa trapping territories.⁷¹

Some bands cooperated while others did not. Those that did not were likely sceptical that any good would come from the proposed trap line system, and refused to participate (their scepticism would prove to be well founded). John Daly, Indian agent for the Parry Sound Agency, said he took the matter up with the bands in his agency, but they refused to answer his questions regarding their trapping grounds. Daly could “not understand why they are not interested in this, but the fact is ... when I ask them for an explanation they shut up and wont [*sic*] say anything.”⁷² George Prewar, the head of the Anglican Western Moosonee Mission, provides some insight into why some hunters refused to participate. He noted that some of the Treaty 9 bands believed the trap line system was too restrictive. Hunters did not think they should limit themselves to such a small territory when, prior to signing the treaty, they could hunt over a much larger area.⁷³

Some agents, however, reported and requested that land be set aside. Agent T.J. Godfrey of the Chapleau Agency (which included a number of Robinson-Superior and Robinson-Huron bands) went so far as to divide his agency into five districts, and, with the help of the hunters from each community, indicated where they wanted their trap lines to be located. Some of these territories were quite large: one area for the Michipicoten Ojibwa who resided near Chapleau was 2,450 square miles. An additional 1,500 square miles was requested for the area around Missanabie Lake because some of the Michipicoten Ojibwa hunted north of the height of land inside Treaty 9.⁷⁴ Godfrey considered the implementation of the trapping lines as vital to the interests of the Ojibwa due to the increasing frequency of white trappers poaching on their territories. Thomas McGookin, the inspector of Indian agencies, agreed. He said that the

Ojibwa and Cree in Godfrey's agency were experienced trappers who knew when to rotate their trap lines and how to conserve the fur-bearing animals. He noted that it was whites, drawn to trapping after losing their jobs in the logging camps, who were destroying the wildlife resource in the north.⁷⁵ Some agents did not bother to send in information because resource development had meant the loss of almost all family territories. For example, the Port Arthur agent said private logging interests took up almost all the land in his region and there was no longer any land for the Ojibwa. Parry Sound and Nipissing agents did not send in any information because the Ojibwa in their agencies refused to participate in the proposed scheme.⁷⁶

Problems with the province's trap line system emerged quickly. They arose because the system did not take into account how the Ojibwa trapped and how they managed their land. In 1939, Fort Frances Indian Agent J. P. Lockhart wrote to Indian Affairs that the Ojibwa in his agency were unhappy with the new regulations. Specifically, they were still losing their trapping grounds to whites, only this time it was being done with the sanction of the Ontario government. The problem was that new system did not guarantee trapping territories to specific Ojibwa hunters or families. Despite the effort to locate family territories, provincial officials ignored the information and assigned trap lines as they saw fit. Lockhart referred to one man who had trapped in a certain area for ten years only to have a white trapper receive a permit for the same land.⁷⁷

The Chapeau agent, Godfrey, also reported that very little had changed. In his report for January 1938, he said that he distributed relief to a large number of families because of the scarcity of fur-bearing animals (compounded by the lack of employment available to the Ojibwa).⁷⁸ Furthermore, even though they possessed certain trapping grounds, they still could not hunt beaver for food. Godfrey said that until the spring "rat" (muskrat) hunt started there was nothing for the bands to do.⁷⁹ By March, Godfrey had issued almost two months rations to some families to enable them to go further into the interior to find game and fish. The entire situation was exacerbated, Godfrey explained, because Ontario game wardens prevented hunters from securing enough deer and moose to feed their families.⁸⁰ The following year, Godfrey reported that the Department of Game agreed to open a short beaver season, but did so in such a manner

that the Ojibwa did not benefit. It was announced so suddenly that some Ojibwa were unable to secure licenses, and mid-way during the season the Department changed the trapping regulations, which resulted in several arrests of Ojibwa trappers who did not know what the new regulations were.⁸¹ The problem was that once a family went to its trapping grounds they stayed there for the entire season, while white trappers might travel back to the nearest town several times or more in a season. The other problem was that the Department would not permit wives or grown-up daughters and sons to trap. Only the head of a family was issued a trapping license and a given a trap line. Again, the province's system failed to take into account the manner in which an Ojibwa family used its trapping territory.⁸² The only people who benefitted from the new trapping system, Godfrey stated, were "white trappers who will trap all over the Indians' territory where he has conserved beaver for years."⁸³

Conclusion

In 1850, the Ojibwa believed they had protected not only their right to hunt, trap, and fish, but also the trapping and hunting territories that supported this activity. The promise that they could continue to hunt and trap as they had "heretofore been in the habit of doing" was a much more all-encompassing promise than William Robinson ever imagined or possibly cared about. Disdainful of trapping and hunting, Crown officials took no interest in the promises made regarding traditional harvesting. Their goals were minerals and timber. For the Ojibwa, albeit concerned about mining and logging (and aware of the necessity of a treaty), the harvesting promises were far more important. They did not agree to give up their system of land division when they signed the Robinson treaties, and maintained that system for decades afterward. However, the slow encroachment of non-Native trappers, government regulation, and resource development slowly dispossessed the Ojibwa of their family territories through resource development, provincial wildlife regulation, or as the increasing number of white trappers led to an overall decline in the populations of fur-bearing animals and large game (and poaching on familial territories). The slow dispossession of the Ojibwa after 1850 impinged upon the original intent of the Robinson Treaties: to protect the harvesting rights of the Ojibwa and the land distribution system that supported this activity.

Appendix 1- Chart from Vidal-Anderson Commission, 1849

Designation or Locality of Bands	Chief's Name	Residence
<i>Fort William</i>	<i>Joseph Peau de Chat</i>	<i>Fort William</i>
Lake Nepigon	Mishemusquaw	Lake Nepigon
Pic	Shong Shong Louison (or Mistoche)	The Pic River
Long Lake	Uknown	South side of Height of Land
Michipicoton	Totomoneh Chickenass	Michipicoton River
Bathewawnung	No chief	Batchewawnung Bay
Sault Ste. Marie	Nabanagoghing Shinguakouse	Sault Ste. Marie Garden River
St. Joseph's	Kewokouse	St. Joseph's Island
Mississaga	Pawtossewag	Near the Mississaga River
Inland Indians	(unknown)	About Green Lake
Serpents	Waytauntegowenene Mainwaywaybenaise	Serpent River
La Cloche & Spanish River	Penaiseseh	About La Cloche River
White Fish Lake	Shawwenawyezhik	White Fish Lake
Mebawwenawning	Shawwawnosseway	Manitowaning
French River	Waygenawkaingh Mishshquongay Payneequenaishcum	Beau Soleil Island near Penetanguishene & Isle aux Sable

Source: Archives of Ontario, Irving Papers, MU 1464, 26/31/4,
 "Report of Commissioners Vidal and Anderson," Appendix B

Total No. of Individuals in Band	Boundaries and Remarks
175	<i>From Pigeon River (the boundary between Canada and the United States) along the Lake eastward</i>
357	To Puckuswawsebe in which the Nepigon and Pic Bands are included; the division between the bands no known, and extending Northward & westward to the Height of Land, the Province boundary
165	" "
40	Part of a large band adjoining the Pic band on the North
160	From Puckuswawsebe eastward in common with the Batchewawnung and St. Marie bands, and back to the Height of Land
50	" "
204 [in total]	The east boundary claimed by the Sault Ste. Marie band is Squash Point at the east of Lake George but it interferes with the next
25	From Echo River (Lake George) to Grand Batture, Lake Huron
74	From Grand Batture to Isle aux Rosses
40	Lands South of the Height & in rear of the 2 land and next Bands
35	From Isle aux Rosses to Nid d'aigle (4 miles west of Spanish River) From Nid d'aigle to La cloche R. & back to the Inland Band
250	Between the Lake bands and the height about White Fish Lake
74	[no entry]
50	From La Cloche to Grumbling Point
40 75	From Saugeen Bay to the surveyed lands and back to the sources of the Rivers running into the lake
Total 1918	

Endnotes

- 1 Text of Robinson-Huron Treaty accessed from Department of Indian and Northern Affairs website, <http://www.ainc-inac.gc.ca/al/hts/tgu/pubs/trob/rbt/rbt-eng.asp> (accessed 1 December 2009).
- 2 James Morrison, *The Robinson Treaties: A Case Study*, prepared for the Royal Commission on Aboriginal Peoples (1996), 134.
- 3 An excellent introduction to this debate is Adrian Tanner, "The New Hunting Territory Debate: An Introduction to Some Unresolved Issues," *Anthropologica* 28, no. 1/2 (MONTH/YEAR?): 19–36. Another short introduction can be found in Janet Chute, "Frank G. Speck's Contributions to the Understanding of Mi'kmaq Land Use, Leadership, and Land Management," *Ethnohistory* 46, no. 3 (Summer 1999): 481–540.
- 4 See Frank Speck, *Family Hunting Territories and Social Life of Various Algonkian Bands of the Ottawa Valley*, Memoirs of the Canadian Geological Survey Anthropological Series, no. 8, vol. 70 (Ottawa: Department of Mines, 1915), 1–10. See also Speck, "The Family Hunting Band as the Basis of Algonkian Social Organization," *American Anthropologist* 17 (YEAR?): 289–305. Also, Speck, "Mistassini Hunting Territories in the Labrador Peninsula," *American Anthropologist* 25 (YEAR?): 452–71. John Cooper's best-known contribution is "Is the Algonquian Family Hunting Ground System Pre-Columbian?," *American Anthropologist* 41 (1939): 66–90.
- 5 E. S. Rogers, "The Northern Ojibwa," in *The Handbook of North American Indians*, vol. 6 (Washington: Smithsonian Institution, 1986). Rogers argues that the band system was pre-Contact in its origins. Charles Bishop argues a contrary opinion. Charles Bishop, *The Northern Ojibwa and the Fur Trade* (Toronto: Holt, Rinehart and Winston, 1974). See also Bishop, "Northern Algonkian, 1550–1760," in *Aboriginal Ontario: Historical Perspectives on the First Nations*, eds. Edward S. Rogers and Donald B. Smith (Toronto: Dundurn Press, 1994), 283.
- 6 Bishop, "The Northern Algonkian, 1550–1760," 283.
- 7 Henry R. Schoolcraft, *The Indian in his Wigwam, or Characteristics of the Red Race of America from Original Notes and Manuscripts* (Buffalo: Derby and Hewson Publishers, 1848), 142. See also Janet Chute, *The Legacy of Shingwaukonse: A Century of Native Leadership* (Toronto: University of Toronto Press, 1998), 259.
- 8 Toby Morantz, "The Probability of Family Hunting Territories in Eighteenth Century James Bay: Old Evidence Newly Presented," in *Proceedings of the Ninth Algonquian Conference*, ed. W. Cowan (Ottawa: Carleton University, 1978).
- 9 Tanner argues persuasively that the focus on the aboriginality of the hunting territory system has led scholars to ignore how the system evolved over time as other factors, such as the European fur trade and the state regulatory system, impacted Algonquian peoples. See Tanner, "Algonquian Land Tenure and State Structures in the North," *Canadian Journal of Native Studies*, 2 (1983): 311–20.

- 10 Point Meurion was established by the HBC to oppose Fort William, which , prior to 1821, was a North West Company trading post. It was located three leagues west of Fort William. With the merger of the HBC and the NWC in 1821, the HBC abandoned Point Meurion and assumed control of Fort William.
- 11 Hudson's Bay Company Archives (hereafter cited as HBCA), B.231/a/5, Fort William/Point Meurion Journal, 1 October 1820.
- 12 HBCA, B.231/a/5, Fort William/Point Meurion Journal, 15 July 1827. Also HBCA, B.231/a/7, Fort William/Point Meurion Journal, 27 June 1827.
- 13 HBCA, B.231/a/7, Fort William/Point Meurion Journal, 5 December 1827. Peau de Chat signed the Robinson-Superior Treaty on behalf of the Fort William Ojibwa. See *Canada: Indian Treaties and Surrenders, from 1680–1902. Treaty Numbers 1–138* (Toronto: Coles Publishing Company, 1971): 147–48. Peau de Chat was an Ojibwa chief in the Fort William area. See Archives of Ontario (hereafter cited as AO), MU 1464, Aemilius Irving Papers 26/31/14, Typescript Copy of Report of Commissioners Vidal and Anderson, 1849. See also Lise C. Hansen, "The Anishinabek Land Claim and the Participation of the Indian People Living on the North Shore of Lake Superior in the Robinson Superior Treaty, 1850" (Toronto: Ministry of Natural Resources), 52–53. See also HBCA, B.231/a/7, 26 December 1827 and 3 April 1828, and HBCA, B.231/a/10, 30 December 1830.
- 14 HBCA, B.231/a/8, Fort William Post Journal, 1828–1829, 21 February 1829.
- 15 HBCA, B.149/e/2, Nipigon Report on District, 1828–1829.
- 16 AO, MU 2200, Box 5-5c, D. Cameron, "The Nipigon Country: A Sketch of the Customs, Manners and Way of Living of the Natives of the barren country around Nipigon," 2.
- 17 Cited in Charles Bishop, "Northern Algonquians, 1550–1760," 294.
- 18 HBCA, B.162/e/1, Pic Report on District, 1828.
- 19 HBCA, B.162/a/1, Pic Post Journal, 1827–1828, 17 March 1828
- 20 HBCA, B.129/a/2, Michipicoten Post Journal, 1799–1800, 6 June 1800. More canoes came the following month. See HBCA, B.129/a/2, Michipicoten Post Journal, 1799–1800, 6 July 1800.
- 21 HBCA, B.129/a/15, Michipicoten Post Journal, 1830–1831, 24 December 1830 and 19 October 1831.
- 22 HBCA, B.129/e/9, Michipicoten Report on District (Report of Lake Superior District, Outfit 1833).
- 23 HBCA, B.129/a/20, Michipicoten Post Journal, 1839–1840, 30 November 1839.
- 24 Cited in Hansen, "The Anishinabek Land Claim," 14.
- 25 The La Cloche Post was responsible for Whitefish Lake, Lake Nipissing, French River, Green Lake, and Shawanaga. At the end of the 1832 Outfit, the HBC closed the Lake Nipissing Post and moved it north to Lake Timiskaming, because the trade at Lake Nipissing paled in comparison to that at Lake Timiskaming. See HBCA, B.109/e/5, La Cloche Report on District 1832–1833.

- 26 HBCA, B.109/a/1, La Cloche Post Journal, 24 August 1827.
- 27 HBCA, B.109/a/2, La Cloche Post Journal, 2 June 1828.
- 28 HBCA, B.109/a/2, La Cloche Post Journal, 21 July 1828.
- 29 HBCA, B.109/a/2, La Cloche Post Journal, 22 May 1829.
- 30 HBCA, B.109/a/2, La Cloche Post Journal, 27 July 1829.
- 31 HBCA, B.109/a/1, La Cloche Post Journal, 1 September 1827.
- 32 HBCA, B.109/a/1, La Cloche Post Journal, 18 October 1827.
- 33 HBCA, B.109/a/2, La Cloche Post Journal, 2 June 1828.
- 34 HBCA, B.109/a/1, La Cloche Post Journal, 9 June 1827.
- 35 HBCA, B.109/a/2, La Cloche Post Journal, 8 June 1828.
- 36 HBCA, B.109/a/2, La Cloche Post Journal, 16 November 1828.
- 37 HBCA, B.109/a/2, La Cloche Post Journal, 8 July 1828.
- 38 HBCA, B.109/a/2, La Cloche Post Journal, 24 August 1828, 31 August 1828, 26 and 27 September 1828, 14 April 1829, 8 May 1829, and 10 May 1829.
- 39 HBCA, B.109/a/2, La Cloche Post Journal, 14 September 1828.
- 40 HBCA, B.109/a/2, La Cloche Post Journal, 14 September 1828 and 15 September 1828.
- 41 See David Calverley, "Who Controls the Hunt? Ontario's *Game Act*, the Canadian Government and the Ojibwa, 1800–1940" (PhD diss., University of Ottawa, 1999): 70–74.
- 42 AO, RG 1, Series A-I-6, vol. 25, no. 4, Alexander Vidal to Papineau, 27 April 1846.
- 43 AO, RG 1, Series A-I-6, vol. 25, no. 4, Alexander Vidal to Papineau, 27 April 1846.
- 44 Library and Archives Canada (hereafter cited as LAC), RG 10, vol. 123, Chiefs to Governor General, 5 July 1847.
- 45 Sir Arthur G. Doughty, ed., *The Elgin Grey Papers*, vol. 2 (Ottawa: J.O. Patenaude, I.S.O., Printer to the King, 1937), 549. Lord Elgin to Grey, 21 November 1849.
- 46 AO, MU 1464, Irving Papers, 26/13/4, Typescript copy of Report of Commissioners Vidal and Anderson, 1849 (hereafter cited as the "Vidal-Anderson Report"). The diaries of both men still exist. See University of Western Ontario, Regional Collection, Alexander Vidal Papers, "Journal of Proceedings on my mission to the Indians of Lakes Superior and Huron, 1849," 10 September 1849 (hereafter cited as the "Vidal Diary"). Anderson recorded a similar observation. See Metropolitan Toronto Library, Baldwin Room, T. G. Anderson Papers, "Diary of Thomas Gummersall Anderson, a visiting Superintendent of Indian Affairs at this time 1849 at Coburg," 14 September 1849 (hereafter cited as the "Anderson Diary"). Vidal, as noted earlier was a government surveyor with experience in the northern portions of the colony. Thomas Anderson was a former Indian agent with experience on Manitoulin Island. See T. R. Millman, "ANDERSON, THOMAS

- GUMMERSALL," in *Dictionary of Canadian Biography*, vol. 10 (University of Toronto/Université Laval, 2003), http://www.biographi.ca/en/bio/anderson_thomas_gummersall_10E.html (accessed 10 November 2014).
- 47 Janet Chute provides an excellent overview of Vidal and Anderson's negotiations. See Chute, *The Legacy of Shingwaukose*, 124–30.
 - 48 Vidal-Anderson Report, 2.
 - 49 Vidal-Anderson Report, 11. One wonders what precedent this approach might have established for future treaties and contemporary issues surrounding resource sharing.
 - 50 Vidal-Anderson Report, 11.
 - 51 Vidal-Anderson Report, 12.
 - 52 Vidal-Anderson Report, 12.
 - 53 Vidal-Anderson Report, 13.
 - 54 Vidal-Anderson Report, 7.
 - 55 The author realizes that there is considerable controversy regarding the Temagami Ojibwa and the Robinson Treaties. This evidence is being presented solely within the context of family hunting territories continuing to exist during this period.
 - 56 AO, MY 1392, F431, Fur Trade Records C-1-3, Hudson's Bay Company Records, Envelope 3, Arthur Ryder to Colin Rankin, 25 October 1875.
 - 57 AO, MY 1392, F431, Fur Trade Records C-1-3, Hudson's Bay Company Records, Envelope 3, Arthur Ryder to Colin Rankin, 15 October 1877.
 - 58 Other scholars note that Speck's observations were coloured by his desire to protect Algonquian hunting and trapping from Ontario's increasingly strict and oppressive wildlife regulatory system. That may well be true; however, it does not detract from Speck's observations that the Ojibwa in this particular area had a system of land regulation and ownership at this time. As noted earlier, the aboriginality of the family hunting territory is not at issue in this paper. Instead, it is concerned with the system that existed just prior to the creation of the treaties and how it continued to influence Ojibwa understanding of the treaties after 1850.
 - 59 Speck, *Family Hunting Territories*, 4
 - 60 Speck, *Family Hunting Territories*, 17.
 - 61 LAC, RG 10, Vol. 6743, file 420-8, McLean to K. Tinsley, 2 December 1910.
 - 62 A more detailed study of the Chapleau Game Preserve and its impact on both the Michipicoten Ojibwa and the New Brunswick House people can be found in David Calverley, "The Dispossession of the Northern Ojibwa and Cree: The Case of the Chapleau Game Preserve," *Ontario History* 101, no. 1 (2009): 83–103.
 - 63 LAC, RG 10, Vol. 6745, file 420-8a, George Prewar to D. C. Scott, 21 September 1925.
 - 64 LAC, RG 10, Vol. 6745, file 420-8a, Walter Soulier to Indian Affairs, 21 February 1928.

- 65 LAC, RG 10, Vol. 6745, file 420-8x part 1, Albert Fletcher to Indian Affairs, 23 July 1928.
- 66 LAC, RG 10, Vol. 6746, file 420-8C, Minutes of a Conference held in Port Arthur, 3 September 1931.
- 67 LAC, RG 10, Vol. 6746, file, 420-8 part 8, Michael Christianson to Dr. McGill, 2 February 1937.
- 68 LAC, RG 10, Vol. 6746, file 420-8C, Memorandum Re. Game Conservation, 2 September 1931.
- 69 LAC, RG 10, Vol. 6746, file, 420-8 part 8, Michael Christianson to Dr. McGill, 2 February 1937.
- 70 LAC, RG 10, Vol. 6746, file, 420-8 part 8, MacInnes to McGill, 26 April 1937.
- 71 The agents were told to consider existing logging operations, as these constituted occupied lands and the Ojibwa had no treaty rights on such land. LAC, RG 10, Vol. 6748, file 420-8-2, part 1, MacInnes to Agent Godfrey et al., 15 March 1937. Indian Agents created maps, which are located on the relevant RG 10 microfilm reels. They are so faded, however, that it is impossible to be accurate as regards the locations of trap lines. They do indicate that specific hunters considered specific areas of land theirs for hunting and trapping.
- 72 LAC, RG 10, Vol. 6748, file 420-8-2, part 1, John Daly to MacInnes, 2 September 1937.
- 73 LAC, RG 10, Vol. 6748, file 420-8-2, part 1, George Prewar to MacInnes, 12 November 1937.
- 74 LAC, RG 10, Vol. 6748, file 420-8-2, part 1, Godfrey to MacInnes, 12 June 1937.
- 75 LAC, RG 10, Vol. 6748, file 420-8-2, part 1, Thomas McGookin to MacInnes, 16 June 1937.
- 76 LAC, RG 10, Vol. 6748, file 420-8-2, part 1, Memorandum, 27 September 1937.
- 77 National Archives of Canada (hereafter cited as NAC), RG 10, Vol. 6747, file 420-8x-3, Fort Frances Agency Report, November 1939.
- 78 NAC, RG 10, Vol. 10751, Series C-V-2, File 484/42-2, Chapleau Agency Report, January 1938.
- 79 NAC, RG 10, Vol. 10751, Series C-V-2, File 484/42-2, Chapleau Agency Report, February 1938.
- 80 NAC, RG 10, Vol. 10751, Series C-V-2, File 484/42-2, Chapleau Agency Report, March 1938, and April 1938.
- 81 NAC, RG 10, Vol. 10751, Series C-V-2, File 484/42-2, Chapleau Agency Report, March 1939. Only two days' notice was given.
- 82 NAC, RG 10, Vol. 10751, Series C-V-2, File 484/42-2, Chapleau Agency Report, June 1939.
- 83 NAC, RG 10, Vol. 10751, Series C-V-2, File 484/42-2, Chapleau Agency Report, March 1939.

CHAPTER 3

“We hardly have any idea of such bargains”:

Teme-Augama Anishnabai Land Rights and the Robinson-Huron Treaty of 1850

David T. McNab

Although the legalities of the Bear Island case were seemingly concluded in 1991, the title and land rights of the Teme-Augama Anishnabai (TAA) to the four thousand square miles of N’Daki Menan have never been resolved. Settlement negotiations on these questions are still in progress, with a possibility of a final agreement ratified in 2010. Although these rights are still under negotiation and debate, the historical facts are clear and are tied to the Robinson-Huron Treaty. The reserves noted in the “Schedule of Reservations” in the Robinson-Huron Treaty document were already-existing reserves from the area covered by the treaty rather than created by the treaty, and thus are unceded Aboriginal title lands. The TAA territory was not on this “Schedule” and the TAA were not covered by the treaty. They are part of the “Indian Territory”; therefore, their lands continue to be unceded lands and should be recognized as such. The TAA were not represented at the Robinson-Huron Treaty negotiations, which has always been consistent with the TAA oral traditions, nor can it be established that they were even present at the signing of the treaty or when payments were first made. Lastly, they were not represented at the treaty negotiations of 1850, nor in the events that followed at Manitowaning on Manitoulin Island.¹

By the late 1840s, the TAA as a community was known to George Ironside Jr., the superintendent of Indian Affairs at Manitowaning.²

Unbeknownst to the TAA, they had come to be known as the Temagami Band. By organizing them into “bands,” officials gave First Nations a “white” identity and category. The word has its meaning and derivation from those Aboriginal families who had been involved in the fur trade and who came to trade at the Hudson Bay Company’s posts. The imperial and provincial governments came to know these families as “trading post bands” and identified them according to the name of the post. The TAA were called the “Temagami Band” after the name of the Hudson Bay Company’s post of that name on Bear Island.³

The local government officials, Thomas Gummersal Anderson and then Ironside, recognized that the TAA were an organized and a separate group of families by the time of the Robinson-Huron Treaty.⁴ Members of the TAA would travel from their homeland to Manitoulin Island in late summer to pick up their presents, ammunition, and provisions, as well as to trade. After the presents were distributed, official government lists were prepared that named the “Indians” who had been given presents. The TAA were not on the present list for 1846, but they did come in August 1850, before the treaty negotiations. After the British imperial crown entered into the treaty at Sault Ste Marie, the TAA stopped coming to Manitoulin Island to receive their presents.⁵ It appears that it was not worthwhile for them to come because they were away hunting.

With the exception of Ironside and Anderson, government officials really did not know much about the Teme-Augama Anishnabai, much less their history and their oral traditions. The Vidal-Anderson Report of 1849 noted the presence of Lake Temagami in the interior, but did not mention the TAA. The Indian Department officials did not venture into the interior north of the Great Lakes. The people of Long Lake boycotted the Robinson-Superior Treaty for fear of prosecution. Instead, the Indian Department relied on the knowledge of the peoples along the shores of Lakes Huron and Superior about those living inland. As a result, the TAA had few dealings with the British imperial or local colonial governments until the early 1880s.⁶

Temagami came to the attention of the government when the colony of Upper Canada wished to acquire Aboriginal lands as cheaply as possible. This became local government policy by 1798.⁷ It established a double standard for the payment of Aboriginal lands—one price at less-than-fair

value for Aboriginal people and another at fair market value for non-Aboriginal people. By the 1840s, the local government's self-interest was focused on the high mineral potential of the area (much further south near Sault Ste. Marie and environs), especially the large copper deposits that had been discovered there.⁸ There were only five or six families living in the TAA community at this time. In spite of being recognized as a separate group, officials considered them to be inland "stragglers" and of no importance. The government would continue to treat them in the same fashion for the next hundred years.⁹

Robinson-Huron Treaty of 1850

In 1850 there was no evidence to suggest that the TAA were aware that a treaty was to be negotiated at Garden River, near Sault Ste. Marie. They were neither invited to attend nor even informed about the treaty negotiations, although others were given such notice. James Morrison, a historian and an expert witness in the Temagami court case, has observed in his study of the Robinson-Huron Treaty (written for the Royal Commission on Aboriginal Peoples in 1996) that absentees had been noted.

Absentees. With respect to the bands on Lake Huron, Messrs Vidal and Anderson had reported the existence in 1849 of an inland group "about Green Lake" [not the TAA]. Like the Long Lake band north of Lake Superior, their territories appear to have straddled the height of land.¹⁰ Representatives of this band, however, did not participate in the treaty—nor is there evidence that they were invited. The absentees also included the Teme-Augama Anishnabai, or Temagami band, from north of Lake Nipissing. Almost fifty years later, Chief Dokis—one of the treaty signatories—explained to Ontario government representatives that Temagami chief Nebenegwune did not go to Sault Ste Marie because he hadn't been invited.¹¹ This would be consistent with a late decision by Dokis and other French River and Lake Nipissing chiefs to attend the treaty themselves.¹²

This interpretation of the evidence is also consistent with the TAA oral tradition that they did not attend the negotiations, sign, or otherwise participate in the making of the Robinson-Huron Treaty.

In either scenario, it is clear that the TAA were not at either the treaty negotiations or its signing at Garden River, nor were they at Manitowaning to receive their payments. Perhaps, even if they did know about the treaty, like the Pic River First Nation in the Robinson-Superior Treaty area, the TAA feared a trap and refused to attend, thereby deliberately choosing not to be a party to it.¹³ Such fears were not imaginary. Just a year earlier, in December 1849, the imperial government had sent the Royal Canadian Rifles from Toronto to Sault Ste. Marie to quell the Mica Bay resistance organized to stop mining companies from moving onto unceded Aboriginal lands. The government blamed the resistance on the “rascally whites,” who were led by the Métis Allan Macdonell,¹⁴ a former law partner of Sir Allan Napier MacNab¹⁵ and a mining entrepreneur who was assisting the Ojibwa and Métis in getting their land back. Chiefs Nebenagoching and Shinguacouse were later arrested and taken to Montreal, where they were put into jail to await trial.¹⁶ They were released early in 1850 after the imperial government decided to appoint William Benjamin Robinson as its treaty negotiator.¹⁷

The provincial government’s intention was to get a “surrender” of all the valuable mining areas on the north shores of Lakes Huron and Superior from the First Nations. On 11 January 1850, Superintendent General of Indian Affairs Robert Bruce instructed William Benjamin Robinson that the government “will speedily take measures to adjust the claims of the Indians for compensation on their renouncing all claims to the occupation of all lands in the vicinity of Lakes Huron and Superior,” part of which lands “have been occupied for mining purposes.” Subsequently, the governor general of the Canadas, Lord Elgin, authorized Robinson “on the part of the Government to nego[t]iate with the several Tribes for the adjustment of their claims to the lands in the vicinity of Lakes Superior and Huron or of such portions of them as may be required for mining purposes.”¹⁸

Robinson made two trips to accomplish his instructions. The first was to Garden River in the spring of 1850. But he failed to meet with all of the chiefs or headmen who were away at that time on their seasonal rounds; at that time of the year, they were hunting. He certainly did not meet with Peter Nabonaigonai, then the headman of the TAA. Six of the chiefs Robinson met signed an agreement to meet again with him

in August–September of that year, but the TAA did not sign this agreement.¹⁹

As planned, Robinson and other prominent representatives of the Crown met with the chiefs of Lakes Huron and Superior at a Council Fire at Garden River in late August–early September. Providing a commanding British imperial presence, Elgin and Bruce were also present at the beginning of the treaty negotiations. Before the negotiations began, Robinson had told Lord Elgin of his "intentions as to the Treaty, which he [Lord Elgin] approved of." In addition, on 1 September Elgin told Chief Peau de Chat of Fort William that he had "left full power" of the British imperial Crown with Robinson to negotiate a treaty (note: "a" treaty, meaning one treaty, not two) in order "to settle this matter & he & the other chiefs were satisfied." On 3 September, Elgin again met with the First Nations at Garden River, and Robinson recorded in his diary that "they had all perfect confidence in 'Mr. Robinson' and would settle their difference with him." Lord Elgin departed and left Robinson to negotiate the treaties, conveying his full authority to Robinson to enter negotiations and sign the treaties on behalf of Queen Victoria.²⁰ It should be noted that it was the government's initial intention to negotiate only one treaty for the Lakes Huron and Superior bands, but the resistance of the First Nations led to two treaties, namely the Robinson-Superior Treaty and the Robinson-Huron Treaty.

Thus it was that Robinson entered negotiations for the Robinson-Superior Treaty, signed on 7 September, and the Robinson-Huron Treaty, signed two days later on 9 September. On the 7th, Robinson told Chief Shinguacouse, one of the Lake Huron chiefs from Garden River, that "the majority of the Chiefs were in favour of my proposition ... that those who choosed [*sic*] might sign it. I wd [would] not press anyone to sign. Those who signed wd get the money for their tribes & those who did not sign wd get none." Since the TAA were not present, they could not have signed the Robinson-Huron Treaty—nor did anyone sign on their behalf. Neither did they receive the cash payments given out by Robinson at Garden River. The treaties were "ratified and confirmed" by an Order in Council of 29 November 1850. Since these treaties were controversial, especially after the Mica Bay resistance and the imprisonment of two prominent Aboriginal leaders by the imperial government, the latter was under close

scrutiny for how it treated “Indians” and had to take great care with the treaties. The signing was a media event. Journalists from as far away as New York came to the Sault and Garden River to witness the proceedings, publishing their accounts in the major North American newspapers.²¹

The Robinson-Huron Treaty was written in Victorian English legalese. Its contents were contrary to what the First Nations understood they were signing, which was a treaty of coexistence flowing from the Covenant Chain and the Treaty of Niagara. Instead, the Robinson-Huron Treaty stated:

That for, and in consideration of the sum of two thousand pounds of good and lawful money of Upper Canada, to them in hand paid ... the said Chiefs and principal men, on behalf of their respective Tribes or Bands, do hereby fully, freely, and voluntarily surrender, cede, grant and convey unto Her Majesty, her heirs and successors for ever, all their right, title, and interest to, and in the whole of, the territory above described....

The last paragraph of the Treaty stated that, “in consequence of the Indians inhabiting French River and Lake Nipissing having become parties to this treaty, the further sum of one hundred and sixty pounds Provincial Currency shall be paid in addition to the two thousand pounds above mentioned.”²²

The “Bands” inhabiting the French River and Lake Nipissing meant those representing the Tagawenini, Maisquozo, Dokis, and Shaboishick. The TAA were not identified as being represented by one or more of these “Bands.”²³ Yet, in the vouchers distributed to the “Bands” for their land, government officials identified the TAA in voucher number 11, which contained the name “Nebinagonai,” and which showed that they had received an initial cash payment of \$25. This amount was identical to the amount given to the other chiefs who signed the treaty. Apparently, it was paid at Manitowaning on Manitoulin Island, four days after the treaty was signed. But in actuality the monies were not paid. This paper, stating that monies were paid, was a forgery. Seven years after the treaty was entered into, Ironside, who had been responsible for the payments and was still the Indian superintendent at Manitowaning, admitted that the TAA had not been paid.²⁴ In fact, in September 1850, the TAA had neither come to

receive their presents nor to trade. At the same time, it is also clear that no TAA reserve was listed on the "Schedule of Reservations," being excepted from the area covered by the treaty. The next five years of documentation show no evidence specifically linking the TAA to the reserves at Lake Nipissing or Wanapitei (which are reserves 10 and 11, respectively, in that schedule). Once a party to the treaty, the signatories were to have been given an initial cash payment followed by a specified annuity payment. They would retain their unceded Aboriginal title and land rights, their reserves, and their hunting (and, by implication, the commercial activities of trapping and trading) and fishing rights within the area covered by the Treaty. The TAA received none of these rights. With a few exceptions noted above, these rights are still outstanding to this day.²⁵

After the treaty was signed, Ironside was instructed by Robinson to prepare a census and complete the government records of who was entitled to share in the Treaty, as well as to prepare a complete census of all those Aboriginal peoples who had participated. Robinson refers to this fact in his official report to government dated 24 September 1850, stating that he took a "census of the Lake Huron Indians at the time they were receiving their presents at Manitoulin."²⁶ But by his own admission, in 1857, Ironside's census was incomplete. The TAA were not on it, since they had not been at the treaty negotiations, nor did they receive the first payments under it. This incompleteness is likely the reason why the census was not attached to Robinson's 1850 report. Furthermore, the census was never completed, either by Ironside prior to his death in 1863, or by anyone else in the years that followed. By the early 1870s, it was clear that no complete government census had ever existed for the Aboriginal peoples living on the north shore of Lakes Huron and Superior.²⁷ Although there is an explanation why the TAA never came to Manitowaning, their names subsequently appeared on the lists and vouchers prepared by Ironside and showed that the TAA had been paid by him.²⁸

Seven years after the treaty was signed, Ironside was still the Indian superintendent at Manitowaning and was responsible for the annual payments. In a letter dated 2 February 1857 to his superior, Richard T. Pennefather, the superintendent of Indian Affairs in Toronto, he explains what had happened at Manitowaning in September 1850:

I would beg leave to state to you that having been informed by the Chief that many of the people justly entitled to share in the annuities arising from the sale of their Lands were not included in the List taken of the Indians at the time of the [Robinson-Huron] Treaty in 1850 and that great complaints were being made by the parties so left out. I in consequence, communicated the circumstances to Colonel Bruce and his reply was that the List could not then, be altered but that after the fourth years' payment a new one might be made out when the matter complained of could be remedied. This recommendation should have been carried into effect in 1856, but notwithstanding ample notice of it had been given to the Indians (for I had spoken to them frequently on this subject) we failed in completing this census, only however, in so far as two of the Bands [the TAA being one; the Green Lake being the other] are concerned the Chiefs of which not having attended with the rest to give in the names of those of their respective Bands to be added to the new List.

It was in order to guard against anything like fraud on the part of the representatives of the different bands in giving in the names, that I deemed it advisable for all the Chiefs interested in the Annuity to be present as checks on each other on the renewal of the List.

The meeting of the Chiefs took place at Manitowaning shortly after the issuing of Presents [likely in September 1850],²⁹ and it was then agreed upon that a reasonable time should be allowed for the absent parties [the TAA and the "Green Lake Indians"] who reside about and beyond Lake Nipissing to come and supply the information required of them with a view to the completing of the List.

And having therefore sent to the two Chiefs before mentioned [not identified in the original document, e.g., TAA and Green Lake] to repair to Manitowaning as soon as possible, I waited for them until the actual time for parties from that part of the Country coming in for the purposes of Trade. As, however, they

did not make their appearance at the time expected it was considered advisable to wait no longer for them and I then proceeded at once, to make up the List preparatory to giving out the money. Entering the two unrepresented Bands [as identified] above without adding to their numbers.

I should mention here that the Chiefs of the Sault & Garden River Indians did not attend the meeting,³⁰ as, in the month of June last [1856], I took their numbers, having come up there for that express purpose.

I thought it right to make the foregoing Statement that you may know the principal cause of the delay in reference to the payments to the Indians of the money brought up by Mr. Turner.

Six Bands of the Lake Huron Indians have recd [received] their money and I am now paying [annuities to] the Indians in this quarter.³¹

The letter concerns two events. The first is the Robinson-Huron Treaty, taken at Sault Ste. Marie, and the events immediately thereafter at Manitowaning. The second is the difficulties and the grievances of the First Nations in the mid-1850s over the payment of their annuities since the signing of the Treaty. The Robinson-Huron Treaty links the two events. But, perhaps to salve his guilty conscience or perhaps because his past was catching up to him,³² Ironside had to tell the story about what had happened.

Ironside was trying to address the issues for which he had been partly responsible seven years previously.³³ He had written the TAA name "Nebenagonai," followed by "(Head man)," on the 1850 pay list of "Chief Tahgaiwenene, Dokis and Nebenaigonai's Band as given at the Treaty in 1850." This list included the names of twenty-four individuals. This was done in the expectation, so he later stated, that the TAA would come to trade at Manitowaning. But the TAA did not come; they were away hunting early in the fall, and Ironside did not change the written record. He left their names on the government documents as if they had come to trade and had received their annuity payments, and he pocketed the proceeds. In debt as a result of his unwise speculation on the Detroit Stock

Exchange in the copper boom of the late 1840s, Ironside used the money to pay off some of his debts (he also sold off some of his properties). He fabricated the TAA's participation in the treaty, betraying them, which led directly, based on this falsehood, to the government's official history of the treaty.³⁴

Subsequently, Ironside's writings on the treaty payments became government propaganda that contradicted and then overwhelmed the TAA's oral tradition about the Treaty, leading directly to their defeat in court, when the Supreme Court of Canada accepted this fabrication as historical fact in its 1991 judgement. Ironside and Robinson were clearly papering over and tidying up after the Treaty was made, even though the TAA had not been present at the time.³⁵ My interpretation of the written record is entirely consistent with and also complementary to the TAA oral tradition of the Robinson-Huron Treaty.³⁶ In 1859, Pennefather also discovered that Ironside had not submitted the proper vouchers for the annuity payments for 1858 and 1859, and had not accounted for large payments made in cash to the First Nations on Lake Huron.³⁷ But nothing was done at that time—or later, in 1996, when the Temagami hired me as a historical consultant to conduct the research that led to the discovery of these written records in Ironside's papers in the Detroit Public Library, five years after the litigation had ended in the Supreme Court of Canada.

In 1862, Ironside came under fire for his role in the negotiation, with William McDougall and William Spragge, of the Manitoulin Island Treaty of 1862. By the early 1860s, Ironside had fallen out of favour with the First Nations on the north shore of Georgian Bay.³⁸ Thereafter, he became a focal point, among others, for increased Aboriginal resistance on Manitoulin Island over annuities and land and fisheries issues. Douglas Leighton, a historian of the Indian Department, has observed that these incidents affected Ironside's health and that "he died suddenly on 14 July 1863, probably of a heart attack."³⁹ They seem to have known what he was doing.⁴⁰ But, like his father before him, Ironside Jr. controlled the written treaty history of the TAA through his pen, his status as a Métis, and his power as a government official.

Thus, Ironside was at least partly responsible for more than 159 years of racism and persecution of the TAA by government officials and the Canadian justice system. His objective was the same as British imperial

and later Canadian Indigenous policy: to explain away and then systematically eliminate what one could not or did not wish to understand. The result was to make invisible what one did not want to see—to render invisible what, in the end, was starkly visible.

From the mid-1850s to the late 1870s, there is a lacuna of written documentation in Indian Affairs records on the relations between the Crown and the TAA. In the late nineteenth century, some Aboriginal people may have come to Manitowaning and collected monies from government officials. However, the TAA, according to their oral traditions, did not receive any money from Ironside.⁴¹ By the late 1800s, the federal Department of Indian Affairs did not know whether the TAA had participated in the treaty or not. The Teme-Augama Anishnabai had not been given a reserve, and it appeared as though they had been forgotten. Any other information the government may have had about the TAA or their territory prior to the 1880s was destroyed when the Indian agent's house and all of the local records in it burned to the ground. (It was the TAA oral tradition, however, that did not die and that continued to bear witness to these historical events.)⁴²

In 1877, the TAA took the initiative to rectify these errors. Their spokesman discussed the matter of their title to their lands with local Indian Agent Charles Skene.⁴³ He asked why the TAA, unlike their neighbours, had no treaty and no reserve under the Robinson-Huron Treaty of 1850. The spokesman informed Skene that the TAA had never signed a treaty and had never received any treaty benefits, including the reaffirmation of their hunting, fishing, and trapping rights, annuity payments, or a reserve. After determining the truth of these statements, Skene wrote to the Department of Indian Affairs in Ottawa. Sometime later he was instructed to discuss the possibility of a treaty with the TAA and to prepare a map showing the extent of their lands. In a subsequent letter to Ottawa, Skene wrote and asked

that some party be sent to meet the Band in Council at lake Temogaming, where the Band is located. That the said party be empowered to come to terms with the Band to offer a certain sum down (say \$15000 or \$20000). Part of this, say one third, to be paid at once to the Band. The other part, two thirds, to be

placed at interest for them.... [I]n addition ... the Band [is] to be paid an Annuity on the same Amount as the Bands named in the Robinson Huron Treaty, also that a Reserve of _____ acres be marked out for the Band, and the Band [is] to have the privilege of selecting the site of the Reserve.

However, the federal Department of Indian Affairs did not respond to Skene's suggestion. At the time, the superintendent general of Indian Affairs, Sir John A. Macdonald, was also the prime minister of Canada.⁴⁴ Macdonald told Skene to let the matter "rest" with him (apparently until Macdonald returned from Europe and recuperated from one of his celebrated drinking bouts). In the interim, Skene asked Chief Tonene what his "conditions" would be for the prospective treaty. Based on their oral tradition, Chief Tonene wrote to Skene:

We hardly have any idea of such bargains, but what I would say is this. Would [you] be so kind as to let us have some money, for instance Four dollars per head of living Souls for our hunting Grounds—maybe we might surrender it—of course, not to receive that money only one year but every year as long as you dispose of our Hunting Grounds. We would like to receive that same Amount every year for the Surrender of our Land. But still besides we would like to have a Reserve for ourselves.⁴⁵

Skene recommended to Ottawa that the TAA be enrolled in the Robinson-Huron Treaty.

This process was unilateral and completed without any consultation with the TAA. In anticipation of their entering into a treaty and receiving all its benefits, they began to receive annuities in 1883. (It is important to note that back payments for lost annuities were never paid for the period from 1850 to 1883. Today, an estimate of the value of these payments, with compound interest, would amount to well over \$25 million.)⁴⁶

In the meantime, Lawrence Vankoughnet, the penny-pinching deputy superintendent general of Indian Affairs, advised Macdonald that the TAA already resided "within the limits of the Robinson Treaty; and inasmuch as they have declared their willingness to come into the Treaty on being included in the annuity paylists this would appear to be the easiest way of settling the matter." The department, as always, took the "easiest

way" out. It reasoned that since the TAA resided within the area covered by the treaty, no treaty was required to be entered with them.⁴⁷ This was a circular argument flawed by disinformation, specious reasoning, and fabricated written evidence. Once again, the TAA lost control of their land rights.

It was not until 1885 that the federal government sent a survey party to the Temagami area. The TAA selected the land and waters at the south end of Lake Temagami, reputed to be about one hundred square miles. But the reserve was never surveyed and a survey plan never prepared, although the surveyors did sketch the area and sent this information to Ottawa. After promising a reserve to the TAA, Ottawa contacted the provincial government on the assumption that the Province held these lands, subject to outstanding Aboriginal title and rights, under section 109 of the British North America Act. Ontario would have to consent to the request to set aside one hundred square miles for a reserve—an area containing large stands of ancient red and white pine, as well as significant mineral deposits. Ottawa had not consulted with provincial officials to determine whether the lands were available to become reserve lands before sending the federal survey party to locate lands for the TAA reserve.⁴⁸ Steadfastly and intractably, the provincial government refused to give over the rights to the land. Queen's Park anticipated receiving royalties from logging companies for harvesting the valuable red and white pine.

It was in the 1880s that the TAA began to be driven off their ancestral lands, both by governments and by commercial interests. First came the timber industry, which, through its powerful lobbying of the Province, led to the denial of the proposed reserve. By the early twentieth century, the one hundred square miles of richness and bounty representing most of the TAA homeland had been virtually logged into a wasteland.⁴⁹ With the onset of tourism in the early twentieth century, the TAA felt its effects, primarily those of the infrastructure that came with it, especially the railway and the roads.

On 9 December 1913, two deputy ministers of the Tory federal and provincial governments met in Ottawa. Their intention was to "resolve all outstanding matters" on Aboriginal issues between the two governments. Temagami, as always, was on their list. Ontario Deputy Minister of Lands, Forests and Mines Aubrey White was an Irish immigrant who

subsequently became the commissioner of Crown Lands (the deputy minister of Crown Lands, in the late nineteenth and early twentieth centuries), the very person who had refused to grant the TAA a reserve more than twenty-five years before in the 1880s and 1890s.⁵⁰ For the federal government, the representative was Deputy Superintendent General of Indian Affairs Duncan Campbell Scott, just promoted earlier that year by the new Tory Government in Ottawa. A well-known Canadian poet and writer, as well as a Métis person himself,⁵¹ Scott had become a career bureaucrat, and by 1913 had been in the government for thirty-five years. To say the very least, he had a chequered history on Aboriginal issues.⁵² At the meeting, Scott acceded to White's initiative to let "Temagami ... stand as it is."⁵³ In spite of the meeting's purpose and despite the actions taken on the other issues, nothing was done to resolve the Temagami issue. These matters have remained to this day.

In the meantime, the TAA waterways—Lake Temagami and inter-connecting rivers and lakes—were being taken over by non-Aboriginal tourists and entrepreneurs, especially after the First World War. By then, wealthy Americans and southern Ontarians had bought cottages and taken up the related activities of hunting and fishing. As the "Deep Water Peoples'" lands were despoiled and sold off, they were herded and pushed back onto part of Bear Island.⁵⁴ In the 1920s, the province began charging the TAA community rent for living on their own land. During the Great Depression of the 1930s, Ontario forced them either to buy their own land on Bear Island or face eviction for "squatting" on "Crown" lands. This persecution continued even after Bear Island became federal government land in 1943.⁵⁵

Negotiations began in the 1930s, and, more than a decade later in the 1940s, an agreement was reached whereby Bear Island would become the TAA reserve. To make this happen, the federal government, using Aboriginal monies from the general budget (rather than the TAA's trust fund monies) of the Indian Affairs Branch of the Department of Mines and Resources, was forced to buy most of Bear Island from Ontario at fair market value, which was set by the province at \$3,000 or about \$5 an acre. Given that the actual fair market value was closer to \$1 an acre for land in northern Ontario at the time, this was an exorbitant sum to pay for one's own land.⁵⁶ But the discussions on establishing Bear Island as a

reserve foundered when the Province insisted that subsurface rights not be included in any transfer of lands (presumably the Province was aware that the entire Temagami area was of high mineral potential). It was not until 1970, after another quarter of a century had passed,⁵⁷ that Bear Island would finally be transferred to Ottawa to become reserve land.⁵⁸

In 1973, the TAA filed their cautions under the Ontario Land Titles Act for the approximately four thousand square miles of N'Daki Menan. This action effectively froze non-Aboriginal economic development within the land claim area for twenty-five years, and in 1978 the litigation process began.⁵⁹ After 1978, the Ontario government proceeded to sue the TAA for their own lands and attempted to secure a declaration from the courts that would prove once and for all that these lands were Crown lands.⁶⁰ And so the issue ended up in the courts, and there was no place left for fairness.

Endnotes

- 1 LAC, RG 10, volume 573, Ironside to Pennefather (?), Letterbook, Sault Ste. Marie, 2 February 1857, 154–56. See David T. McNab, *No Place for Fairness: Indigenous Land Rights and Policy in the Bear Island Case and Beyond* (Montreal and Kingston: McGill-Queen's University Press, 2009). This chapter is a revised version of Chapter 3 of that book. The Bear Island case rested, as defined by the Canadian justice system, on the premise of the TAA's presence in their homeland both prior to and after the issuance of the Royal Proclamation of 1763. Since 1991, there have been negotiations on the TAA land rights issue. This was acknowledged both by the Supreme Court of Canada (SCC) and, at least by implication, by the Ontario government through the Treaty of Co-Existence signed between the Province and the TAA in 1990, a treaty acknowledged and agreed upon in principle by both these parties in a bilateral memorandum of understanding signed on Earth Day in April 1990. Yet there has been no statement of respect or direct declaration by Ontario of the existence of the TAA's title and land rights. The basis for the ongoing negotiations is the SCC judgement, which states that, although the TAA was a party to the adhesion to the Robinson-Huron Treaty (which it signed in the late nineteenth century), none of the treaty rights were provided to the TAA in 1850 or thereafter, except for some annuity payments made to individuals, beginning in 1883 and continuing until 1973. Nor has the federal government recognized the TAA's rights. In fact, the federal government continues to deny the TAA's history and has not recognized their rights in the litigation. This is ironic, since the federal government inherited the treaty-making process together with the responsibilities of the British imperial government as trustee and alleged protector of First Nations.

- 2 Douglas Leighton, "George Ironside [Junior, c. 1800–63]," *Dictionary of Canadian Biography, Volume IX (1861–1870)*, http://www.biographi.ca/en/bio/ironside_george_1863_9E.html; and Douglas Leighton, "Jean-Baptiste Assignack," *Dictionary of Canadian Biography, Volume IX (1861–1870)*, http://www.biographi.ca/en/bio/assignack_jean_baptiste_9E.html (accessed 14 July 2014). Assignack was Ironside's interpreter at Manitowaning.
- 3 See the chapters by Charles Bishop, for example, in *Aboriginal Ontario Historical Perspectives on the First Nations*, eds. Edward S. Rogers and Donald B. Smith (Toronto: Dundurn Press, 1994), 275–306.
- 4 George Ironside Jr., "Indian Record Books," Archives of Ontario (hereafter cited as AO), MS/Ironside, George, 1846, January–October, duplicate copy of August 1846 Present List, entitled "Places of Residence of the undermentioned Bands of Indians who received Presents in Augt [August] 1846."
- 5 Bruce Hodgins and Jamie Benedickson, *The Temagami Experience: Recreation, Resources, and Aboriginal Rights in the Northern Ontario Wilderness* (Toronto: University of Toronto Press, 1989), 6–61.
- 6 Here I mean the government of the colony of Upper Canada, and then, after the Act of Union in 1840, the government of the Canadas.
- 7 E. A. Cruikshank, ed., *The Russell Papers, vol. 2* (Toronto: Ontario Historical Society, 1925), ICC Documents, 237–38, entry of 22 October 1798.
- 8 Rhonda Mae Telford, "'The Sound of the Rustling of the Gold is Under My Feet Where I Stand; We Have a Rich Country': A History of Aboriginal Mineral Resources in Ontario" (PhD diss., University of Toronto, 1996).
- 9 Hodgins and Benedickson, *The Temagami Experience*, 6–61.
- 10 Library and Archives Canada (hereafter cited as LAC), RG 1, Crown Lands Records, Vidal-Anderson Report, appendix B.
- 11 AO, Indian Lands file #186217, volume 1, D. F. Macdonald to Aubrey White, 18 September 1894.
- 12 Morrison, "The Robinson Treaties," 85–90. Morrison's note is to Canada, Journals of the Legislative Assembly 1851, appendix II, voucher no. 11. It is this voucher that Ironside fabricated in the expectation that the TAA would come to participate in the treaty in the autumn of 1850.
- 13 James Morrison, "The Robinson Treaties of 1850: A Case Study. Prepared for the Royal Commission on Aboriginal Peoples," Treaty and Land Research Section, final draft (31 August 1996), 103–4.
- 14 Fitzroy MacLean, *Highlanders: A History of the Scottish Clans* (New York: Penguin Books, 1995), 257; Charles MacLean, *The Clan Almanac* (New York: Crescent Books, 1990), 60, 121.
- 15 On MacNab and Macdonell, see Donald R. Beer, *Sir Allan Napier MacNab* (Hamilton: Dictionary of Hamilton Biography, 1984), 125, 145, 182, 388, 389; Peter Baskerville, "Sir Allan Napier MacNab (1798–1862)," *Dictionary of Canadian Biography: Volume IX (1861–1870)*, http://www.biographi.ca/en/bio/macnab_allan_napier_9E.html; and Donald Swainson, "Allan Macdonell (1808–1888)," *Dictionary of Canadian Biography: Volume XI (1881–1890)*,

- http://www.biographi.ca/en/bio/macdonell_allan_11E.html (accessed 14 July 2015).
- 16 The best study to date on the background to the Robinson Treaty negotiations is by Telford, "The Sound of the Rustling of the Gold." For a general historical background, see Tony Hall, "Native Limited Identities and Newcomer Metropolitanism in Upper Canada, 1814–1867," in *Old Ontario: Essays in Honour of J. M. S. Careless*, eds. David Keane and Colin Read (Toronto, Dundurn Press, 1990), 148–73.
 - 17 See Alexander Morris, ed. *The Treaties of Canada with the Indians of Manitoba and the North-West Territories including the Negotiations on which they are based* (1880; reprint, Saskatoon: Fifth House Publishers, 1991).
 - 18 W. L. Morton, "James Bruce, 8th Earl of Elgin," *Dictionary of Canadian Biography: Volume IX (1861–1870)*, http://www.biographi.ca/en/bio/bruce_james_9E.html (accessed 14 July 2015); and Morrison, "The Robinson Treaties," 92–99.
 - 19 Hodgins and Benedickson, *The Temagami Experience*, 6–61.
 - 20 Morrison, "The Robinson Treaties," 103–4.
 - 21 For example, see the *Toronto Globe*, September 1850.
 - 22 "No. 61. [Robinson-Huron Treaty (1850)]," in Canada, *Indian Treaties and Surrenders, volume 1: Treaties 1–138* (1891; reprint, Saskatoon: Fifth House Publishers, 1992), 149–50.
 - 23 Morris, *The Treaties of Canada*.
 - 24 See my article "Who Is On Trial?: Teme-Augama Anishnabai Land Rights And George Ironside, Junior: Re-Considering Oral Tradition," *Canadian Journal of Native Studies* XVIII, no. 1 (1998): 117–34.
 - 25 Gary Potts, "Teme-Augama Anishnabai: Last-Ditch Defence of a Priceless Homeland," in *Drumbeat: Anger and Renewal in Indian Country*, ed. Boyce Richardson (Toronto, 1989), 201–28.
 - 26 Morris, *The Treaties of Canada*.
 - 27 LAC, RG 10, reel C-13,374, volumes 573–75, Deputy Superintendent General's Office Letterbooks, 1852–62; letter, William Plummer to W. H. Langevin, dated 16 April 1869, 123–24; letter, William Plummer to W. H. Langevin, dated 17 September 1869, 189–90; letter, William Plummer to Joseph Howe, dated January 1870, 232–35; letter, William Plummer to Joseph Howe, dated 22 March 1871, 372.
 - 28 A fuller explanation can be found in McNab, "Who Is on Trial?", 117–34.
 - 29 Admittedly, Ironside's letter is not unambiguous regarding the events to which he is referring. It is clear that he is not talking about a meeting in 1856, here, since he stated that this should have happened but had not occurred. The words beginning the new paragraph read, "The meeting of the Chiefs took place at Manitowaning shortly after the issuing of Presents"; this cannot then refer to either 1856 or 1857, because no presents were issued in 1856 and the date of the letter is 2 February 1857, before the time in which the presents were given out, i.e., August of each year. The meeting Ironside is referring to

here can thus be placed within the time period when the presents were still being issued, i.e., sometime between 1850 and 1852. However, it should be noted, here, that the issuing of the presents ceased in 1855. This dates the events described by Ironside to 1850, and not likely at a later time than 1855, such as at a meeting in 1856. See LAC, RG 10, volume 268, "Memo. Wants & complaints of Bands visited by Commissioners in Augt. 1857," 164295-164301. This document indicates that in August 1857 there were complaints by First Nations against the Crown over not having received their presents in 1856.

- 30 Here it appears that Ironside is referring to another meeting held in August 1856 at Manitowaning, at which the First Nations complained that they had not received their presents, but at which they were given their annuity monies in cash, not in kind.
- 31 LAC, RG 10, volume 573, reel C13374, George Ironside to Richard Pennefather(?), Letterbook, Sault Ste. Marie, 2 February 1857, 154–56.
- 32 AO, MS/Ironside, George, Folder, n.d., c. 1840–49, letter, J. W. Keating to George Ironside, "Walpole Island," 23 June 23 [1846?]; Folder MS/Ironside, George, January–October 1846, duplicate copy of August 1846 Present List, entitled "Places of Residence of the undermentioned Bands of Indians who received Presents in Augt [August] 1846"; letter, J. N. MacLeod, "Amherstburg," to George Ironside, 29 April 1846; Folder 1846 November/December, letter, Robert McClure [Sir Robert John McClure?] to George Ironside, 1 December 1846, marked "Private and Confidential"; Folder "1849," letter, George Ironside to E. S. Freer, Esq., Post Office Surveyor, 24 January 1849; letter, George Ironside to Charles Hale, "Toronto," 21 February 1849; letter, Arthur Gore to Reverend Alexander W. Gale, Knox College, Toronto, 10 March 1849 (this letter was to have been given by Gale to Ironside).
- 33 LAC, RG 10, volume 573, reel C13374, Ironside to Pennefather(?), Letterbook, Sault Ste. Marie, 2 February 1857, 154–56.
- 34 McNab, "Who Is on Trial?," 117–34.
- 35 McNab, "Who Is on Trial?," 117–34.
- 36 Potts, "Teme-Augama Anishnabai," 201–28.
- 37 LAC, RG 10, volume 519, reel C13347, letter, Pennefather to the provincial secretary, Indian Department, Toronto, 31 May 1859. On 31 May 1859, R. T. Pennefather wrote to the provincial secretary in Toronto about his forthcoming trip to Sault Ste. Marie and Bruce Mines. He requested that a warrant may issue as usual for the payment of the customary annuity to the Indians of Lake Huron and Superior as settled by the Treaty of 1850. As it is my intention to leave town on Friday next and take with me the amount payable to the Lake Huron Indians, I have to request that the amount may be issued in my favor not later than tomorrow. Pennefather was going to pay the annuities in cash and then at the same time get surrenders from the Batchewana, Garden River, and Thessalon First Nations. But when Pennefather arrived in Sault Ste. Marie on 9 June 1859, the shit hit the bureaucratic fan. As noted earlier, George Ironside did not have the accurate documentation on the annuity pay lists. He write the following caustic letter to Ironside: I beg to draw your

- attention to the fact that no vouchers or Pay Lists have been received at the Indian Office at Toronto for the annuity of the Lake Huron Indians for the year 1858, \$3349.70—nor for the sum of £574.11.6 which was directed to be paid to the same Indians as part of the balance of their annuity of the year 1857 by you in conjunction with Thos. Worthington Esq. As these necessary documents are now long over due I request your early attention to them with a view of furnishing them with the least possible delay. LAC, RG 10, volume 519, reel C13347, Letter, Pennefather to George Ironside, Indian Department, Sault Ste. Marie, 9 June 1858.
- 38 See David T. McNab and Dale Standen, eds., *Gin Das Winan: Documenting Aboriginal History in Ontario* (Toronto: Champlain Society, 1996), 24n12. Douglas Leighton has described these events in greater detail in "The Manitoulin Incident of 1863: An Indian-White Confrontation in the Province of Canada," *Ontario History* LXIX, no. 2 (1977), 113–24.
- 39 Leighton, "George Ironside."
- 40 There is some evidence that at least two First Nations considered Ironside in an ill light, as noted in their complaints made about him, especially in regard to the Garden River First Nation and the Wikwemikong First Nation in 1861; see, for example, LAC, RG 10, volume 573, reel C13374, Indian Affairs, Deputy Superintendent General's Office Letterbook, 1852–62, 283–84, letter, Ironside to Pennefather, Manitowaning, 23 March 1861; 287–310; letter, Ironside to Pennefather, Manitowaning, 23 May 1861.
- 41 Hodgins and Benedickson, *The Temagami Experience*, 6–61.
- 42 Dean Jacobs, "'We have but our hearts and the traditions of our old men': Understanding the Traditions and History of Bkewanong," in *Gin Das Winan: Documenting Aboriginal History in Ontario*, ed. Dale Standen and David McNab (Toronto: Champlain Society, 1996), 1–13.
- 43 The clan name "Skene" comes from the name of the same place in Aberdeenshire. The clan motto is "A palace the reward of bravery," and the clan badge is "an arm holding a laurel wreath." See MacLean, *The Clan Almanac*, 112.
- 44 The name "son of Donald" in Gaelic is "Domhnull," which means "World Ruler." The clan motto is "By land and by sea," and the "heathery isle." Heather is the plant or heraldic badge. MacLean, *The Clan Almanac*, 59. See also Fitzroy MacLean, *Highlanders*, 257.
- 45 Hodgins and Benedickson, *The Temagami Experience*, 6–61.
- 46 In 1986, in preparing for the 1986 settlement offer, the Ontario calculations prepared by an independent certified public accountant on this amount were over \$12 million.
- 47 Douglas Leighton, "Lawrence Vankoughnet and the Department of Indian Affairs," in *As Long as the Sun Shines and the Water Flows: A Reader in Canadian Native Studies*, eds. Ian L. Getty and Antoine S. Lussier (Vancouver: University of British Columbia Press, 1983), 104–19.
- 48 LAC, RG 10, volume 7757, file #27043-9, part 1, "Nipissing Agency—Survey of land for a reserve for the Timagami band of Indians (map). 1880–1929."

- 49 Hodgins and Benedickson, *The Temagami Experience*, 6–61.
- 50 S. Barry Cottam, "Aubrey White (1845–1915)," *Dictionary of Canadian Biography: Volume XIV (1911–1920)*, http://www.biographi.ca/en/bio/white_aubrey_14E.html (accessed 14 July 2015). This biography must be used with caution since it is uncritical of White.
- 51 See David McNab, "'A Lurid Dash of Colour': Powassan's Drum and Canada's Mission, the Reverend William and Duncan Campbell Scott," in *Aboriginal Cultural Landscapes*, eds., Jill Oakes and Rick Riewe (Winnipeg: Aboriginal Issues Press, 2004), 258–71.
- 52 On Scott's family, see "'A Lurid Dash of Colour,'" 258–71. On Scott's Indian Department career, see Brian Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada* (Vancouver: University of British Columbia Press, 1986). This is still the best general study of Duncan Campbell Scott as a colonial administrator. Also see Stan Dragland, *Floating Voice: Duncan Campbell Scott and the Literature of Treaty 9* (Concord, ON: Anansi, 1994), which is more narrowly focused on Scott's literary career. There is no full-scale biography of Scott.
- 53 LAC, RG 10, volume 7757, file #27043-9, part 1, Ontario Ministry of Natural Resources Lands files (now with the Ontario Ministry of Aboriginal Affairs) #186217.
- 54 LAC, RG 10, volume 7757, file #27043-9, pt. 1–2.
- 55 AO, Lands files #186217, "Temagami Indian Reserve #18," 2 vol.; #65213, "101 Bear Island Town." See also AO, Leslie Frost Papers, RG 3, box 89, Correspondence 1954–55, folders entitled "Temagami."
- 56 Canada, Department of Indian Affairs, Ontario Regional Office, Toronto, copies of federal and provincial Orders in Council, 1943 and 1943, respectively.
- 57 LAC, RG 10, volume 7757, file #27043-9, pt. 2.
- 58 Hodgins and Benedickson, *The Temagami Experience*, 267–89.
- 59 Bruce Hodgins and Jonathan Bordo, "Wilderness, Aboriginal Presence and the Land Claim," in *Co-Existence?: Studies In Ontario-First Nations Relations*, eds. Bruce W. Hodgins, Shawn Heard and John S. Milloy (Peterborough, ON: Frost Centre for Canadian Studies and Heritage Development), 67–80; and Potts, "Teme-Augama Anishnabai," 201–28.
- 60 Ontario, Ministry of Natural Resources, Office of Indian Resource Policy file on the "Temagami or Bear Island Land Claim." This file, and other files of this office, were transferred to the Ontario Native Affairs Directorate (later Secretariat, after 1990) after 1 February 1988, when the Office of Indian Resource Policy ceased to exist within the Ontario Ministry of Natural Resources.

CHAPTER 4

“Is it marked in the Bible, that the English and American should draw a line and do what so he pleases with the natives?”¹

The 1850 Treaty as an International Document

Karl S. Hele

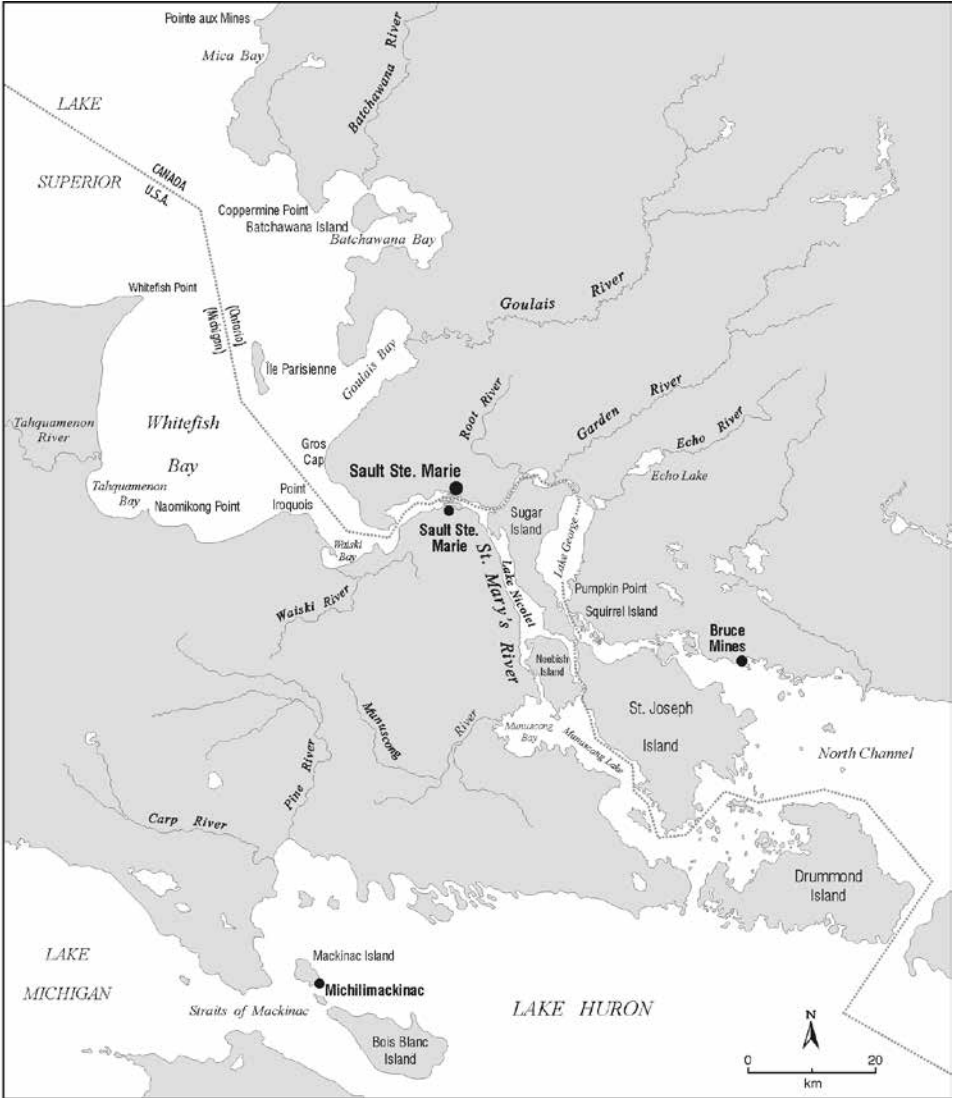
After requesting a treaty be negotiated for several years, the Anishinaabeg and the Queen’s representatives in Canada West signed the Robinson-Huron and Robinson-Superior Treaties. The treaties dealt solely with the British North American “North Shore” of Lakes Superior and Huron, from the Pigeon River at the western extremity of Lake Superior to Penetanguishene on Lake Huron, and inland ten leagues or miles to the height of land. The size of the area surrendered made the two treaties the largest land surrenders in British North America prior to Confederation in 1867.² Together the Anishinaabeg of the Upper Lakes and their Métis brethren, led by such men as Shingwaukonse and Peau d’Chat, brought the government of Canada West to the treaty table. Events and people from both sides of the international border influenced treaty demands, negotiations, and the eventual signing of the two treaties. Both the Anishinaabeg and Métis leadership drew on American precedents and experience as did the Crown’s negotiators. Additionally, the individuals involved in the negotiations and signings were drawn from both the United States and Canada West—particularly for the Anishinaabeg. As such, the 1850 Robinson Treaties can be seen as international documents based on multiple and overlapping connections among the Anishinaabeg, Métis, and non-Natives across the British-American border.

Under the terms of the 1783 Treaty of Paris, a border dividing British North America (BNA) and the new republic of the United States of America (US) came into existence. While the border was unsurveyed and unmarked in 1783, it was said to run down the middle of the Great Lakes and connecting waterways making the north shores British and the south shores American.³ Such a decision negatively affected communities throughout the Great Lakes, never more so than the people living in the Sault Ste. Marie region. The newly drawn border ran down the middle of the St. Mary's River, thereby officially dividing a community between two emerging states that had for hundreds of years suffered only mother nature's division of their community during the spring melt and fall freeze. Nonetheless, people in the Sault continued to cross the line upon the water in the course of their daily lives. Significantly, the creation of the border meant little to the Sault region's community because the states who claimed suzerainty over them and their lands seemed far away. This is how things would remain until Britain, BNA, and the US decided to define and enforce their claims in the new borderland created in 1783.

Just over a decade after signing the 1783 Treaty of Paris, Britain and the US signed a second agreement that further solidified the division of the Anishinaabeg homeland while recognizing Aboriginal border-crossing rights. Article III of the 1794 Jay Treaty explicitly stated that "Indians dwelling on either side of the boundary line" were free "to pass and repass by land or inland navigation, into the respective territories and countries of the two parties"⁴ With this recognition came increased competition from BNA and the US for the Indians' loyalty—with both sides, particularly the US, feeling that foreign influence with the Indians led to increased violence along the frontier. The US belief that the British were aiding and encouraging Indians to attack American settlements formed part of the rationale for a declaration of war in 1812. The War of 1812 did little to alter the border's placement or alleviate many of the US's supposed grievances. By the end of the war, non-Aboriginal dominance east of the Mississippi River was assured, along with the notion that future border grievances needed be worked out amicably. As part of the peace process, Britain and the US agreed to undertake a joint survey of their common border. By 1828 the border commission officially demarcated the international boundary through the Sault region.⁵ This reaffirmed the fact that

the region's Anishinaabeg and Métis would exist between two emerging nation states who cared little for Aboriginal rights and traditions. Despite the official demarcation, the Anishinaabeg and Métis continued to live astride the border, crossing and re-crossing according to the demands of life in the region.⁶ Thus, from the creation of the border in 1783 onward, the Sault region was a borderland where the local populations' lifestyles and territorial claims continued to conflict with the emerging nation states' claims of power and authority over them and their lands.

A general rule of thumb governing land surrenders and treaties restricts the ability of Indigenous peoples to negotiate with more than one colonial state. According to precedents and practice under international law, settler states can only take treaties with those Indigenous peoples within its borders. Likewise, Indigenous peoples can only make a treaty with the settler-state deemed to control their lands. This practice, while more often observed in the breach, dates to the first efforts to colonize and settle Indigenous lands in the sixteenth century. In terms of Sault Ste. Marie, the guideline became operative with the creation of the international border under the terms of the 1794 Jay Treaty. In theory, the Anishinaabeg living on the South Shore, or American-claimed territory, could only negotiate and surrender lands to the US; whereas those living on the North Shore, or British-claimed territory, could only negotiate with Great Britain. The Anishinaabeg in the region, however, failed to abide by these governing settler precepts. Instead, the Anishinaabeg from either shore took part in all the treaties affecting the region, either as witnesses, negotiators, signatories, or supporters. The settler representatives were well aware of the international border, as well as the guideline concerning who could or could not participate within each settler-states' treaty process. Despite this knowledge the representatives of the settler-state, specifically William B. Robinson, the Crown negotiator for the 1850 treaties, negotiated and allowed both "American" and "British" Indians to sign the documents. Today the settler-states of Canada and the US pretend that the regional treaties were entirely *sui generis* (internal issues); hence the terms and conditions of the region's treaties do not apply to those Anishinaabeg not resident with a particular state's boundary. This was not the case in nineteenth-century Sault Ste. Marie, where the imposition of an international border held broad implications for the Anishinaabeg and Métis.



Map 5: International Boundary Dividing the Sault

Treaties under Modern Law in Canada and the US

Before examining the international nature of the 1850 treaties, specifically the Robinson-Huron Treaty, it is necessary briefly to discuss the Anishinaabeg, Canadian, and American positions on the status of Indian treaties, as well as the 1794 Jay Treaty. Indian treaties in both Canada and the United States are described as historical anomalies or paradoxes, and matters of internal concern. Both governments entered into treaties with Indians to establish peace and friendship, or to acquire lands for resource use and settlement. Similarly, both states entered into treaties with Indians, particularly after the War of 1812, from a position of dominance—militarily, economically, and politically. Moreover, both countries eventually ended the treaty process, albeit at different times,⁷ when it became apparent that the original intent behind the treaty idea was no longer valid; simply, the decision to end the treaty process was based on the state's political notion that it was foolish to enter into such agreements with a portion of one's citizenry. There is also ample evidence that the states' representatives did not enter into negotiations in good faith, that Indians did not completely comprehend all aspects of the documents they signed, and, in some cases, that treaties were unilateral decisions by the states involved. Finally, it is important to note that the treaties were not uniform in their terms.⁸

Specifically, in Canada treaties are viewed by the court system as *sui generis* or unique—neither international agreements nor simple contracts.⁹ This position was evident in two Supreme Court of Canada (SCC) rulings known as the Simon Decision of 1985 and the Sioui Decision of 1990.¹⁰ For instance, in Simon 1985, the SCC stated that the "Indian treaty is unique: it is an agreement *sui generis* which is neither created nor terminated according to the rules of international law."¹¹ In Canada, following the guidelines of the Royal Proclamation of 1763, the Crown is solely responsible for negotiating and signing Indian treaties. The federal government of Canada is responsible for their implementation and all laws dealing with Indians. After Confederation, section 91.24 of the British North America Act of 1867 and the 1982 Canadian Constitution contains the constitutional recognition of the precedents established in the 1763 Proclamation.¹² Under section 92.5, the Canadian provinces control the lands and resources. This division of power has complicated both the

fulfillment and negotiation of all treaties since 1867. Finally, since 1982, treaty rights have become part of the constitution of Canada, which elevated them, to an extent, beyond the pleasure of the Crown. Despite this constitutional entrenchment, the Canadian Parliament continues to retain its claimed right to abolish or rescind its treaties with Indians unilaterally.

In 1831 and 1832, Chief Justice John Marshall of the US Supreme Court maintained that the Cherokee were a state having “a distinct political society, separated from others, capable of managing its own affairs and governing itself.” Additionally, he held that the many treaties between the Cherokee and the US affirmed that they were an independent people capable of undertaking war or peace, as well as responsible for their people’s actions and for violations of engagements. Nonetheless, by labelling the Cherokee as a domestic dependent nation, Marshall refused to recognize them as a truly sovereign nation.¹³ His rulings in the first half of the nineteenth century established how all American Indians and their treaties were eventually viewed. While US treaties were negotiated in the name of the Great Father in Washington—the President—it was Congress, under the terms of the American Constitution, that was responsible for passing each treaty into law. This often led to unilateral amendments by Congress to treaties, which, under the constitution, the President could veto. Regardless of the politics in Washington, the Indians were fully expected to follow the amended document, despite never having agreed to it. The US federal government claimed its right or ability to deal exclusively with Indian nations under Section 8 of the American Constitution.¹⁴ Additionally, the continued existence of all treaty rights in the US remain dependent on the pleasure of Congress and the President.

For the Anishinaabeg, treaties are of a different nature. The documents are more than simple legal arrangements negotiated by a dependent people with a dominant colonial state. While it is recognized that the Anishinaabeg were neither capable of defeating nor driving the immigrants from their lands, they entered into these agreements as equals with the settlers. Anishinaabeg people and leaders did not see themselves as the weaker nation. After all, it was the colonial governments that were approaching them for land and resources. Based on Anishinaabeg culture, agreements were negotiated whereby both they and the colonial society would benefit, signifying the societal concept of sharing and reciprocity.

This cultural concept can be seen in 1849 and 1850, when Shingwaukonse attempted to garner a percentage of all mining revenues, a large annuity, and retain the right to lease lands on the reserves.¹⁵

The interpretation of the Jay Treaty of 1794 similarly varies between the Canadian, US, and Anishinaabeg perspectives. First, the Anishinaabeg see the Jay Treaty as recognizing and confirming their cross-border rights. The United States agrees that the treaty allows American Indians to traverse the border freely. Accordingly, Congress enacted legislation permitting individuals to cross the border freely who can provide documentation that they have fifty percent American Indian blood quantum.¹⁶ Canada, however, currently does not recognize the border-crossing provisions of the Jay Treaty. In *Francis v. The Queen* (1956), the SCC ruled that Indians cannot freely cross the border. It further argued that the 1794 Jay Treaty, and the later 1814 Treaty of Ghent, were not treaties with Indians, and that the 1814 treaty only provided a promise to restore Aboriginal rights. Based on this decision, Canada has continued to inhibit Anishinaabeg efforts to cross the border freely. However, the 1982 repatriation of the Constitution may alter Canada's "legal" border blockade. Since the Constitution of Canada now recognizes and affirms both Aboriginal and treaty rights, the Anishinaabeg may be able to have their border-crossing rights recognized as either Aboriginal or treaty rights through the Canadian court process.¹⁷ This paper is a partial step in supporting the Anishinaabeg argument that the Robinson Treaties of 1850, specifically the Robinson-Huron Treaty, were undertaken in full awareness of the international aspect of the region and its populations, and amount to an accord between British North America/Canada and the Anishinaabeg nation living on either side of the international boundary.

The 1850 Treaties in the Context of the Borderlands

The need for a treaty covering the Anishinaabeg lands on the northern shores of Lakes Huron and Superior became evident in the 1820s along the southern shores of the Upper Lakes, which are US territory. American interest in the minerals located throughout the Sault region and west to Minnesota began with Henry R. Schoolcraft's explorations. In addition to working as a mineralogist on the Mississippi expedition of 1820, Schoolcraft became an amateur Indian linguist and folklorist, as well as

the American Indian agent and treaty negotiator at Sault Ste. Marie.¹⁸ Schoolcraft's role in this expedition to the Mississippi, his connection through marriage to a prominent Mixed-Blood family—the Johnstons—and conversations with Anishinaabeg provided him with information on the potential “unexploited” resources in the Upper Lakes region. Thus, when the American government entered into negotiations for all the lands from Sault Ste. Marie west to the Mississippi River in 1825–26, a clause in the 1826 Treaty granted the government the “right to search for, and carry away, any metals or minerals from any part of their [the Ojibwa's] country.”¹⁹ This article may have been inserted into the 1826 Treaty without Native knowledge, been “misexplained,” or seen as non-threatening by the Anishinaabeg, since the *maemaega'waehnssiwuk* (little people(s)) protected mineral deposits from transgression.²⁰ Beyond a few forays to locate copper deposits shortly before and during treaty negotiations, settlers proved unable or unwilling to venture into the area en masse. This reluctance, according to historian Rhonda Telford, can be explained by Anishinaabeg insistence, despite the apparent surrender of their mineral rights and promises made in 1826, that they continued to own the resources. After surveying the Upper Lakes mineral resources from 1830 to 1841, Michigan geologist Douglas Houghton's report in 1841 initiated a rush of speculators and prospectors staking mineral claims in the region. Seeking to secure settler access to the mineral riches, the US signed the 1842 Treaty of La Pointe, which opened Lake Superior's resources. The following year larger numbers of future-seekers ventured north.²¹ From 1844 to 1860, more than 116 copper-mining companies operated between Sault Ste. Marie and the western end of Lake Superior, with the first mineral dividend to be paid in 1848.²²

The mineral rush along the South Shore served to spark a similar, albeit smaller, rush along the North Shore.²³ Individuals from the US and Upper Canada furtively scouted the North Shore for potential mineral deposits.²⁴ Speculations about the mineral riches along the northern shores of Lakes Superior and Huron in 1843 by W. E. Logan, geologist for the United Provinces of Canada, combined with news emanating from Michigan about copper strikes to spark a mineral boom in British claim territory.²⁵ Between 1845 and 1846, more than 133 mining applications for Lakes Superior and Huron had been received and granted.²⁶

The presence of surveyors, miners, and speculators, as well as government actions, led to increased calls from the Anishinaabeg for a treaty. These numerous calls between 1846 and 1849 spoke of Anishinaabeg loyalty to Britain; their assistance during the various colonial wars, the most recent of which was the War of 1812; their Aboriginal right to the land; and, just as important, the actions of the US in negotiating treaties. For instance, in 1846 Shingwaukonse spoke of promises made to him at the end of the War of 1812, specifically that the British Officers told him

Chinguak you fought well for us, your lands are gone but you shall have those you helped us to defend, you shall possess the same on the British side, and you shall live on them unmolested for ever.²⁷

Similarly, in 1849, when in Montreal, Shingwaukonse and Nebenagoching (a Crane chief from the Sault), as well as other leaders from the Sault region, published a petition to Governor General Lord Elgin in the *Montreal Gazette*. Therein the leaders noted that by custom and right a treaty needed to be signed. They noted their disappointment in the government's actions, denials of their rights, and continued usurpation of their lands. Additionally, the leaders demonstrated their familiarity with American treaties and actions, as well as BNA's duplicity when they stated,

Father, —

Your White Children tell us that the Long Knives ill-use and cheat the Red Skin when they buy from them any lands, they tell us that you only are kind and just; but where is your justice if you allow your White Children to plunder our lands and drive us from them against our wishes? Where is your kindness or justice if you take from us our lands without our consent?

—*Those unjust cheating Long Knives, altho' they have often deeply wronged the Red Skins, yet they have not done this which you are now doing—they have not taken from the Red Skins any lands unless there was at least some kind of treaty entered into and a purchase made.*

Father,—

*Every year we behold the Red Skins on the other side of the Lake proceeding to La Pointe to receive tribute due them by the Long Knives for the South Shore, and our hearts are made sore, for we cannot avoid contrasting this conduct of the Long Knives with that of you our Father [emphasis mine].*²⁸

These comparisons eventually sparked a Canadian commission to investigate Anishinaabeg claims in the region in 1849. Prior to the investigation, the United Canadas were intent on denying Anishinaabeg claims to the North Shore. This denial was based on claims that the Anishinaabeg had migrated to the North Shore from what was considered American territory, thereby negating Indigenous claims to the soil under previous British legislation. In effect, by claiming that the Anishinaabeg were really recent immigrants from the US, the United Canadas attempted to negate the Crown's obligation to negotiate a treaty. The government conveniently concluded that the claimants had no indigenous right to the soil, and therefore the colony had no obligation under the terms of the 1763 Royal Proclamation.²⁹ Interestingly, however, Captain T. G. Anderson, wrote in 1845 that the lands along the North Shore of Lake Huron belonged to the Anishinaabeg that lived in both British and American territory.³⁰ Further complicating claims to the region was the knowledge that many of the Anishinaabeg along the North Shore, specifically in this case those in the Sault region, resided in the US for part of the year, accepted American treaty payments, and had been born south of the international borderline.³¹

In September 1849 the commissioners set out for Sault Ste. Marie, where they intended to begin their investigation of Indian claims to the North Shore. Alexander Vidal, who arrived before Indian Superintendent T. G. Anderson, set about learning as much as possible about the Anishinaabeg claims. To this end, Vidal began his queries in Sault Michigan. Between 7 and 17 September, Vidal read through US Indian Agency records and documents at Fort Brady, as well as spoke to a number of locals, including George Johnston, a Mixed-Blood and former American Indian agent.³² In a letter to his wife Catherine, Vidal described the Americans as very friendly and willing to open all

their books to him.³³ The most important contact Vidal made in Sault Michigan was Johnston. A long-time resident, former employee of the Indian Agency and War Department, mineral speculator, trader, and boardinghouse keeper, Johnston spoke fluent Anishinabowin, French, and English.³⁴ Importantly, while working for the US government, Johnston had participated in several treaty negotiations, had become familiar with the Anishinaabeg from the Sault to Fort William on both sides of Lake Superior, and had many documents from this period of his life. Based on discussions with local settlers, Métis, and Indians, but most importantly Johnston, Vidal learned how the US dealt with Indian claims, studied negotiating tactics, learned about possible Anishinaabeg demands and governance, and became familiar with US treaty texts, such as the 1842 Treaty of LaPointe. Significantly, Vidal discovered "that head chiefs, such as Shingwaukonse and Nebenagoching, could be coerced into agreeing to terms provided the lesser chiefs and head-men had previously signed" the treaty document.³⁵ Or, according to Johnston and as recorded by Vidal, the Chief "must summon his chiefs and consult them—in general before any council for treaty is held a 'smoking' council is held in which the matter is freely discussed by old and young of the band—chiefs are of course influenced to [a] great extent by their expressions of opinion and generally the decision is unanimous."³⁶ With this knowledge in hand, and in the company of T. G. Anderson, Vidal set out for Fort William on the American steamer *Napoleon*. The trip to Fort William followed the South Shore and afforded Vidal further opportunity to discuss US-Indian relations with and learn from Anderson.

When the commissioners returned to Sault Ste. Marie in October 1849, they informed the Anishinaabeg that their instructions were only to investigate claims, not negotiate a treaty.³⁷ Fully expecting to begin the treaty process, Chiefs Shingwaukonse and Nebenagoching and their followers were confounded and angry. With the failure of the investigation, the region's Anishinaabeg decided to enforce their rights.

Thus, on 1 November 1849, Oshawano, Shingwaukonse, Nebenagoching, Allan and Angus Macdonell, Wharton Metcalfe, and thirty other Ojibwa and Métis boarded a ship and headed for the Quebec and Lake Superior Mining Company's operation at Mica Bay, on Lake Superior. Supplies were obtained from P. B. Barbeau, an American

American French trader, and also included an old cannon taken from the lawn of the HBC post.³⁸ The composition of the “rebel” force, with contingents of American (Oshawano and about half of the Métis) and British (Shingwaukonse, Nebenagoching, and the others) residents, illustrates the trans-border nature of the Anishinaabeg efforts to obtain a treaty. The group set out in Macdonell’s schooner, the *Falcon*, formerly known as the *Florence*, which had been previously seized by BNA customs and sold to Macdonell at auction.³⁹ Rather than sign a document that acknowledged Anishinaabeg authority over the lands and the mine, the company manager closed the operation. Miners were evacuated by the US schooner *Chippewa* to Sault Michigan. Canadian and American papers, each echoing demands for intervention to quiet the apparent uprising, reported on the incident. The *Detroit Tribune*, for instance, reported on the events that led to the mine takeover and hinted that American efforts in the region were more effective.⁴⁰ Troops dispatched by Governor General Lord Elgin reached the region aboard the US steamer *Independence*.⁴¹

During the finger-pointing in the aftermath of Mica Bay, each side levelled accusations against the other. Shingwaukonse argued that BNA’s government and settlers were acting like Americans, while British-Canadian officials argued that the chief was an American Indian. The Reverend A. O’Meara, former Anglican missionary to the Sault, claimed that residents from both Saults believed that Macdonell stirred up the Indians. Even Lord Elgin, despite his attempts to have a treaty negotiated, maintained that the ringleaders were “blackguard whites” and “American Indians.”⁴² Moreover, the lawyer and mineral speculator Alan Macdonell was involved in the annexation movement in Montreal. Although Janet Chute and Alan Knight, in their essay “A Visionary on the Edge,” downplay Macdonell’s involvement, long-term support for and membership in the annexation movement would likely have informed his actions in the Sault region.⁴³ More specifically, Macdonell’s advocacy for annexation ties directly to the Anishinaabeg’s insistence that they were one nation despite the presence of the border defining two settler states.

By 13 December, Shingwaukonse, Nebenagoching, and some of their “co-conspirators” had been arrested, transported to York, and confined to jail for a few days. One of the arrested men, Wharton Metcalfe, escaped custody, crossed into Sault Michigan, and eventually made his way to

England.⁴⁴ The detachment of troops remained at the Sault, wintering in the HBC post with the intention of preventing further acts of rebellion. Some of these men deserted or brawled in Sault Michigan.⁴⁵ The “rebels” “were released by the Chief Justice, Sir John Beverly Robinson, a relative by marriage of Macdonell,” on the grounds that the group had been illegally arrested.⁴⁶

To diffuse the situation along the North Shore, Canada West appointed a man familiar with the region and its people, as well as brother to the colony’s chief justice—William Benjamin Robinson.⁴⁷ After a series of “negotiations” in August and September 1850, the Anishinaabeg from both the north and south shores of Lakes Huron and Superior signed the Robinson-Huron and Robinson-Superior Treaties. The presence of “American” Anishinaabeg and Métis was known to and accepted by Robinson.

The 1850 Treaty as a Borderland Document

During the treaty negotiations, the Anishinaabeg drew on their experiences throughout the Great Lakes. This allowed them to compare and contrast treaty terms, as well as attempt to include aspects that were more favourable than or similar to the US treaties. This can be seen in terms of the hunting and fishing on occupied surrendered lands, as well as the attempts at Métis inclusion. Simply, the BNA treaty was negotiated in light of early American treaties in the region.

Prior to 1850 the US had signed treaties in 1820 with the Sault Ste. Marie Anishinaabeg specifically, while treaties in 1826, 1836, and 1842 were negotiated and signed with Anishinaabeg throughout the Upper Lakes, including representatives from the Sault region. The 1820 Treaty of St. Mary, or “Treaty with the Chippewa, 1820,” recognized and affirmed US claims to the Sault region and allowed for the construction of Fort Brady at the foot of the rapids.⁴⁸ In 1826, the Treaty of Fond du Lac saw the Anishinaabeg agree to mineral exploration on their lands, monies set aside by the US government to establish a school in the Sault, a Half-Breed provision, and an annuity.⁴⁹ By 1836, growing pressures from American settlers, traders, and a depressed economy led to a treaty signing whereby the Anishinaabeg territory in the upper and lower peninsulas of Michigan was surrendered in return for permanent

reservations, payment of debts, and annuities. The US Senate unilaterally amended the treaty, which placed the reservations in trust for five years unless extended at the pleasure of Congress. In return for “giving up” their reservations after five years, the treaty stipulated that lands in the west and monetary compensation would be provided to the Ojibwa.⁵⁰ To encourage the Indians to consent to the new version of the treaty, Schoolcraft refused to distribute annuities unless the terms were accepted. As traders with Mixed-Blood relatives, and a desperate need for cash, as well as reassurance by Schoolcraft that their reservations would not be needed by non-Natives for many years, the Anishinaabeg added their signatures to the “agreement.”⁵¹ As a result, those who were unwilling to leave their homeland in the Sault region crossed the river and became “British” Indians. Meanwhile many of those who remained on the South Shore made preparations to flee across the river to avoid forced westward relocation. Additionally, leaders of the American Sault’s Ojibwa community strengthened their ties with Britain by visiting its Indian agents and military posts to receive gifts.⁵² Finally, the 1842 Treaty surrendered the remaining Anishinaabeg lands on the South Shore of Lake Superior in preparation for the mineral boom. Together, these three US treaties helped inform negotiations in 1850.

The 1820, 1836, and 1842 treaties all contained clauses that promised hunting and fishing rights on ceded lands, either in perpetuity or until the land was needed by settlers. Specifically, the 1820 Treaty of St. Mary “secure[d] to the Indians a perpetual right of fishing at the falls of the St. Mary’s.”⁵³ The 1836 Treaty promised in its thirteenth article that, “The Indians stipulate for the right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement.”⁵⁴ The second article of the 1842 Treaty of LaPointe holds that “The Indians stipulate for the right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to remove by the President of the United States, and that the laws of the United States shall be continued in force, in respect to their trade and inter course with the whites, until otherwise ordered by Congress.”⁵⁵ The importance of the hunting clause to the Anishinaabeg is seen by its placement as the second agreed term in the 1842 treaty. Additionally, the idea in 1832 that the lands could be used until needed for settlement may indicate a concession

to Anishinaabeg sensibilities concerning the sharing of land, rather than its permanent alienation, as well as a means to obtain their consent. Finally, the gradual shifting of the terms within the treaties from perpetuity, to "required" for settlement, to removal by the President, reflects the changing US ideas concerning Indian treaties. In the 1830s and 1840s, removal was the key policy in US Indian affairs. Regardless, by placing limits on the hunting and fishing as well as occupancy rights, the US was sending a message that the traditional mode of life for the Anishinaabeg was going to come to an end, and that they would be living somewhere in the west, far from their traditional homelands.

During the negotiations in 1850, the Anishinaabeg demanded and won continued access to lands outside of the reserves for hunting and gathering purposes. Specifically, the treaty "allow[ed] the said Chiefs and their tribes the full and free privilege to hunt over the territory now ceded by them, and to fish in the waters thereof, as they have heretofore been in the habit of doing, saving and excepting such portions of the said territory as may from time to time be sold or leased to individuals or companies of individuals and occupied by them with the consent of the Provincial Government."⁵⁶ This statement was important for the people to continue with their economy. Robinson had assured the Anishinaabeg and the government that with the mines being opened in the region such an agreement "would prove of great benefit as they [the Anishinaabeg] would afford a market for any things they may have to sell."⁵⁷ Thus, lands outside of the reservations, much like Anishinaabeg surrendered lands in the US, would continue to be utilized as they had been for centuries.

Additional demands by the Anishinaabeg at the Sault included recognition of the Métis. In 1840, for instance, Shingwaukonse met with a number of Métis from both the British and American Saults on Sugar Island. During this council Shingwaukonse claimed that the Half-Breeds were well treated by the British. He further noted that if the Métis consented to be under the Indians, they would receive greater assistance from the British—such as receiving farm implements, houses, and instruction in agriculture and carpentry. In addition to this speech, the US Indian agent intercepted two letters, both from Alexis Cadotte, addressed to the head-chief at La Pointe and a prominent Métis named Eustache la Garde. These letters from an American Métis, a later resident of BNA, notified

these individuals of the beneficial treatment received by the British Half-Breeds.⁵⁸ Shingwaukonse continued his efforts to see Métis rights recognized in the Sault region throughout the treaty process.

During the treaty negotiations, Robinson claimed that Shingwaukonse and Nebenagoching presented him with a list of Métis or “half-breeds” whom they wished to be given a “free grant 100 acres of land each & confirmed ... certain old residents in the free & full possession of their lands on which they now reside.”⁵⁹ James Morrison notes in his submission to the 1996 Royal Commission on Aboriginal Peoples that the chiefs also presented Robinson with a draft clause for the treaty written by Alan Macdonell that was virtually identical to the text of the clause in the 1826 treaty. Macdonell’s clause read,

It being deemed important that the halfbreeds scattered through this extensive country shall be stimulated to exertion and improvement by the possession of permanent property and fixed residences, the Odjibewa nation, in consideration thereof and the affection they bear these people and their children and the interest they feel in their welfare, grant to each of the persons described in the schedule hereto annexed, one hundred acres of land to be located upon some part of the lands ceded by this treaty, and that free patents for each hundred acres, shall be granted by the Government to the undersigned respectively and their heirs forever, so soon as the persons therein referred to, shall have made the location they desire respectively.⁶⁰

By comparison, article four of the 1826 Treaty of Fond du Lac stated:

It being deemed important that the half-breeds, scattered through this extensive country, should be stimulated to exertion and improvement by the possession of permanent property and fixed residences, the Chippewa tribe, in consideration of the affection they bear to these persons, and of the interest which they feel in their welfare, grant to each of the persons described in the schedule hereunto annexed, being half-breeds and Chippewas by descent, and it being understood that the schedule includes all of this description who are attached to the Government of the United States, six hundred and forty acres of land, to be located,

under the direction of the President of the United States, upon the islands and shore of the St. Mary's river, wherever good land enough for this purpose can be found; and as soon as such locations are made, the jurisdiction and soil thereof are hereby ceded. It is the intention of the parties, that, where circumstances will permit, the grants be surveyed in the ancient French manner, bounding not less than six arpens, nor more than ten, upon the river, and running back for quantity; and that where this cannot be done, such grants be surveyed in any manner the President may direct. The locations for Oshauguscoday wayqua and her descendents shall be adjoining the lower part of the military reservation, and upon the head of Sugar Island. The persons to whom grants are made shall not have the privilege of conveying the same, without the permission of the President.⁶¹

While the Sault leadership was undoubtedly familiar with the terms of the 1826 Treaty, as was Alan Macdonell, the subsequent treaties of 1836 and 1842 also contained Half-Breed clauses. The 1836 Treaty did not award land to the Half-Breeds, but did retain the notion that based on their "Indian descent" and "resident within the boundaries described in the first article of this treaty," they were entitled to a cash payout according to a complex formula based on their percentage of Chippewa blood.⁶² This presented the Half-Breeds with a choice: refuse the payout and join with a tribe or accept the payout and see your Aboriginal claim extinguished. The Métis clause in the 1842 La Pointe Treaty simply stated:

Whereas the Indians have expressed a strong desire to have some provision made for their half breed relatives, therefore it is agreed, that fifteen thousand (15,000) dollars shall be paid to said Indians, next year, as a present, to be disposed of, as they, together with their agent, shall determine in council.⁶³

These precedents led the Anishinaabeg leadership to demand concessions on behalf of the Métis. In the end, Robinson rejected the Half-Breed request for land grants. He informed the chiefs that he only held authority to deal with Indian claims and thus could make no promise of land for the Métis; he noted, however, that the "Chiefs had kept a large reserve & might if they pleased give them [Half-Breeds] locations."⁶⁴ Nonetheless,

Robinson did advise the Half-Breeds (or, in Robinson's words, the "Canadians") on how to word a petition to the government. Specifically, he told the Métis to cite how they "were put in possession by the military authorities of the time, and that I had little doubt that the Government would do them justice." In his report to the government, Robinson does request, "that those who can show a fair claim to the favourable consideration of the Government should be liberally dealt with."⁶⁵

Robinson also balked at a Half-Breed payment as seen under the terms of the 1836 Treaty—although his decision, as outlined in the final report, does parallel the 1842 Treaty. Robinson informed the government that,

As the half-breeds at Sault Ste. Marie and other places may seek to be recognized by the Government in future payments, it may be well that I should state here the answer that I gave to their demands on the present occasion. I told them I came to treat with the chiefs who were present, that the money would be paid to them—and their receipt was sufficient for me—that when in their possession they might give as much or as little to that class of claimants as they pleased.⁶⁶

This is strikingly similar to the 1842 provision that the chiefs in council would determine the distribution of one-time monies to the Half-Breeds. Despite apparent promises, between 1850 and 1900 the majority of the Métis lost their land within Sault Ste. Marie, and, like many of their brethren in the US, were forced either to assimilate into the mainstream, hide their identity, move away, or join with the Indians.⁶⁷

There are other, similar aspects between the BNA treaty of 1850 and prior documents signed in the US. These similarities include treating with a mass assembly of Indians for a large territory and the touching of the pen, by the Indians, to signify assent.⁶⁸ While treating with an assembly of Indians follows the guidelines set out by the 1763 Royal Proclamation, by assembling many leaders and followers from such a vast area the government massaged the spirit and intent of the King's document. By dealing with a large body of Indians at once, rather than individual bands, government negotiators on both sides of the border were able to succeed in gaining a treaty by convincing the lesser chiefs—the majority—to sign the document, thereby compelling the key leaders to assent. Such a tactic

took advantage of Anishinaabeg societal norms that maintained a leader could only follow the community's will. This is a lesson Vidal learned as he read through the US Indian Affairs documents in Sault Michigan. Familiar with this tactic, however, the Anishinaabeg did nonetheless attempt to block Canada West's aims by forming a treaty consensus prior to Robinson's arrival. The divisions among the Anishinaabeg, specifically between the chiefs from Lake Superior and those from Lake Huron, led to the creation of two treaties rather than just one. By creating two treaties, Robinson violated his orders from the Lieutenant Governor. The division between the Lake Superior and Lake Huron bands is also a partial explanation why Batchewana First Nation, located on Lake Superior, under the leadership of Nebenagoching, signed the Huron and not the Superior treaty; he supported the demands put forth by Shingwaukonse.⁶⁹ Finally, despite their signatures appearing at the top of the Robinson-Huron Treaty, Shingwaukonse and Nebenagoching likely signed last.⁷⁰ Their assent took place two days after the 7 September 1850 signing of the Robinson-Superior Treaty. Both men appear to have signed after the other Lake Huron chiefs and head-men, as well as after Robinson threatened to leave Shingwaukonse and Nebenagoching's bands without a treaty on 9 September 1850.⁷¹ The touching of the pen was merely formulaic, although it did become a standard method for the Indians to signify their assent to a treaty.⁷²

The influence of previous American treaties can be seen in the negotiations surrounding the monetary compensation due to the Anishinaabeg signatories. In 1849 Anderson rejected Anishinaabeg demands at Fort William for an annuity of \$30 in perpetuity based on the knowledge that the U.S. paid less than \$30 per person and that the payments were time-limited.⁷³ The following year, during the 1850 treaty negotiations, Shingwaukonse's demands for higher annuities—\$10 per head versus Robinson's offer of \$1 to \$2—as well as Robinson's realization that his financial offer paled in comparison to the liberal American payments for land on the south shores of the lakes, and the higher annuities of earlier BNA treaties, are examples of these prior experiences.⁷⁴ The *Lake Superior Journal* reported on 18 September 1850 that a number of the Indians did not believe that the small annuity was worth the annual effort to collect it. Additionally, the newspaper noted that many believed the government

had acquired a vast territory of great mineral and agricultural value for very little. In short, according to the newspaper, the Indians believed that the US had treated them with greater liberality than BNA.⁷⁵

The overall amount of compensation differed radically between the most recent US treaty, signed in 1842, and the 1850 treaties. Under the terms of each Robinson treaty, the Indians were to receive an “immediate sum of two thousand pounds of good and lawful money of Upper Canada.”⁷⁶ Furthermore, perpetual annuities worth £600 for Lake Huron and £500 for Lake Superior signatories were included. Thus, the initial distribution to all signatories was £5,100, with £1,100 distributed each year thereafter.⁷⁷ This is in comparison to the US Treaty of 1842, which paid out \$111,200 in the first year and \$36,200 per year for the next twenty-five years.⁷⁸ This significant difference is scarcely less significant when one takes the exchange rate from the period as \$4 for every £1.⁷⁹ At this rate of exchange, the 1842 Treaty paid £27,800 (first year) and £9,050 (subsequent years), respectively. In an effort to convince the chiefs to sign the treaty, Robinson argued that there were two key differences in the annuity formulations, which negated the cash difference. The first was the escalator clause, which stated that the annuity could increase should revenues permit it.⁸⁰ The second was that, unlike the US treaties, the BNA treaty monies would be distributed in perpetuity.⁸¹ The 1850 treaties also promised to pay out an adjusted amount for the mining claims that were staked prior to the treaty signing.⁸²

Interestingly, the initial disbursement of money associated with 1850 treaties was made in US silver half-dollars.⁸³ Subsequent annuity payments to the Robinson-Huron Treaty signatories was made in goods, while the signatories to the Superior Treaty continued to receive cash at the insistence of the Hudson’s Bay Company. While it is unclear which form of coin was used to pay the annuities, apparently the Anishinaabeg preferred the US coins. For instance, in 1873 the Hudson’s Bay Company chief factor at La Cloche, Joseph W. Hardisty, wrote to the government recommending that US silver half-dollars be used to pay the annuity. Hardisty maintained that the Anishinaabeg did not want or understand paper money, but were intimately familiar with American coinage.⁸⁴ Such familiarity came from the Anishinaabeg resident in British-Canada participating in US treaty payments, the proximity of the international

boundary, and, in the case of the British Sault, the overwhelming presence of the larger and commercially vibrant American Sault.

A significant key difference between the 1836 and 1842 US treaties and the 1850 BNA treaties centres upon the perpetuity statement. First, both US treaties expected the Anishinaabeg signatories to remove to the west. The Treaty of 1836 placed a limit of five years on the reserves, unless Congress granted the Indians permission to remain on the lands longer, and provided limited annuities for twenty years.⁸⁵ The Treaty of 1842 placed a twenty-five-year limit on monetary disbursement and made the Anishinaabeg "residing on the Mineral district ... subject to removal therefrom at the pleasure of the President of the United States."⁸⁶ As such, at this time the permanence of the Anishinaabeg presence in Michigan was not considered a viable option. Comparatively, the two 1850 BNA treaties not only promised a perpetual annuity, as well as a tantalizing promise of increased annuities in the distant future, but allowed for the reservation of lands that would forever belong to the Anishinaabeg.⁸⁷ These conditions allowed Robinson to argue that despite lower monetary benefits, his treaties were different because the Anishinaabeg were not required to remove, thereby assuring a permanent presence in the region. Thus, the BNA treaties assured that the Anishinaabeg along the northern shores of Lakes Huron and Superior would always be there—a confidence that those living in the US could not share. Additionally, the BNA treaties' permanence presented the Anishinaabeg living on the US side of the international boundary with the opportunity to remain within their homelands, should the American government press for removal.

The smaller annuity, albeit perpetual, was similar to US treaties in a significant way. In 1849, during his survey of the American Sault's Indian records, Vidal discovered that some US treaties would reduce the annuity should the band size decrease.⁸⁸ While it is not clear if its inclusion stemmed from information given to Robinson by Vidal or from Johnston, the idea of a "diminution of the [annuity if the] band decreased"⁸⁹ was incorporated into the 1850 treaties. Specifically, both treaties contained a clause that states that, "should they [the Anishinaabeg] not at any future period amount to two-thirds of fourteen hundred and twenty-two, then the said annuity shall be diminished in proportion to their actual numbers."⁹⁰ This idea of a de-escalator clause, while based on knowledge

of US treaties, also sought to take advantage of the popular notion in nineteenth-century settler culture that Indians would either assimilate or become extinct.

Those Involved in the 1850 Negotiations and Signing

Other aspects of the treaties' and treaty negotiations' borderlands nature are evident when considering those involved. First and foremost, the Anishinaabeg sent the most qualified individuals, in terms of stature, knowledge, and ability, to negotiate treaties with the colonial state. Anishinaabeg scholar Dr. P. Bellfy has clearly demonstrated in his essay "Cross-border Treaty-signers" that the Anishinaabeg living on either side of the international border took part in treaties affecting their homelands.⁹¹ In terms of the 1820, 1836, 1842, and 1850 treaties, Bellfy identifies no less than sixteen individuals involved with these treaties, either as signatories or annuity recipients, living on one side of the border or the other.⁹² Bellfy's numbers obviously do not include individuals working for the governments during the negotiations who were non-Native or Métis. A good example of this is George Johnston, a Mixed-Blood from the Sault Ste. Marie region. During the 1850 negotiations, Johnston worked at translating the documents (alongside L. Cadot, J. W. Keating, and J. B. Assikinock) for the assembled Anishinaabeg. An American citizen, Johnston had worked for the American Indian Department in the Great Lakes, operated as an Indian trader, kept a boarding house, and was a justice of the peace in Sault Michigan.⁹³ Additionally, he was a descendant of a prominent Sault family that had extensive ties throughout the Lakes Huron and Superior region due to its activities in the fur trade, as well as prestige drawn from his mother's connections to Waub-o-jeeg, a chief from La Pointe.⁹⁴ He had written letters for Shingwaukonse attesting to the chief's loyalty to Britain and his stature among the Indians.⁹⁵ Johnston also provided information to Vidal regarding Indian claims in the region in 1849, which is clearly visible in Vidal and Anderson's report.⁹⁶ For example, according to Vidal's journal entry for 13 September 1849, he "spent greater part of the morning at Mr. G. Johnston's obtaining valuable information relative to the Indians and their claims."⁹⁷ Moreover, Johnston was related through marriage to a beloved former missionary to the Sault Anishinaabeg and a friend of Shingwaukonse: the Reverend

William McMurray.⁹⁸ The ongoing positive nature of their relationship is evident in McMurray's correspondence with Johnston regarding the former's claims under the 1850 Treaty. In a letter, McMurray requests that Johnston obtain Shingwaukonse's and Nebenagoching's signatures on a letter that would allow McMurray and his family to share equally in any payment made to the families at the Sault. Johnston obtained the required signatures for McMurray's letter and returned it. McMurray subsequently forwarded the signed document to the BNA government.⁹⁹ Obviously, McMurray hoped to profit from the one-time Indian disbursement or a possible Métis settlement, as happened under the 1836 Treaty.¹⁰⁰ Johnston also participated in mineral exploration and speculation on both sides of the river, prior to and after the signing of the 1850 treaties.¹⁰¹ Johnston's roles, status, and family connections in the Sault community would have lent support to Robinson's 1850 negotiations and lent an air of American authority and support to the negotiations.

Reverend James Cameron was another prominent local figure who participated in the treaty process, although he was not a signatory. Cameron arrived in the Sault region in 1831 as a lay missionary of the Anglican Church. He converted to the Baptist faith in 1832 and relocated to the US shore.¹⁰² After a dispute with his supervisor, the Reverend Abel Bingham, Cameron subsequently purchased a farm and regularly resided on both the north and south shores.¹⁰³ He founded the first Baptist Church in the British Sault as an offshoot of the American Baptist Foreign Mission Society (ABFMS) station run by Bingham. Cameron had also married into the local community. During the events of the 1840s and 1850, Cameron corresponded with and spoke to BNA authorities regarding Anishinaabeg claims and Shingwaukonse's actions. Specifically, in 1849 he offered the commissioner of Crown lands his assistance in treaty negotiation. Urging the government to make a treaty, Cameron noted that anything less would not "keep the Indians within the bounds of good behaviour." Moreover, Cameron pointed out that the Indians held little faith in the government and its agents because they had been told and believed that these individuals "will study to promote the interests of government."¹⁰⁴ Finally, Cameron contested Chief Shingwaukonse's grant of mineral leases upon several islands to Alan Macdonell in payment for services, based on his knowledge of the region. That action,

according to Cameron, was illegal. This charge of illegality did not stem from the formal rules imposed by the state concerning its exclusive ability to deal with Indians and their lands, but from Cameron's knowledge that the islands were not Shingwaukonse's to lease. Cameron knew that the Tahquamenon and Naomikong bands resident in Michigan "owned" these islands; the islands that Shingwaukonse leased away were the camping and fishing sites for these bands. Simply, Shingwaukonse did not have the authority to sell or lease these islands without the consent and authority of the Tahquamenon and Naomikong peoples.¹⁰⁵ Thus, Cameron's knowledge was derived from his life in the community, marriage into a prominent Naomikong family, his familiarity with the Anishinaabeg leadership, his fluency in Ojibwe, a Mixed-Blood heritage, and his position as a trusted missionary.

Finally, Chiefs Shingwaukonse, Nebenagoching, and Oshawano were all individuals who held cross-border claims. Since Bellfy has already documented their participation in various treaties that the Anishinaabeg entered into with both British and American authorities, a brief description of each leader's role in 1850 will suffice to illustrate their cross-border nature. Oshawano was the lead Crane totem chief of the Sault region, making him the regional titular head.¹⁰⁶ He participated in the Mica Bay Affair in 1849, and was listed on the band rolls of the Robinson-Huron Treaty.¹⁰⁷ According to Janet Chute, Shingwaukonse's biographer, this listing was undertaken by government interpreters George Johnston and John W. Keating.¹⁰⁸ Not being a member of the Crane totem, Shingwaukonse was only seen as the head or lead chief of the British Sault Anishinaabeg. He could not undertake, nor would he have undertaken, to defend Anishinaabeg land rights without the knowledge and explicit support of the region's key leader, Oshawano.

Shingwaukonse, head chief of the Garden River band and overall chief of the British Sault, had been born on American territory, fought with the British during the War of 1812, and participated in the negotiations for and signed the 1820 treaty. He had permanently moved to BNA by the 1830s, and eventually became the key chief on the Sault's North Shore.¹⁰⁹ Shingwaukonse became the lead chief after being elevated to the position through his connection to the Anglican Church, his loyalty to Britain, and his status within his culture's parameters as war leader and spiritualist.

Shingwaukonse maintained ties to various chiefs throughout the Lakes, and wished for Garden River specifically, and the Sault region more generally, to serve as a homeland for Anishinaabeg from both BNA and the US.¹¹⁰ His ties and experiences allowed him to become a familiar figure to government officials and traders on either side of the international border.

Nebenagoching, head chief of the Batchawana and Sault bands, signed the 1850 treaty. Like Shingwaukonse, he had been born in American territory and eventually settled on the British side of the line. Nebenagoching was a member of the Crane totem, thus part of a group that held the hereditary leadership of the Sault region. In 1819, the British Indian Department elevated Nebenagoching, when a small child, to the status of head chief, thereby replacing his father who had died in the War of 1812.¹¹¹ Viewed as unusual at the time, even by the British, the Sault region Anishinaabeg simply selected someone else for a leader.¹¹² Regardless, Nebenagoching continued to function as a key chief in the region, although he was removed as the British Sault's head chief in 1835 by William McMurray, Anglican catechist, missionary, and British Indian agent. The dispossession of Nebenagoching was undertaken by McMurray due to the chief's continued support of Anishinaabeg cross-border rights, his regular residence on the South Shore, and his continued support of both Métis rights and the Catholic Church.¹¹³ Regardless of this manipulation of leadership in the British Sault, Nebenagoching and Shingwaukonse generally cooperated when it came to promoting Anishinaabeg rights.

While this is but a brief discussion of the treaty participants' cross-border nature, it does serve to illustrate the international aspect of those involved with the Robinson Treaties of 1850. Many other individuals involved in the treaties, such as John Bell, L. Cadot, and Peau de Chat,¹¹⁴ were also part of the borderlands discussions undertaken in 1850. Simply, these individuals and communities, whether Indian, Métis, or newcomer, were familiar with and operated within the context of the region's borderlands.

Government Knowledge of International Nature of the Treaties

While it is clear that the treaties were products of the borderlands, inasmuch as the treaties of 1850 were BNA treaties the question remains

whether or not the government of the day and its negotiators recognized these international aspects. While it has been shown that some of those involved in the treaty process had multiple ties that stretched across the border, it needs to be demonstrated that officials working for the BNA government of Canada West saw the North Shore as part of the larger Anishinaabeg homeland. It also needs to be shown that the Anishinaabeg saw the BNA treaties as an extension of previous dealings with various newcomers to their homeland.

The Anishinaabeg treaty signatories evidently saw the treaties as part of their ongoing interactions with the newcomers. From an Anishinaabeg perspective, the treaty was about protecting land rights in BNA for all Anishinaabeg. In the Sault region, for instance, people on the South Shore often had hunting and fishing rights on the North Shore, whereas those on the North Shore had rights on the South Shore. Additionally, the multiple islands in the river, from Sugar Island in the east to Whitefish Island in the west, served as camping and fishing sites, as much as the river banks, for various family groups in the region. Which group had the right to access the whitefish fishery from the shore, the islands, or the water, depended on many factors, including relative distance from the main Anishinaabeg settlement on the southern shore of the St. Mary's River (essentially modern-day Sault Michigan's canal waterfront), as well as relative distance from the Crane clan. All of this meant that the Sault region's bands had a complex social structure that utilized the resources on both sides of the river long before an international boundary was drawn through the region.¹¹⁵

Officially, the 1850 Treaties were simply land surrender treaties signed with British Indians to permit resource extraction and settlement on previously unsurrendered lands in Canada West. Interestingly, the term "British Indian" and its twin identifier, "American Indian," are products of the imperial desire to identify and regulate individuals and groups. Both terms emerged in the late 1830s and 1840s, used by British authorities to appease American fears of interference with Indians in US territory by restricting "gifts" to those resident in BNA.¹¹⁶ Aboriginals classed as "visiting" or "American" Indians were discouraged from remaining in Canada West and were encouraged to return to the US. "Resident," "Canadian," "British" Indians referred specifically to groups living or originating

within BNA's boundaries who had a fixed or identifiable residence. British and US authorities, at least in the Sault area, used these classifications based upon precedents set by the treaties and observable residency patterns; yet the effort to prevent Anishinaabeg moving across the border freely continued for decades, with various individuals being labelled as both American *and* British Indians.

The movement of the Sault region's Indians back and forth can be seen in the records of both nations' Indian agents. For instance, William Van Abbott, Indian agent to the British-Canadian Sault, noted in 1876 that the Indians informed him that at the time of the treaty no restriction was placed on residence when receiving the annuity. Van Abbott, with this information, simply concluded that the government needed to investigate the various annuity claimants to determine their "nationality." This, he argued, would reveal that a greater portion of the annuitants were US citizens, had surrendered land to which they were not entitled, and could thus be struck from the pay lists.¹¹⁷ In response to Van Abbott's comments, the Department Indian Affairs directed him in September 1876 to establish the Canadian or American residency of Indians. This was done in an effort to exclude Indians not resident in Canada from the receipt of annuities. Van Abbott was advised that should the individuals return from the US and permanently remain in Canada, they could be reinstated for subsequent annuity payments.¹¹⁸ Approximately twenty-six years earlier, in 1850, Acting Superintendent of Indian Affairs Charles P. Babcock reported that the Indians from Garden River were receiving annuity benefits under US treaties at Sault Michigan.¹¹⁹ A year later in 1851, the Sault Ste. Marie subagent reported that many Sault band members were worried they would lose the US annuity if they continued to reside in Canada.¹²⁰ Such worries were based on US government's policy to exclude all non-resident Indians, Métis, and traders from treaty payments.¹²¹ Similar exclusions were practiced by the British-Canadian government after the mid-1850s. In 1869, for instance, William Plummer, Indian agent at the Sault, was ordered to remove all Indians from the band lists who had emigrated from the US.¹²² A decade earlier, Superintendent of Indian Affairs George Ironside informed Richard Carney, sheriff of Sault Ste. Marie, that American Indians had no right to be on the Garden River Reserve and that the receipt of American monies or privileges negated

rights in BNA.¹²³ For example, in 1859 Ironside stated that he did “not think that the parties at Garden River designated ‘American Indians’ have any right to cut and dispose of wood from off the Reserve there.”¹²⁴ Investigations were commenced to determine who did and did not belong on British-Canadian band lists, a process that continued from the late 1850s to the early twentieth century. Many Anishinaabeg were labelled “American Indians,” which resulted in their exclusion from band lists.¹²⁵ For instance, Piabetassung and his followers’ residency in both Canada and the US resulted in the band’s demise. This band resided on Sugar Island, Michigan, and on the east side of the mouth of Garden River, Canada West. After signing both the 1850 BNA and 1855 US treaties, Piabetassung and his followers accepted annuity payments and government largesse from both countries.¹²⁶ Canada West officials declared Piabetassung’s band “American Indians” after learning the group had accepted US treaty payments. The US in turn used the band’s acceptance of Canadian annuities to deny them recognition in Michigan. This convergence of US and Canadian colonial definitions, neither of which included dual national residency, tore the group apart, resulting in Piabetassung’s band members blending into the “recognized” groups on both shores or leaving the area.¹²⁷ Piabetassung settled on the Garden River Reserve. In late 1859, this investigative outcome eliminated approximately two hundred individuals from the 1850 Garden River annuity lists.¹²⁸

Thus it appears that shortly after the treaties were signed, BNA sought to eliminate people from the annuity lists; yet these very individuals had been recognized as parties to the treaty, not only by the chiefs on the North Shore but also by Canada West’s negotiators. In the years leading up to the treaty, 1830 to 1849, and even before that, government representatives knew of the Anishinaabeg claims and rights to both sides of the river. Papineau’s report, referred to above, cited Anishinaabeg immigration from the Mississippi region as a reason to deny claims to the land. William Keating, a disgraced former Indian agent, in his 1849 *Chatham Chronicle* response to Shingwaukonse’s plea in the *Montreal Gazette*, referred to the chief’s mixed origins and his non-British birth on Lake Superior.¹²⁹ T. G. Anderson, one of the longest-serving members of the Indian Department and intimately familiar with the region’s inhabitants from his service on Drummond Island and Penetanguishene, noted in

1845 that the land at Sault Ste. Marie belonged to the Anishinaabeg who lived on both sides of the river.¹³⁰

The activities and work of William McMurray, first Indian agent to the BNA Sault, further testifies to the government's knowledge of the cross-border nature of people in the region. McMurray arrived in Sault Ste. Marie via Detroit in 1832. Once in the BNA Sault, he established an Anglican mission and served as the Indian Department's representative in the region. He distributed British flags, medals, and annuities in the Sault to both "British" and "American" Indians, often from H. R. Schoolcraft's home on the US shore. Schoolcraft was the American Indian agent, and he and McMurray were brothers-in-law. Both men, while remaining friends and colleagues, reported to their respective governments concerning Indian movements and loyalties. The records of both indicate that their respective governments were well informed concerning Anishinaabeg residency patterns and claims in the region.¹³¹

Robinson, the BNA negotiator, was also familiar with the trans-border nature of Anishinaabeg rights. He was a former mine manager at Bruce Mines and knew Shingwaukose, as well as other Anishinaabeg treaty signatories. Additionally, during the treaty negotiation process Robinson resided in Sault Michigan and employed George Johnston as the main government interpreter for £25.¹³² By residing in the US and utilizing an experienced and prominent American Métis, Robinson drew on various forms of American knowledge concerning Anishinaabeg claims. Hence, Robinson was not ignorant concerning Anishinaabeg ownership of the region, regardless of which side of the border they happened to reside on, and was likely cognizant of the "American" Anishinaabeg's inclusion in the treaties.

Conclusion

It is clear that the 1850 treaties that William Benjamin Robinson signed on behalf of the Crown in BNA with the Anishinaabeg are products of the borderlands. Events, negotiations, and outcomes, as well as individuals involved, are entirely reflective of the Upper Lakes region and the Anishinaabeg homeland, bifurcated by a border not of their making. Nonetheless, might these documents, particularly the Robinson-Huron Treaty, be interpreted as viable international documents that establish

“American” Anishinaabeg rights on the Canadian side of the international boundary?

According to constitutional expert Peter Hogg, there are five factors that must be taken into consideration to determine whether or not an Indian treaty is valid. While there is not a doubt that the 1850 treaties are valid documents, these same factors can be used to argue that the treaties’ validity established international rights for the Anishinaabeg. First, “the parties to the treaty must be the Crown on the one side, and an Aboriginal nation on the other.” By understanding the trans-border nature of the Upper Lakes Anishinaabeg’s homeland, and the residency patterns of the Sault Anishinaabeg in particular, the nation signing the treaty was and remains international. Second, “the signatories to the treaty must have the authority to bind their principals, namely, the Crown and the Aboriginal nation.” William B. Robinson was the duly authorized agent of the Crown. The various head-men and chiefs who signed both of the 1850 treaties were capable of binding their members to the treaty. Each Anishinaabeg representative, and particularly the key leaders—Shingwaukonse, Nebenagoching, and Peau de Chat—were representatives of those individuals and claimants living on both sides of the border. Moreover, the presence of head chief and Crane totem leader Oshawano in the events leading up to the treaty-signing and his name on the band list for Garden River, along with other South Shore residents, adds further weight to the ability of the Anishinaabeg on both shores being able to sign a binding document. Third, “the parties must intend to create legally binding obligations,” and fourth, “the obligations must be assumed by both sides, so that the agreement is a bargain.” This was done through the incorporation of annuities and Anishinaabeg acquiescence to resource extraction from surrendered lands, as well as oaths to live under the Queen’s law. Fifth, “there must be a ‘a certain measure of solemnity.’”¹³³ Aside from Robinson’s threats to ignore Shingwaukonse and Nebenagoching’s bands if they did not sign a treaty, there was due solemnity at the proceedings. From the non-Anishinaabeg perspective, the presence of the British military, various onlookers from both Saults, and the symbolic touching of the pen gave the proceedings an air not only of pageantry, but solemnity. For the Anishinaabeg, the signing and

negotiations were undertaken with due cultural constraints regarding speaking order, hosting, and cleansing of mind and body, as well as the symbolism in the touching of the pen. Finally, the distribution of monies, alcohol, and gifts afterward capped the agreement. Thus, the 1850 treaties are valid documents and contain "American" Indian signatures.

The international border complicated the practice accepted under international law that only Indians resident in the British-claimed territory could negotiate for the lands. While technically Robinson only negotiated for lands and rights within the British-claimed region, the existence of the Anishinaabeg nation at the Sault that lived astride the border complicated the practice. To conclude the treaties, Robinson was forced to work within Anishinaabeg conventions. In essence, Robinson had to negotiate with the region's Anishinaabeg, regardless of territorial residency, to obtain the "right, title and interest" in the region for the settlers.¹³⁴

In addition to determining whether or not a treaty is valid, it is necessary to establish the intent of the treaty. To such an end, Canadian courts have identified several factors necessary to establish the intent of the parties entering into a treaty—factors that go beyond the text. These include but are not limited to the following:

1. Continuous exercise of a right presently, and in the past;
2. The reasons as to why the Crown made the commitment;
3. The situation prevailing at the time when the document was signed;
4. Evidence regarding mutual respect and esteem between negotiators; and
5. The subsequent conduct of the parties.¹³⁵

In terms of understanding the 1850 treaties as international documents, factors 2 and 4 are not relevant. Simply, the commitment was made so the Crown could access resources along the North Shore legally by extinguishing Aboriginal rights only after speculation on the resource potential of the region based on mineral discoveries on the South Shore. The region's Anishinaabeg entered into the agreements in an effort to share their land and resources with the newcomers while preserving key areas for their own use and ensuring their continued existence in the region.

There is ample evidence of the mutual esteem in which the Anishinaabeg and Robinson held each other. During the negotiations, both sides treated each other and the events with decorum and respect.

The remaining three factors are more useful in determining the 1850 treaties' international aspect. During the period leading up to the 1850 Treaty and its signing, the 1794 Jay Treaty was respected by both BNA and the US. First and foremost, the recognition by British-Canadian and American authorities of Anishinaabeg claims along the north and south shores, particularly in the Sault region, attests to the exercise of both historic residency and land-use patterns. This can be seen in the various distributions of presents held at Drummond Island, and later at Penetanguishene and Manitoulin Island, by the British Indian Department. The gathering of Anishinaabeg prior to and during such distributions of presents included people from both sides of the international border.¹³⁶ It was in an effort to restrict and eventually eliminate Indian contact with the British that an Indian agency was established in Sault Ste. Marie, Michigan. Henry R. Schoolcraft's correspondence while Indian agent, as well as that of subsequent agents in the 1840s and 1850s, demonstrates American efforts to supersede the British in the eyes of the Indians.¹³⁷ Moreover, this correspondence demonstrates that the Americans attempted to extend their influence among Indians living along the North Shore, as well. Both sides also distributed treaty benefits to the Anishinaabeg until the evolution and enforcement of government policies ended the practice. In receiving gifts from the respective governments, as well as treaty benefits, the Anishinaabeg continued to exercise their right, as outlined in the 1794 Jay Treaty, to cross the border unhindered. The continued presence of names on treaty lists, cross-border marriages, and annual Jay Treaty Day demonstrations, as well as current US support of the 1794 document, all attest to the continued exercise of Anishinaabeg border rights. Finally, the Canadian government's subsequent conduct in response to the rights of the Anishinaabeg to the North Shore, regardless of place of birth or residency, has been one of denial and elimination. This is particularly evident in British-Canadian correspondence and investigations of band lists in search of individuals holding American Indian status and then eliminating them from the lists. An entire band was destroyed by the policies of British-Canada and the US

in regard to the trans-border rights of the Anishinaabeg. In fact, it can be argued that British-Canadian authorities' efforts to restrict treaty benefits to "Canadian" Indians attests to their knowledge that the 1850 Treaty was viewed as an international document. This reality could cause problems for British-Canada's Indian legislation and other efforts to civilize its Indian populations. From a government perspective, one cannot administer a population that lives between two states. American practice (although the US government did not sign the 1850 treaties) has been to recognize the Jay Treaty rights of Canadian Indians living in the Upper Lakes region. More recently, in July 2010 the US federal government signed a memorandum of agreement that recognized that the Anishinaabeg are an "Indigenous Nation of North America." Essentially, the memorandum recognizes that the Anishinaabeg are neither Canadian nor American.¹³⁸ Although the exact meaning and application of the designation has not been worked out, Garden River First Nation is negotiating to have its own version of a secure identity card recognized by US Homeland Security. Finally, since the signing of the treaties, the Anishinaabeg have continued to conduct themselves as if the border were an imposition on their territory rather than a fact that restricts their movements, like it does their Canadian and American neighbours.

Thus, the 1850 Robinson Treaties are documents that affirm Anishinaabeg rights along the north shores of Lakes Huron and Superior regardless of "national" origin. These two documents, and the events leading up to and following their signing, indicate that not only are these Treaties products of the borderlands, but they are also truly international. Canada may view the treaties as anomalies or paradoxes, and as documents internal to Canada, but that does not preclude the fact that in 1850 its negotiators signed documents with the Anishinaabeg nation. Even if treaties remain *sui generis*, the rights of the American Anishinaabeg who were party to the 1850 treaties need to be acknowledged and respected within Canada. While Supreme Court of Canada decisions maintain that treaties were not "created ... according to the rules of international law," other decisions by the court argue that the Canadian government must interpret treaties both liberally and in terms beneficial to the Indian understanding of the documents when signed. This conflict must be addressed in terms of the modern legal understanding of both the

Robinson-Huron and Robinson-Superior Treaties. Furthermore, both of the 1850 treaties show that British North America recognized the Anishinaabeg rights guaranteed under the 1794 Jay Treaty. Hence, the promises made in the 1814 Treaty of Ghent to recognize Aboriginal rights were fulfilled, and thus Anishinaabeg “treaty and aboriginal rights” under the Canadian Constitution need to include the border. As such, the 1850 treaties are documents with an international scope, which affirmed Anishinaabeg rights in the Upper Lakes. The Canadian government needs to recognize that the Anishinaabeg of the entire borderland region signed the documents, not just the individuals living along the North Shore; or, in terms of the promises made during the 1850 negotiations, the Ojibwa should be able to continue their way of life as they had “heretofore been in the habit of doing.”¹³⁹

Endnotes

- 1 Metro-Toronto Reference Library, Anderson Papers, C-34, S-29, Relation of John Bell.
- 2 James Morrison, “The Robinson Treaties of 1850: A Case Study,” research report prepared for the Royal Commission on Aboriginal Peoples, Treaty and Land Research Section, 1996.
- 3 Treaty of Paris (1783), Article 2, Our Documents, www.ourdocuments.gov (accessed 27 April 2010).
- 4 “Jay’s Treaty—1794,” *Treaty of Amity, Commerce and Navigation*, Archiving Early America, www.earlyamerica.com/earlyamerica/milestones/jaytreaty/text.html (accessed 27 April 2010).
- 5 Francis M. Carroll, *A Good and Wise Measure: The Search for the Canadian-American Boundary, 1783–1842* (Toronto: University of Toronto Press, 2001), 113–40.
- 6 The Anishinaabe of the Sault region have never stopped moving back and forth across the border that bisects their homeland. The demand that Anishinaabe border rights be recognized has not ceased. See, for instance, Joan Black, “Jay Treaty border crossing rights implemented,” *Windspeaker*, 29 October 1999; Michael Purvis, “CBSA denies profiling in Monday’s border blockade,” *Sault Star*, 2010 (article ID# 2233373, accessed 11 July 2010); and Marcia Yablon-Zug, “Gone but not forgotten: the strange afterlife of the Jay Treaty’s Indian free passage right,” *Queen’s Law Journal* 33, no. 2 (2008): 565–617.
- 7 The US ended its Treaty-making process in 1871. Canada ended its Treaty process in 1923, but it was reborn with the Supreme Court of Canada’s 1973 Calder Ruling, which led to the official establishment of the land claims

process, often referred to as the modern treaty process. From the Aboriginal perspective, the efforts to seek redress for rights and land usurpation never ceased between 1923 and 1973.

- 8 Thomas Isaac, *Aboriginal Law: Commentary, Cases and Materials*, 3rd ed. (Saskatoon: Purich Publishing, 2003), 71; Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994), 1–2; and J. R. Miller, *Compact, Contact, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009), 3–5, 283, 299–304.
- 9 Isaac, *Aboriginal Law*, 74–75.
- 10 *R. v. Sioui* [1990], 1 S.C.R., and *R. v. Simon* [1985], 2 S.C.R., *Judgements of the Supreme Court of Canada*, <http://scc-csc.lexum.com/scc-csc/en/nav.do> (accessed 22 Feb. 2016); and Isaac, *Aboriginal Law*, 71–74.
- 11 *Simon v. The Queen* [1985], 2 S.C.R. 387, *Judgements of the Supreme Court of Canada*, <http://scc.lexum.org/en/1985/1985scr2-387/1985scr2-387.html> (accessed 24 July 2011)
- 12 Section 91 states: It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,
24. Indians, and Lands reserved for the Indians. Canada, Department of Justice, Constitution Acts, 1867 to 1982, laws.justice.gc.ca/en/const/3.html#anchorbo-ga:s_91-gb:s_91 (accessed 29 April 2010).
- 13 Prucha, *American Indian Treaties*, 4–5.
- 14 Section 8, Powers of Congress, states that it has the power, "To regulate Commerce with foreign Nations, and among the several States, and with the Indian," "Constitution of the United States: A Transcription," *The Charters of Freedom: A New World is at Hand* www.archives.gov/exhibits/charters/constitution_transcript.html (accessed 30 April 2010); and Prucha, *American Indian Treaties*, 15.
- 15 Janet Chute, *The Legacy of Shingwaukose: A Century of Native Leadership* (Toronto: University of Toronto Press, 1998), 142; Alexander Morris, ed., "Robinson Treaties [William B. Robinson's Report, September 24, 1850]," in *Treaties of Canada with the Indians of Manitoba and the North-West Territories including the Negotiations on which they are based* (1880; reprint, Saskatoon: Fifth House Publishers, 1991), 17–18; and Morrison, "The Robinson Treaties," 4, 97–98.
- 16 "First Nations and Native Americans," *The American Embassy Consular Services Canada*, <http://canada.usembassy.gov/visas/information-for-canadians/first-nations-and-native-americans.html> (accessed 22 Feb. 2016).

- 17 "Border Crossing Rights Between the United States and Canada for Aboriginal People," *Publication of the American Indian Law Alliance New York City*, <http://ptla.org/border-crossing-rights-jay-treaty> (accessed 22 Feb. 2016); and *Francis v. The Queen* [1956], S.C.R. 618, *Judgements of the Supreme Court of Canada*, <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6944/index.do?r=AAAAQAVRnJhbmNpcyB2LiBUaGUgUXVlZW4gAQ> (accessed 22 Feb. 2016).
- 18 For more information, see Richard G. Bremer, *Indian Agent and Wilderness Scholar: The Life of Henry Rowe Schoolcraft* (Mt. Pleasant, MI: Clarke Historical Library, Central Michigan University, 1987).
- 19 "Article 3, Treaty with the Chippewa, 1826," in *Indian Affairs. Laws and Treaties: Volume II (Treaties)*, ed. Charles J. Kappler (Washington: Government Printing Office, 1904), 269.
- 20 See Rhonda Mae Telford, "'The Sound of the Rustling of the Gold is Under My Feet Where I Stand; We Have a Rich Country': A History of Aboriginal Mineral Resources in Ontario" (PhD diss., University of Toronto, 1996), 35–37.
- 21 Bernard Lambert, "Mission Priorities: Indians or Miners?," *Michigan History* 51, no. 4 (1967): 323.
- 22 Hon. Jos. H. Steere, Circuit Judge, *The Pioneers of the Upper Peninsula* (Sault Ste. Marie: The Society, 1899), 9. For more information, see Larry D. Lankton, *Beyond the Boundaries: Life & Landscape at the Lake Superior Copper Mines, 1840–1875* (Toronto: Oxford University Press, 1999); and Philip C. Bellfy, "Michigan's Upper Peninsula, An Internal Colony: The Sault Sainte Marie Experience" (master's thesis, Michigan State University, 1982), 13–14.
- 23 For more information on mining activities, see Telford, "'The Sound of the Rustling of the Gold,'" Chute, *The Legacy*; and Mary-Lynn Murphy, "Draft Research Report: The Mining Locations of the Garden River Indian Reserve #14" (Toronto: Ontario Native Affairs Secretariat, January 1987; revised by Jean Manore, May 1990).
- 24 Rhonda Telford, "Aboriginal Resistance in the Mid-Nineteenth Century: The Anishinabe, Their Allies, and the Closing of the Mining Operations at Mica Bay and Michipicoten Island," in *Blockades and Resistance: Studies in Actions of Peace and the Temagami Blockades of 1988–1989*, eds. Bruce W. Hodgins, Ute Lischke, and David T. McNab (Waterloo: Wilfrid Laurier University Press, 2002), 72.
- 25 This journal began as the *Lake Superior News*, from July to October 1846. In 1847 it was reincarnated as the *Lake Superior News and Miners Journal*, and ceased publication in April 1850. It was reborn a second time in May 1850 as the *Lake Superior Journal*, and ceased publication in 1867.
- 26 Telford, "'The Sound of the Rustling of the Gold,'" 123–25.
- 27 Library and Archives Canada (hereafter cited as LAC), Record Group (RG) 10, volume 122, Petition 167, Shingwauk to Geo. Ironside, 10 June 1846.
- 28 *Montreal Gazette*, 7 July 1849.
- 29 Chute, *The Legacy*, 113–14; Deborah Anne Montgomerie, "Coming to Terms: Ngai Tahu, Robeson County Indians and the Garden River Band of

- Ojibwa, 1840–1940. Three Studies of Colonialism in Action" (PhD diss., Duke University, 1993), 214–16; and Morrison, "The Robinson Treaties of 1850," 34–37.
- 30 LAC, RG 10, vol.151: 87,755-9, Report, Thomas G. Anderson, 25 August 1845.
- 31 Johann Georg Kohl, *Kitchi-Gami: Life Among the Lake Superior Ojibway* (1860; reprint, St. Paul: Minnesota Historical Society Press, 1985), 382–85; Montgomerie, "Coming to Terms," 181–82; Chute, *The Legacy*, 21; and Karl S. Hele, "'By the Rapids': The Anishinabeg-Missionary Encounter at Bawating (Sault Ste. Marie), c. 1821–1871" (PhD diss., McGill University, 2003), 76–170.
- 32 J. J. Talmun Collection, University of Western Ontario, Vidal Family Papers, Alexander Vidal Journal.
- 33 J. J. Talmun Collection, University of Western Ontario, Vidal Family Papers, Alexander Vidal to Catherine Vidal, 14 September 1849; Box 4437: Vidal Family Correspondence: Vidal, Catherine from Vidal, Alexander (husband), 147–1863; and Alexander Vidal, "Journal of Proceedings on my Mission to the Indians 1849."
- 34 George M. Blackburn, "George Johnston: Indian Agent and Copper Hunter," *Michigan History* 54 (1970), 108–21; and Alice B. Clapp, "George Johnston, Indian Interpreter," *Michigan History* XXIII (1939), 350–66.
- 35 Hele, "'By the Rapids,'" 146.
- 36 J. J. Talmun Collection, University of Western Ontario, Vidal Family Papers, Box 4438, Alexander Vidal, Notebook, 14 September 1849.
- 37 Chute, *The Legacy*, 124–30; Telford, "'The Sound of the Rustling of the Gold,'" 154; Telford, "Aboriginal Resistance," 76–77; and Nancy M. and W. Robert Wightman, "The Mica Bay Affair: Conflict on the Upper Lakes Mining Frontier, 1840-1850," *Ontario History* 83 (1991), 199.
- 38 Chute, *The Legacy*, 132. Significantly, Chute does not mention the importance of Oshawano, the Ogima (head chief) of the area, in this expedition, which, along with the presence of Nebenagoching, indicates that Shingwaukonse consulted and operated with the Crane Clan's support. Letters Received by the Superintendent and Indian Agent at Mackinac, 1836–1851, Volume 23, April–December 1849, 359J, Ord to Charles P. Babcock, 15 November 1849; and Janet Chute, "Ojibwa Leadership during the Fur Trade Era at Sault Ste. Marie," *New Faces of the Fur Trade: Selected Papers of the Seventh North American Fur Trade Conference, Halifax, Nova Scotia, 1995*, eds. Jo-Anne Fiske, Susan Sleeper-Smith, and William Wicken (East Lansing: Michigan State University Press, 1998), 167.
- 39 In 1851, Macdonell engaged Peter B. Barbeau to sell the schooner. American Fur Company Papers (Sault Ste. Marie Collection), Clarke Historical Library, Peter B. Barbeau Papers, Box 1, Barbeau Letters, 1848–1855, A. Macdonell to P. B. Barbeau, 16 January 1851; 21 January 1851; 22 January 1851; and Jane Metcalfe to P. B. Barbeau, 18 September 1851.

- 40 "War On Lake Superior. From the Detroit *Tribune*, November 19," *The Globe*, 13 December 1849. The *Tribune* article was also reprinted in *The Boston Daily Atlas*, 1 December 1849. Other papers to carry a story about the Mica Bay affair included: *North American and United States Gazette* (1 December 1849); *Milwaukee Sentinel and Gazette* (1 December 1849); *Boston Courier*, 3 December 1849; and *Daily National Intelligencer* (3 December 1849).
- 41 Wightman, "The Mica Bay Affair," 202.
- 42 Telford, "Aboriginal Resistance," 78; and Morrison, "The Robinson Treaties of 1850," 66–71.
- 43 Chute, *The Legacy*, 133; Alan Knight and Janet E. Chute, "A Visionary on the Edge: Allan Macdonell and the Championing of Native Resource Rights," in *With Good Intentions: Euro-Canadian & Aboriginal Relations in Colonial Canada*, eds. Celia Haig-Brown and David A. Nock (Vancouver: University of British Columbia Press, 2006), 93; and "Montreal Annexation Manifesto. To the People of Canada," in Doughty, ed., *The Elgin-Grey Papers*, app. XVII, 6: 1487–94.
- 44 Wightman, "The Mica Bay Affair," 202.
- 45 Bingham Papers, Entry 8 January 1850, Journal 5, August 1844–October 1864; and Morrison, "The Robinson Treaties of 1850," 89.
- 46 Chute, *The Legacy*, 136.
- 47 W. B. Robinson had also negotiated a treaty with the Chippewas of Lake Simcoe in 1843. Julia Jarvis, "Robinson, William Benjamin," *Dictionary of Canadian Biography Online* (accessed 22 July 2011).
- 48 For more information concerning the 1820 Treaty, see Charles E. Cleland, *Rites of Conquest: The History and Culture of Michigan's Native Americans* (Ann Arbor: University of Michigan Press, 1992), 183–86; Charles E. Cleland, *The Place of the Pike (Gnoozhekaaning): A History of the Bay Mills Indian Community* (Ann Arbor: University of Michigan Press, 2001), 16–19; Andrea Gutsche, Barbara Chisholm, and Russell Floren, *North Channel and St. Mary's River: A Guide to the History* (Toronto: Lynx Images, 1997), 259–61; Janet Lewis, *The Invasion* (1932; East Lansing: Michigan State University Press, 2000); and Mentor L. Williams, ed., *Schoolcraft's Narrative Journal of Travels* [quoting *Detroit Gazette*, 30 June 1820] (East Lansing: Michigan State University Press, 1992), 503.
- 49 "Treaty with the Chippewa, 1826," 268–73.
- 50 "Article Second and Third," *Treaty with the Ottawa, etc., 1836*, in *Indian Affairs. Laws and Treaties: Volume II (Treaties)*, ed. Charles J. Kappler (Washington: Government Printing Office, 1904), 451.
- 51 Cleland, *Rites of Conquest*, 227–29; and Cleland, *The Place of the Pike*, 21–24.
- 52 For instance, see Michigan Superintendent and the Mackinac Agency Letters Received, 1836–51, Jas. Ord, Sault Ste. Marie, to H. R. Schoolcraft, Mackinac, 1 September 1838, 175–77; Michigan Superintendent and the Mackinac Agency, Letters Sent, 1836–51, H. R. Schoolcraft to C. A. Harris, Comm. Ind. Affairs, War Dept., Washington, 29 Aug 1837, 299–300; H. R. Schoolcraft to C. A. Harris, 30 October 1837, 351–52; H. R. Schoolcraft to Mason, Gov.

- Michigan, 26 December 1837, 385–87; H. R. Schoolcraft to C. A. Harris, Com. Ind. Affairs, 30 September 1838: 560–61; and H. R. Schoolcraft to C. A. Harris, 4 October 1838, 567–73. See also James A. Clifton, "'Visiting Indians' in Canada," manuscript for a booklet to be issued by Fort Malden National Historical Park (Parks Canada, 1979), 3–6, 22, 25.
- 53 "Treaty with the Chippewa, 1820," 187–88.
- 54 *Treaty with the Ottawa, etc., 1836*, 454.
- 55 "Treaty with the Chippewa, 1842," in *Indian Affairs, Laws and Treaties: Vol. II (Treaties)*, ed. Charles J. Kappler (Washington: Government Printing Office, 1904), 542–43.
- 56 "No. 61. [Robinson-Huron Treaty (1850)]," in *Canada: Indian Treaties and Surrenders, Volume 1: Treaties 1–138* (1891; reprint, Saskatoon: Fifth House Publishers, 1992), 149.
- 57 Morris, ed., "Robinson Treaties," 17.
- 58 Present at Shingwaukonse's speech were Indians resident on United States territory; Shebawgeejeek, Magnisanniquay, and Kaybayosay; US Métis Pierre Defaut and Charles Cadotte; BNA Indians Monzomaning, Kiskkeetawaak, Mnaabenwak, and Naybenaygodjin; and BNA Métis Louison Cadotte. Letters Received by the Office of Indian Affairs, 1824–1881, Michigan Superintendancy, 1824–1851, Roll 424, 1840–41, Folder 1840, S1785-S1876, Letter (S1785), H. R. Schoolcraft, Acting Superintendent Indian Affairs, Michilimackinac, to T. H. Crawford, Commissioner of Indian Affairs, Washington, 7 May 1840. Phil Bellfy, "The Anishinaabeg of Bawating: Indigenous People Look at the Canada-US Border," in *Beyond the Border: Tensions across the Forty-Ninth Parallel in the Great Plains and Prairies*, eds. Kyle Conway and Timothy Pasch (Montreal: McGill-Queen's University Press, 2013), 209–12.
- 59 Archives of Ontario (hereafter cited as AO), Sir John Beverly Robinson Papers, F44 MS 4, Diary (or Journal) of W. B. Robinson, 24; and Morris, ed. "Robinson Treaties," 18.
- 60 Morrison, "The Robinson Treaties of 1850," 154.
- 61 "Treaty with the Chippewa, 1842," 269.
- 62 Article 4, *Treaty with the Ottawa, etc., 1836*, 269.
- 63 Article 4, "Treaty with the Chippewa, 1842," 543.
- 64 AO, Sir John Beverly Robinson Papers, F44 MS 4, Diary (or Journal) of W. B. Robinson, 24; Morrison, "The Robinson Treaties of 1850," 155; and Morris, ed., "Robinson Treaties," 18.
- 65 Morris, "Robinson Treaties," 20.
- 66 Morris, "Robinson Treaties," 20.
- 67 For a detailed examination of the Métis and their claims at Sault Ste. Marie, see Morrison, "The Robinson Treaties of 1850," 153–59; Alan Knight and Janet Chute, "In the Shadow of the Thumping Drum: The Sault Métis—The People In-Between," in *Lines Drawn Upon the Water: First Nations and the Great Lakes Borders and Borderlands*, ed. Karl S. Hele (Waterloo: Wilfrid Laurier University Press, 2008), 85–114; and Victor P. Lytwyn, "Echo of the Crane:

- Tracing Anishnawbek and Métis Title to Bawating (Sault Ste. Marie)," in *New Histories for Old: Changing Perspectives on Canada's Native Past*, eds. Ted Binnema and Susan Neylan (Vancouver: University of British Columbia Press, 2007), 41–65.
- 68 Timothy Cochrane, *Minong—The Good Place: Ojibwe and Isle Royale* (East Lansing: Michigan State University Press, 2009), 133.
- 69 Additionally, Nebenagoching's people held land rights in Sault Ste. Marie and some of the adjacent islands.
- 70 It states in Robinson's report that it was only after all the other chiefs present had come forward to sign that Shingwaukonse and Nebenagoching consented to add their signatures. The language of the report appears to indicate it was at this moment that Shingwaukonse and Nebenagoching signed with the rest following. Morris, "Robinson Treaties," 18. Robinson's diary simply indicates that everyone signed, with Shingwaukonse and Nebenagoching signing first. *Diary (or Journal) of W. B. Robinson*, 24–25. Regardless of whether or not Shingwaukonse and Nebenagoching signed first or last, it is clear that they only consented to the Treaty after the other leaders present indicated their assent and intention to sign.
- 71 *Diary (or Journal) of W. B. Robinson*, 22–23. According to James Morrison, a land claims researcher, Robinson's threat indicated to the dissident chiefs that they and their bands would not receive payment for their lands nor participate in the Treaty's provisions while being expected to comply with the terms because a majority of chiefs had agreed. Morrison, "The Robinson Treaties," 100.
- 72 This formula meant the treaties would not bear the totem marks of those signing the documents, which had previously been the case. The totem marks on treaties did occasionally reappear, such as in the 1859 Pennefather Treaty; over time, however, such marks were simply replaced with an "x" on the treaty documents. Additionally, official publications of the treaties do not include the totem marks. See *Canada: Indian Treaties and Surrenders, Volumes 1 to 3* (1891; reprint, Saskatoon: Fifth House Publishers, 1992). A lack of totem marks has left some wondering if the treaties were legitimate, since signing with a totem held more significance. It bound both the individual, as well as the clan, now and in the future to uphold the agreement.
- 73 "Father Nicolas Frémont, Fort William, to Superior in New York, 18 October 1849," in *Lettres de nouvelles missions du Canada, 1843–1852* (Montréal: Éditions Bellarmin, 1973), 587–98.
- 74 Morris, "Robinson Treaties," 17; and Morrison, "The Robinson Treaties of 1850," 96.
- 75 "Treaty with the Canadian Indians," *Lake Superior Journal*, 18 September 1850.
- 76 "No. 61. [Robinson-Huron Treaty (1850)]," 151.
- 77 This figure does not include the monies distributed to the French River and Lake Nipissing adhesion to the Robinson-Huron Treaty.

- 78 "Treaty with the Chippewa, 1842"; and Morrison, "The Robinson Treaties," 122–23.
- 79 Morrison, "The Robinson Treaties," 122. For an in-depth discussion concerning the real value of the initial distribution and annuities under the Robinson Treaties, see Morrison, "The Robinson Treaties," 122–41.
- 80 Eventually the annuities did increase from \$2 to \$4 per person. See Janet Chute, "Moving on Up: The Rationale for, and Consequence of, the Escalation Clause in the Robinson Treaties," *Native Studies Review* 18, no. 1 (2009): 53–65. Currently the chiefs of the Robinson Treaties area are attempting to have the annuity increased so as to reflect the terms of the Treaties. David P. Ball, "Unchanged treaty annuity is 'weight of injustice' on Anishinabek," *Ontario Birchbark*, <http://www.ammmsa.com/publications/ontario-birchbark/unchanged-treaty-annuity-%E2%80%98weight-injustice%E2%80%99-anishinabek> (accessed 21 July 2014); and Mary Laronde, "Last raise in 1874 for Robinson Huron," *Anishinabek News* 24, no. 7 (September 2012), 1.
- 81 Perpetuity rests upon the idea that there would always be signatory Indians to receive the annuity. Beginning in 1857 and continuing with the most recent 2010 amendments to the Indian Act, British-Canadian Indian legislation is designed to reduce the number of "status" or recognized Indians. As such, perpetuity will be a lot shorter than forever. Currently, the overall number of recognized Indians entitled to the annuity is declining. Without changes to the Indian Act's status definition sections, this trend will continue. In his master's thesis, Dan Shaule reveals a not-so-subtle federal and provincial agenda concerning Indian status, lands, and trust monies. Simply, where there are no more status Indians, the province will receive all monies and land connected to the "extinct" group. Dan Shaule, "Disputed Boundaries of the 1923 (Williams) Treaties" master's thesis (Trent University, 2003), 173-87, 200.
- 82 Cochrane, *Minong*, 134.
- 83 AO, Irving Papers, MS 1779 26-31-01, Robinson-Superior Treaty Payment Voucher, 7 September 1850.
- 84 Hudson Bay Company Archives, b.134/c/124: 240-240d, J. Hardisty, La Cloche, to James Bissett, Montreal, 12 April 1873.
- 85 *Treaty with the Ottawa, etc., 1836*, 451–52.
- 86 *Treaty with the Ottawa, etc., 1836*, 543.
- 87 Despite these promises of forever, the various governments since 1850 have set about reducing the size of the reserves. See Chapter 5 in this volume.
- 88 J. J. Talmun Regional Collection, University of Western Ontario, Vidal Papers, Box 4438, p. 9, Alexander Vidal, 14 September 1949, Notebook.
- 89 J. J. Talmun Regional Collection, University of Western Ontario, Vidal Papers, Box 4438, p. 9, Alexander Vidal, 14 September 1949, Notebook.
- 90 "No. 61. [Robinson-Huron Treaty (1850)]," 151.
- 91 Phil Belfy, "Cross-border Treaty-signers: The Anishnaabeg of the Lake Huron Borderlands," *Lines Drawn Upon the Water: The First Nations Experience in the Great Lakes' Borderlands*, ed. Karl S. Hele (Waterloo: Wilfrid Laurier University

- Press, 2008), 21–42; and Phil Bellfy, *Three Fires Unity: The Anishinaabeg of the Lake Huron Borderlands* (Lincoln: University of Nebraska Press, 2011).
- 92 Bellfy, “Cross-border Treaty-signers,” 31–35; and *Three Fires Unity*, 151–60.
- 93 Records of the Michigan Superintendency of Indian Affairs, Letters Received by the Superintendent and Indian Agent at Mackinac, 1836–1851, Vol. 23: April–December 1849, Letter to Charles P. Babcock, Superintendent of Indian Affairs, 14 November 1849. For detailed biographies of George Johnston, see Blackburn, “George Johnston,” 108–21; and Clapp, “George Johnston,” 350–66.
- 94 For more information about the Johnston family of Sault Ste. Marie, see Marjorie Cahn Brazer, *Harpes Upon the Willows: The Johnston Family of the Old North West* (Ann Arbor: Michigan State Historical Society, 1993).
- 95 American Fur Company Papers (Sault Ste. Marie Collection), Clarke Historical Library, George Johnston Papers, 1792–1851 [Box 1], “Letter Attesting to Shingwaukonce’s Loyalty to the British cause,” signed Geo. Johnston, 17 August 1837.
- 96 J. J. Talmun Regional Collection, University of Western Ontario, Vidal Family Papers, Box 4438, A. Vidal, “Memorandum of Indian Mission, 1849,” 2–3, 11–14, 21; A. Vidal, Journal of Proceedings on my mission to the Indians. Lakes Superior & Huron, 1849, entries for September 10, 13, and October 17; and see n90 above.
- 97 J. J. Talmun Regional Collection, University of Western Ontario, Vidal Family Papers, Box 4438, A. Vidal, Journal of Proceedings.
- 98 Hele, “‘By the Rapids,’” 471; and Karl S. Hele, “‘How to Win Friends and Influence People’: Missions to Bawating, 1830–1840,” *Historical Papers 1996: Canadian Society of Church History* (1996), 155–76.
- 99 Burton Historical Collection, Detroit Public Library, George Johnston Papers, Folders 1850 and 1851, Wm. McMurray to Geo. Johnston, 5 October 1850; 27 November 1850; 22 May 1851; and 31 July 1851.
- 100 Karl S. Hele, “The Anishinabeg and Métis in the Sault Ste. Marie Borderlands Confronting a Line Drawn Upon the Water,” in *Lines Drawn Upon the Water: The First Nations Experience in the Great Lakes’ Borderlands*, ed. Karl S. Hele (Waterloo: Wilfrid Laurier University Press, 2008), 72–73.
- 101 Burton Historical Collection, Detroit Public Library, George Johnston Papers, Folder 1847, McMurray to Johnston, 18 October 1847; Folder 1853, McMurray to Johnston, 5 May 1853; Folder 1854, Oath/Letter signed by Gity Nepahwahbay, 12 June 1854; Folder 1855, Johnston to Truman Smith (late), US Senator, 9 July 1855; and Folder 1857, Truman Smith to Johnston, 29 July 1857.
- 102 For a discussion of Reverend Cameron’s role as a missionary, see Karl S. Hele “James D. Cameron: Baptist and Mixed-blood minister at Bawating: 1831–1859,” in *Papers of the 35th Algonquian Conference*, ed. H. C. Wolfart (Winnipeg: University of Manitoba, 2004), 137–61.
- 103 Shingwaukonse (the British Chief on the North Shore) protested Cameron’s land purchase, claiming that land could not be sold without his explicit

- permission. Partially aimed at Cameron and his church, these protests were also part of an ongoing effort to have Indian land rights recognized and a treaty negotiated. Shingwaukonse also denied claims by the Ermatinger family that they had purchased property at the British Sault. LAC, RG 10, v.129: 72524-5, Thomas G. Anderson to Samuel P. Jarvis, 13 May 1844; RG 10, v.120: 4808-9, "Shingwakchose, Indian Chief, Petition," 8 September 1843; and RG 10, v.131, 74133-4, Ermatinger to Jarvis, 13 September 1844. American Baptist Foreign Missionary Society (ABFMS), Cameron to S. Peck, 13 August 1844; and 22 August 1847. In 1857, Cameron contemplated moving to BNA, leading the ABFMS to remind him that this was unacceptable. "Extracts ... September 29, 1841," *American Baptist Magazine* 21, no. 6 (December 1841): 355; and ABFMS, Cameron to Peck, 13 August 1844 and 30 September 1857. The Ermatinger family also had claims to land on the US side of the river. Newberry Library, Chicago, Sketch of the Claims to Land on the River St. Mary's at Pauwayteeg, 6 July 1823, Map.
- 104 Morrison, "The Robinson Treaties of 1850," 51.
- 105 Hele, "The Anishinabeg and Métis," 79; "James D. Cameron," 154–56; and Telford, "'The Sound of the Rustling of the Gold,'" 141–43.
- 106 Letters Received by the Office of Indian Affairs, 1824–1881, Michigan Superintendency, 1824–1851, Roll 422, 1836–37, Folder 1837, A36-G129, p. 432, Letter (C244), Major Cobbs to C. A. Harris, 26 March 1837.
- 107 Letters Received by the Superintendent and Indian Agent at Mackinac, 1836–1851, Volume 23, April–December 1849, 359, Ord to Charles P. Babcock, 15 November 1849; Telford, "Aboriginal Resistance"; Bellfy, "Cross-border Treaty-signers," 32; and Chute, *The Legacy*, 138, 143.
- 108 Chute, *The Legacy*, 143.
- 109 For an excellent examination of his life, see Chute, *The Legacy*.
- 110 Chute, *The Legacy*, 150–53.
- 111 Chute, *The Legacy*, 30, 266nn82–83.
- 112 LAC, RG 8 (British Military and Naval Records), Vol. 249, Part 1, 218, Joseph Chews to Captain James Givens, 14 July 1796, noted the unusual proceedings in appointing chiefs more than a decade earlier.
- 113 Hele, "'By the Rapids,'" 211; Chute, *The Legacy*, 64–65; and Karl S. Hele, "Only calculated to captivate the senses: The Protestant Missionary Experience of Garden River First Nation, 1830–1870" (master's paper, University of Toronto, 1994), 49n15.
- 114 See Cochrane, *Minong*, 131–34; and Lise C. Hansen, "Chiefs and Principle Men: A Question of Leadership in Treaty Negotiations," *Anthropologica* XXIX (1987): 39–60.
- 115 For more information about the Sault Anishinaabeg, see Theresa Schenck, *The Voice of the Crane Echoes Afar: The Sociopolitical Organization of the Lake Superior Ojibwa, 1640–1855* (New York: Garland Publishing, 1997); and Cleland, *The Place of the Pike*.
- 116 Michigan Superintendency of Indian Affairs and Mackinac Agency, Letters Sent, vol. 2, 241–42, H. R. Schoolcraft to T. Hartley Crawford, Commissioner

- of Indian Affairs, War Department, 4 April 1840; James A. Clifton, *A Place of Refuge for All Time: Migration of the American Potawatomi into Upper Canada 1830 to 1850* (Ottawa: National Museum of Man, 1975), 33–35, 53–54; Roger L. Nichols, *Indians in the United States and Canada: A Comparative History* (Lincoln and London: University of Nebraska Press, 1998), 200; and Phil C. Belfly, “Division and Unity, Dispersal and Permanence: The Anishinabeg of the Lake Huron Borderlands” (PhD diss., Michigan State University, 1995), 156–60.
- 117 LAC, RG 10, vol. 1992, file 6808, Wm. Van Abbott to Minister of the Interior, 25 July 1876.
- 118 LAC, RG 10, vol. 1992, file 6808, Letter to Wm. Van Abbott, 19 September 1876.
- 119 Records of the Michigan Superintendency of Indian Affairs, Letters Received by the Superintendent and Indian Agent at Mackinac, 1836–1851, Vol. 24, January–December 1850, Roll 426, 1846–1851, Folder 1850, B783-S515, Letter (B794), Charles P. Babcock, Acting Superintendent of Indian Affairs, to Luke Lea, Commissioner of Indian Affairs, 27 November 1850; and Letter David Aitken, sub-agent, Sault Ste. Marie, to Charles P. Babcock, 21 November 1850.
- 120 Subagency Sault Ste. Marie, Office of Indian Affairs, 1842–1852, Report of the Subagent for 1851.
- 121 For instance, see Michigan Superintendency of Indian Affairs and Mackinac Agency, Letters Sent, vol. 2, 299, H. R. Schoolcraft to T. Hartley Crawford, Commissioner of Indian Affairs, War Department, 15 July 1840; Hele, “A Line Drawn By Fools,” 93; and “Anishinabeg and Métis,” 70–74.
- 122 LAC, RG 10, vol. 617, Hector Langevin to Wm. Plummer, enclosed letter H. Langevin to Jos. Wilson, 26 May 1869; and RG10, vol. 617, H. Langevin to Wm. Plummer, 10 August 1869.
- 123 AO, Harry D. Blanchard Collection, F331, MU 275, Geo. Ironside, S. I. Affairs, to Richard Carney, 17 February 1859.
- 124 Burton Historical Collection, Detroit Public Library, George Ironside Papers, Box 14 (1850–1859), Geo. Ironside to Commissioner [Pennefather], 17 February 1859.
- 125 See AO, Blanchard Papers, Indian File, “Names of heads of families excluded by the Garden River Band in 1858, the majority of them being considered American Indians.” According to oral tradition and records cited above and below, the exclusions were undertaken by government agents against band wishes. Other members were eliminated based on various government statutes concerning marriage and descent to/from non-Natives, as well as on mere appearance. For more information on Indian Act Legislation concerning Status Indians, see Sébastien Grammond, *Identity Captured by Law: Membership in Canada’s Indigenous Peoples and Linguistic Minorities* (Montreal: McGill-Queen’s University Press, 2009), 71–105; and Bonita Lawrence, *“Real” Indians and Others: Mixed-blood Urban Native Peoples and Indigenous Nationhood* (Lincoln: University of Nebraska Press, 2004), 45–81.

- 126 Cleland, *The Place of the Pike*, 27, 35–36.
- 127 Chute, *The Legacy*, 171, 177–78.
- 128 Nichols, *Indians in the United States and Canada*, 175, 190–94; and Chute, *The Legacy*, 177–79. See AO, Blanchard Papers, Indian File, which contains lists compiled by George Ironside, SIA, in 1859 and 1860. These lists detail who was Indian and Métis, as well as who belonged to the Garden River and Sault Ste. Marie Bands. See also AO, Sir Aemilius Irving Papers, for the same period.
- 129 J. W. Keating, "Indians on Lake Huron and Superior," *Chatham Chronicle*, 15 August 1849. For more information concerning Keating's role and actions that led to his dismissal from the Indian department, see Telford, "The Nefarious and Far-Ranging Interests," 372–402.
- 130 Lytwyn, "Echo of the Crane," 54; LAC, RG 10, vol. 710, In Council, 10 October 1845. For a biography of T. G. Anderson, see T. R. Millman, "Anderson, Thomas Gummersall," *Dictionary of Canadian Biography Online*, <http://www.biographi.ca/> (accessed 21 January 2011).
- 131 Karl S. Hele, "'A Line Drawn by Fools': Life and Community in the Sault Ste. Marie, Ontario and Michigan Borderlands," in *Communities and Connections: Writings in North American Studies*, ed. Ari Helo (Helsinki: Renvall Institute, 2007), 92–93; and "The Anishinabeg and Métis," 74–76.
- 132 Diary (or Journal) of W. B. Robinson, 20, 21; "No. 61. [Robinson-Huron Treaty (1850)]," 151; and Morrison, *The Robinson Treaties*, 86.
- 133 Peter Hogg, *Constitution Law of Canada*, 4th ed. (Toronto: Carswell, 1997), 27.6(c), 691, quoted in Thomas Isaac, *Aboriginal Law: Commentary, Cases and Materials*, 3rd ed. (Saskatoon: Purich Publishing Ltd., 2003), 75.
- 134 "No. 61. [Robinson-Huron Treaty (1850)]," 149.
- 135 Isaac, *Aboriginal Law*, 75.
- 136 Chute, *The Legacy*, 76; and Edward S. Rogers, "The Algonquian Farmers of Southern Ontario, 1830–1945," in *Aboriginal Ontario: Historical Perspectives on the First Nations*, eds. Edward S. Rogers and Donald B. Smith (Toronto: Dundurn Press, 1994), 122–23.
- 137 Hele, "'By the Rapids,'" 114–15. For instance, see Sault Ste. Marie Agency Records, Letters Sent, July 12, 1822–May 2, 1833, 246–48, H. R. Schoolcraft to Lewis Cass, 18 July 1822, 5–7; Schoolcraft to John H. Paton, Secy of War, 7 August 1829; and Letters Received by the Agent at Mackinac, Volume 1, May 7, 1816–November 1, 1831, Cass to George Boyd, Indian Agent, Mackinac, 7 April 1822; and Sault Ste. Marie Agency Records, Letters Sent, July 12, 1822–May 2, 1833: 27–28, Circular, Schoolcraft, Indian Agent to George Johnston, Elijah B. Allen &c., 5 May 1823; Records of the Michigan Superintendency of Indian Affairs 1814–1851, Clarke Historical Library.
- 138 Bellfy, "The Anishinaabeg of Bawating," 220.
- 139 "No. 61. [Robinson-Huron Treaty]," 149.

Internal and External Factors Leading to the Reduction of the Robinson Treaties Indian Reserves 1820s–1870s

Rhonda Telford

A longstanding and very important rivalry existed between the Indian Department and the Crown Lands Department over which had the right to initiate, manage, and profit from Indian land and resource sales. From about 1845 onward, the Crown Lands Department had sold dozens of 6,400-acre mining locations on the unceded territory of the Anishinaabek on Lakes Huron and Superior, retaining all the proceeds for provincial coffers. This was a breach of the terms of the Royal Proclamation of 1763 and the established treaty-making process. Anishinaabek knowledge of and disagreement with these sales led Chiefs Shinguaconse and Nebainagoching of Garden River and Batchewana, respectively, along with their Mixed-Blood and non-Native allies, to take over the Montreal Mining Company's mining location at Mica Bay on Lake Superior. This action precipitated the Robinson Treaties of 1850,¹ which were negotiated on the part of the Crown by W. B. Robinson, the Montreal company's former superintendent.² After the establishment of the Indian reserves under the 1850 Robinson Treaties, the Indian Department tried, as quickly as possible, to reduce or dismantle as many of them as it could. On the one hand, this did not make sense, because the government wanted the Anishinaabek to be concentrated on reserves to become civilized, self-sufficient farmers so that it would not have to support them. On the other hand, the government wanted to promote development of the land and

resources in the Treaties' areas through free grants, land sales, and resource sales and leases. The protection and advancement of First Nations³ and the development of the country by farmers and businessmen may seem like conflicting goals. They were. These goals were carried out, separately and together, primarily by the Indian and Crown Lands departments.

There were also other, bigger internal factors at work. The Indian Department's desire for First Nations to be self-sufficient was directly linked to the longstanding goal of the British government to eliminate its £20,000 Parliamentary Grant, the majority of which was used to pay for the annual presents distributed to the Indians (the remainder covered Indian Department administrative costs in the Canadas). Britain wanted the presents, and perhaps even the Indian Department, abolished. Britain forewarned the Indian Department that this would happen as early as the 1820s, and ever since the Indian Department pursued a number of theoretical and actual schemes to make First Nations self-sufficient or "civilized." For a variety of reasons, these schemes largely failed. But Britain and the Indian Department were slowly heading toward a plan to make the latter self-funding, a plan that included using part of the proceeds from Indian land sales to pay for the administration of Indian Affairs in Canada. The Bond Head surrender Treaties of 1836 were a step in this direction. Some of the proceeds from the sale of these lands would be used to benefit (or civilize) other First Nations who had no legal interest in them. In addition, Bond Head asserted the proceeds would defray the expenses of the administration of Indian Affairs. Although the government made some land cession treaties after 1836, nothing on a large-scale occurred until the Robinson Treaties of 1850. The proceeds from the disposal of the shared treaty areas would not be returned to First Nations; they would go straight into the provincial Territorial Revenue. While this windfall accrued to the government, First Nations received a one-time signing bonus, an annuity, and a promise that the annuity would be increased as soon as the government could do so without loss:

...Her Majesty ... further promises and agrees that should the territory hereby ceded ... at any future period produce such an amount as will enable the government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to

time, provided that the amount paid to each individual shall not exceed the sum of one pound Provincial currency in any one year, or such further sum as Her Majesty may be graciously pleased to order....⁴

By the time the Indian Department began in earnest to reduce or dismantle Indian Reserves on the north shores, it had had more than twenty years to figure out a concrete plan for funding itself. Even so, this had not happened as late as 1856, when the Governor General was implored to motivate officers in the Indian Department to produce “well-considered proposals for the future maintenance and administration” of their department.⁵ The Parliamentary Grant and the Indian presents were stopped in 1858,⁶ when the Indian Land Management Fund was (more or less) established to take ten percent on Indian land and resource transactions. First Nations in the Canadas would thus pay for departmental expenses. If the Indian Department failed to obtain new land and resource surrenders, no new money would be added into the Indian Land Management Fund for departmental support. In effect, the Indian Department needed to get First Nations to consent to land and resource surrenders, not primarily because it would benefit the First Nations, but because it would pay for departmental salaries and myriad other administrative costs.⁷ Thus, it was no coincidence that the Department began scrambling to obtain surrenders of Indian reserves from the Robinson Treaties First Nations (and many other First Nations not considered here) from about the mid-1850s onward.

Together with these internal elements were external ones pressing the Indian and Crown Lands departments to move toward disposing of land and resources in the newly surveyed Indian reserves. These were principally related to demands from would-be farmers and businessmen, particularly miners and timbermen, to open the reserves for sale and development.

First Nations also wanted to control the disposal of some of their lands or resources, because in this way the Indian Department would allow them to have some money to use at their own discretion. There were many reasons why First Nations had no or insufficient money: the Indian Department controlled their trust funds; it restricted their ability to sell timber except under departmental terms;⁸ and it had provided

them with very small treaty annuities⁹ and failed to increase them according to the promise in the Robinson Treaties.¹⁰ So, in order to have what they considered sufficient food and clothing, among other things, some First Nations succumbed to government pressure to dispose of lands and resources that they otherwise might not have. Because it was difficult for the Indian Department to obtain surrenders, it frequently worded them to be complete surrenders of the land or resource in question. In this way, the Department would not have to go back to the First Nation and face resistance or refusal.

The outcome of these internal and external factors on the Robinson Treaties First Nations—and the worsening economic position of First Nations—was the loss of some or all of their reserve land and/or control over their resources.

Examination of the Internal Factors (1820s–1859)

As early as the 1820s, Britain wanted to stop its annual £20,000 Parliamentary Grant to the Canadas, which paid for the annual presents given to the Indians by the British monarch and the expenses of running the Indian Department. The annual presents and the existence of the Indian Department were reflective of the British need to cement and manage Indian loyalty. As the military role of the Indian declined (especially following the close of the War of 1812), Britain grew to consider its Parliamentary Grant a heavy burden on its own citizenry. For a number of reasons, including the economic and social condition of First Nations, the immediate elimination of the Parliamentary Grant was not feasible. However, British administrators believed that if Indians could be made self-sufficient farmers, educated, and Christian, they would be equal to their non-Native neighbours and would no longer require presents. Indeed, the entire Indian Department in the Canadas could be greatly reduced or even abolished. This was the real reason behind the “civilization policy.”¹¹

Between 1822 and 1829, several British and Canadian officials examined how presents could be reduced, commuted, or abolished, and/or how the Indian Department might also be reduced or abolished. The presents were going to be problematic, because First Nations considered them almost as a treaty right, and many officials regarded them as the basis of

Indian military loyalty. Additionally, presents were provided as subsidies, as half-pay retainers for former soldiers, and as payment for surrendered Indian land. These obligations could not easily be dispensed with.¹²

Administrators began to see that if First Nations were to be civilized, some form of Indian Department would have to exist. Yet, Britain no longer intended to pay for Indian Affairs in Canada. Canada did not want to pay, and the Indian Department could not pay for itself. Several proposals for funding Indian civilization were under consideration during the late 1820s. One suggested that First Nations be made to substitute farm animals or tools for their annual presents. Another maintained that First Nations with money arising from land sales should be made to fund houses, schools, and churches. This idea prompted Lieutenant Governor Colborne to assert that Indian land should be leased or sold, with proceeds used to create a fund “for their future support.” Colborne viewed this scheme as the means by which Britain would be relieved of an “enormous expense.”¹³ The Indian Department was reorganized in 1830. Indian civilization, now a priority, would give the Department a civil instead of military focus. Britain thus limited its financial involvement in Indian Affairs in the Canadas to its £20,000 Parliamentary Grant.

In 1832, British Under-Secretary Howick stated that the £20,000 Parliamentary Grant paid both for the annual presents and for Treaty-presents given in compensation for ceded land. He asserted that neither type of present could be abolished, but wanted part of the expense of the land cession presents paid from the proceeds of Indian land sales.¹⁴ This was extremely important, because at this time almost all such proceeds went into the Territorial Revenue of the province. Indian land sales were conducted by the Crown Lands Department, which also collected and managed, for hefty fees, the proceeds before turning them over to provincial coffers. Therefore, when Howick stated that land sale money should be used to defray expenses, he meant that the province should be responsible for paying part of the cost of the annual presents.

By 1834, officials began noting that some Indian land had become “exceedingly valuable.” They believed that civilized First Nations would participate in the growing prosperity and development of the country, and would no longer require presents.¹⁵

In January 1836, British Colonial Secretary Lord Glenelg revisited the idea that the Indian Department could be abolished. Lieutenant Governor Bond Head was to report, but did not do so until November. In the interim, he had been very busy preparing to involve the Indian Department in a series of large surrenders at Manitoulin Island, Saugeen, Amhurstburg, Moraviantown, and Coldwater and the Narrows.¹⁶ Some of these surrenders provided for one-third or two-thirds of the proceeds of land sales to be used for the purposes of the Indians generally. Thus was born the General Indian Fund. This appeared to be the actualization of Colborne's old idea of "a fund created for their future support, by authorizing their lands to be leased, and in some cases to be sold."¹⁷

These were important surrenders—the first in Upper Canada, whereby some land sale proceeds, per se, were returned to First Nations instead of provincial coffers. This, however, would not be a great financial boon to First Nations, who would forever thereafter have to pay for an ever-increasing array of expenses and charges, which they (or some of them) had not been subject to previously. Bond Head had created a type of surrender that would allow him to squirrel away cash for the future operation of the Department at the expense of the First Nations' birthright. The imperilment of this birthright was what was at stake.

In November 1836, Bond Head wrote to Glenelg about these surrenders:

....I need hardly observe, that I have thus obtained for His Majesty's Government, from the Indians, an immense Portion of most valuable Land, which will undoubtedly produce, at no remote Period, more than sufficient to defray the whole of the Expenses of the Indians and Indian Department in this Province.¹⁸

While agreeing that First Nations should pay for departmental expenses, subsequent reports, including but not limited to those of Lord Glenelg and Chief Superintendent Jarvis, also asserted that because the province obtained the full benefit from Indian land sales, it should pay an equal portion¹⁹ of departmental expenses. Nowhere in their reports did these gentlemen consider that the surrenders signed by the various First

Nations did not contemplate or provide for the Indian Department using their land sale proceeds to pay for departmental expenses.

Survey expenses for the land surrendered at Anderdon and Coldwater and the Narrows were to come from land sale proceeds, despite having earlier been advanced from Crown revenue. Neither surrender provided for the taking of a management fee. Both had in fact guaranteed one-third of the proceeds to the respective First Nations.²⁰

This taking of money for management fees was subsequently deemed problematic. At least one departmental official considered it a future source of much trouble: “a subject which required immediate attention; the system of paying Clerks and other expenses out of the principal of money sold under Trust, in my opinion, cannot be too speedily put an end to, as it may tend hereafter to raise great difficulties.”²¹ There was no elaboration on nature of the “great difficulties,” but it must have had something to do with using moneys held in trust for an end that had never been contemplated nor agreed to by the First Nations.

Between 1839 and 1845, a number of investigations into the state of government offices, including the Indian and the Crown Lands departments, were undertaken. Several reports and sub-reports were produced, including the well-known ones by John Macaulay and commissioners Rawson, Davidson, and Hepburn. One surveyor painted a picture of unbridled expense and useless fees, resulting in a grand depletion of First Nation funds for no good reason. Another noted that upwards of fifty percent of land sale proceeds were expended in various management and other fees, so that First Nations received very little in return. Indian land management through the Commissioner of Crown Lands was deemed a disaster for First Nations and their property. The system was too expensive and too vague. It was decided that detailed land-holding and financial information for each First Nation would have to be created. Rawson, Davidson, and Hepburn determined that such land sale moneys as First Nations received could not meet current departmental expenses.²²

The commissioners made several recommendations for the future operation of the Indian Department. Among them were the following: that management of First Nations be placed under the civil secretary; that the Department be united and all records stored in one office, with

correspondence and business to be handled by a chief clerk; that an accountant be employed; that the chief superintendent and the local officers be terminated and replaced by three visiting superintendents; and that missionaries and teachers be appointed. Additionally, the commissioners argued in vain that the ten-percent management fee was too high and should be reduced to five percent. They found Bond Head's 1836 surrenders to be peculiar and thought the taking of money for the General Indian Fund was wrong. And they found the current Chief Superintendent Jarvis guilty of misappropriating Indian funds in excess of £8,000.²³

In September 1850, the two Robinson Treaties were concluded. As noted above, all land and resource sale proceeds were placed in the Territorial Revenue. The next large land surrender occurred on 13 October 1854, when Superintendent General Lawrence Oliphant presided over and obtained a surrender of the Saugeen Peninsula. There was no mention of the payment of management fees or expenses. The proceeds were to be paid to the Saugeen First Nation and their descendants forever, unreduced.²⁴ Like Bond Head before him, Oliphant also wrote a lengthy report touching in part on how his Saugeen Surrender would finance Indian Affairs once the Parliamentary Grant ceased to exist:

...the most moderate calculation will furnish so large an addition to the present funds of the department as to lead to the hope that the period may not be very remote, when [these proceeds shall] ... ultimately reliev[e] the Imperial Government of the burden of contributing towards the superintendence or support of the Indian tribes of the province of Canada.

He also discussed the timetable for ending the presents, noting that this would be a financial burden on some First Nations at almost the same time that their land or resource proceeds were to be confiscated to pay Indian Department expenses:

The withdrawal of presents to the value of £10,000. annually, although it is extended over a period of four years, is nevertheless so serious and unexpected a reduction of their yearly allowances as to render any imposition of fresh pecuniary burdens undesirable.

It has always been the distinct impression of the Indians that their presents were guaranteed to them in perpetuity, and their feelings of disappointment upon this subject have frequently manifested themselves.

It is, moreover, worthy of observation, that the Indians upon whom the burden of maintaining the department would entirely fall, are those who have most suddenly been deprived of their presents. It is true that the extreme poverty of the Indians of Lower Canada, and those resident on the Manitoulin Island have procured for them this indulgence. Upon the same ground they now seem entitled to exemption from those liabilities which abundant means involve upon their more fortunate neighbours.

Some of their lands may turn out to be valuable from their mineral resources, and a percentage might be taken off them as they were sold. I have not, however, included these tribes among those whom I conceive liable to contribute towards the support of the department.²⁵

A subsequent report on how Indian Affairs would be funded, written by Oliphant's successor, Lord Bury, disagreed, arguing land sale proceeds and other Indian moneys could not equal departmental costs. Bury believed Britain should continue to pay for First Nations because forcing them to bear the expense of departmental operations at the same moment that their presents would be abrogated would be "a very considerable hardship" and would be viewed by them "as a breach of faith." Bury wanted Parliament to grant a one-time sum of £78,000 to be invested at six percent to produce an annual income sufficient to cover departmental expenses.²⁶

In 1855 and 1856, the Oliphant and Bury reports were reviewed by the Governor General, who in turn reported to British Member of Parliament H. Labouchere; the former thought Bury's ideas the more effective, but the latter noted the presents would be abolished in 1858 and that Parliament would never agree to a £78,000 grant. Labouchere preferred Oliphant's observation that, "it evidently is no more than consonant with equity and common usage ... that where an agency is employed for the

management of large pecuniary interests, its officers should be paid out of the funds which they administer." He directed the Governor General to motivate departmental officers to figure out how the Department would be funded.²⁷

In response, Bury's successor, Superintendent General R. T. Pennefather wrote that Oliphant's dictum on "equity and common usage" was ill-advised, as the Department had always been incapable of providing: "protection and good management" to the Indians and their property. He also maintained that if Indian interests could not be fully met through the British Parliamentary Grant, additional moneys ought to be sought through Canadian revenue. Finally, Pennefather disagreed with two current proposals designed to place the entire burden of departmental expenses on First Nations. These not only called for an annual ten-percent confiscation of proceeds from surrendered Indian land sales, but also a twelve-percent confiscation of the imaginary value of unsurrendered Indian land once every seven years. Here, Pennefather could not contain his contempt for the plan, noting that the Crown was not morally in a position to impose it. He provided more than a dozen examples of government mismanagement, including the non-repayment of the Jarvis and Clench defalcations, and the Grand River Navigation investment debacle. Most damningly, Pennefather observed that management fees taken by the Crown Lands Department were massively out of proportion to the receipts, so that First Nations often retained only half the proceeds.²⁸ Pennefather's views were completely ignored, and an Order in Council was passed under which it was deemed convenient to use ten percent and twelve percent of the proceeds of Indian land sales to cover the cost of running the Indian Department.²⁹

In 1856, Pennefather, Worthington, and Talfourd were appointed commissioners to investigate and report on the most suitable method of civilizing First Nations and managing their property without hampering settlement. Their report, commonly called the Pennefather Report, was printed in 1858. In the mean time, upwards of £23,000 was unequally taken from eleven First Nations and credited to the Indian Land Management Fund—without their knowledge or consent. Although the commissioners concluded that Indian land sales did not produce enough revenue to carry departmental expenses, they nevertheless approved the

Fund's creation. For legal reasons, they asserted that Indian annuity moneys could not be used to defray departmental expenses. Significantly, they maintained that the ten-percent management fee was double the amount usually taken for the same purpose on private estates. The commissioners claimed this was justified because the Department did more than just manage Indian property; it also protected and assisted them. In setting his name to this report, Pennefather completely contradicted his earlier report.³⁰

In spite of its long battles with the Crown Lands Department to control such dispositions and proceeds, in April 1859 the Indian Department willingly turned most timber licensing and dues collection over to Crown Lands, claiming lack of staff.³¹ Perhaps the Indian Department had so little time to deal with this issue because it had been embarking on a tireless campaign to obtain large land surrenders from several First Nations. Before the year was out, Pennefather or his representatives had obtained surrenders from the First Nations at Batchewana, Goulais Bays, Garden River, Thessalon, and Fort William.

Examination of the External Factors (1850 Onward)

Before any disposition of land and resources in the Treaty areas or Indian reserves could be made, it was necessary to survey the reserve boundaries. The Crown Lands Department appointed J. S. Dennis to complete the surveys. Following disputes between the chiefs and Dennis over the location and extent of some of the reserves during the 1851 surveying season, the Indian Department appointed J. W. Keating to assist Dennis during the 1852 season. As a result of these disputes, two chiefs, Wagemake and Papansainse, petitioned their Great Father in August 1851 for redress.³² This petition dealt with a number of issues, including the leagues vs. miles controversy, annuity moneys, and fishing rights. It was forwarded to headquarters in September.³³

Keating was responsible for the leagues vs. miles mix-up at the Treaty negotiations. Although fluent in English, Anishinaabek, and French, he wrote the measurement "miles," rather than the French "leagues," into the Treaty descriptions of reserve extent, later admitting that the latter was the only distance the First Nations understood.³⁴ The French league was about 3.5 times larger than the English mile.³⁵ Several chiefs expressly

complained they had intended their reserves to be set out in leagues, but Dennis and Keating did not extend reserve boundaries to their satisfaction: there were limited adjustments at some reserves and no adjustments at others.³⁶

Both Dennis and Keating were interested in the lands and resources in and around the reserves, even as they were adjusting and laying out their boundaries. Keating's business partner and stepfather, E. Davies, had been making timber applications to the Crown Lands Department at least nine months before the Treaty was signed, and during Keating's involvement with the surveys he operated a sawmill on what he knew would become the Point Grondine Indian Reserve. Keating was also involved with Arthur Rankin's mining interests at Garden River. Indeed, Keating and Dennis adjusted the western boundary of the Garden River Indian Reserve so that Rankin's mining location would be cut out of it.³⁷

While surveying other reserves on Lake Huron, Keating and Dennis aided other would-be timber developers by witnessing, fronting for, or recommending their applications. For example, at Mississauga, Keating and Dennis witnessed a timber agreement between Chief Bonekosh and Eusibe Salvail. The agreement was subsequently forwarded to Indian Agent George Ironside, and, through him, to the Indian Department,³⁸ which declined to deal with such applications until it received Keating's report on the reserves.³⁹ Dennis was unable to survey the reserves on Lake Superior, and Keating was sent to settle any disputes that might arise between those chiefs and James Bridgeland.⁴⁰

One important feature of the Robinson Treaties was that some chiefs had exempted their reserves from the Treaties, so that they remained untreated pockets of Aboriginal title land surrounded by the larger, shared Treaty area; another was that the Robinson Treaties allowed the government to complete the irregular, pre-Treaty mining locations with patent if the conditions of the initial bargain were met by the purchasers.⁴¹ Much pressure must have been brought to bear on the Indian Department to include this provision among the terms of Treaty. It echoed the power and influence of the mining location purchasers, among them the Hudson's Bay Company, leading entrepreneurs, and Tory politicians and financiers of the day—including W. B. Robinson himself.⁴² With such prominent men involved, and much money at stake, it is no surprise that almost

as soon as the Indian reserve surveys were completed, the pre-Treaty purchasers sought, through the Crown Lands Department, to have the Indian Department agree to the completion of their sales.

Multiple mining locations infringed on a number of Indian reserves on Lake Huron, including six in Garden River, two in Thessalon, four in Spanish River, and two in Whitefish River.⁴³ But this was not all. Timber rights were also at stake, as miners claimed all the timber within their 6,400-acre mining locations.⁴⁴ By the summer of 1853, the Indian Department was dealing with a number of timber applications, including ones from Dennis at Point Grondine and Salvail at Mississauga, as well as others pertaining to Garden River Reserve from P. S. Church and Alan Macdonell. There was also a mining application from George Smith at Gros Cap. As instructed, Ironside gave his opinions, recommending the sale of pine to Dennis and Salvail as very advantageous. The timber “agreement” at Mississauga between Chief Penekosh and Eusibe Salvail was not actually authorized by the Indian Department until some time in 1857, as Ironside had signed the agreement on the Chief’s behalf and the document was backdated to 1854.⁴⁵ Ironside reported that the Anishinaabek of Garden River had erected their own sawmill with advice from Church and Macdonell, so that their timber would not fall to speculators. He awaited the survey report for Gros Cap before considering that case.⁴⁶

By the summer of 1853, the Garden River Anishinaabek were questioning the right of the miners, particularly W. H. Palmer’s crew, to take timber from the mining locations and bar them from doing the same. On behalf of the chiefs, Ironside reported that the miners had long since failed to fulfill the terms of their mining locations.⁴⁷ The idea that the mining locations were now forfeited for non-compliance prompted Superintendent General Robert Bruce to send the Commissioner of Crown Lands a copy of the Treaty’s “completion” clause to determine whether valid claims existed.⁴⁸ This led to a flurry of heated correspondence between the two department heads, the former concluding that the locations were void, the latter that Bruce’s interpretation was untenable because none of the license holders had paid the balance on their first installment. Bruce asserted the Indian Department would retain ultimate power to decide to complete a mining location, but conceded that locations not interfering with inhabited portions of reserves could be sold.⁴⁹

Bruce's concession was a turning point—the first indication that the Indian Department would support outright land sales within the reserves, even though all of the mining purchasers had breached the terms of their sales contracts. Although Bruce insisted that the First Nations would have to agree, just how much power they had to stop the sales was unclear, especially as the Crown Lands Department increased pressure to have the mining locations patented, and as developers became more vocal about the necessity of opening the reserves. As we have already seen, the Indian Department needed First Nations to dispose of all land not used for residential or agricultural purposes in order to exact ten percent from the proceeds to pay for its administrative costs.

Ironside reported mixed results from the sale of mineral and timber lands in reserves on the north shore of Lake Huron. The Garden River First Nation refused to allow the Lemoine and Simpson mining sales, covering their entire village, but were willing, according to Ironside, to sell other mining locations only if they could retain timber rights. The Whitefish River First Nation was initially opposed to all sales, but, according to Ironside, later relented. Thessalon opposed all sales and the Spanish and Serpent Rivers First Nations were willing to allow sales.⁵⁰ Ironside's letterbook provided no evidence that he met in council, or otherwise, with any of these First Nations to discuss these issues.

The Indian Department was considering timber sales at Spanish River and elsewhere, based on relatively new guidelines that clearly separated timber from mining rights, throughout the Spring of 1855.⁵¹ Then, in the summer of that year, the Commissioner of Crown Lands sent surveyor A. P. Salter to report on the resources along Lake Huron. Salter's reports included reserve lands. Many of the major river mouths on the north shore provided his main points of departure, and these were almost invariably at the heart of the reserve areas chosen by the Anishinaabek. Salter explored and valued the land in between and north of the reserves, reporting on soil conditions, timber types, minerals, and agricultural potential. He concluded that the Garden River, Thessalon, and Mississaggi reserves were disadvantageous:

A bar to the ready settlement of the country will, I fear, be found in the position of the Indian reserves, they being generally at the mouths of the rivers, and although the land in rear is much better

in character I apprehend it will be difficult to induce settlers to penetrate and open up the interior while large tracts unimproved, or only very partially cultivated lie between them and the front. I allude more particularly to the reserves at the Garden, Thessalon and Mississaga Rivers.⁵²

On 10 April 1855, John Mackenzie, an employee of the Hudson's Bay Company at Michipicoten, claimed to have obtained a surrender of one square mile at Gros Cap from Chief Tootemais—the sole Anishinaabek signatory. This surrender was officially recognized by Order in Council.⁵³ The circumstances under which Mackenzie, as an HBC employee, took the surrender remain unknown. Neither is it known who suggested the surrender, or why.

Following the publication of Salter's explorations by the Crown Lands Department in 1856,⁵⁴ developers sought outright purchase of reserve lands, openly canvassing for their dismantling and citing their obstruction to the advancement of the country. In September 1856, Mr. Bartlett of Amherstburg applied to purchase a square half-mile of land in Batchewana Reserve.⁵⁵ W. H. Palmer, the agent on the Root River mining location in the Garden River Reserve, viewed the large Indian reserves on both lakes as impediments to resource development, public good, and trade with America. In 1857, he wrote that,

...on the South shore, every suitable spot for a farm, every site for a village or port, and every mining location is occupied by its enterprising owners, and progressing rapidly— on the north shore with natural advantages far superior for all the above named purposes, the settler who wishes either as a Farmer, a Miner or a man of general business to get a foothold in the country finds himself shut out at every available point by an "Indian Reserve"....

More particularly, Palmer maintained that, "these 'Reserves' are a terrible nuisance, and a regular drawback on the settlement of the country—There is not one of them all along the north shores of Lakes Huron or Superior that will not stand in the way of civilization...." He claimed that the Batchewana, Goulais Bay, and Garden River areas were most lucrative for timber, minerals, fisheries, and agriculture.⁵⁶

Multiple Crown Attempts to Take the Batchewana, Goulais Bay, and Garden River Reserves, 1857–59

Between 1857 and 1859, the Crown engaged in numerous attempts to take the Batchewana, Goulais Bay, and Garden River reserves. At the same time, timber issues were beginning to boil over, and the Indian and Crown Lands departments were arguing over mining proceeds. In July 1857, J. W. Keating arrived at the Sault to obtain a surrender of the Batchewana Reserve. Upon arriving, Keating outfitted his colleague, Mr. Brady, for mineral explorations and sent him off. He met with the Anishinaabek to explain the benefits of selling “a large tract which in their hands whether as arable or Mineral must remain utterly unproductive.” Keating maintained they were persuaded, and predicted they would sign a surrender “en masse.” He did not expressly identify with whom he was speaking, and in a following paragraph he stated that the “Batchewana Indians being absent,” he would go there tomorrow and ask them to meet him at the Sault the following day. He thought there might be a delay in having the surrenders signed because of their “childish whim” for Pennefather or some other official to be present. Keating enclosed a copy of the surrender document he had prepared, and, without further explanation, directed Pennefather to review Palmer’s letter concerning Batchewana and Goulais Bay.⁵⁷

Keating attached a copy of the surrender document he had prepared. It was to be signed at the Sault and not at Batchewana, even though it was a surrender of the Batchewana Reserve. According to Keating’s surrender, the Batchewana Reserve was to be relinquished to the Crown for sale at the highest price, with proceeds accruing to the First Nation under the following conditions: that the land immediately be surveyed and laid out into one-mile sections; that it be sold at public auction; that proceeds accrue to the First Nation minus survey and administrative costs; that six-percent interest be paid on the proceeds; that Batchewana Island be retained by the First Nation; that any First Nation member could purchase eighty acres of the surrendered land at the upset price; and that £300 were to be immediately divided among First Nation members. Keating believed that valuable pine, excellent agricultural land, two navigable rivers, and a mill site would lead to a quick sale of the surrendered reserves.⁵⁸

Keating maintained that the Batchewana First Nation disliked holding land in common and that *they* had insisted on the provision allowing themselves to buy back eighty acres at the upset price. He informed Superintendent General Pennefather that after the Batchewana Anishinaabek signed a surrender, it was likely that he would be able to effect a similar surrender for the lower part of the Garden River Reserve.⁵⁹

Keating repeated much of this information in a final report to Pennefather dated 25 July 1857. This report added a few additional details to that of 8 July. In his 25 July report, Keating stated that his initial meeting with the Anishinaabek at the Sault had ended with no decision on a surrender, because those present wanted to consult with a number of others who were absent. Keating agreed to give them some time and left to explore the Batchewana Reserve. He estimated there were about three hundred square miles of agricultural land in the reserve, with the rest being mineral land. After speaking with some of the Batchewana Anishinaabek, he told them to meet him at the Sault where he would provide them with food. When he returned to the Sault, he found the Garden River Anishinaabek would not agree to any surrender unless Pennefather was present. He also reported that the “half-breed” American Baptist minister, James Cameron, and others interested in mining rights were having the “most adverse influences” on them. Keating met with the Batchewana Anishinaabek at the Sault on 20 July, at which time he claimed that two chiefs and two-thirds of the First Nation agreed with his surrender proposition. Notwithstanding Cameron’s actions, Keating said he had obtained an “amply sufficient” surrender. Next, Keating reported his “utter failure” to have the Garden River Anishinaabek surrender any of their reserve, and enclosed a copy of Garden River Chief Augustin’s speech against the surrender. Nevertheless, he insisted that Augustin was favourable to a surrender and had “requested to sign the Treaty of Nebenegoching at the ratification of which he was present.”⁶⁰ But this does not make sense. Why would Augustin have made a speech that he completely disagreed with? Why would he seek to sign a surrender for land that did not belong to his First Nation? Keating explained none of this. He concluded his report by noting that the Anishinaabek wanted to speak with Crown Lands and Customs Agent Joseph Wilson in his presence about the seizure of their saw logs. According to Keating, after

Wilson explained the proposed timber leasing system to them, they refused to accept it. Keating maintained that,

they unanimously and most emphatically refused their assent in these terms. No white man shall plant his foot on our Reserve or carry on any works there— I told them that I had nothing to do with the matter and could only report it without comment.⁶¹

Keating was not the only one to report to Pennefather about his so-called surrender with the Batchawana Anishinaabek. Following the conclusion of Keating's meeting with them on 20 July, they petitioned Pennefather, protesting in the strongest language the false "treaty" made by Mr. Keating, stating in part that they

do protest and object and Petition To the sale of our lands situate in the region of the above Bays Being foally [*sic*] convinced that our present prosperity and happiness and that of our children requires that we retain the fee simple of the same.

We are well aware of the value of said lands and know they are rich in fisheries timber and minerals a large portion is likewise valuable to us for cultivation and we have recently made arrangements ... to enjoy the full value of the same and the blessings of civilization and religion We earnestly protest to the Treaty or pretended Treaty of Mr. J W Cating [Keating] held at Canada west on the date of this paper and we are the lawful and legal owners of the land these protested to the sale of the lands and were treated by the said Cating with contempt and abuse being called fools &c ...

The Batchewana Anishinaabek explained that of the approximately twenty-six signatures Keating obtained for his "treaty," only two belonged to their First Nation: one was an American citizen, while the remainder were citizens of the Garden River First Nation, none of whom had any interest in the Batchewana Reserve. The petitioners appealed to Pennefather to protect their rights against the "frauds mentioned" and demanded to know what the government would do about the miners on their lands, as "we will not be deprived of an interest in what we consider so valuable a property without an adequate compensation."⁶²

The following day, missionary James Cameron wrote to Pennefather similarly protesting Keating's fraudulent "treaty." Elaborating on Anishinaabek complaints, Cameron asserted that all of the Anishinaabek who had been at the Robinson Treaties in 1850 distrusted the government's agents in land dealings. According to Cameron, Keating was no exception, and the Anishinaabek regarded him with suspicion and disrespect. Cameron reported that Keating obtained illegitimate signatures for the "treaty," that he verbally abused the Anishinaabek, and that the "treaty" provision allowing members of the First Nation to buy back their own land after the surrender was "foreign" and ludicrous: "The reasonableness of selling lands to them, in their estimation actually their own, was a new idea to them. For my part, I must say that when it was suggested, I the same [*sic*] difficulty in my mind." Nevertheless, Cameron believed that the government could still obtain some kind of suitable arrangement if it behaved more "honourably" and protected the Anishinaabek "in their just rights."⁶³

Joseph Wilson must also have spoken again to the Anishinaabek, because in September 1857 he reported to Pennefather that the Batchewana and Garden River Anishinaabek each wanted to lease their timber. He also asserted that a limited land surrender might be obtained at Batchewana. Wilson stated that the Batchawana Anishinaabek would negotiate a new arrangement with the Indian Department, noting they were

...anxious to Lease a portion of their Reserve, say one third, the other portion they are willing should be sold for their benefit—the parties wishing to Lease the portion of the Reserve in question wish to manufacture the timber on the [spot?] & employ all the Indians & would at the same time establish a Fishery—I am fully satisfied that the Lease would much benefit the band and seems to me [?] the only cause by which the Indians may be tempted in case they refuse to part with their Reserve. —the tract they wish to Lease is for the most sandy and unfit for settlement....

The Indians at Garden River expect to receive an answer from you to continue cutting timber as [?] & would have consented to Lease their Reserve had they not been led to believe, that

such would be the case, by conversations they have had with Mr Keating & others.⁶⁴

Wilson would soon be in Toronto and asked to meet with Pennefather about leasing arrangements. Nothing came of his suggestion that the Batchewana Anishinaabek were amenable to a partial land surrender.⁶⁵

In October 1857, Superintendent General Pennefather asked the Commissioner of Crown Lands to account for the mining monies collected, thereby causing a lengthy and heated exchange of correspondence between the departments over the validity of the claims.⁶⁶ In the course of this exchange, as we will see below, the Crown Lands Department laid bare its desire to end the reserve system on the north shores, and its position that the Anishinaabek did not have the right to any mineral compensation.

Early in 1858, two Garden River chiefs petitioned the governor general that their people were starving because the government refused to allow them to sell their timber. They also complained they had received none of their mining land sale monies. These monies would, to some degree, offset the loss of their timber revenues. The chiefs suggested a number of other measures to increase their cash flow, including the sale of their reserve.⁶⁷ Wilson forwarded the petition with the observation that if the governor general granted what the Garden River chiefs desired, "I should have no great difficulty in concluding a treaty with them for the sale of their Reserve."⁶⁸ For the second time in a few months, Wilson unsuccessfully offered to orchestrate land surrenders from First Nations around the Sault.

In February 1858, Commissioner of Crown Lands L. Sicotte wrote to Pennefather regarding his view that the mining locations in the Indian reserves would stand, regardless of the fact that in all cases the developers had breached their terms; that the Anishinaabek had no right to any mining proceeds; and that the Indian reserves were an impediment to development. In part, he wrote as follows:

By the report transmitted to you shewing all the locations authorized on the Indian Reserves, you will perceive that in no case the first payment has been made during the two years from the date of the deposit.

This Department hitherto has been of opinion, that the Indians had not a right to receive any portion of the sums paid, which had not been absorbed by the Expense of Survey, because the resistance and acts of violence of the Indians, had contributed greatly to impede the working of the Mineral resources of the region, and I will take the liberty to draw your attention to the statements made by the Superintendent General of Indian Affairs, in his letter of the 30th March 1854.

The authority for these locations was given with a view to public utility, and it is now equally important to the general interests, not to abandon these reserves to the Indians; but it would on the contrary be a wise policy to acquire all the territory covered by the reserves, made according to the terms of the Treaty of 1850.⁶⁹

As we have already seen, these statements were reflective of the longstanding competition between the Crown Lands and Indian departments over which had the right to control land or resource sales within the province, and which had the right to benefit from the proceeds generated.

Pennefather did not agree with Sicotte on many issues, but he did agree to the idea of obtaining surrenders of the reserves where possible. In March 1858 Pennefather maintained, in part, that his department

...is fully prepared to use every exertion for obtaining the surrender of as much of these Reserves as the tribes may be induced to cede— (If however it be determined to confirm the mining grants the S. G— respectfully urges that the Indians should not bear any cost for survey as according to the letter of the treaty they are not bound to carry out these locations— If they are forced to recognize them it would be but an equitable set off to relieve them from the preliminary expenses incurred thereby.)⁷⁰

In 1858, both Joseph Wilson and Ironside wrote to Pennefather claiming to be able to obtain surrenders from the Garden River, Batchewana, and Goulais Bay First Nations.⁷¹ What exactly transpired remains unknown, but in October 1858 Manitowaning Indian Superintendent George Ironside reported that Chief Nebenaigoching had complained that council meetings regarding his reserve were being held at the Sault

without his participation and he was very uneasy. At the same time, he also asked about the treaty made with Keating, which Ironside said the Chief fully supported.⁷²

On 6 September 1858, Richard Carney, a Commissioner for the Protection of the Indians, wrote to Pennefather about the great distrust of the Garden River Anishinaabek for government officials making them new promises when old ones remained unfulfilled. Carney included a speech from Ogista (Chief Shinguaconse's son), who maintained that until the mining monies situation was concluded to their satisfaction, there would be no more treaties.⁷³ Carney wrote again on 16 October to forestall another treaty attempt by Joseph Wilson at Batchewana. Carney believed the outcome would be tainted, because head Chief Nebenaigoching had no intention of signing it, and Wilson planned to ignore him.⁷⁴ Writing again in March 1859, Carney blamed the failure to obtain surrenders on two timber developers and the missionary James Cameron.⁷⁵

Early in 1859, Carney reported that Chief Nebenaigoching was willing to surrender his reserve (at Batchewana), and Sub-Chief Pechikininne at Garden River would likewise relinquish his, while Head Chief Agista would not. Carney said he would convince the Anishinaabek to sign, and advised Pennefather to come and take the treaties himself.⁷⁶ However, Carney provided no explanation why the chiefs suddenly changed their minds, apparently dropping former demands for their mining land sale monies before discussing land surrenders.

The Pennefather Surrenders of 1859

During the summer of 1859, within the space of a few days, Pennefather obtained full surrenders of the Batchewana and Goulais Bay reserves (9 June) and a large part of the Garden River Reserve (10 June). He also took a complete surrender of the Thessalon Reserve on 25 June,⁷⁷ while on the same day Ironside took the first (and apparently invalid) surrender, of several such surrenders,⁷⁸ from the Whitefish River First Nation. These First Nations (with the exception of Whitefish River) were, according to Pennefather, to be relocated at Garden River.⁷⁹ Pennefather's colleague, S. Y. Chesley, obtained a large segment of the Fort William Reserve on 5 July.⁸⁰

Although, as we have seen above, Pennefather's primary motivation

behind these surrenders was to obtain a percentage of land or resource sale proceeds for the Indian Land Management Fund, none of the surrenders stated that a management fee would be deducted from subsequent transactions. At the same time, however—as we have also seen above—Orders in Council were in place allowing the Superintendent General to do this. But this unilateral government authority did not change the fact that the surrenders that the First Nations signed said nothing about the deduction of a management fee for the benefit of the Indian Department. To date, I have been unable to locate Indian Land Management Fund tables for before 1864. The 1864 table gives an amount for receipts on land and timber, interest, and annuities; but the disbursement column does not distinguish between warrants and transfers. There are no Indian Affairs annual reports for 1865–67, inclusive. The 1868 table does distinguish between debits for warrants and transfers, and indicates that ten percent of the land and timber receipts belonging to the Batchawana, Garden River, and Nipissing First Nations were docked.⁸¹

The Indian Department did not stop here. It continued to push surrender documents on Robinson-Huron Treaty First Nations: at Point Grondine in 1863; at Whitefish River and Mississauga in 1865;⁸² and at Magnetawan, twice, in 1869 (both on the same day—once for the entire reserve, and once for only the merchantable timber).⁸³ In contrast to the 1859 surrenders discussed above, each of these surrender documents contained the statement that the Department would take “the usual proportion for the expense of management.” These surrenders are discussed in further detail below.

The Robinson Treaties provided for First Nations to arrange for the sale of their “valuable productions” through the Indian Department. The Treaties did not provide for the Department to initiate and relentlessly pursue surrenders from the First Nations until it obtained what it wanted.

A Detailed Look at One of the 1859 Surrenders

Space precludes an examination in greater detail of all of the Pennefather surrenders noted above, but an example can be made of one of them. At Garden River, the chiefs surrendered their reserve to Pennefather under the following conditions: first, they surrendered only part of it, retaining the rest, and also Squirrel Island; second, the land was to be sold for their

benefit, with the interest accruing from the invested proceeds to be distributed annually among them; third, they were to receive an immediate sum of \$1,200 upon accepting this treaty; fourth, their “acceptance” of the treaty was to be the “final ratification of the surrender”; fifth, each family was to be allotted forty acres under a title deed; sixth, those who desired were to be able to purchase eighty acres of the land just surrendered at an upset price and on conditions fixed by government; and seventh, they agreed to public passage on the Garden River running through their reserve.⁸⁴

A closer look reveals that clauses two and six, taken together, implied that land in the surrendered area was to be sold to settlers. In fact, most of the land was leased for timbering. If the First Nation’s understanding was that the surrendered land would be used for agricultural purposes, the government breached the terms of Treaty when it *leased* the area for other activities. Furthermore, timbering or mining denuded and devalued the land before it was sold to settlers.⁸⁵ Even if clause six did not limit the sale of land to settlers only, clause two clearly stated that the surrendered land was to be *sold*; there was no provision for land to be *leased*. When the Indian Department leased the surrendered land, it authorized a transaction outside the terms of the Treaty.

It was unnecessary for the Garden River Anishinaabek to have surrendered any of their reserve land under clause one, when it could have retained all of it, leasing only the timber conditionally under a one-time contract. But this would have meant that when the Indian Department wanted to obtain another timber surrender for leasing purposes from the Garden River First Nation, it would have had to go back to them and negotiate from scratch. And this is what the Indian Department did not like to do. There is no evidence that Pennefather, or any other Crown representative, informed Garden River, or any of the other First Nations involved in the 1859 surrenders, that by first ceding all of their original reserves to the Crown they were giving up their reserves’ unique status as unceded pockets of Aboriginal land under the Robinson Treaties. Evidence shows that Pennefather made outside promises regarding the location of the western boundary at Garden River, which did not appear in the printed Treaty.⁸⁶

The Amalgamation of the Crown Lands and Indian Departments, and the Surrenders at Whitefish River and Mississaugi

As noted above, the Indian Department voluntarily passed to the Crown Lands Department control over certain timber licensing and dues collection. During the following year, the Crown Lands Department would subsume the entire workings of the Indian Department. While this amalgamation of operations may have ushered in seven years free of dispute between Crown Lands and Indian Affairs, it created an incredible situation. In 1860, the Commissioner of Crown Lands became the Superintendent General of Indian Affairs.⁸⁷ The first man to hold the dual responsibility was Phillip Vankoughnet.⁸⁸ He had stated in parliament that the Crown Lands and Indian departments could function well together without independent employees.⁸⁹ He was wrong. It was a blatant conflict of interest, and a breach of fiduciary obligation, that the Commissioner of Crown Lands, who had traditionally coveted and irregularly disposed of unceded First Nations resources (while keeping the money for the province), should also be the Superintendent General of Indian Affairs, the treaty-maker and supposed protector of First Nations property. This dual responsibility was subsequently cemented by legislation.⁹⁰

During this period, the Indian Department continued its endeavours to obtain surrenders at the Whitefish River and Mississaugi reserves. In 1861, two years after Ironside took his first Whitefish River surrender, now deemed invalid by the newly combined Indian and Crown Lands departments, he was directed by accountant C. T. Walcot to retake it. Failing this, he was told to make alterations as necessary in the margin, and have as many as possible of the original signatories sign the document. One of the original Treaty provisions would no longer be honoured: the government would not protect Anishinaabek purchasers from molestation.⁹¹ Although not so instructed, Ironside held a council and obtained his second surrender on 22 October 1861.⁹² In this council, the Anishinaabek had demanded certain rights from him that did not appear in writing. A number of discrepancies were also apparent in the Treaty, with its attached declaration sworn by John Prince, first judge of Algoma.⁹³

This Treaty was again considered invalid, and so, three years later in 1864, Ironside's successor Charles Dupont was instructed to take a third

surrender at Whitefish for the same area, the leading reason being the mining application of Josiah Blackburn.⁹⁴ Dupont reported success on 2 August, although he did not actually have papers signed⁹⁵ until the fall of 1864. Instead, he claimed to have secured the surrender of the Mississauga Reserve.⁹⁶

Subsequent correspondence indicates that Dupont claimed to have secured two surrenders: one at Mississauga and one at Whitefish River. However, his initial account only mentioned one surrender at Mississauga. The first instance where it is clear that he also obtained an agreement from Whitefish River was in June 1865. Based on his letterbook, all Dupont did in the fall of 1864 at Whitefish River was conduct an inspection and valuation with Donald McDonald. Nowhere does he report holding council for a surrender. Only through a letter from Deputy Superintendent Spragge do we learn that an agreement to surrender had been obtained.⁹⁷ Spragge sent Dupont definite instructions on how to proceed with the actual surrenders from the Mississauga and Whitefish River First Nations.⁹⁸ These were not followed.

It was unclear whether John Prince (through others) had mining interests on the North Shore of Lake Huron. What was clear, however, was that Prince's son, Septimus, left for Mississauga and its vicinity on 13 May in order to conduct mining surveys. John Prince made the following entry in his diary for that date: "Sep's went up to town preparing for his Journey tomorrow to Massasauga + God knows where on Mining surveys for Wray" (Judge Wray was an associate of Prince's in Illinois).⁹⁹

On 23 July 1865, Deputy Superintendent Spragge wrote to Josiah Blackburn, care of Donald McDonald, informing him that Dupont would soon be procuring a surrender from the Whitefish River First Nation, which there was no doubt would be successful.¹⁰⁰ McDonald had been Dupont's companion in valuing and inspecting the Whitefish River Reserve. Thus, more than one month before Dupont had even been dispatched to conduct final negotiations with the First Nation on the surrender, a high-ranking official within the Crown Lands Department had notified the single-most interested person in the surrender (Blackburn) that such would soon be accomplished. The improper nature of such insider information can hardly be overstated. This situation was, however, reflective of the conflict of interest between the imperative of Crown

Lands to facilitate development and the duty of Indian Affairs to protect the interests of First Nations.

Dupont was asked to supply information on the timber limit in the Whitefish River Reserve, recently applied for by Thomas Atkins. Spragge noted that, “the assent of the Indians is in the first place to be obtained, unless indeed you have already obtained a surrender of that reserve.”¹⁰¹ Dupont and Prince took a surrender from the Mississauga First Nation on 16 August 1865. Prince reported the occasion in his diary, where it was clear that his main preoccupation on this trip appeared to be the scenery and his personal hunting interests.¹⁰²

Three days later, Dupont stated that he had obtained a fourth surrender for the northern part of the Whitefish River Reserve from that First Nation.¹⁰³ The surrender document failed to identify either an interpreter or witness except for Dupont and Prince, whose diary once again recorded the social and recreational opportunities throughout the day and evening, saying very little about the Treaty: “In the Evening we concluded the Cession of the Reserve at White Fish River, with the Band, and Dupont’s Office, just at dark.”¹⁰⁴ And there were other problems: first, the acreage of the area being surrendered was left blank. Second, Dupont made outside promises involving cash payments to both First Nations.¹⁰⁵ Third, the Treaty indicated that the land would be sold to settlers with whom the First Nation would share fishing rights in the river equally, although they had *exclusively reserved* the right of fishing for themselves. Aside from the contradictory meaning of the words “reserve” and “common right,” it is clear at this time and afterward that the Crown Lands Department never had any intention of selling the land to farmers.¹⁰⁶ Dupont’s account of the surrender varied widely from that of Chief John Bezhkgobiness who subsequently claimed that they had only agreed to allow Dupont to have some fish for personal use.¹⁰⁷ The oral tradition of the Whitefish River First Nation plainly demonstrated that what Dupont submitted on paper as the contents of the agreements between that First Nation and himself was a misrepresentation.

Dupont reported his activities to Spragge in a letter the day after the Whitefish Treaty.¹⁰⁸ His outside promise of a cash payment at Whitefish River amounted to \$96 to be paid by the fall of 1865, or else that Treaty would be null and void—which was exactly what should have happened,

as the government paid nothing until well into 1867.¹⁰⁹ Further, it was unfair that the Crown was allowed to take multiple surrender Treaties until it obtained the best one; that it failed to comply with the terms represented a breach of fiduciary obligation.

Land and Resource Dispositions at Garden River During the 1860s

Following the conclusion of the Pennefather Treaty at Garden River, the Crown Lands Department continued to use its new power over the Indian Department to facilitate development on the north shore of Lake Huron. In 1864, Spragge directed Dupont to obtain through “firmness,” but not “intimidation,” a surrender of timber rights from the First Nation on Lake Huron, but particularly at Garden River. Ironside was informed that a “quantity of valuable elm” existed on the Mississaugi Reserve, about which he should find out more.¹¹⁰ This request may have been part of the reason why the surrender at Mississaugi (discussed above) was taken. A redundant situation occurred whereby the Superintendent General instructed his agents to obtain surrenders of First Nation timber on their reserves, so that in his other capacity as the Commissioner of Crown Lands, he could sell or lease the same timber to non-Native developers.

In the summer of 1864, provincial land surveyor G. B. Kirkpatrick was instructed by the Crown Lands Department to survey the northern boundary of Garden River in accordance with the 1859 Treaty.¹¹¹ The Garden River First Nation maintained for the next twenty years that Kirkpatrick’s line was wrong and included land they had never surrendered. Nevertheless, in 1869 the Indian Department had leased almost the entire surrendered area—about five townships—to non-Native timber developers. In spite of persistent First Nation petitions and deputations complaining about the location of the northern boundary and their loss of timber, the 1869 timber license was consistently reassigned.¹¹² Although the Indian Department did adjust the northern boundary in 1895, returning a small strip of the disputed area to reserve status, it stipulated that all patents and mining and timber licenses would stand.¹¹³ The Anishinaabek could not use or develop their resources. When the 1869 timber license finally ended in the 1920s, every stick of merchantable timber had been removed.¹¹⁴

The Separation of Crown Lands: Indian Affairs and the Surrender of the Magnetawan Reserve, 1867–69

What had been amalgamated in 1860 was again separated under the British North America Act in 1867: the Crown Lands Department resumed its old duties as part of the provincial government, and the Indian Department became part of the federal Department of the Secretary of State. It is common to point to this Act as creating the severance between First Nations and the beneficial interest in their land and resources (the former falling into the hands of Canada under section 91(24); the latter into the hands of Ontario under section 109).¹¹⁵ However, it should be recognized that such severance had already existed from the moment Indian land and resources obtained by Treaty (since the 1780s) were granted, sold, or leased by government, including the Crown Lands Department, with the vast majority of the proceeds (except for Indian annuities in cash or kind) being placed in provincial coffers. The constitutional division of powers in 1867 would resurrect the old disputes between the Crown Lands and Indian departments, both claiming the right to control and profit from mining, fishing, timber, island, and water lot sales or leases.¹¹⁶

Shortly after the confederation of Canada, C. Clark, a developer with timber rights in five townships adjacent to the Magnetawan Reserve, applied to Indian Superintendent Charles Dupont at Manitowaning to occupy fifty or one hundred acres of reserve land for sawmill purposes. According to Dupont, Chief Pamequonaishcung and his band, “all” residing on Manitoulin Island, wanted to “surrender the whole reserve to be sold for their benefit on condition of an advance of \$2,00 per head being paid to them. They number 109 persons.”¹¹⁷ The Indian Department directed Dupont to report on a number of issues, including the nature and extent of the reserve and further information about the residential patterns of the Magnetawan First Nation.¹¹⁸

Dupont reported in September 1867 that the eastern part of the reserve contained good land, which the First Nation wished to retain. Good pine existed on the portion of the reserve to be surrendered, and the First Nation would sign a timber license covering the area they wished to retain. Dupont emphasized that, “the water power is very good + is what is chiefly desired by the proprietor of the adjoining timber limits.” Contrary to his

former assertion that *all* the members of the Magnetawan First Nation lived on Manitoulin Island, Dupont now maintained that two families, who did not intend to leave, lived at Magnetawan. According to Dupont, the value of their improvements were “very insignificant.” The 109 people on Manitoulin Island lived at Mitchekewedining (West Bay).¹¹⁹

Clark reapplied for the mill site at the falls in November, and was supported by Dupont, who could supply no further information to Indian Affairs without going to the site himself.¹²⁰ Nothing more appears to have been done until 30 September 1868, when new Indian Superintendent William Plummer was instructed to obtain a surrender of the merchantable timber on Magnetawan. This should be taken to conform to Clarke’s timber application. Indian Affairs advertised for the submission of timber tenders on 9,000 acres in the Magnetawan Reserve before Plummer obtained a surrender.¹²¹

After failing to find anyone at Magnetawan and discovering that Chief Pamequonaishcung lived at West Bay, Plummer went there and took a surrender from the Chief and his son, Francis—the only two people Plummer found at West Bay. According to Plummer, after signing the surrender, the Chief

...further certified that he had received full power + authority from his people, to sign any documents for the Surrender of their Reserve to the Government—I may remark that there are only eight persons, besides the Chief + his son in the Band entitled to be present at a Council ... they are scattered all over the country.

Under the nineteen signatures on the surrender document was the following caveat signed by Chief Pamequonaishcung:

Nine of the above mentioned were signed by me by their directions, I being their Chief, and they being scattered and living at great distances could not be present at this council.

Plummer correctly guessed that this might not be a valid surrender. Subsequently, he was advised to retake it once the whole group was assembled.¹²²

Because of the difficulty of gathering members of the families living on West Bay, Plummer took the timber surrender, but also obtained another

surrender for the entire reserve. Both were dated 17 May 1869. He believed the first surrender could be acted on immediately, but thought the second would require the certification of the district judge (in Sault Ste. Marie) after Plummer and the Chief attested to the contents. Indian Affairs shortly approved both surrenders.¹²³ No judge-certified copy of the reserve surrender had been found to exist in Indian Affairs records, and it appears never to have been acted on.

The primary terms of the reserve surrender were: that the Crown would sell the reserve to whom it pleased, at how much it pleased, and that the proceeds belonged to the First Nation; and that management expenses would be deducted from the proceeds, with interest to be paid annually to the First Nation. The primary terms of the timber surrender were: that all the merchantable timber was relinquished; that an undisclosed quantity of land was relinquished to erect a sawmill and other buildings; and that management expenses would be deducted from the proceeds, with interest to be paid annually.¹²⁴ These surrenders were meant to facilitate non-Native development of land, timber, and water power within the Magnetawan Reserve.

Apparently having reached the limit of the First Nations' appetite to continue making further land surrenders, the Indian Department now concentrated on timber surrenders. Between 1869 and 1873, Plummer received headquarters' instructions to take timber surrenders from well over a half-dozen First Nations. Responding to the Department's 17 May 1869 request for Plummer to examine and value timber on the Mississaugi Reserve, he responded from memory that the timber was inferior and that the best pieces had already been removed.¹²⁵ On 14 June 1869, Plummer wrote to French River No. 13 Chief Maishequonggai, asking the latter to allow the government to sell the large timber with the proceeds to be annually divided among the First Nation. Plummer emphasized that the timber surrender contemplated would not affect the First Nation's title to, or use of, this reserve. The Chief and most of the First Nation lived at Sheguiandah on Manitoulin Island. On the same day, Plummer informed Superintendent-General of Indian Affairs Hector-Louis Langevin that Chief Dokis had agreed to surrender the pine timber on his Reserve No. 9 in the French River. By 19 July, however, Plummer wrote that Dokis had "withdrawn" his agreement to the scheme.¹²⁶ Plummer obtained

some kind of timber surrender on French River No. 13, because on 13 August 1869, he reported to Langevin that Richard Fuller was on his way there to select a mill site and had fully paid the bonus, ground rent, and fees for licenses on No. 13 and Nipissing. In total, Fuller paid \$736, from which Plummer held back \$8 as his own “perquisite.”¹²⁷ On 20 August 1869, Plummer visited Squirrel Island, opposite the Garden River Reserve, to examine the timber, and on 13 September he went to both the Magnetawan and Naiscoutang reserves to describe and value timber. Clark had cut a number of trees in trespass at Naiscoutang, but argued the Chief had given him permission. Plummer later charged him with trespass.¹²⁸ Plummer informed the new Secretary of State Joseph Howe, on 15 March 1870, that he had finally obtained a timber surrender for French River No. 13.¹²⁹ On 14 June 1870, Plummer informed Howe that, as instructed, he would visit when possible the reserves No. 9 and No. 13 on the French River, part of Henvey Inlet, Shawanaga, and Naiscoutang to examine the timber and obtain timber surrenders.¹³⁰ It is not clear why Plummer would need to take two timber surrenders at French River No. 13, but on 15 August 1870 he reported that, as per instructions, he took the Chief to the Sault to attest to the surrender of merchantable timber on his reserve before a judge. The latter being absent, Plummer and the Chief executed the attached paper before two justices of the peace.¹³¹ In December, Plummer reported on the remainder of his efforts to obtain surrenders: failure all the way around. He did hold out hope, however, that the Henvey Inlet Anishinaabek would eventually agree. He included descriptions of the quality of timber on the reserves. Plummer also responded to Howe’s instructions to obtain a timber surrender from the Fort William First Nation, noting he would go as soon as possible, which would not be until the next spring.¹³² Timber development was also occurring on the surrendered Thessalon Reserve, as Plummer reported collection of dues in June 1871.¹³³

In July 1871, Plummer identified the following Indian reserves as being under license to timber merchants:

Batchewana and Goulais Bay—Lake Superior—Garden River, Thessalon River—Mississauga, Spanish River, and Whitefish River, on Lake Huron, and Nipissing Reserve—Lake

Nipissing—The following Reserves Surrendered and not yet Licensed—Serpent River, French River, Maganettawan, and Naishcouteyong—

The following are unsurrendered, namely Dokis' Reserve near Lake Nipissing, Henvy Inlet, Shawanaga and Parry Island—The Indians owning the latter Reserves show a disinclination to Surrender them.¹³⁴

Plummer advised Howe in August 1871 that he had obtained a timber surrender from the chief, sub-chief, and two other persons at Fort William. No others could be collected for the purpose, and Plummer enclosed the document, which included a brief description of the timber.¹³⁵ On 5 September 1871, Plummer reported his successful trips to obtain timber surrenders for the reserves at Spanish and Serpent Rivers, along with brief descriptions of the timber. He enclosed copies of the signed documents. Plummer reported on these and other surrenders again a few days later, noting that he was unable to get Chief Dokis to agree to any timber surrender: "He is not so easily influenced by money considerations as most Indians are—a few dollars will not tempt him."¹³⁶ After the passing of Chief Dokis, his son, the new chief, surrendered the pine timber in 1908 for upwards of one million dollars. In September 1871, Plummer informed Howe that he had obtained a timber surrender from the Parry Island Anishinaabek, also providing very brief comments on timber quality.¹³⁷

On 28 October 1871, Plummer lamented that Howe's instructions of 30 September asking him to inspect and report on timber, and to obtain timber surrenders on "several" Reserves on Lakes Huron and Superior were delayed because of the irregularity of steamer mail. It was now too late for him to go. In March 1872, Plummer requested an advance for his trip to obtain merchantable timber surrenders from Michipicoten and the other Lake Superior reserves. He also asked for a form in connection with the mining surrender he was to obtain at Fort William.¹³⁸

Proceeds arising from the surrender of land, timber rights, or mining rights in Canada East and Canada West, including the transactions discussed in this paper after 1858, were subject to a ten-percent claw-back for the Indian Land Management Fund. On top of this was a five-percent

fee, or “perquisite,” for the Indian agent. By 1898, if not before, the Indian Department also implemented a six-percent claw-back on ground rent and fees. The Indian Department continued to skim these percentages until 1912–13, when the Fund was finally shut down and the remaining moneys returned to certain First Nations.

Conclusion

Internal and external elements extant both before and after the signing of the Robinson Treaties in 1850 converged, perhaps inescapably, to facilitate the reduction of the Robinson Treaties Indian Reserves on the north shores of Lakes Huron and Superior. The British desire to abolish its Parliamentary Grant, the Indian presents, and even the Indian Department itself led it to champion the goal of Indian civilization. The Indian Department in the Canadas supported all these goals but its own demise. As the role of First Nations in British military defence lessened, and the role of the Department in Indian land transactions increased, it came more and more into conflict with the aspirations of the Crown Lands Department to control land and resource dispositions in the Canadas (and later Ontario). The conflicts of interest that ensued as the competition between the two departments played out resulted in little benefit for the Anishinaabek and others. Between the pre-Treaty mining location sales, the well-connected and powerful mining entrepreneurs and timber developers, and the [mining] completion clause inserted into the Robinson Treaties, a long and prosperous relationship between the North Shore First Nations and their natural resources was not in the cards.

The Bond Head surrenders of 1836 might be viewed as the antecedents of the Pennefather surrenders of 1859, and some other, subsequent surrenders. All were taken, on the one hand, to advance the position of the Indian Department to self-fund its operations, while on the other, it was explained to First Nations that these surrenders were for their best interests and benefit. From the time the Indian Department became dependent on percentages from the proceeds of Indian land sales to pay for either its operational costs or the implementation of its policies, obtaining further land surrenders would always be necessary—for without them no proceeds could be skimmed for departmental purposes. The process was self-perpetuating. Departmental need for a percentage of Indian land sale

revenue was a driving force behind the taking of many future land and resource surrenders—a turn of events that had not been contemplated in, and which in many respects ran contrary to, the Royal Proclamation of 1763.

Under the Pennefather surrenders of 1859, and those that followed at Gros Cap, Whitefish River, Mississauga, and Magnetawan up to 1869, several First Nations lost all or a great deal of their land base. This would have a significant impact on their culture, their ability to expand for the future and to live comfortably and prosperously on their land. Some of the timber surrenders involved a permanent relinquishment of timber rights—or contained no provision for the Department to return to the First Nation to make a new timber arrangement at a future date.

The primary purpose of these surrenders was not to open land for settlement and agriculture, but to allow the British government to decrease the tax burden on its citizenry, to allow the Indian Department to be self-funding, and to lease or sell timber, minerals, or water power to non-Native developers. Valuable production, which the Treaties intended for the sole use and benefit of the Anishinaabek on whose reserves it occurred, passed from the Anishinaabek economic sphere into non-Native hands. From 1858 to 1912–13, this was how the Indian Department made First Nations pay for their own colonization.

Endnotes

- 1 It is not the purpose of this paper to provide a detailed examination of the negotiation or terms of the Robinson Treaties, except to discuss certain provisions in the course of this paper.
- 2 Rhonda Telford, “‘The Sound of the Rustling of the Gold is Under My Feet Where I Stand, We Have a Rich Country’: A History of Aboriginal Mineral Resources in Ontario” (PhD diss., University of Toronto, 1996), 117–61.
- 3 Note: Words such as “Indians,” “Half-Breeds,” “Tribe,” “Tribal,” “Band,” “Ojibway,” and “Six Nations” were typically used throughout contemporary documents. Occasionally I have retained some of this language in this paper.
- 4 The increased annuities, or escalator clause, appeared in both Treaties, and is quoted here from Treaty No. 61. *Indian Treaties and Surrenders*, Robinson Huron Treaty, No. 61, 149–52
- 5 Return, 21 Feb 1856, H. Labouchere, MP, to Governor General E. Head, 39–41.

- 6 The annual presents had been reduced in various stages, beginning in about 1836 with the removal of so-called frivolous items and certain types of clothing and equipment. About this time, Indians were also informed that resident American Indians would be cut off. Reductions continued into the 1850s. In 1854, the amount of the presents was reduced to £10,000; this would continue for the next four years, after which the presents would cease altogether.
- 7 The Indian Department used the Indian Land Management Fund to pay for such things as Indian agent salaries, postage, blankets, telegrams, surveys, roads, pensions, legal expenses, advertising, furniture and repairs, office rent, commissions on sales, and other items too numerous to mention here.
- 8 Although this is a later example re: timber, it also deals with their starvation. Library and Archives Canada (hereafter cited as LAC), RG 10, vol. 574, memo, John Prince, Judge of Algoma, 16 December 1863, 3.
- 9 See, for example, LAC, RG 10, vol. 612, George Ironside, Indian Supt. to R. Bruce, SGIA, 20 November 1850, 659–61.
- 10 See for example, LAC, RG 10, vol. 518, R. T. Pennefather, SGIA, to Commissioner of Crown Lands, 7 October 1857, 151.
- 11 Return, 16 May 1829, Sir James Kempt, Governor General, to Sir George Murray, Secretary of State, 37–41.
- 12 See, for example, Return, 14 July 1827, Lord Goderich to the Earl of Dalhousie, 5.
- 13 Return, 7 May 1829, Lt. Governor Sir John Colborne to James Kempt, 41–42.
- 14 Estimates, 14 February 1832, Viscount Howick to Hon. J.K. Stewart, 13.
- 15 LAC, RG 10, vol. 10018, report to Treasury Commissioners, 7 March 1834, R. G. Routh, Commissariat General, to the Hon. James Stewart, 173, 175.
- 16 Canada, *Indian Treaties and Surrenders*, vol. 1 (Ottawa: Brown Chamberlain, 1891), Manitoulin Island “Proposal,” No. 45, pp. 112–13; Saugeen “Arrangement,” No. 45½, p. 113; “Huron” or Anderdon Reserve Surrender, No. 146, pp. 113–15; Moraviantown Surrender, No. 47, pp. 115–17; Coldwater and the Narrows Surrender, No. 48, p. 117.
- 17 Return to Addresses, 7 May 1829, Lt. Governor Sir John Colborne to James Kempt, 41–42.
- 18 Return, 20 November 1836, Sir Francis Bond Head to Lord Glenelg, 124–30.
- 19 See, for example, Return, 20 January 1837, Lord Glenelg to Sir F. B. Head, 73–74.
- 20 *Indian Treaties and Surrenders*, vol. 1, “Huron” or Anderdon Reserve Surrender, No. 146, pp. 113–15; also Coldwater and the Narrows Surrender, No. 48, p. 117.
- 21 LAC, RG 10, vol. 6, 2764–2766, George Vardon to TWC Murdoch, Provincial Secretary of Lower Canada, 23 July 1841.
- 22 Journals, Louis Burwell testimony, 17 Nov 1843, 12–14; also Petition of the Six Nations Chiefs, 4 December 1843, 27–28.

- 23 LAC, RG 10, vol. 10018, "Extract from the Report on Indian Affairs by the Commissioners, Rawson, Davidson and Hepburn...", 22 January 1844, 191–96.
- 24 *Indian Treaties and Surrenders*, Saugeen "Arrangement," No. 72, pp. 195–97.
- 25 Return, 3 November 1854, L. Oliphant, SGIA, to Governor General Lord Elgin, 3–11.
- 26 Return, 5 December 1855, Lord Bury, SGIA, to Governor General E. W. Head, 17–39.
- 27 Return, 21 February 1856, H. Labouchere, MP, to Governor General Head, 39–41.
- 28 LAC, RG 10, vol. 10018, marked "Confidential," covering letter, R. T. Pennefather, SGIA, to Thos. Worthington, 26 March 1856, 202; also, attached [extract of Report as requested], 203–11.
- 29 LAC, RG 10, vol. 10019, "No. 5." [Order in Council], 12 July 1856, 220–21.
- 30 Journals, "Report of the Special Commissioners Appointed on the 8th of September, 1856, to Investigate Indian Affairs in Canada." Note: I have never come across a document explaining Pennefather's complete about-face.
- 31 LAC, RG 10, vol. 711, report, 23 April 1859, P. M. Vankoughnet, Commissioner of Crown Lands, with accompanying memo, 20 April 1859, P. [Ritledge] Supt. Woods and Forests, marked "approved 20th April 1859 (signed) PM Vankoughnet, Com'r.," 362–65.
- 32 LAC, RG 10, vol. 613, petition, 17 August 1851, Chiefs Wagemake and Papansainse to Great Father, 378–80.
- 33 LAC, RG 10, vol. 323, 216152, Ironside to Bruce, 6 September 1851.
- 34 Archives of Ontario (hereafter cited as AO), RG 1, A-I-I, vol. 66, report, Keating to Bruce, 2 December 1851.
- 35 Conrad Heidenreich, "Exploration and Mapping of Samuel de Champlain, 1603–1632," *Cartographica* Monograph No. 17 (Supplement, vol. 13, 1976), 42–50.
- 36 Michael Marlatt, OLS, "The Calamity of the Initial Reserve Surveys under the Robinson Treaties," in *Papers of the Thirty-Fifth Algonquian Conference*, ed. H. C. Wolfart (Winnipeg: University of Manitoba, 2004), 281–335.
- 37 Rhonda Telford, "The Nefarious and Far-Ranging Interests of Indian Agent and Surveyor John William Keating, 1827 to 1869," in *Papers of the Twenty-Eighty Algonquian Conference*, ed. David H. Pentland (Winnipeg: University of Manitoba, 1997), 372–402. Note: Since writing this article, I have discovered that Davies/Davis was Keating's stepfather; see LAC, RG5, C1, vol. 407, f. 395(1), Chatham, covering letter and memorial, 23 March 1854, J. W. Keating to P. J. O. Chauvreau, Provincial Secretary, 3pp.
- 38 LAC, RG 10, vol. 572, River Penbewabecong, letter, 18 September 1852, Eusibe Sailvaoil, copy by Ironside; vol. 573, letter, ID, Manitowaning, 22 September 1853, George Ironside, Indian Agent to Lt Col Hon. R. Bruce, SGIA, Quebec.

- 39 LAC, RG 10, vol. 515, 20 October 1852, R. Bruce, SGIA, to Ironside, Indian agent, 234.
- 40 AO, RG 1, B-IV, Box 3, Item 13, 8 Jun 1853, J. S. Dennis, P.L.S., to James W. Bridgland, P.L.S.; also Ministry of Natural Resources (hereafter cited as MNR), Survey Branch, instructions to land Surveyors, vol. 5, 6 July 1853, Andrew Russell to J. W. Keating, P.L.S., 224.
- 41 *Indian Treaties and Surrenders*, Robinson Superior Treaty, No. 60, pp. 147–49; also Robinson Huron Treaty, No. 61, pp. 149–52. See also Telford, “The Sound of the Rustling of the Gold,” 117–61.
- 42 See Jim Morrison, RCAP report on the Robinson Treaties (sections: “The influence of American mining” and “Patronage”).
- 43 LAC, RG 10, vol. 239, pt. 2, 142552–142564, William Spragge, Supt. of Land Sales, “Report relative to certain Mining Locations upon Lake Huron...”, 16 February 1858.
- 44 For example: W. H. Palmer, who was Arthur Rankin and John Cuthbertson’s agent on their Root River mining location in the Garden River Reserve, claimed exclusive use of the timber. LAC, RG 10, vol. 573, W. H. Palmer to Captain Ironside, 24 Aug 1853, 48–49; also Ironside to Bruce, SGIA, 16 September 1853, 47.
- 45 LAC, RG 10, vol. 614, Pennefather to Ironside, with attached agreements, 21 April 1857, 184–92.
- 46 LAC, RG 10, vol. 516, R. Bruce, SGIA, to Ironside, 10 June 1853, 4–5; also: vol. 573, Michipicoton Island, letter, 1 September 1853, George K Smith to Bruce, pp. 51–52; letter, Ironside to Bruce, 10 September 1853, looseleaf pages inserted at p. 44
- 47 NOTE: Palmer was Arthur Rankin and John Cuthbertson’s agent on their Root River mining location in the Garden River Reserve. LAC, RG 10, vol. 573, Ironside to Bruce, 16 September 1853, 47.
- 48 LAC, RG 10, vol. 516, Bruce to CCL, Toronto, 8 October 1853, 103–4.
- 49 LAC, RG 10, vol. 516, Bruce to Ironside, 12 November 1853, 124–25.
- 50 LAC, RG 10, vol. 573, Ironside to Bruce, 30 March 1854, 69–70; also Ironside to Bruce, 12 April 1854, 73; and Ironside to L. Oliphant, SGIA, 21 October 1854, 106. Note that the prospective purchaser at Thessalon River was E. B. Borron, the manager of the Bruce Mines: vol. 516, Oliphant to Ironside, 13 December 1854, 319–20.
- 51 In other words, developers could not scoop timber rights up under their mining licenses. LAC, RG 10, vol. 573, letters, Ironside to J. B. Stephens, Notowasaga, 21 March 1855; Ironside to Viscount Bury, SGIA, Quebec, 2 April 1855, 117.
- 52 AO, RG 1-360-0-70, Box 6, Report on Progress of Exploration on North Shore of Lake Huron, 1855: Thessalon River, 30 July 1855, Report on Progress of Exploration, Albert Salter to Commissioner of Crown Lands, n.p. (10 pp.); and RG 1-360-0-72, Box 6, Report on Exploration of Country Bordering on the North Shore of Lake Huron, 1856: 26 January 1856, Report by Albert Salter on

the mines on Lake Huron submitted to Hon. Joseph Cauchon, Commissioner of Crown Lands, n.p. (33 pp.).

- 53 Canada, *Treaties and Surrenders*, Gros Cap surrender, No. 75, pp. 199–200.
- 54 AO, Pamph. no. 16. A. P. Salter, P.L.S. [report on the country bordering upon the North Shore of Lake Huron] [Toronto: John Lovell, April 1856].
- 55 LAC, RG 10, vol. 517, S. Y. Chesley to Ironside, 16 September 1856, 387.
- 56 AO, RG 1, A-1-7, vol. 8, env. 3, “Copy of a letter received from William H. Palmer dated Sault de St Marie,” 2 February 1857, 03944–3947.
- 57 LAC, RG 10, vol. 235, 139455–139458, Keating to Pennefather, 6 July 1857; 139458–13946, same to same, 18 July 1857.
- 58 LAC, RG 10, vol. 235, 139455–139458, Keating to Pennefather, 6 July 1857; 139458-139461, same to same, 8 July 1857.
- 59 LAC, RG 10, vol. 235, 139455–139458, Keating to Pennefather, 6 July 1857; 139458–139461, same to same, 8 July 1857.
- 60 LAC, RG 10, vol. 235, 139650–139654, report, Keating to Pennefather, 25 July 1857.
- 61 LAC, RG 10, vol. 235, 139650–139654, report, Keating to Pennefather, 25 July 1857.
- 62 LAC, RG 10, vol. 235, 139541–139545, petition, 21 citizens of the Batchewana Bay First Nation and 6 members of the Goulais Bay First Nation to Pennefather, 20 July 1857.
- 63 LAC, RG 10, vol. 235, 139546–139550, J. D. Cameron to Pennefather.
- 64 LAC, RG 10, vol. 235, 140312–140314, SSM, Joseph Wilson, Indian Comm. to Pennefather, 12 September 1857.
- 65 LAC, RG 10, vol. 235, 140315-7, SSM, Wilson to Pennefather, SGIA, Toronto, 14 September 1857.
- 66 LAC, RG 10, vol. 518, Pennefather to Commissioner of Crown Lands, 7 October 1857, 151; and 30 October 1857, Pennefather to Commissioner of Crown Lands, 150.
- 67 LAC, RG 10, vol. 239, pt. 2, 142584–142586, petition, Augustin Shingwauk Chief [crane totem] and Pequachinnini Chief [crane totem] to His Excellency, Sir E. Head, Governor General, 26 January 1858.
- 68 LAC, RG 10, vol. 239, pt. 2, 142581–142583, Joseph Wilson to Pennefather, 2 February 1858.
- 69 LAC, RG 10, vol. 239, pt. 2, 142548–142551, L. Sicotte, Commissioner of Crown Lands to Pennefather, 16 February 1858. See also the attached: 142552–142564, “Report relative to certain Mining Locations upon Lake Huron...”, William Sprage, Supt. of Land Sales, CLD.
- 70 LAC, RG 10, vol. 239, pt. 2, 142542–142545, draft letter, Pennefather to Governor General, 3 March 1858. A formal copy of this letter is in this file at 142565–142570.
- 71 LAC, RG 10, vol. 242, 143600-1, Joseph Wilson to P. M. Vankoughnet,

Commissioner of Crown Lands, 17 May 1858; also vol. 573, Ironside to Pennefather, 27 March 1858, 182–88. *Ogista or Agista, a.k.a. Augustin: the son of Garden River Chief Shinguaconse. Augustin was now head Chief.

- 72 LAC, RG 10, vol. 573, Ironside to Pennefather, 5 October 1858, 198–200. Note: Chief Nebenaigoching seemed to be in the midst of a power struggle with other Band members; see: Ironside to Chief Na.ben.nai.goo.ching, 23 October 1858, 200.
- 73 LAC, RG 10, vol. 249, 148472-148482, Carney to Pennefather, 6 September 1858, includes sketch.
- 74 LAC, RG 10, vol. 245, pt. 2, 145638–145641, Carney to Pennefather, 16 October 1858: “Statements respecting Chief Nebenaigoching—Joseph Wilson + the surrender of Batchewaning Bay Reserve. Reports that a person has squatted on the Reserve at Goulais Bay.”
- 75 LAC, RG 10, vol. 248, pt. 2, 147691–147708, Carney to Pennefather, also several other pages re: affidavits, statements, rulings, 25 March 1859. My quotation from p. 147697.
- 76 LAC, RG 10, vol. 247, pt. 2, 147043–147046, Carney to Pennefather, 28 January 1859: “Relating to Propositions to be made to the Indians at Garden River and Batchewana Band of Indians for the Surrender of Reserves & & &c.”
- 77 *Indian Treaties and Surrenders*, Batchewana and Goulais Bay Surrender, No. 91(A), 227–29. Note: For more information on the current land base of the Batchewana First Nation, see their website; other historical notes on how some lands were reconstituted may be found on their Community Healing Strategic Project website. Also: Garden River Surrender, No. 91(B), 229–31; Thessalon Surrender, No. 91(C), 231–32. Note: Similar to the Batchewana and Goulais Bay situation, the Thessalon people and their land base did not forever disappear. I believe that Canada undertook to purchase back land for them some time after 1859, but am unaware of the details.
- 78 LAC, RG 10, vol. 573, Instrument of Surrender, 25 June 1859, 308–9. Note: To date, I have not found any surrounding documents for this surrender: instructions? Correspondence? Council minutes? This surrender does not appear in Canada’s *Indian Treaties and Surrenders* book.
- 79 LAC, RG 10, vol. 250, pt. 1, 148843–148845, copy in INAC, Toronto, Binder 474, (994) “Surveys” 1594, copy also in INAC, Toronto, DIAND, Reg. No. 5911-185 D: “Copy of a Report of a Committee of the Honorable the Executive Council, dated 18 July 1859 approved by His Excellency the Governor General in Council on the 22nd of same month.”
- 80 *Indian Treaties and Surrenders*, Fort William Surrender, No. 92, pp. 232–33. Note: To date, no documents have been found suggesting the Indian Department sent representatives to Fort William or Thessalon very far in advance of the summer of 1859.
- 81 DIA Annual Report, Statement F for year ending 30 June 1868. Note: I have not traced when the first or subsequent sales, either for land or timber, occurred on Pennefather Treaties surrendered lands. I am just noting that ten percent

- of such receipts for these three First Nations were skimmed in 1869. The table does not say this money was transferred into the Indian Land Management Fund (ILFM), but that is where the ten-percentages were headed. The 1869 table does not contain a statement of transfers from individual First Nations to the ILMF. Beginning in 1877, the Annual Reports contain individual account information for First Nations, and these include land and timber receipts and a line item for moneys removed and put into the ILMF. The tables and accounts can be used to trace all moneys skimmed by the DIA from First Nations and placed in the ILMF.
- 82 *Indian Treaties and Surrenders*, Point Grondine timber surrender No. 207, pp. 142–43; Whitefish River timber surrender, No. 109, pp. 255–57; and Mississauga timber surrender, No. 103, pp. 247–48.
- 83 LAC, RG 10, vol. 617, Hector Langvin, Secretary of State, to William Plummer, Visiting Supt. and Indian Commissioner, Manitowaning, 8 June 1869; and 17 May 1869, “Surrender by the Chief and Band of the Indians of the Reserve at Maganattawan ... of their Reserve Number one ... to be sold for their benefit,” 167–72. See also 17 May 1869, *Indian Treaties and Surrenders*, No. 112: “Surrender by the Chief and Band of the Indians of the Reserve at Maganattawan ... of all the merchantable timber contained in the Reserve there, as described below, to be sold for their benefit,” 262–63.
- 84 *Indian Treaties & Surrenders*, Garden River surrender No. 91B, 229–30.
- 85 This point was crystal clear to John Prince, first Judge of Algoma. In a subsequent memo on the timber issue, Prince maintained that the Ojibway at Garden River had the right to cut timber for personal use only, but no right to the beneficial interest from sales. Prince continued: “If they were permitted to sell all the timber therefrom, and to denude the loads of it, what w’d the lands be worth? Why, little or nothing, comparatively speaking....”, in LAC, RG 10, vol. 574, memo, 16 December 1863, John Prince, Judge of Algoma, 43–45.
- 86 Regarding the outside promises, see, for example, one of several such complaints in LAC, RG 10, vol. 2878, f. 177,991-1, Wm. Van Abbott, Indian Agent to [Hayter Reed], DSGIA, 10 February 1897.
- 87 J. E. Hodgetts, *Pioneer Public Service: An Administrative History of the United Canadas, 1841–1867* (Toronto: University of Toronto Press, 1955), 213, and appended chart between pp. 280–81.
- 88 The persons holding this dual responsibility were the following: Hon. Philip Vankoughnet: 1 July 1860–7 March 1862; Hon. George Sherwood: 7 March 1862–21 May 1862; Hon. William McDougall: 21 May 1862–30 March 1864; and Hon. Alexander Campbell: 30 March 1864–30 June 1867. Jim Wells, formerly of Indian Northern Affairs Canada “Indian Affairs,” (informal discussion, 1990).
- 89 AO, *Thompson’s Mirror of Parliament. Being a Report of the Debates in both Houses of the Canadian Legislature*, No. 31, p. 8, 3rd Sess., 6th Parl., 23 April 1860. See also the report for 24 April 1860, No. 32:5. Vankoughnet was attempting to weaken the wording surrounding the Crown’s definite role in land surrenders. He was called on this by the Hon. Mr. Morin.

- 90 An Act respecting the Management of the Indian Lands and Property, Cap. CLI, proclaimed 13 December 1860.
- 91 LAC, RG 10, vol. 520, Walcot to Ironside, 9 October 1861, 429.
- 92 LAC, RG 10, vol. 573, Ironside to Walcot, 31 October 1861, 323–24.
- 93 LAC, RG 10, vol. 1958, f. 4713, indenture, 22 October 1861, n.p.
- 94 LAC, RG 10, vol. 523, Spragge to C. T. Dupont, 2 June 1864, 385–86. Note: Sketch referred to was attached to the April letter.
- 95 LAC, RG 10, vol. 574, Dupont to Spragge, 2 August 1864, 81.
- 96 LAC, RG 10, vol. 574, Dupont to Walcot, 2 September 1864, 87.
- 97 LAC, RG 10, vol. 574, Spragge to Prince, 16 June 1865, 395–96.
- 98 LAC, RG 10, vol. 574, instructions, Spragge to Dupont, 16 June 1865, 396–97.
- 99 R. Alan Douglas, ed., *John Prince, 1796–1870* (Toronto: Champlain Society, 1980), 191.
- 100 LAC, RG 10, vol. 574, Spragge to Josiah Blackburn, Care of Hon: Donald McDonald [MLC] Toronto, 12 July 1865, 435.
- 101 LAC, RG 10, vol. 574, Spragge to Dupont, 7 August 1865, 487.
- 102 R. Alan Douglas, ed., *John Prince, 1796–1870*, 191–92.
- 103 LAC, RG 10, vol. 1958, f. 4713, Instrument of Surrender, 19 August 1865, at Manitowaning.
- 104 R. Alan Douglas, ed., *John Prince, 1796–1870*, 192.
- 105 It should be noted here that the outside promise of a cash advance to the Mississagi First Nation was assented to by the Executive Council. The money was initially advanced from the Parliamentary Fund, but was to be refunded after the timber on their land was sold. Thus, the principle reason why the DIA sought the surrender of entire or large parts of the reserves on the north shores was not to encourage settlement, but rather to transfer the natural resources out of the ownership and economy of the Tribes and into the control and economy of non-Natives. Subsequently the government broke the condition of payment of the \$96 to the Whitefish River First Nation. Re: Mississagi, see LAC, RG 10, vol. 722, report, “Wm. Spragge. Referred to a Committee of the Hon’ble Executive Council for consideration & Report. By Command (sd) A Campbell, Sep’t 7th 1865,” 243–44.
- 106 Both before and after the Treaty to 1900, the primary claimants were either mineral or timber developers. The first activity would destroy the surface of the land and pollute the waters; the second would denude and devalue the land.
- 107 AO, Williams Papers, F4337-3-0-29, Subscriptions/Lists—Whitefish Lake [sic]. Whitefish River Reserve, letter, Chief John Bezhkgobiness to George Mills, Commissioner of Crown Lands, 4 April 1904.
- 108 LAC, RG 10, vol. 574, Dupont to Wm Spragge, 20 August 1865, 236–37. Reference to Dupont’s invoicing can be found at the following locations in vol. 574: 11 September and 30 November 1865. There was some problem with the expenses he submitted on behalf of John Prince (primarily his “beverage”

- bill), who had still not been reimbursed well into 1867. See vol. 722, report, 16 October 1867, Wm Spragge, 362.
- 109 LAC, RG 10, vol. 574, Dupont to Spragge, 7 August 1866, 351; and, vol. 574, Dupont to Wm. Spragge, 1 November 1866, 412; also vol. 526, Spragge to Dupont, 29 April 1867, 335.
- 110 LAC, RG 10, vol. 523, Spragge to Dupont, 22 April 1864, 318–19.
- 111 LAC, RG 10, vol. 7751, f. 27013-2-1, pt. 1, copy of instructions to survey, Andrew Russell, Asst. Commissioner of Crown Lands, to G. B. Kirkpatrick, P.L.S., 2 July 1864; also "Plan of Part of Indian Reserve Garden River. Department of Crown Lands, Quebec, June 27th 1864..." and a copy of "(Extract) Surrender of the Garden River Indian Reserve." See also: NRCAN, Toronto, 53647, "Plan of Part of Indian Reserve Garden River," by George B. Kirkpatrick, P.L.S., 9 September 1864. NRCAN, Toronto, FNB 823, microfiche 632, "Garden River Indian Reserve No 14, Ontario. Field Notes of part of Reserve. GB Kirkpatrick, PLS, 1864."
- 112 All information regarding Timber License No. 3 is from: LAC, RG 10, vol. 656a, pp. 3, 120.
- 113 See, for example: LAC, RG 10, vol. 7751, f. 27013-2-1, pt. 1, J. D. McLean, Asst. Deputy and Secretary, to Chief George Shinguakous, c/o A. D. McNabb, Indian Agent, SSM, 8 September 1922.
- 114 LAC, RG 10, vol. 7751, f. 27013-2-1, pt. 1, memo, J. H. Bury, Supervisor, to Mr. Caldwell, 19 December 1921; see also: letter, J. D. McLean, Asst. Deputy and Secretary, to George Shaw, Timber Inspection, Thessalon, 29 December 1921.
- 115 See, for example: G. LaForest, *Natural Resources and Public Property under the Canadian Constitution* (Toronto: University of Toronto Press, 1969).
- 116 For a detailed discussion of the federal and provincial disputes, see Rhonda Telford, "'The Sound of the Rustling of the Gold.'"
- 117 1LAC, RG 10, vol. 574, Dupont to Spragge, 10 August 1867, 554.
- 118 LAC, RG 10, vol. 616, Spragge to Dupont, 16 August 1867, 520–21.
- 119 LAC, RG 10, vol. 574, Dupont to Spragge, 13 September 1867, 588.
- 120 LAC, RG 10, vol. 574, Dupont to Spragge, 22 November 1867, 617; vol. 616, H. L. Langevin, Secretary of State, to Dupont, 11 December 1867, 603–4; vol. 574, Dupont to Langevin, 22 December 1867, 633–34.
- 121 LAC, RG 10, vol. 616, Langevin to Plummer, 30 September 1868, 765–66. Also: vol. 402, 5 October 1868, 91.
- 122 LAC, RG 10, vol. 575, Plummer to Langevin, 2 November 1868, 51; Plummer to E. Clark, 9 November 1868, 55. First quote from: Plummer to Secretary of State, 2 February 1869, 87. Second quote from: vol. 617, "Surrender by the Chief and Band of the Indians of the Reserve at Maganattawan...", 17 May 1869, 170–72; Langevin to Plummer, 27 February 1869, 80–81.
- 123 LAC, RG 10, vol. 575, Plummer to Langevin, 29 May 1869, 143–44. Note: Some inconsistencies with previous correspondence appear in this letter re:

- the population of Magnetawan people at West Bay. Also: vol. 617, Langevin to Plummer, 8 June 1869, 166–68.
- 124 LAC, RG 10, vol. 617, Langvin to Plummer, 8 June 1869; and “Surrender by the Chief and Band of the Indians of the Reserve at Maganattawan...”, 17 May 1869, 167–72. Also: *Treaties and Surrenders*, 17 May 1869, No. 112: “Surrender by the Chief and Band of the Indians of the Reserve at Maganattawan...”, 262–63.
- 125 LAC, RG 10, vol. 575, Plummer to Langevin, 2 June 1869, 145.
- 126 LAC, RG 10, vol. 575, Plummer to Chief Maishequonggai, 14 June 1869, 135; see also Plummer to Langevin, 14 June 1869, 137; same to same, 19 July 1869, 157; and same to same, 26 July 1869, 163.
- 127 LAC, RG 10, vol. 575, Plummer to Langevin, 13 August 1869, 173.
- 128 LAC, RG 10, vol. 575, Plummer to Langevin, 26 October 1869, 205; and same to same, 13 September 1869, 185–86; also Plummer to Clarke & White & Co., 11 November 1869, 208.
- 129 LAC, RG 10, vol. 575, Plummer to Joseph Howe, Secretary of State for the Provinces, 15 March 1870, 252–53.
- 130 LAC, RG 10, vol. 575, Plummer to Howe, 14 June 1870, 272.
- 131 LAC, RG 10, vol. 575, Plummer to Howe, 15 August 1870, 300.
- 132 LAC, RG 10, vol. 575, Plummer to Howe, 10 December 1870, 330–33; also same to same, 14 December 1870, 339.
- 133 LAC, RG 10, vol. 575, Plummer to Howe, 10 June 1871, 394.
- 134 LAC, RG 10, vol. 575, Plummer to H. M. Fowlds, Hastings P.O., 26 July 1871, 414–15.
- 135 LAC, RG 10, vol. 575, Plummer to Howe, 31 August 1871, 423.
- 136 LAC, RG 10, vol. 575, Plummer to Howe, 5 September 1871, 425–26; see also: same to same, 5 September 1871, 431–32.
- 137 LAC, RG 10, vol. 575, Plummer to Howe, 26 September 1871, 439–40.
- 138 LAC, RG 10, vol. 575, Plummer to Howe, 28 October 1871, 455–56; see also vol. 576, Plummer to Howe, 15 March 1872, 45. Note: Additional research will be required to determine whether Plummer succeeded in obtaining these new surrenders on Lake Superior.

**“In all cases where the term miles occurs
the Indians intended leagues: the only mode
of measurement known to the Indians”:**

The Robinson Huron Treaty of 1850, Leagues and Miles, and
the Shawanaga and the Naiscoutaing Reserves¹

David T. McNab

The primary English imperial, and local, reasons for the taking of the Robinson Treaties included the English imperial policy of “civilization” and the white settlers’ perspective of the lands and waters as “wilderness”—a resource frontier in which the natural resources were there to be exploited to produce material wealth for the colonial economy. The government’s objective was to remove Aboriginal people from their homelands—their Treaty lands—and place them on reserves. The two primary government priorities were mining and white settlement. These interests collided on the Indigenous homelands when the English imperial principle of protection of Aboriginal people was eroded by the immediate exigency of white settlement and resource development. The dynamic of greed on the resource frontier, especially surrounding mineral wealth in what became northern Ontario, led directly to the Robinson Treaties of 1850.

When the government tried to take this wealth in the 1840s, the Anishinabe resisted by writing petitions to the government and then using armed resistance. It will be recalled that, in December 1849, after the Mica Bay resistance, the government sent the Royal Canadian Rifles from Toronto to Sault Ste. Marie. The government blamed the resistance

on the “rascally whites,” led by Allan Macdonell,¹ a Métis, former law partner of Sir Allan Napier MacNab,² and mining entrepreneur acting for the Ojibwa. Two chiefs, Nebenagoching and Shinguacouse, were later arrested and taken to Toronto where they were put into jail preparatory to their trial.

The government intended to get a “surrender” from the First Nations of all the valuable mining areas on the north shores of Lakes Huron and Superior. To this end, on 4 August 1849, the government appointed two commissioners—Alexander Vidal, an experienced surveyor, and the local Indian agent, T. G. Anderson—to investigate these “claims” on the north shores of the lakes (but not the islands in those lakes). The commissioners met with many but not all of the chiefs. For example, Vidal and Anderson did not meet with Chief Megis of the Wasauksing First Nation, erroneously assuming it to be a sub-group of the Shawanaga First Nation. The commissioners were informed by Nahwahquagezhig, a citizen of the Shawanaga First Nation, that the Wasauksing First Nation’s group of forty-five individuals’ mainland territory included the area “from Saugeen Bay to the surveyed lands and back to the sources of the rivers running into the Lake [Georgian Bay].” This Territory is shown on the map attached to the Vidal-Anderson Report, dated 5 December 1849. In addition, Nahwahquagezhig requested a reserve for the Wasauksing First Nation “between Moose River and Parry’s Sound and extending half a day’s [journey by canoe] back.”³

Vidal and Anderson did meet with Chief Muckata Mishaquet of the Shawanaga First Nation. However, the commissioners reported on 5 December 1849, in Appendix B of their report, that this First Nation numbered forty persons and that the “Shawwaynaga” territory extended from “Head Island to Saugeen Bay”—back to the sources of the rivers running into Lake Huron. The sketch attached to their report shows this territory encompassing a large area, from the Magnetawan River southward to Saugeen Bay, and inland to the north without reference to any northern boundary. Appendix D of their report was titled “Reservations which the Indians wish to make.”⁴ This appendix mentioned the Shawanaga First Nation as follows: “Shawwaynaga band. —A small reserve at Pointe au Baril.”⁵ From these descriptions it is clear that the Treaty was intended to cover only the mainland north from the shores of Lakes Huron, including

Georgian Bay, and Lake Superior. The islands in those lakes were not to be part of the proposed Treaty area. It should be emphasized here that it was not the government's intention, at least initially, to take a "surrender" of all the islands in Lake Huron and Georgian Bay. In fact, one of the largest of them, Michipicoten Island, had been leased by the Anishinabe to private individuals prior to 1850. And, of course, the Anishinabe had no intention of relinquishing these very special and sacred places, which included Shawanaga Island in Shawanaga Bay.

Robert Bruce, a cousin of Lord Elgin, Governor General of the Canadas, then the Superintendent of Indian Affairs, instructed William Benjamin Robinson on 11 January 1850, that the government "will speedily take measures to adjust the claims of the Indians for compensation on their renouncing all claims to the occupation of all lands in the vicinity of Lakes Huron and Superior" and part of which lands "have been occupied for mining purposes." Later, Lord Elgin authorized Robinson, "on the part of the Government to negotiate [*sic*] with the several Tribes for the adjustment of their claims to the lands in the vicinity of Lakes Superior and Huron or of such portions of them as may be required for mining purposes." Robinson was, from the government's perspective, an excellent choice for the task. He had been a trader with Aboriginal people since the 1820s and knew them well. He made two trips to carry out these instructions. The first was to Garden River in the spring of 1850. But he failed to meet with all of the chiefs or head-men, who were away at that time on their seasonal rounds, instead meeting with only six of the chiefs. They signed an agreement to meet again with him in August–September 1850. He did not meet with Chief Muckata Mishaquet of the Shawanaga First Nation.

Accordingly, late in August–September 1850, Robinson and other prominent representatives of the Crown met with the chiefs of Lakes Huron and Superior at a council fire at Garden River. Again, Chief Muckata Mishaquet of the Shawanaga First Nation was not present for these negotiations. Lord Elgin⁶ and Robert Bruce⁷ were present at the beginning of the Treaty negotiations. Before the negotiations began, Robinson told Lord Elgin of his "intentions as to the Treaty, which he [Elgin] approved of." In addition, on 1 September Elgin told Chief Peau de Chat of Fort William that he had "left full power" of the English

imperial Crown with Robinson to negotiate a Treaty (note: one Treaty, not two) “to settle this matter & he & the other chiefs were satisfied.” On 3 September, Elgin met again with the Aboriginal representatives at Garden River, and Robinson recorded in his diary that “they had all perfect confidence in ‘Mr. Robinson’ and would settle their difference with him.” Lord Elgin then departed for Toronto and left Robinson to negotiate the Treaties, having conveyed his full authority to Robinson to enter into negotiations and sign the Treaties on behalf of Queen Victoria.

Robinson then entered into the negotiations for not one, but rather two Treaties—the Robinson-Superior Treaty, signed on 7 September, and the Robinson-Huron Treaty, signed two days later. On the 7th, Robinson told one of the Lake Huron chiefs from Garden River, Chief Shinguacouse, that “the majority of the Chiefs were in favour of my proposition ... that those who choosed [*sic*] might sign it. I wd [would] not press anyone to sign. Those who signed wd get the money for their tribes & those who did not sign wd get none.” (Robinson’s Report on the Treaty)

These Treaties were politically controversial after the Mica Bay resistance of 1849, and the imprisonment of two prominent Aboriginal leaders by the government. As a result, politicians and government officials appear to have taken great care with them. The government was under scrutiny for how it treated “bad Indians.” It was a media event. Journalists from as far away as New York came to the Sault and Garden River to witness the proceedings. They published accounts of it in the major North American newspapers in Toronto, Montreal and New York.

The first part of the Robinson-Huron Treaty stated, in Victorian English legalese (which was contrary to the First Nations’ understanding), that they were entering in a spirit of sharing—into a Treaty of coexistence:

That for, and in consideration of the sum of two thousand pounds of good and lawful money of Upper Canada, to them in hand paid ... the said Chiefs and principal men, on behalf of their respective Tribes or Bands, do hereby fully, freely, and voluntarily surrender, cede, grant and convey unto Her Majesty, her heirs and successors for ever, all their right, title, and interest to, and in the whole of, the territory above described....⁸

There is no evidence that the First Nations who were at the negotiations ever saw a translation of the treaty documents. Nor, to my knowledge, has there ever been a translation of them in the Anishinaabe language. "Pen and ink" were in the treaty document; the treaty itself, its spirit and its significance, was in the hearts of the First Nations. And to be sure, there it has remained to this day.

The substance of the Treaty's terms may have been translated or interpreted to the First Nations prior to its being signed, but certainly not thereafter. This point is critical. A former Indian Agent William Keating drew up the "Schedule of Reservations" subsequent to the Treaty negotiations and agreement in council, which listed areas not deemed to be included in the area covered by the Treaty. In this "Schedule," he later admitted, Keating substituted the English word "miles" where the Chiefs had understood "leagues," since "miles as a form of measurement was not known to them." As a result, the First Nations could not possibly have known that Keating was cutting their Reserves by measuring them in miles—i.e., by one-third the distance indicated in the "Schedule." It is also clear from the written Treaty document that the islands in Lake Huron and Georgian Bay were to be part of the area covered by the Treaty, "together with the islands in the said lakes opposite to the shores thereof." At the same time, however, a number of islands were also excluded from the area covered by the Treaty, including Squirrel Island and a small island used by the Batchewana First Nation for a fishing station at Sault Ste. Marie.

However, representatives from the Shawanaga First Nation and several other First Nations were not present at these negotiations or at the Treaty in Sault Ste. Marie. Thus, a reserve for the Shawanaga First Nation was initially not included in the "Schedule of Reservations" as part of the Treaty document. The reserves listed on the Schedule were clearly intended to be excluded from the lands to be shared in the Treaty.⁹ Thereafter, by their adhesion, neither the Treaty document nor the "Schedule" were interpreted or translated for them in their language.

After the taking of the Robinson Treaties on 7 and 9 September 1850, Robinson travelled south in the steamer *Gore* and reached Penetanguishene on Sunday, 15 September. He appears to have been expecting to meet the remaining chiefs there, likely because they had

already picked up their annual presents and did not need to go all the way to Bawating (the “place of the rapids,” now known as Sault Ste. Marie). The next day he met with three chiefs of the Wasauksing, Shawanaga, and Muskoka First Nations, and explained the Treaty to them, as indicated in his diary:

Sunday [September 15] — Went to Church & then walked to Fort. Saw the Indians who are waiting for their payment & tell them I wd pay them at 9 tomorrow. Returned at 9 & saw Capt. Anderson & appointed time & place to pay the Indians.

Monday 16 [September] — Up at six & went to Fort to pay Indians. Paid them all by 12—\$702—then saw Yellowhead, Snake & Aisance on their business. They claim some right to a small tract of land near Severn River, which they said is not included in any former treaty. Could only promise then to inquire at the Land & Indian Offices in Toronto into it & write them. Gave them (7 of them) \$4 ea. To pay their expenses. Finished everything by 12 P.M. Retd [returned] to Penetanguishene to sleep. Saw Indians again there & gave them some provs [provisions] to take them home. Capt. Anderson & his interpreter Solomon assisted me materially at the payts [payments] & other business. Explained the treaty to the Indians & got the description of their reservations. Slept at Penetange [Penetanguishene].

In addition to Captain T. G. Anderson and Solomon, three citizens of Penetanguishene were also present: Wemyss Simpson, Alfred A. Thompson, and William Hamilton—all merchants, so it seems. However, none of these individuals left any other account of this meeting. In his diary, Robinson only states that he explained the Treaty to them and got the description of their reservations from the Treaty area and then paid them. He did not say whether his interpreter, William Solomon, translated the written Treaty document for them. Robinson, in his 24 September 1850 report on the Treaty to Colonel Robert Bruce, Superintendent General of Indian Affairs, does not refer at all to the Penetanguishene adhesion of 16 September, merely referring to his meeting thereafter with Chiefs Yellowhead, Snake, and Aisance. It is likewise not known whether Robinson explained the written Treaty document’s terms to Chief

Muckata Mishaquet of the Shawanaga First Nation, or explained that islands were not to be included in the Treaty. In his report, Robinson indicated that he had discussed the following (but only at Sault Ste. Marie) regarding the reservations:

In allowing the Indians to retain reservations of land for their own use I was governed by the fact that they in most cases asked for such tracts as they had heretofore been in the habit of using for purposes of residence and cultivation, and by securing these to them and the right of hunting and fishing over the ceded territory, they cannot say that the Government takes from their usual means of subsistence and therefore have no claims for support, which they no doubt would have preferred, had this not been done. (Robinson's Report on the Treaty)

Robinson also wrote, in the same document, that the chiefs "are desirous that their several reservations should be marked by proper posts and monuments, and I have told them the government would probably send someone next spring for that purpose." He also observed that since he knew "many of the localities," he would be able to "give the necessary information when required." From this last statement, it is clear that Robinson, an experienced trader in the Georgian Bay area for a quarter of a century, would have known the locations of the Shawanaga Reserves.¹⁰ It should be emphasized that the Robinson-Huron Treaty was unequivocal that the areas included as the "Reservations" appended to the treaty document were not included as those areas covered by the Treaty, but remained Aboriginal title lands with their rights in those lands intact, just like the islands in Georgian Bay.

The two most notable examples of the discrepancy between the written record and the Shawanaga oral tradition (as written) occurred regarding the understanding of the size of their two reserves that were included in the Robinson-Huron Treaty, especially in light of the facts that the Shawanaga First Nation had not been present at the Treaty negotiations in Sault Ste. Marie, and that Robinson had apparently not discussed it with Chief Muckata Mishaquet or the other chiefs at the 16 September 1850 meeting at Penetanguishene when the adhesion was taken. The understandings of the Treaty diverged sharply thereafter. The one common

denominator was the fact that Robinson had promised the Shawanaga First Nation two reserves of three miles square, by which the First Nation, having no word or understanding for the English word “miles,” understood that the reserves would be three *leagues* square. It is not at all surprising that some of the chiefs protested this fact after the Treaty was signed.

On 17 August 1851, the Anishinaabe Chiefs Way-ge-ma-kai and Pa-pa-sanner (Wagemake at Henvey Inlet No. 2 Reserve, and Papisinse at Grumbling Point, or Point Grondine No. 3 on the Treaty list list above), “who sends for other bands,” sent a petition from “Assin ne be a,” also known as “Beaver Stone River” (a tributary of the Severn River, located at Point Grondine on Beaverstone Bay), to Lord Elgin, the Governor General. Both these Chiefs’ reserves are neighbours to the Shawanaga Reserves, and their First Nations are next to Shawanaga First Nation. It is inconceivable that the petition would have excluded the Shawanaga First Nation in the context of having been sent to Lord Elgin “for other bands.” The petition was also “witnessed” and “signed” by James William Keating.

The petition applied (and still applies) to the Shawanaga First Nation and their reserves. It was sent before the two reserves were surveyed in the summer of 1852. The full text of the petition is as follows:

Assin ne be a (Beaver Stone River)

August 17th 1851

Great Father

We salute you—our warriors our women our children salute you and offer you the hand of friendship.

Great Father

We are of the tribes who signed the Treaty last summer and we are perfectly satisfied with its provisions were wise and good.

Great Father

We thank you for the promise it contains that our annuity shall increase as our lands are sold or leased, and that the contents of each Bands Reserve shall of valuable be for its Sole and individual benefit.

Great Father

The lumber if no value to us on our Reserve we shall be glad to sell to them who come to live among us, and we feel assured that we shall desire benefit from it.

Great Father

There is one thing however that we think not right and we come to you to tell you of it sure of redress.

Great Father

When the Treaty was made, no inquiry as to the actual extent owned by each Chief and Band was made.

Great Father

We think that in proportion to the quantity of land owned and possessed by each Band should be the proportion of the annuity it receives.

Great Father

If the white man owns little and sells he receives little, if he holds much and sells he receives much—it is right, it is just—shall there be one rule for the white man and another for the Red man—Numbers are no test of right.

Great Father

We do not wish our words only to be believed— We wish that you should employ one of your own Chiefs to ascertain in the next council at Manatowaning [Manitowaning] where it can be done openly and in the face of all the extent of each Band's right and then distribute the annuity accordingly.

Great Father

Halfbreeds and other Indians coming to reside on a tract either with or without leave cannot increase the right of a Chief to receive a larger sum than that which the size of the territory his people own entitle him and them to [too].

Great Father

In describing our reserves we did not understand the distance of miles; but we gave certain points and we hope that in the survey those boundaries will be adhered to and not the imagined space which a term conveys to us tho [though] well known to you.

Great Father

We will point out to the surveyor the Lake we mentioned and which from enquiry of the Whites, we find would be further them we said.

Great Father

We also wish to know if we have not the exclusive right to the fisheries immediately adjoining and opposite to our reserves.

Great Father

This is all we have to say again we salute you, and beg you to listen to our words.

Great Father

Please take from my hands in the name of my people the pouch which is to contain the pipe of peace and plenty.

Signed Way-ge-ma-kai

Signed Pa-pa-sanner

(Who sends for other bands)

Witness

Signed

J. M. Keating¹¹

The petition was received at Manitowaning by George Ironside Jr., and then forwarded by his letter of 6 September 1851 to Robert Bruce, then Superintendent General of Indian Affairs, in Toronto. Ironside's letter to Bruce stated, "Agreeable to the wish of the Chiefs whose names are attached to the accompanying speech I have the honour to transmit to same through you to His Excellency the Governor General. The parcels

[pouch of tobacco (?) and a pipe of peace] mentioned by these Indians I will forward to you by the first favourable opportunity."¹²

The petition outlines why the Shawanaga First Nation had to explain "certain points" to John Stoughton Dennis the Surveyor (who later became the first Surveyor General of Canada and Keating—in regard to the extent of their reserves adjacent to the Lake and to where they could fish and engage in their other commercial activities. They did not understand the term "miles" and the "imagined space" it represents, and they understood it instead to mean leagues.

After the Robinson-Huron Treaty was ratified early in 1852, the government chose J. S. Dennis, a provincial land surveyor, to survey those reserves that were to be excluded from the area covered by the Treaty. James W. Keating, a former Indian agent, specially hired for the job by the Indian Department because of his knowledge of "Indian" culture and language, was to reconcile any difficulties with respect to the understanding of the location of the reserves when they met with the First Nations' representatives.

Dennis and Keating arrived at Shawanaga and at Naiscoutaing in July 1852, and when, according to Keating's account, the First Nations' representatives asked for an exchange of their lands, such an exchange was agreed upon, as indicated below. It is clear that the Anishinaabe, based on their petition of 17 August 1851 (noted above), were unfamiliar with the English measurement of miles, which was used in the written Treaty document. This fact was acknowledged repeatedly by Keating himself after they had visited the second place on Keating and Dennis's survey (the first being Wasauksing or Parry Island, or Shawanaga). Whenever the English said miles, the Anishinaabe understood leagues (a league is about three miles). Below is Keating's description of his and Dennis's meeting with Chief Muckata Mishaquet at Shawanaga, dated December 2, 1852:

The coast still continues to present the same appearance save immediately along the bank of some few small streams where a narrow margin of good soil and a few Pine broke the monotony of the scene. We found Mahdemeshacuit, and his people assembled on an island in the deep bay of She-a-ne-nega awaiting our arrival — In the morning they came to our tents, and produced

a plan of their own upon birch Bark. The Mistinaway (homme d'affaires) of the Chief a most intelligent Indian explained it to us. It gave the general formation of the coast the extent of the lands claimed by their Band and the outline of the tract which they wished to reserve.

We accordingly accompanied them to mark the limits and commenced near the entrance of the river where a cairn was erected—In order to secure to them the pickerel fishery at the mouth of the River She ai ne go We were here again induced to make a slight alteration reducing the Reserve at Nathcomb. yang, and adding to this the same proportion. This we had the less intention in doing as with the exception of a few hundred acres of Sugar Bush where they also have some plantations the whole utterly worthless independently of this, both Mr. Dennis, and myself were satisfied that could claim none, that in all cases where the term miles occurs the Indians intended leagues the only mode of measurement known to the Indians from whom they have derived what knowledge they possess of distances the words in their vernacular meaning simply a measure (fila e gaw) assured however that the real intention of the treaty was to give to the parties at the time of its execution the Tracts they severally indicated. We thought ourselves bound to admit this interpretation when claimed. We therefore felt less difficulty on departing from the strict letter of description. The Locality offered, no inducement for a careful examination but its shores afford most extensive and valuable fisheries at the distance 75 miles from Penetanguishene its whole population assembled there every autumn and many hundred Barrels of White Fish and Trout were put up. Keating's report on the survey - see above

The Shawanaga First Nation's primary village site was named "the place of sand at the bottom of the bay"—namely Shawanaga Bay on Georgian Bay. The village site was the starting point for the reserve, and it was to include that village site, as was the case with all of the other reservations surveyed under the Robinson-Huron Treaty.

Keating reported that they proceeded next to the Naiscoutaing River to

determine the limits of the second reserve of the Shawanaga First Nation:

It really does seem that when not induced by the fisheries, they have taken their Reserves merely from association the graves of their dead—the places of their birth—there seen to have directed their choice.

Having with the Chief, marked the boundaries we gladly left this stagnant stream, which we ascended several miles to the forks, and the myriad of mosquitoes which infest it for the clear waters of the open lake. Identified in text

Dennis's report on the meeting with the Shawanaga First Nation representatives, dated 14 May 1853, was as follows:

On the 23rd [July 1852] we proceeded to Shawanaga where by appointment we met the Indians — Here Mr. Keating and myself determined the position and dimensions of the Reserve which I left Mr. Unwin and his party to survey ourselves continuing up the Lake to Naiscoutaing on the Sunday following — At this place, which presents anything but an attractive appearance being low and swampy, where it will be recollected the same Band has according to the Treaty a second Reservation of 3 miles square, we located the starting point the Chief being present of a Tract of 2 miles square having in compliance with the wishes of the Band increased proportionately the size of the one at Shawanaga.

It is significant that Charles Unwin, the assistant surveyor, who was not present for these discussions on the location of the two reserves, was instructed to survey them after Dennis and Keating had left the area. It seems quite clear that Unwin surveyed these two reserves in the wrong location, since his drawings did not include the primary village site on Shawanaga Bay and indicated both reserves as being landlocked far from the coasts of Shawanaga Bay and Georgian Bay. In addition, they were represented as being at least ten times smaller than what had been indicated by the First Nation's representatives at their meeting with Dennis and Keating (when the latter admitted his mistake as to the difference between leagues and miles). This description was reiterated and provided in greater detail by Dennis in his diary, which accompanied his report.¹³

Instead of three miles square (nine square miles, or 5,760 acres) at the Naiscoutaing River, the Naiscoutaing Reserve was represented as being two miles square (four square miles, or 2,560 acres), while the Shawanaga Reserve should have been four miles square (sixteen square miles, or 10,240 acres) rather than three miles square (nine square miles, or 5,760 acres). In spite of the acknowledgement by Keating that leagues instead of miles had been intended, the two reserves were clearly not surveyed based on the measurement of leagues square rather than miles square. Moreover, it appears that the size of the two reserves as surveyed was considerably less than what was agreed upon in the Robinson-Huron Treaty. The Shawanaga Reserve No. 17 was surveyed by Dennis at 8,960 acres, and the Naiscoutaing Reserve at 2,560 acres. These two reserves are listed in the Indian Land Registry at 8,475 acres and at 2,650 acres, respectively, and, after being re-surveyed in 1970 by D. H. Browne, at 8,503 acres and 2,547 acres, respectively.

The actual description of the reservation, on which the First Nation had agreed on 16 September 1850, was as follows:

For Chief Muckata Mishaquet and his band, a tract of land on the east side of the River Naishcouteong, near Pointe aux Barils, three miles square, and also a small tract in Washanwenega Bay, now occupied by a part of the band, three miles square.

The total area of each reserve would thus have been eighty-one square miles (51,840 acres), thereby giving a total reserve acreage of one hundred and sixty-two (162) square miles (103,680 acres). A Reserve of this size would not have been unusual for the Robinson Treaties and would be in accord with the size of two townships as townships were surveyed and confirmed at that time. For example, the Wasauksing Reserves totalled about 92,600 acres. However, only a total of about 9,560 acres was actually surveyed, which was less than the Treaty stated on its face (it required at least 11,520 acres, even if the word “miles,” instead of “leagues,” was used). There was never any surrender of the reserves, which were excluded from the area covered by the Robinson-Huron Treaty. Thus, the Aboriginal title and rights of the reserve areas referenced in the Treaty remains intact. The Aboriginal title and rights that were excepted from the area covered by the Treaty continue to exist to this day.

On 31 January 1853, the government of the province of Upper Canada purported to confirm the reserves under the Treaty by an Order in Council of that date, reproduced in full here:

On a communication from the Honble. R. Bruce, Superintendent General of Indian Affairs, dated 20 January 1853, submitting for consideration a Copy of a Report addressed to him by Mr. J. W. Keating, who, under instructions from the Crown Land Department, accompanied Mr. Surveyor Dennis while employed last summer in laying off the Indian Reserves on the Shores of Lake Huron & of its tributaries from which it appears that these Gentlemen felt themselves constrained, for reasons explained by Mr. Keating, to deviate in some cases from the strict letter of the treaty with reference to the extent & limits of the Reserves—that as these deviations seem to be made in a spirit of justice towards the Indians & with the view of supplying omissions which originated in their inability to communicate their wishes in an intelligent manner to the Commissioner, Mr. Robinson,— the Superintendent General hopes that they will be confirmed by the Provincial Government.

The Superintendent General also invites special attention to the desire expressed by the Indians & advocated by Mr. Keating, that they would have the exclusive right of fishing in the waters immediately fronting the Reserves which Reserves are represented to be barren & unproductive & except for fishing purposes, seem to be of very little value:—The Committee recommend that the proceedings of Messrs. Dennis & Keating above alluded to be approved & confirmed; as regards the exclusive right of fishing in front of the Reserves, prayed for on behalf of the Indians, the committee advise that the Superintendent General be informed that, in the event of any attempt being made by other parties to trespass upon the deep water frontage for the purpose of fishing, the government will then consider the expediency of giving the Indians such a Title thereto, either by lease, License of Occupation or otherwise, as will effectually protect them from future interference—the granting the exclusive right of fishing is

a subject involving legal questions which the Committee do not think it will be advisable or necessary to raise

Any deviations in the reserves and their descriptions under the Treaty were only to have been made by Dennis and Keating based on “a spirit of justice towards the Indians” and because of the Indians’ “inability to communicate their wishes.” Both of these reasons are not applicable to the case of the Shawanaga and Naiscoutaing Reserves. They received only a fraction of acres, as surveyed, instead of 103,680 acres. There is ample indication in these historical facts that there was no spirit of justice here, and there is no evidence that they failed to communicate their wishes properly. The Shawanaga First Nation’s representatives would never have agreed to accept a reserve that did not include their primary village site at Shawanaga Bay, or anything less than the 103,680 acres as stated in the Treaty and agreed upon in July 1852. Nor did they indicate so to Dennis or Keating in the summer of 1852. The assistant surveyor surveyed both the Shawanaga Reserves in the wrong location, as well as surveying them at least ten times smaller than what had been agreed upon by all concerned.

In the summer of 1865, Provincial Land Surveyor James W. Fitzgerald surveyed the area between Spanish River and Parry Sound for the provincial government and submitted his “Plan of Exploration-Line between Spanish River and Parry-Sound,” dated September 1865. This plan shows an Indian village on the Shawanaga Reserve and on the Shawanaga River, probably a summer fishing location, as well as the village where the gardens were located. Fitzgerald’s plan does not show an Indian village on Shawanaga Bay, but south and east of the Bay—but it does show a “Trading Post” close by the Bay. Most trading posts were located just outside the primary Indian villages to facilitate trade, and these posts are almost always along the main waterway routes, as were the primary villages. Fitzgerald’s plan also does not show a road or a shoreline allowance along the shore in front of Shawanaga Bay anywhere along the coast in Shawanaga Township (including where lots 34 and 35 were to be surveyed). The plan also shows an Indian village on the south side of the Naiscoutaing River at the Naiscoutaing Reserve.¹⁴

Charles Skene, the Indian superintendent at Parry Sound, wrote to the Ontario Commissioner of Crown Lands on 23 [?] September 1877, stating:

I have the honor to forward the following application from the Band of Ojibway Indians of Shawanaga. [Apparently the undated letter to which Skene refers was from Chief Solomon James and addressed to "government."]

The Indians of Shawanaga Band having for several years occupied parts of Lots 34 & 35 in the VII Concession Township of Shawanaga—and having built their village there desire licence of occupation for said Land.

I enclose a copy of Letter No 4235—Dep. Of Crown Lands—Toronto 5 June 1853 [*sic*—actually 20 May 1868] in answer to an application then made by the Indians—

Copy (Letter of A. Russel [Russell] Assistant Commissioner of Crown Lands to Chief Solomon James)

In reply to your application for a piece of Land on the Shawanaga Bay I have to state that upon receiving a correct Plan of the land made by a P. L. S. [Provincial Land Surveyor] together with affidavits of disinterested parties showing that the land applied for is not occupied at present except by your Band of Indians the Commissioner will recommend to Government present a License of Occupation for said Land.

(Signed) A. Russel—Asst. Comr.

I enclose Mr. Beatty P. L. S.'s Certificate who informs me that no further description is required—the Township having been surveyed and laid out in Lots.

The sketch map is attached, which shows the Shawanaga village on the Shawanaga Bay, and the location of the land that the First Nation wished to acquire, which appears to be adjacent to their reserve as outlined on that sketch. It appears that the Shawanaga Ojibways found out that their village was not part of their reserve after Dennis and Keating had left it in July 1852. Their 20 May 1868 letter was a protest that things had gone seriously awry as a result of Unwin's survey.

Keating, of the Indian Department, assisted Indian Superintendent George Ironside in drawing up the "Schedule of Reservations" mentioned

earlier, which was included as part of the Treaty and which substituted the word “miles” for the intended “leagues.” There are problems with the size of most of the reserves in the Robinson Treaties, most notably at Shawanaga and at Naiscoutaing, and also at Fort William, Thessalon, Mississauga River, and Point Grondine. In almost every case, the written records left by Dennis and Keating misrepresented the size of the reserves. The area of the reserves as surveyed was thus considerably smaller than intended or stated in the Treaty. On or about 17 August 1851, the Shawanaga First Nation drew the attention of the Governor General to the fact that their reserves had not been surveyed as intended by the 1850 Robinson-Huron Treaty.

On 21 December 1877, the provincial government, acting finally on the protest of the Shawanaga Ojibways, which was acknowledged in the 20 May 1868 letter, transferred lots 34 and 35, in the Seventh Concession, Township of Shawanaga, by Order in Council to the federal government to be set apart as a reserve for the Shawanaga First Nation as requested by the them. A patent plan was then drawn up by the Ontario Department of Crown Lands, which showed lots 34 and 35 as “Reserved OC for Indian Dep.” The plan also identifies these two lots as “Naiscoutaing Reserve #17B.” The plan also indicates that there was a road or a shoreline allowance along the shore in front of these and other lots along Shawanaga Bay in Shawanaga Township, but does not show an Indian village on it. A note written on the plan states that the original patent plan was “annulled” and replaced by one signed by the Surveyor General and the Deputy Minister of Lands and Forests, dated 29 November 1955, designated as “Plan # T.2911,” and filed in the “Surveys Draughting Room.” This latter plan is not in the Map Collection of the Ontario Archives, and may still be with the Crown Lands records of the Ontario Ministry of Natural Resources in Peterborough.¹⁵ Likewise, the township plan of Shawanaga Township prepared at about the same time identified lots 34 and 35 as Indian Reserve Lands, but did not indicate an Indian village anywhere on it.¹⁶

The matter was raised again by Skene in a letter of 14 December 1881 to C. Beck & Co., Penetanguishene, Ontario, regarding the lumber company’s trespass on the “Indian Land” on Shawanaga Bay:¹⁷

I have to inform you that I was much surprised the other day by the information and complaints my letter by the Chief of

the Shawanaga Band of Indians that you had put up a building upon the land belonging to that Band, without ever going to the trouble of asking permission from them to do so.

Even if you had applied to them and got permission from them you will see an [*sic*] reference to the Indian Act of 1880 and the amendment of 1881—sections 22 & 23 that the granting such permission by them cannot be effectual without the consent & approval of the Superintendent General of Indian Affairs or the Local Superintendent Acting for him.

I have therefore to request that you will without delay cause to be removed from the Indian Land the building you have erected upon it.

I shall expect an immediate acknowledgement of this letter so that I may know what steps to take in the matter.¹⁸

Skene then informed Prime Minister Sir John A. Macdonald, and also the Minister of the Interior and the Superintendent General of Indian Affairs in Ottawa, of the issue in a letter dated 14 December 1881:

I have the honor to enclose copy of a letter I sent recently to C. Beck & Co.—Penetanguishene. C. Beck & Co. has a Timber Limit on the Shawanaga River, East of the Indian Reserve and this year brought down a considerable number of Logs.

The place where the Store has been put up is on the Bay at the old Indian Village & fully 2 miles from the mouth of the River. It is not on the Reserve but at a place on one of the 2 Lots granted to the Indians by the Crown Lands.

I conclude that these Lots come under the same Act as the Reserve—but whether or not they have been granted to the Indians and consequently no one can have a right to build upon them.

I suppose that I shall hear from Mr. Beck in reply but in the meantime I think it is best to apply to you for Instructions.¹⁹

Skene investigated the matter further on location, and his sketch,

immediately below his letter, shows the location of the building erected by C. Beck & Co. in relation to the Indian lots, dated c. 24 January 1882, as well as the site of the original Indian village.²⁰ Skene reported the following information to Macdonald on 19 April 1882:

I have the honor to acknowledge the Receipt of your letter—No 34,753—15 March 1882—enclosing copy of Part of the Plan of Shawanaga—

In reply I beg to say that I have no doubt from what Chief Pawis has told me but the Building put up by Beck on the Indian Lot of Shawanaga is within the bound marked by the Red Line on the plan—O.C.—within one chain measuring from high water mark.

Any time I have been to the Reserve since the Building was put up was in winter when I went by the Road and there I went to Mr. Dolen's Shanty and the Indian Village at the Gardens, which is about 6 miles from the Lake Shore—and as at these times the track was always bad and not enough of Snow for Snow Shoes I have not been to the Shore so I cannot speak from personal knowledge—However I shall be at the place in May and shall then ascertain:

I believe there can be no doubt that the Government retains the right to the foreshore to the width of one chain when granting a piece of Land—But I confess it does seem to me rather curious that after a Lot on the Shore has been granted to one party that another party can come and take possession of the Foreshore without shewing any lease from the Government— Of course the first party cannot shew a legal claim—but neither can the other in this case—no doubt the Government could interfere in the matter but a case might arise in which a Squatter taking possession of the Foreshore would be a great deterioration of the value of the Lot to the party to whom it had been granted.²¹

There the file ends abruptly.

In 1887 the Parry Island First Nation inquired about the size and location of their reserve and requested a copy of the Robinson-Huron Treaty

of 1850. The Shawanaga First Nation, whose representatives had been at the Penetanguishene adhesion of that Treaty, was also included in this enquiry. The council minutes of the Parry Island First Nation of 4 February 1887 were outlined in full as follows:

From: The Department of Indian Affairs 1887.

Thomas J. Walton, Indian Supt.

The Chief and Councillors of Parry Island Indians ask for a copy of the Robinson Treaty.

Thomas J. Walton, M. D.

Supt. Indian Affairs, Parry Sound.

In our council held at Parry Island 4th Feb., 1887. It was again affirmed by William King and Chief Papahmwawedung that chiefs Mekes [Megis] and Mukudameshuquod were not at Sault Ste. Marie when the Robinson Treaty was made, and that the above chiefs were called at Penetanguishene where they met Robinson, Esq. and there the above chiefs signed a Treaty.

That William King and Chief Papahmwawedung were present at the time, and that their belief is that there is a different record, from that made at Sault Ste. Marie, that was signed by Chiefs Mekis and Mukudameshuquod.—

The council having heard the above and other statements now for many years, we agree in council to request the Indian Department for a copy of the treaty signed at Penetanguishene by chiefs Mekis and Mukudameshuquod.

Praying that the above request may be attended to we sign our names.

Chief Peter Megis

Papahmwawedung

2nd Chief Parry Island

Councillor Jas. Pegamahganh

Councillor Wm. King

Parry Island Band²²

Thomas J. Walton, the Indian Department superintendent at Parry Island, forwarded that First Nation's council minutes of 11 February 1887 to Prime Minister Macdonald and to the Superintendent General of Indian Affairs. The minutes are as follows:

I have the honour to enclose the petition of the Chiefs and Councillors of the Parry Island Band praying that a copy of the Robinson Treaty of the Robinson Treaty signed at Penetanguishene by Chiefs Mekis and Mukudameshuquod (alias Muckata) be supplied to them.

I beg to report that they have a printed copy of the Robinson Treaty and I have showed them a written copy of the same, on file, in this office but they have doubts as to the correctness of these documents.²³

On 22 February 1887, W. A. Orr, a clerk in the Department of Indian Affairs, wrote to Deputy Minister Lawrence Vankoughnet:

With reference to letter from In. Supt. Walton of the 11th instant enclosing request from Parry Island Band for a copy of the Treaty signed at Penetanguishene by Chiefs Mekis and Mukudamashuquod, the undersigned would beg to recommend that a certified copy of the Robinson Treaty which was assented to by these Chiefs at Penetanguishene on 16 Sept. 1850 be prepared & sent to Mr. Walton for them.²⁴

Walton wrote back on 10 March 1887:

I have to acknowledge the receipt of your letter of the 11th inst. enclosing a Petition from the Parry Island Band for copy of Robinson Treaty signed at Penetanguishene and to enclose you a copy of Same prepared from the Original document on file in the Dept. and certified correct by the Deputy of the Supt. Genl. which you will kindly hand to the Chiefs.²⁵

The chiefs wrote again from Parry Island on 25 March 1887:

To the Government, Department of Indian Affairs, Ottawa.

We the undersigned send you the following Statements of William King and Chief Papahmwawedung which causes us to believe that there must be a different record of a Treaty made with Mukndameshuquod and Mekis, than that made at Sault Ste. Marie where they were not present, and it is that that we ask for.

Viz.—Robinson. Esq said at Penetanguishene. The Governor also the Queen ask you for your land. Chiefs Mukudameshuquod and Mekis sat quietly for a long time. Mr. Robinson then said, "If you do not give up your land, the Big Knife will take your land from you then you will get nothing for it. But if you give up your land to me, I will pay you well. You will not be in want for clothing and what you will eat on account of the money I will give you. The money you will now receive at this time Four Dollars each is Thanking you for giving up your land to me. The money you will get at the end of the year will be \$1.50/100 for each. Second year \$2.00 each. Third year \$3.00 each &tc. up to the tenth year \$10.00 each, then it would not increase. The Queen does not ask you for your Islands, but only for the main land".

The Chiefs spake, and answered Mr. Robinson. "What my fellow Indians have done at Sault Ste, Marie, we do also, because you would not stop asking us. You asked us to sell our land to you so we sell you our land. We now tell you what we want as long as Indians live their pay must never cease". Mr. Robinson asked chief Mukudameshuquod how much land he wished to reserve. The chief answered "Ten miles square". Mr. Robinson wrote it down. Chief Mekis was also asked the same, and he answered "the same quantity, Ten miles square".

Now about eight years after the Treaty at Penetanguishene, I went to the city of Toronto and said to Mr. Robinson. I come to see you. He said "Why do you come to see me, for anything?". "I said What you said to the Indians when you asked them for

their land does not come to pass. Then he, Mr. Robinson, took up a paper and asked me, "What did I say". I then repeated as above stated. Then Mr. Robinson said, "I did say so. Why does not the Governor do it. Do not let him alone till he does it all".

I therefore believe that is a written Treaty made at Penetanguishene according to the above, because I was present.

Signed Wm. King,

I was present also, and saw and heard as above stated that took place at Penetanguishene between Robinson, esq and the two Chiefs.

Signed, Pahbahmowatong, Chief

I have the honour to be sir your obedient servant, Peter Megis,
Head Chief

Charles Sinebah

Jas. Peyamahgahbi

Dan Tebanbidong

Councillors²⁶

Walton then wrote to Macdonald on 31 March 1887:

Sir,

I have the honour to acknowledge the receipt of your letter dated the 10th inst. No. 74634, enclosing a Copy of the Robinson Treaty which according to your instructions I handed to the Chiefs of the Parry Island Band.

Relative to the same subject I presume, I now have the honour to enclose statements of Wm. King alias Mukudameshuquod and Pahbahmowatong.²⁷

On 21 April 1887, Samuel Stewart of the Department of Indian Affairs wrote a Memorandum to the "Deputy Minister":

The letters sent herewith are all that I can find a record as having been sent by Hon. Mr. Robinson, relative to treaties made with

Inds of Lake Huron + Superior, other than that of 24 Sept, 1850
contained in Hon. Mr. Morris' Treaties of Canada with the Inds.

There followed a memorandum of indeterminate authorship to Walton:

From: [?]

To: Thomas Walton, Indian Supt., Parry Sound, April 26th, 1887.

I have to ack [act]. The rcct of your letter of the 31st enclosing a statement made by the Chief and Councillors of the Parry Island Band relative to a treaty alleged to have been made with Mukudameshuquod at Penetanguishene and Mekis, besides the one made at Sault Ste. Marie and in reply I have to inform him that there is no other Treaty nor any record of any other Treaty with the Ojibeway of Lake Huron than the one a copy of which was sent you on the 10th Feb.²⁸

From this 1887 council meeting, it can be discerned that Chiefs Mukudameshuquod and Mekis were present at the Penetanguishene adhesion of 16 September 1850. These two representatives, from Shawanaga First Nation and Parry Island First Nation, requested that each of their reserves be "10 miles square." This arrangement was confirmed when they spoke to Robinson in Toronto, eight years after the Treaty was negotiated and signed.

No further action was taken by the federal Department of Indian Affairs in regard to Beck and Company's trespass onto reserve land. The other outstanding issue was whether the road allowance adjacent to Shawanaga Bay, near the original Shawanaga Reserve, was part of the reserve. Nothing more was done by Indian Affairs to reconcile the fact that the primary village site of the Shawanaga First Nation on the shore of Shawanaga Bay had not been included within the original Shawanaga Reserve. Clearly, the surveyor Unwin, working under Dennis and Keating, had surveyed Shawanaga's reserves not only in the wrong location but also at least ten times smaller than what had been agreed upon with the Shawanaga First Nation's representatives under the Robinson-Huron Treaty.

Endnotes

- 1 See Fitzroy MacLean, *Highlanders, A History of the Scottish Clans* (New York: Penguin Books Ltd., 1995), 257; Charles MacLean, *The Clan Almanac* (New York: Crescent Books, 1990), 60, 121.
- 2 On MacNab and Macdonell, see Donald R. Beer, *Sir Allan Napier MacNab* (Hamilton: Dictionary of Hamilton Biography, 1984), 125, 145, 182, 388, 389.
- 3 Report of A. Vidal and T. G. Anderson, December 5, 1849 (hereafter cited as Vidal-Anderson Report), Archives of Ontario (hereafter cited as AO), MU 1464, Irving Papers, Box 26, Package 31, Package #4.
- 4 On the significance of water and the treaties, see David T. McNab, "'Water is Her Lifeblood': The Waters of Bkejwanong and the Treaty-Making Process," in *Earth, Water, Air and Fire: Studies in Canadian Ethnohistory*, ed. David T. McNab (Waterloo: Wilfrid Laurier University Press, 1998), 35–63.
- 5 Vidal-Anderson Report.
- 6 Colonel Robert Bruce was the Superintendent of Indian Affairs in 1850 and a relative of James Bruce, the 8th Earl of Elgin, the Governor General of the Canadas. See W. L. Morton, "James Bruce," *Dictionary of Canadian Biography, Volume IX, 1861–1870* (Toronto: University of Toronto Press, 1976), 89–93.
- 7 Lord Elgin and Robert Bruce were of the Bruce Clan. See MacLean, *Highlanders*, 15–23; Charles MacLean, *The Clan Almanac*, 18. The clan is named "after the French town of Brix, from which Adam de Brus originated." The clan motto is "Fuimus," meaning "We have been," and the badge is rosemary.
- 8 Canada, *Indian Treaties and Surrenders, Volume 1* (1891; reprint, Saskatoon: Fifth House Publishers, 1992).
- 9 "Treaty #61" (otherwise known as the Robinson Treaty of 1850), 9 September 1850, *Indian Treaties*, 149–52.
- 10 Alexander Morris, *The Treaties of Canada with the Indians* (1880; reprint, Toronto: Coles Canadian Reprint, 1971), 19.
- 11 Library and Archives Canada (hereafter cited as LAC), RG 10, vol. 572, reel C-13, 373, Indian Affairs, Deputy Superintendent's Office Letterbook, 1846–1852 (microfilm copy in the Archives of Ontario, Toronto), Petition of Anishinabeg Chiefs, by themselves and others, to Lord Elgin, dated 17 August 1851.
- 12 LAC, RG 10, Volume 572, Reel C-13, 373, Ironside to Bruce, 6 September 1853.
- 13 His survey notes from his diary are as follows:
 Friday 23d [July 1852]
 The decision arrived at by Mr. Keating and myself with respect to the change in the Reserve at this place [Parry Island and Sound]; the communication of which to the Indians appeared to give them great satisfaction left no necessity for any survey—we therefore proceeded on our way up the Lake. Arrived at Shawanaga where camped.
 Saturday 24th
 Got an observation last night found variation to be 1°14' W. The Indians for whom we sent last evening came over in the morning and explained where they

want their Reserves— Viz. To commence at a small Bay a short distance North of the Mouth of the River Shawanaga, and to extend from thence three miles Southerly and Easterly.

Took a series of observations connecting observation of last night with a post and Cairn of Stones previously planted in presence of Mr. Keating and Chiefs at the point above mentioned—finding variation to be 2°14' W.

On returning to Camp again in evening the Indians held another Council at which they requested that their Reserve might be commenced not at the cairn erected yesterday but up the River at the first rapids and that a post might be planted on the north side of the side rapid in order to secure to them the spring fishery for Pickerel, which is quite an object at that particular season in the case of most of the Rivers on this shore, as the fish mentioned frequent the rapids in the greatest abundance[.]

And further that a tract only two miles square might be laid out for the Band at Naiscoutaing and the difference added to their reserve at this place— Mr. Keating and I agreed to this—and appointed Monday to meet the Chief at Naiscoutaing.

Sunday 25th

This day parties separated. Mr. Unwin remaining to run the outlines of the tract at this place, ourselves going on to Naiscoutaing where we arrived and camped in the evening.

Monday 26th

Chief arrived this morning with Mr. Keating and I proceeded up River in order to make outlines of tract desired—at about one mile up on the North side of the River passed deserted trading house at one time a station of Hudson Bay Company a short distance lay some old plantation now occupied formerly cultivated by the Band at Shawanaga about 2 1/4 miles up came to forks in Stream one branch coming down from the North East and being a Branch (all the Indians agree in saying) outlet form the River Maganitawang— Here turned back and at desire of Chief marked a Balsam tree just at edge of River between old trading station before mentioned and the deserted gardens— This tree is intended to mark the Centre of the West limits of a tract 2 miles square running North East and South West and containing 4 square miles.

Tuesday 27th

Chief left this morning carrying back with him instructions for Mr. Unwin respecting the survey of this place—

We left about the some time for Maganitawang and Camped about 1 mile up the River....

- 14 AO, Map Collection, OTAR (SR 37758) R-R.
- 15 AO, Map Collection, Patent Plan of Shawanaga Township.
- 16 AO, RG 1, C277-1-375-0-1 and C277-1-375-0-1, Township of Shawanaga Plan.
- 17 LAC, RG 10, vol. 2166, file 34,753, reel C-11172, "Indian Affairs Register detailing Correspondence to and from Charles Skene, Indian Superintendent,

CHAPTER 7:

“Extravagant claims and extraordinary demands”:

The Robinson Treaties and the Struggle for
Aboriginal Water Rights in Ontario to 1900

Karen J. Travers

The Robinson-Huron and Robinson-Superior Treaties of 1850 cannot be viewed in isolation.¹ The tendency to see them as precursor to those negotiated in Western Canada in the latter half of the nineteenth century, rather than as a part of a long history of treaty making in Ontario, obscures the very circumstances and events that give them meaning. They are part of a historic relationship between the British and Three Fires Confederacy that began in the seventeenth century.² The rights confirmed in the Proclamation of 1763 and all treaties afterward must be considered in light of this alliance. For thousands of years, Aboriginal peoples used, managed, and exercised stewardship over the lands and resources of what would become Ontario. These treaties, therefore, are a continuum in the strategic and often tenuous coexistence Native peoples maintained with European newcomers.³ Though they were willing to share parts of their traditional territories for European settlement, they did not cede wholesale title to resources, including the fishery or the waters and beds of the Great Lakes.

Understanding the Robinson Treaties in terms of the Great Lakes fishery and waters requires that they be situated in the history of treaty making in Upper Canada. Eurocanadians often encroached on Indigenous territories and poached resources prior to 1850. However, until a “natural resources regulatory regime,” beginning with the passage of

the first Fishery Act in 1857, gained a foothold, British policy and Indian agents entrusted to enforce the treaties generally supported the contention that the fishery remained under Aboriginal jurisdiction.⁴ That Aboriginal people negotiated access to resources in treaties while reserving rights for themselves demonstrated not only foresight, but a desire to play a role in the burgeoning resource-based economy of the “New Ontario.”⁵ The Robinson Treaties were negotiated at a crucial time by a people who had seen their autonomy and successive reserves of land confirmed and then eroded by settlers in a cycle of surrenders beginning with the first treaties in the 1780s.⁶

This paper will examine the cultural and economic importance of the fishery and key early Upper Canadian treaties to show that with respect to waters and the fishery, the Robinson Treaties were negotiated in a spirit consistent with previous agreements. Throughout the late eighteenth and early nineteenth centuries, Anishinaabe peoples deliberately reserved the right to hunt and fish over territories included in the treaties and in the waters in order to protect them from the encroachment of non-Natives. British demands followed a familiar formula, requesting only free and open trade, unhindered passage through Indigenous territories, and limited settlement. Great Britain had the opportunity explicitly to seek rights to water, land under the water, and other incidental resources, but did not do so. Beginning in the 1840s, interpretations of the treaties increasingly began to overstate the original intent of the agreements.⁷ Great Britain turned the management of Indian Affairs over to the provinces in 1860, and since Confederation in 1867, successive Ontario and Canadian governments, driven by neglect, apathy, and self-interest, have limited and in many cases denied Great Lakes Aboriginal peoples access to the resources reserved in the Robinson Treaties. While the unilateral actions of government officials in the twentieth century have attempted to alter the terms of the treaties, they in no way undermine present Indigenous claims that water and resources incidental to water remain unceded.⁸

Turtle Island and the Waters of the Great Lakes to 1763

For the 126 First Nations communities in Ontario, as it was for their ancestors, the Great Lakes hold incredible spiritual significance—it is Turtle Island, and it is home. Stewardship for the lands and resources stems from

the need to protect a region that plays such a large role in Indigenous creation stories, cultures, and economies.⁹ During their western migration along the watercourses of the Great Lakes basin, Anishinaabe peoples followed the Island "stepping stones" that led them to their homeland.¹⁰ "Water is her life blood,' for without water, islands will not survive and Mother Earth will not survive. Without water, islands and Mother Earth, Aboriginal people will not survive. Water is not negotiable; it can be shared but never sold; neither can islands."¹¹ The shores of the Great Lakes have continuously been used as sites of ceremony and meeting for thousands of years.¹² By the seventeenth century, thirty-four Native communities lived and travelled around the 180,000 square kilometres of inland waters throughout present-day Ontario.¹³ Fishing was principally a shoreline activity dependent on coastlines, peninsulas, and islands, and remnants of seasonal fishing stations along the shores of the Great Lakes date to the Late Archaic period, four to five thousand years ago.¹⁴ Spring and fall spawning periods for river salmon, whitefish, sturgeon, trout, bass, and other species drew large numbers of people together and became important not only for food but for social gathering.¹⁵ "At one time, everyone who lived near the lake was essentially made of the lake. As the people lived off fish, animals, the lake's water and water plants for medicine, they were literally cell by cell composed of the lake and the lake's islands."¹⁶

Islands and shorelines were important components of the spring and fall fishery, not only for encampments but for non-spawning periods when the fish retreated to the depths of the Great Lakes. In such months, Indigenous angling, nets, and spears could not reach them from the shore.¹⁷ Elizabeth Simcoe observed how fish were caught in the winter in Ashbridges Bay, on Lake Ontario:

The Indians have cut holes in the ice, over which they spread a blanket on poles, and they sit under the shed, moving a wooden fish hung to a line in the water by way of attracting the living fish which they spear with great dexterity when they approach ... they were catching maskalonge, a superior kind of pike, and pickerell [*sic*].¹⁸

When smoked or dried, fish were a relatively predictable and stable food source, which could be stored over the winter and relied upon in

times of scarcity.¹⁹ This was crucial for peoples of the Upper Lakes, where game fluctuated seasonally, growing seasons shortened, and soils supported only limited agriculture.²⁰ Concomitant with subsistence activities, the fur trade was limited in scope and endurance, and therefore it is reasonable to conclude that the fishery, both in the pre-contact and post-contact periods, was far more important to Aboriginal economies than previously assumed.²¹

Shared among of the Anishinaabe and northern Algonquians who lived along its waters, the Great Lakes fishery was a vital part of their livelihood and was maintained under their stewardship. "Each ... would allow others to take resources as long as the harvest did not threaten to usurp their rights of ownership or endanger their management philosophies."²² This responsibility was taken so seriously that after years of intermittent and prolonged warfare, the Anishinaabe and Haudenosaunee came together in 1701 and agreed to share the lakes' bounty. "The intent of these treaties was ... primarily one of peace and friendship.... The Amerindian trade was by this time too lucrative both in fish and furs to have it disrupted by incessant warfare which was continually being provoked by European imperial rivalries."²³ The fallout of these "Beaver Wars" decimated the Five Nations and depleted the territory south of the Great Lakes of fur and, consequently, of food-bearing animals.²⁴ In 1700, the Upper Algonquians told the Five Nations that they wished "to be united in ye Covenant Chain, our hunting places to be one, and to boile in one kettle, eat out of one dish, and with one spoon, and so be one...."²⁵ The Dish With One Spoon Treaty renewed between the peoples of the Great Lakes became a permanent, lasting legacy of the Great Peace of 1701. Throughout the eighteenth and nineteenth centuries, various incarnations of the treaty all refer to a dish and spoon, or communal kettle, to symbolize shared resources. Intense warfare and competition for furs, fish, and territory throughout the seventeenth century depleted all the hunting grounds. In the best interests of all communities, the Anishinaabe and Haudenosaunee recognized that shared access allowed these resources to recover over time. At a general council convened in 1870, nearly two hundred years after the Great Peace, Chief J. Smoke Johnson held up a white wampum and said: "this Wampum applies to all-it combines all Indians. The work denotes a dish with a beaver's tail in it-it is full. It was

when game was plenty, no knife was allowed for fear it might cut some brother—they eat with their fingers, all was harmony and quietness, all was free to use."²⁶ Subject to local conditions, fishing in combination with agriculture, sugar making, hunting, and gathering were key components of a yearly subsistence cycle.²⁷ The fisheries and other resources remained plentiful throughout the seventeenth, eighteenth, and nineteenth centuries, not only because they were economically important but because the Great Lakes First Nations exercised sound management practices.²⁸

Resource sharing agreements like the Dish With One Spoon Treaty also informed relations between the Anishinaabe and Europeans in the Great Lakes, as the fishery adapted to commercial realities. Native fishermen routinely supplied trading posts with fish for consumption and trade, and provisioned government officials both in residence and on journeys to conduct official business.²⁹ Though they were willing to share access to waterways and resources with Europeans and to provision forts and garrisons themselves, Native peoples would not do so at the expense of the continuing sustainability of the resource.³⁰ When it came to securing a steady and reliable food supply, officials also recognized that Indigenous peoples often possessed superior knowledge and used more efficient techniques than Europeans.

The Royal Proclamation of 1763 recognized Indigenous rights to manage lands and resources. It reserved the greater part of what is now present-day Ontario as exclusive "Hunting Grounds" on which "several nations or Tribes of Indians" should "not be molested or disturbed."³¹ Ratified by First Nations at the "Niagara Treaty Conference" in 1764, the Proclamation secured Indigenous lands and resources in the "Indian Territory" from non-Native encroachments. According to Anishinaabe legal scholar John Borrows, Indigenous peoples "expected the Crown to protect their interests, and not allow them to be interfered with, especially with regard to their land use and means of livelihood."³² Though resource rights are not explicitly mentioned in the Proclamation, the fact that access to the Indian Territory was limited to licenced traders and officials, and settlement prohibited on unceded lands, implies that their use and management remained with Aboriginal people.³³ The document clearly distinguishes between the duties and responsibilities of British subjects in the interior and recognition of the right of Aboriginal peoples to

reside there. The Proclamation, therefore, “did not establish Aboriginal rights; it was declaratory of those rights.”³⁴ Aboriginal lands could only be surrendered after 1763 to a representative of the Crown at a council called for that purpose. While the Anishinaabe transferred some of these rights to the Crown through the Upper Canadian Treaties, they retained their rights to the fishery, the waters, and the land under the water.³⁵ Pre-contact use and post-contact relations with Europeans suggest that Native people managed and controlled resources and that this was indeed recognized by non-Natives.

Occurring only twenty years after the Proclamation, the Anishinaabe would have viewed the earliest Upper Canadian cessions in terms of past resource sharing agreements. Pre-Confederation treaties generally do not indicate that Indigenous peoples surrendered anything beyond access to land.³⁶ Treaties negotiated for land near Fort Niagara, the peninsula between Lakes Erie and Ontario, for Penetanguishene Harbour and the Islands of Michilimackinac and St. Joseph, are worthy of examination. Because they concern themselves with land surrounded by water, they do not exemplify British and Anishinaabe perspectives concerning land, water, and island rights prior to 1850. They also enable us to see how these agreements were interpreted and extended well beyond the original intent by Canadian and provincial government officials after the Robinson Treaties in 1850. The Aboriginal understanding of these early treaties is extremely important, as they informed and influenced all later treaties with the British. A significant number of Anishinaabe peoples around the Great Lakes did not speak English well into the late nineteenth century, did not have ready access to translators, and were likely not present at treaty signings. Though many communicated and mingled with one another, communities nonetheless would have relied heavily upon the impressions and experiences of a few bilingual attendees who had the opportunity to hear speeches and question government officials at treaty negotiations.³⁷ This became even more important as progressively larger and ambiguously bordered treaties became the standard after 1850. Even if the specifics did not make it into the text and officials later aggrandized their interpretations, the early Upper Canadian Treaties were smaller and designed for specific purposes immediately apparent to the local Indigenous population. They were negotiated by familiar faces, and, more often than not, by people married into local Indigenous communities.³⁸

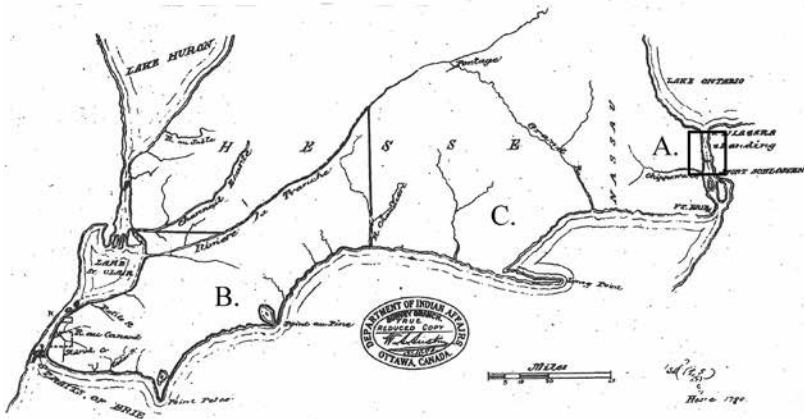


Figure 1: Map of Southwestern Ontario showing (A) No. 381: The 1781 Niagara Treaty; (B) Treaty No. 2: The 1790 McKee Purchase; and (C) Treaty No. 3: The Between the Lakes Purchase, 1784. Modified from *Indian Treaties and Surrenders* (1912; reprint, Toronto: Coles Canadiana Reprint, 1971).

Land Bordered by Water

A request by Sir William Johnson in 1764 for four miles of land along the Niagara River in what would later become Newark formed the basis for one of the first Upper Canadian Treaties.³⁹ Though the particulars were not recorded until 1781, the wording of this treaty exemplifies the treatment of land in later cessions.⁴⁰ Despite the fact that the land in this case is a riverbank running between two large lakes, there is no mention of water, land under the water, or related resources in the text. The land describes consists of “all that certain Tract of land situate on the West side of the said Strait or River, leading from Lake Erie to Lake Ontario....”⁴¹ The boundaries follow the west bank of the river for four miles adjoining the “bank” of Lake Ontario and the “Northern Bank of Lake Erie.”⁴² Though treaties subsequently became more specific and detailed in their wording, they did not deviate from the kind of description initially contained in the Niagara Treaty. Though it was later assumed by the British to have been included, water had not been ceded by First Nations.

A unique example of this fact is contained in what is known as “The Between the Lakes Treaty,” or Treaty No. 3, negotiated in 1784 (Figure 1: C),⁴³ in which the British specifically requested rights of transportation and trade. Beginning at the boundary of the Niagara Treaty described as “Messissague Point,” it includes “that tract of land lying and being

between the Lakes Ontario and Erie,” roughly between Catfish Creek west of Long Point on Lake Erie, and northeast along the Thames River to Burlington Bay. Using the phrase “woods, ways, paths, waters and watercourses,” the treaty refers to features *within* the area and *on* the land. Catfish Creek, the Thames River, and the Burlington Bay shoreline provided the outer limits of the surrender.⁴⁴

Reminiscent of the Proclamation’s wording, the Between the Lakes Purchase requested access to what was exclusively recognized as Indian Territory. At the council held at Niagara in 1764, Sir William Johnson explained the Proclamation and told the First Nations gathered that the British wished to secure “Free & open trade, at the principal Posts, & a free intercourse, & passage into our Country.” Johnson promised that they would “make no Settlements or Encroachments contrary to Treaty, or without their permission.”⁴⁵ Twenty years later, officials desired that “the King should have a right to make roads thro’ the Mississague Country, that the navigation of the said rivers and lakes should be open and free for His vessels and those of His Subjects [and] that the King’s subjects should carry on a free trade unmolested, in and thro’ the country.”⁴⁶ The Chiefs assembled in 1784 would have viewed the agreement as a grant of permission for Europeans to enter and use their land and resources. They did not surrender any rights, nor did they agree to give the British any kind of permanent access or power to exclude them or limit the use of their lands. The British requested access to lands and waters in “Messissague Country” because authorities recognized that the Mississauga controlled the territory and their permission was required to access it.⁴⁷

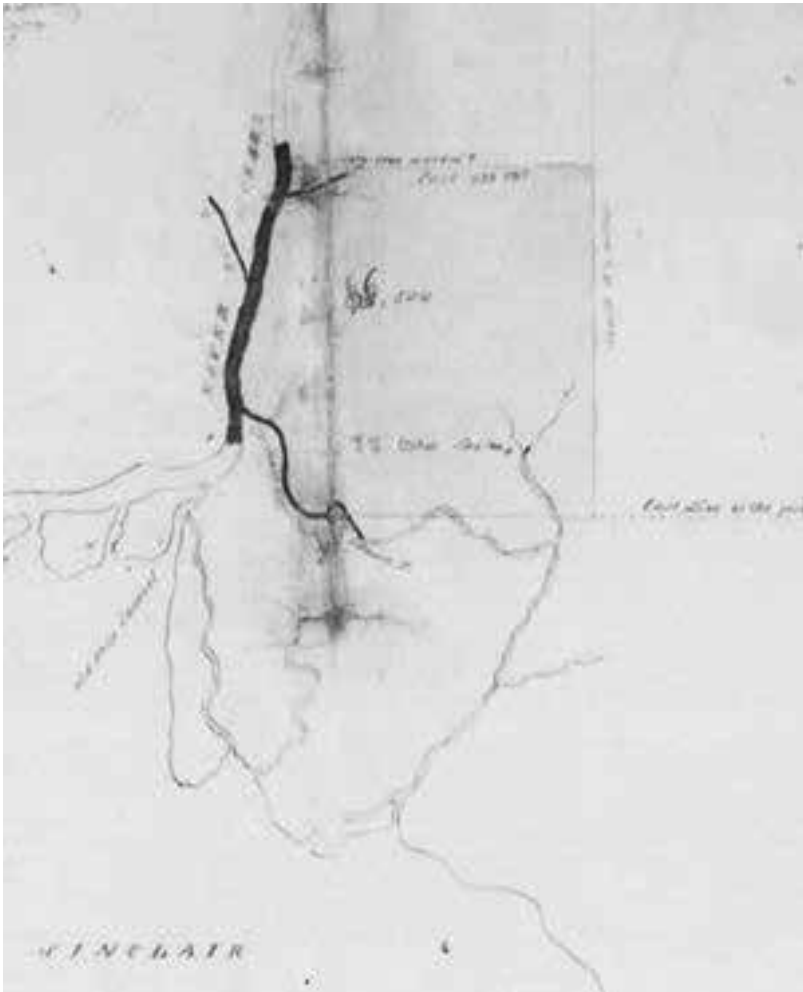
Prior to 1850, adjacent bodies of water are not mentioned in the text of any cessions concerning land bordering the Great Lakes. Instead, most are quite specific that they follow the “several windings and courses” of rivers and shorelines of the Great Lakes, and that the major rivers and streams provide the boundaries.⁴⁸ Several indicate the boundaries away from the water—following the bank, shoreline, or beach—while others are bounded by or bordered “at the water’s edge.”⁴⁹ Aboriginal people would never have suspected the treaties included anything other than land by reading the text or having it interpreted to them.

Most maps accompanying these early treaties also do not show that anything other than land was included, and the few that do are far from

clear. Figure 2 is representative of maps illustrating these very early surrenders. This map accompanied the 1796 Chenail Ecarté agreement, and, while it appears to indicate by dark shading that the adjacent waters of the Chenail Ecarté (or Snye) and St. Clair Rivers are included, the text of the treaty does not.



Figure 2: Map of Treaty No. 7: The 1796 Chenail Ecarté Surrender. In the original, the square section of land (now Sombra Township) adjacent to the darkened portion of the River Sinclair (St. Clair River) is tinted red. Library and Archives Canada, RG 10, Indian Affairs Consecutive Number 7, Volume 1840/IT 026, nd.



The purpose of the shaded section remains unexplained and unclear: It could represent an agreement to share access to that portion of the river for navigation, or it could refer to the fishery or to land under the water. It could surrender access to the British, or reserve it for the Anishinaabe. Equally misleading is red tinting applied to the square of land in question, which naturally draws attention to the area and suggests to Indigenous leaders that this was the focus or intent of the agreement. Alexander McKee led the chiefs to believe that this was not a surrender at all, but

a reservation of land "for all Nations." The 92,000 acres in Shawanoe or Sombra Township was, as McKee told them, "not for settling his own people, but for the comfort and satisfaction of . . . all his Indian Children."⁵⁰

In addition to being bounded by watercourses, the "parcels" or "tracts" of land described in the Chenail Ecarté agreement and all others are measured in miles, chains, or acres. Water or land under the water is neither measured nor accounted for, and it is not added into the total amount of land surrendered. Land in the Chenail Ecarté map (Figure 2) is measured in chains; the adjacent waters of the St. Clair River are not included, even though a segment is darkened. Presented as land surrenders for the purposes of farming, it is reasonable to assume that both parties were fully aware that rights to the water, the fishery, or land under the water were not affected by them.

Penetanguishene Harbour

The 1798 Penetanguishene Treaty is an interesting exception to early treaties for land. Negotiated by the British expressly for the harbour, the area played a prominent role in Simcoe's plan to secure the Upper Lakes from American incursions.⁵¹ Like the Niagara Treaty, this cession was for a limited and specific purpose, and there is no reason to believe either that the Chippewa surrendered or that the British desired anything beyond the requirements for a harbour. The agreement is extremely important because it has the potential to influence the future interpretation of Great Lakes treaty claims. British and Canadian officials later claimed that the vague and contradictory boundaries in the treaties extend out into the water and include the lakebed and islands in Penetanguishene Harbour.⁵² This is highly questionable for several reasons.

There are substantial textual and cartographic differences between the Provisional Agreement for the harbour signed in May 1795 and the final Conveyance signed in May 1798.⁵³ Making reference to an accompanying map, the Provisional Agreement (Figure 3: Map A) states that the boundaries extend from "the Head of Opetiquaywsing to Nottoway Sauge Bay including the harbour of Penetanguishene running West twenty degrees North or thereabouts and coloured red," however only the peninsula is tinted red.⁵⁴ The final Conveyance (Map C) describes the lands as "all that tract or space containing land and water, or parcel of ground covered with

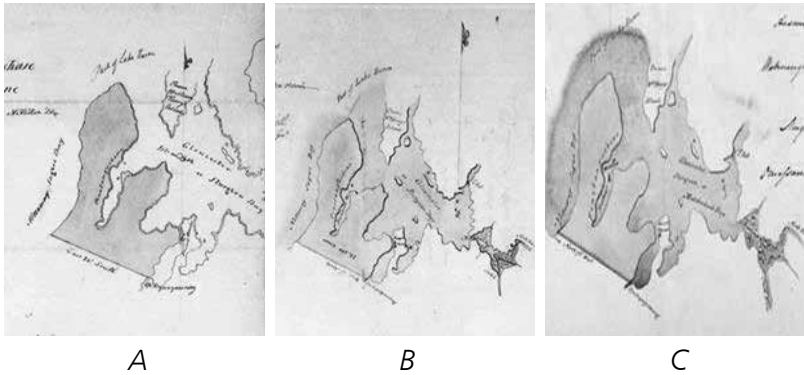


Figure 3: (A) Portions of a map from the original Provisional Agreement (left); (B) map with a copy of the Provisional Agreement (centre); and (C) an undated map assumed to belong to the final Conveyance (right). Library and Archives Canada, RG 10, Indian Affairs Consecutive No. 5, Vol. 1840, IT 019, IT 020, IT 018.

water, be the same land or water or both lying and being near or upon the Lake Huron called Penetanguishene ... *together with the Islands in the said Harbour...*⁵⁵ Additionally, though the 1795 text indicates that the land extended twenty degrees north of the line between Nottoway Sauge Bay and Matchedash Bay, the final Conveyance is actually seventy degrees north.⁵⁶ Discrepancies between the treaty maps and textual agreements, as well as modern mapping of the region, are evident.

Similarly, maps created between 1795 and 1798 inconsistently highlight different aspects of the surrender. The Provisional Agreement shown in Figure 3: Map A boldly outlines the peninsula and shoreline, but does not indicate that water, islands, or land under the water are included.⁵⁷ Map B purports to be a copy, and, while the text is identical, the waters and peninsula *are* coloured. None of the maps clearly identify the totality of the surrender, which, if we include the shaded area to the east, covers thousands of islands and the waters south of Beausoleil Island from Midland Bay through Severn Sound and Sturgeon Bay to Matchedash Bay. Admiralty maps of Penetanguishene Harbour show what would logically be understood as the inner and outer harbours of the inlet to the town of Penetanguishene, located on the east shore of the South Basin.⁵⁸ Most peculiar, here, is that while it is absolutely necessary that the harbour include submerged land where ships set anchor and we would thus expect

to find it consistently illustrated and included in the total, only peninsular land is measured.

What exactly was "Penetanguishene," and did it perhaps mean something different to Europeans and Aboriginal people? In Anishinaabeg, it is known as "the place of the white rolling sands" – a reference to the features of the land and, in its broadest interpretation, a term for the peninsula, not the harbour.⁵⁹ While Penetanguishene is identified as the "land ... upon the Lake Huron," the islands, including larger individual islands like Prince William Henry's (Beausoleil) Island, were not specifically named. Beausoleil, named "Pamadenagog" by the Anishinaabe, means a "rocky place floating about the mouth of a river." It and the other islands would not be understood as "Penetanguishene."⁶⁰ While officials believed they had acquired "all the land, water, islands and land under water at Penetanguishene harbour," Aboriginal people would not have understood that the "parcel of ground covered with water" included hundreds of islands, the peninsula, and the beds and waters in several bays east of the harbour.⁶¹

Despite defects with the document itself, the treaty for Penetanguishene Harbour explicitly limits any water rights acquired by the British to those "being near or upon the Lake Huron," suggesting that bodies of water or the land under them in other locations were not ceded.⁶² The fact that the Anishinaabe could later reserve and lease their fisheries indicates that Eurocanadians believed them to be severable. Aboriginal people had to have possessed exclusive rights to waters necessary for navigation and harbouring, or they would not have been formally requested by the British.⁶³ Moreover, unless they were expressly surrendered, these rights remain vested in First Nations today.⁶⁴

Michilimackinac and the Surrender of Islands

Cessions of islands seem to be another place for Europeans to claim additional rights to water, the fishery, or land under the water; yet, as in the case of land adjacent to large bodies of water, they did not do so. This is because early treaties for the islands of Michilimackinac in 1781 and St. Joseph's in 1798 were initially negotiated for specific purposes, such as the construction of forts and associated settlements.⁶⁵

The Treaty of Michilimackinac is vague in some respects; however, it clearly states that it is only for “the Island of Michilimakinak or as it is called by the Canadians, La Grosse Isle....”⁶⁶ Island surrenders thereafter only refer to the land, recording the name in Ojibway (if known) and English, and measuring the amount ceded along the shoreline perimeter. The 1798 Treaty for the Island of St. Joseph states that the island was “one hundred and twenty miles in circumference . . . together with all the woods and waters *thereon* situate.”⁶⁷ As late as the 1860s, in cases where only portions of islands were required to erect lighthouses, descriptions and surveys followed the same protocol as land surrenders.⁶⁸ In other words, history and circumstance points to the fact that Aboriginal people and Europeans both understood these treaties to be agreements for securing access to land, and occasionally water, for the specific purposes stated and nothing more.

In the nineteenth century, islands served as places of meeting away from official eyes and where those living in the southern portion of the province could connect with kin and communities from the north.⁶⁹ Wabakangewana, a Chief from Lake Superior, witnessed the 1798 Treaty for St. Joseph Island, and his perspective of the agreement would have been brought back to the communities of the Upper Lakes.⁷⁰ While a small number of islands in the Great Lakes were surrendered from time to time, the Anishinaabe retained most for the fishery, as well as for gardens, burials, and ceremonies.⁷¹ Treaties with Europeans permitted them to use islands for settlement and for the erection of forts and lighthouses; however, none of these were detrimental to the continuation of an Aboriginal way of life.⁷²

The 1836 Bond Head or Manitoulin Island Treaty represents a continuum in the strategy to find places of refuge in Upper Canada.⁷³ Europeans continually encroached on Aboriginal lands and resources, and the attitude of the British government and promises made to Aboriginal peoples cemented in this Treaty are important to future understandings. In return for mainland surrenders of agricultural lands, Bond Head assured the Saugeen and Manitoulin peoples that:

from their facilities and from their being surrounded by innumerable fishing islands, they might be made a most desirable

place of residence for so many Indians who wish to be civilized, as well as to be totally separated from the whites; and I now tell you that *your Great Father will withdraw his claim to these islands and allow them to be applied for that purpose.*⁷⁴

Because this was one of the last major gatherings between the Crown and people of the Upper Lakes before 1850, the Bond Head treaty is crucial in order to understand not only the promises made, but how they were interpreted by Aboriginal peoples, because all subsequent treaties, including the Robinson Treaties, would be viewed through a similar lens. Bond Head recognized the value of the Manitoulin chain of islands and the fishery to Indigenous peoples. In this respect, the treaty addressed and answered their concerns; it secured the fishery and the islands from white encroachment and gave them secure settlement away from Europeans to live as they chose. The fact that Bond Head made reference to the 1764 Council at Niagara at the beginning of his speech clearly suggested to those assembled that he was reconfirming the Proclamation of 1763 and associated rights of Indigenous territorial exclusivity, management, and law.⁷⁵ While Bond Head had ulterior motives and the land provisions may not have been made clear, to exchange land already encroached upon by whites for protection of the fishery and a promise to be left alone were the true inducements to sign the treaty in 1836.⁷⁶

Indigenous peoples leased and reserved fisheries and islands themselves previous to the Bond Head Treaty, and this agreement confirmed long-established practices. The Mississauga reserved the Credit River fishery exclusively for themselves in 1790, while willingly sharing "other Creeks" with non-Native fishermen.⁷⁷ After ceding the lands in 1805, the Mississauga continued to reserve portions of their fishery on the Etobicoke and Credit Rivers and Twelve and Sixteen Mile Creeks "for the sole use of themselves" as protection against these encroachments.⁷⁸ From these actions, it is clear not only that the Anishinaabe viewed these fisheries as theirs, but that the Crown did as well and enacted legislation to enforce it. Simcoe informed the Lords of Trade as early as 1792 that "the Natives could not be deprived of either their rights to unceded hunting and fishing territories or to ceded lands and waters where traditional activities were reserved,"⁷⁹ and in 1797 issued a "Proclamation to Protect

the Fishing Places and the Burying Grounds of the Mississaugas.”⁸⁰ Non-Native settlers still occupied the shorelines, helped themselves to the river fisheries and polluted the waters;⁸¹ however, had the Mississauga not exercised exclusive rights prior to the treaties, and had these not been recognized by the Crown, they would not have been able to reserve their fishing and hunting lands at all.⁸² That islands could also be surrendered individually, and the fishery reserved separately, further proves these rights were not surrendered wholesale with the land.

Most of the Upper Canadian Treaties are consistent only in their inconsistency, and, as legal documents, must be viewed as insufficient to transfer wholesale title to lands and waters to Great Britain and Canada. Surtees describes those negotiated prior to 1790 as “shrouded in a general ignorance of conditions of the day, but which still apparently ... [rest] only on verbal assurances made ... 200 years ago.”⁸³ The oral traditions of First Nations, which accurately and consistently assert that neither waters nor fishery were surrendered, have been repeatedly dismissed as “unreliable” throughout the nineteenth and twentieth centuries.⁸⁴ Yet the language of the treaties themselves is unclear, irregular, and confusing, particularly where water is supposedly included.⁸⁵ The documents read by or translated and shown to Aboriginal peoples do not contain what the Crown later claimed as surrendered, and this would not change with the Robinson Treaties. Eurocanadians approached the Anishinaabe with requests for land for the purposes of farming, and, with the exception of treaties for specific purposes, treaties were for land only. The law evolved in a manner consistent with the transfer of rights from Anishinaabe people to the Crown (British and Canadian). The refusal to admit that ambiguities make agreements defective enables the government to have it both ways. In very specifically worded treaties, the government argues that the surrender of incidental rights is implied, and, in very broad and vaguely defined treaties, it is argued that these rights are included. Aboriginal peoples always possess the rights to surrender their resources, but rarely retain rights sufficient to keep them.

Though it evolved differently in both countries, Canadian and American legal traditions rest on the adoption of English common law. Had British officials desired more than land, they would only have to look across the border. The United States purchased land under the waters of

Lakes Huron, St. Clair, and Erie, and the St. Clair and Detroit Rivers in 1807, and recognized Chippewa fishing rights. While the British negotiated treaties in Upper Canada prior to this date, there is no reason why land under the water was not included in later treaties.⁸⁶ The fact that the British did not include it, and further requested access to water for the purposes of navigation and harbouring, indicates that they must have believed these rights to have been vested in Indigenous peoples. In an era without any significant inland infrastructure, water frontage and access to water was not only important for the fishery, it was vital for transportation for both Indigenous and non-Native settlers.⁸⁷ Settlers would only have required access to the water, and First Nations would neither have surrendered their rights to important life ways nor subjected them to restriction or enclosure. Exclusivity seems to have been neither desirable nor necessary until it conferred monetary advantage to those who possessed it.

Perhaps the most significant evidence confirming the retention of Aboriginal fishing rights in the treaties is the inclusion of fishhooks and twine in goods given to the Anishinaabe as presents and annuities.⁸⁸ Fishing supplies, unlike firearms and ammunition, were never limited or restricted, suggesting that government officials recognized Indigenous rights to fish unrestricted in significant numbers and that these rights were not surrendered by treaty.⁸⁹ The behaviour of representatives of the Crown further supports this assertion. Government reports, inquiries, and correspondence recognized the importance of the fishery, agreed that evidence existed to confirm Aboriginal title to islands, and recognized the validity of Indigenous leases. As late as 1851, the Superintendent General of Indian Affairs remained reluctant to approve island purchases because "of the uncertainty of the Indian tenure."⁹⁰ That the Crown assumed the "Territorial Estate and eminent Dominion in Canada," and government resources were then not allocated to protect and enforce Aboriginal use and access, does not reduce or negate these rights.⁹¹

The Supreme Court of Canada has ruled that treaties must not only be liberally construed, but interpreted in the way Aboriginal peoples would have understood them at the time.⁹² That they maintained the right of access to hunt and fish is consistent with all the early cessions on both sides of the international boundary, whether they form a part of the treaty text itself or are contained in oral traditions. A description of the 1792 Gun

Shot Treaty by Bkejwanong (Walpole Island) Elder Norm Miskokomon serves as an example of the understandings of the Anishinaabe in this period and the present. He noted that,

although the Gov't [Government] wanted the land it was not intended that the fish and game rights be excluded or that they were to be deprived of their privileges of hunting, trapping and fishing as it was a source of their living and sustenance.... This land mentioned [reservations of waters and shorelines] is their inheritance where they can camp and abide while pursuing their occupation of fishing and trapping and while occupying said land no white man can order them off.⁹³

The importance of the St. Mary's fishery in the Upper Lakes cannot be overstated in this regard. On the eve of the negotiation of the Robinson Treaties, the artist Paul Kane produced scenes of Anishinaabe fishermen on both sides of the St. Mary's River catching whitefish by torchlight using dip nets. Reports by traders, officials, and missionaries in the region describe this fishery as capable of "easily" "feed[ing] 10,000 men," not only in the immediate vicinity of the rapids but throughout the region.⁹⁴ Bellfy identified many Anishinaabe cross-border treaty-signers who sought to reserve this precious, economically significant resource in Michigan and Ontario.⁹⁵ In 1820, the Anishinaabe reserved the fishery at the falls along with a place to camp and process fish "in perpetuity," and in the 1836 Treaty of Washington, fishing grounds fronting reservations, as well as a number of island fishing stations in the adjacent northern region, were retained. To store and distribute this catch, the treaty stipulated that one hundred barrels of salt and five hundred fish barrels were to be provided for a period of twenty years until the reserve economies were solidly established. These were not the demands of a people resigned to life on the margins of an anemic subsistence fishery.⁹⁶

Ambiguities concerning the title of waters and islands led to the implementation of contradictory policies and resulted in considerable frustration on the part of Great Lakes Anishinaabe communities trying to manage their fishery.⁹⁷ Fishermen on the Sarnia Reserve had their nets confiscated and destroyed by the Fisheries Department for fishing in front of their reserve in 1827. Nothing in the treaty applied restrictions to the

reserve, and the chiefs were certain that the land they ceded stopped "at the water's edge."⁹⁸ Successive commissions of inquiry in the 1840s and 1850s described Anishinaabe people fishing in great numbers, leasing their fisheries to others and defending their islands against encroachment.⁹⁹ In 1848, Superintendent George Ironside "used every means in my power to stimulate the Indians of the Island [Manitoulin] to further ... their fishing operations," and requested twine, line, and hooks "necessary for their fishing."¹⁰⁰ In 1858, commissioners noted the "fisheries surrounding the Islands on all sides in the large Bays, and in Lake Huron are excellent, and if properly managed would furnish not only a supply of food to the Indians themselves, but also prove a source of considerable profit to them."¹⁰¹ By mentioning "profit," the commissioners also expected that Aboriginal peoples would participate in a commercial fishery and that it would be a major source of support for them in the future. In 1859, Superintendent General R. T. Pennefather questioned the recent passage of fisheries legislation and the wisdom of leasing the entire Great Lakes fishery, "respectfully urg[ing] the claims of the native tribes upon the government."¹⁰²

"Buy As Much Land As Possible": The Robinson Treaties

Great Lakes First Nations had a long tradition of reserving, managing, and leasing their resources. Communities in the St. Clair, Saugeen, Manitoulin, and Upper Lakes regions still maintained economies centered on the fishery in the 1840s. Pollution and depletion resulting from the encroachment of non-Native commercial enterprises threatened the sustainability of the entire Great Lakes fishery in the latter half of the century.¹⁰³ On the North Shore, protecting this resource in the Robinson Treaties was not to be taken lightly.

Though previous treaties are no less questionable, the Robinson Treaties in particular are symbolic of a radical shift in government attitude. While officials might have been inwardly indifferent to enforcement in the past, they were overtly sympathetic to the conditions of Aboriginal peoples. By the late 1840s, however, government and settlers alike were openly hostile toward Aboriginal peoples and their treaty rights. Non-Natives, offering little in return to Anishinaabe communities, frequently helped themselves via fishing and mining leases to unceded lands and waters in the Upper

Great Lakes. Chief Shingwaukonse petitioned in 1847 for a share of the mining proceeds, payment for the use of the land, and an assurance that the people of the North Shore would be left “unmolested forever.”¹⁰⁴ Fed up with flagrant violations of the Proclamation, a group of Ojibwa, Métis, and sympathetic non-Natives took over the mine at Mica Bay in 1849.¹⁰⁵ Thomas G. Anderson and Alexander Vidal were sent to the north shores of Lakes Huron and Superior to investigate the prospects of a treaty. Based on a positive reception, W. B. Robinson was given a mandate to “to buy as much land as possible.”¹⁰⁶

In the treaty text, communities in the Upper Lakes secured exclusive use of their fishing stations and the right to hunt and fish over their lands. Only after hunting and fishing rights were confirmed did Chiefs Peau de Chat and Shingwaukonse consider signing the treaty.¹⁰⁷ Useless without any means of support, the Chiefs ensured their reserves would continue to be supported by hunting and fishing. The Robinson Treaties contain clauses guaranteeing that, “the said Chiefs and their tribes the full and free privilege to hunt over the territory now ceded by them, and to fish in the waters thereof, as they have been heretofore been in the habit of doing, saving and excepting such portions . . . as may from time to time be sold or leased . . . with the consent of the Provincial Government.”¹⁰⁸ Robinson’s report verifies that, “by securing these [their fishing stations] and the right of hunting and fishing over the ceded territory, they [the Anishinaabe] cannot say that the Government takes from their usual means of subsistence. . . .”¹⁰⁹ After the countless encroachments suffered in Southwestern Ontario and Georgian Bay, the Anishinaabe hoped to finally secure for themselves the means of a livelihood.

Yet government officials did not listen to Aboriginal peoples and learned very little from the ambiguously worded Upper Canadian treaties, because the Robinson Treaties continue in that very same tradition. Enough has already been written about the defects of the treaty process, and the Robinson Treaty negotiations in particular, that no more needs to be said here.¹¹⁰ It is important, however, to note that the description of the surrender rested solely on descriptions provided by the “Principal Men of the Ojibway Indians inhabiting and claiming the eastern and northern shores of Lake Huron from Penetanguishene to Sault Ste. Marie, and thence to Batchewanaung Bay on the northern shore of Lake Superior.”

The surrender included these territories, "together with the islands in the said lakes opposite to the shores thereof ... inland to the height of land [separating the colony from Hudson's Bay Company territory]," subject to reservations made by the Chiefs.¹¹¹

Negotiated in haste and involving an enormous amount of territory, the Robinson Treaty reserves had to be identified by the chiefs, surveyed, and appended to the end of the document.¹¹² The three reserves appended to the Robinson-Superior Treaty, and the twenty-one under the Robinson-Huron, were all located alongside bays, rivers, and lakes, because these were culturally and economically important to them.¹¹³ Nonetheless, legal recognition rested on the attention, accuracy, and goodwill of Robinson, of those legally responsible for recording and filing these allowances, and of surveyors who entered reserve boundaries into the permanent record. It is not surprising, then, that the ink on the treaty was barely dry before the chiefs began lodging complaints with Indian agents and Crown Lands officials about errors in the size and location of their reserves and the inclusion of islands adjacent to them.¹¹⁴

Given the well-documented history of the Upper Canadian Treaties, the commissioners should have been aware that clear and accurate measurements would be an issue. Influenced by the historic presence of the French on the North Shore, most chiefs described their reserves in French "leagues," which were larger than English "miles." Though some limited corrections were made, Ojibway communities received reserves that were only one-third of the area they expected. As David McNab explains in Chapter 5 of this volume, the extent and impact of these omissions were enormous.¹¹⁵ In 1851, French River Chief Wagemake and Chief Papaisance petitioned the Governor General: "Great Father-in describing our reserves, we did not understand the distance of miles, but we gave certain points and we hoped that in the survey those boundaries will be adhered to."¹¹⁶ As a result of the smaller unit of measurement, Fort William lost several islands that were to be included in the reserve. In 1859, Chief John L'Illinois said that, "Mr. Keating was secretary, and instead of making it six leagues, he made it six miles." In 1853, the community discovered that despite assurances from a surveyor that he had corrected the omission of Pie Island, he had not.¹¹⁷ Though this particular dispute was settled in 2011,¹¹⁸ similar issues form the basis for most claims

lodged by Robinson-Huron and Robinson-Superior communities against the Ontario and Canadian governments today. But after years of acrimonious litigation, cash settlements cannot adequately compensate for the loss of the fishery, cottage lease payments, or the subsequent destruction of the resource.¹¹⁹ The number of additions and corrections made over the years to reserve boundaries are a testament to community persistence, reminding us that many more agreements and promises are preserved in oral histories.

Like the Upper Canadian Treaties, those of 1850 did not surrender rights to the water, the land under the water, the fishery, or the islands—they confirmed them. Vidal and Anderson commission's report verifies this: "for they relinquished nothing but a mere nominal title; they will continue to enjoy all their present advantages and will not be the poorer."¹²⁰ Nonetheless, the Lake Huron Ojibwa were forced to assert continually that they did not surrender the waters, islands, and "all the game and fish."¹²¹ In 1861, the Manitoulin chiefs stated, "we have never ceded this Island of ours nor the little ones. That is how we always strongly hold onto those islands of ours, we hold them for our children in order for them to gain their livelihood. The chiefs declare unequivocally that they never ceded the islands and they believe that their title was never extinguished."¹²² In 1868, Garden River Chief Augustin said, "I never heard that my grand father ever sold the River and I did not. It was overlooked in the Treaty and neither white man or Indian spoke of it.... The water is my storehouse, that is where I take my provisions from."¹²³ In 1878, the Indian agent for Manitoulin Island reiterated what the Anishinaabe had been stating for over one hundred years:

the fisheries which have been exclusively Indian for the past few years have been taken from them and given to white traders who employ white fishermen.... It cannot be for the public interest ... to deprive several hundred Indians who reside in adjacent villages of the privileges which they have enjoyed from time immemorial ... it is well known that in the general surrenders, large tracts of land and adjacent islands were reserved and there are no treaties in existence covering any surrender of these tracts of islands and the waters ... [which] were released for the express purpose of retaining the privilege of fishing in adjacent waters.¹²⁴

Law and Legislation: The Loss of the Great Lakes Commons

In light of this history, it is difficult to understand how British and later Canadian governments claimed that water was included in these treaties, and, more importantly, that Aboriginal peoples knowingly and consensually surrendered title to them. Anishinaabe legal historian John Borrows has written that "judicial power often cascades,"¹²⁵ and the transformation of the Native fishery from customary management shared under the Dish With One Spoon, to open access, and finally to private property, was assumed under English common law and implemented through legislation introduced in the 1860s without consideration of previous Aboriginal rights, treaty or otherwise.

One legal historian argues that "English law arrived in the new world with the English settlers," vesting the Crown with ownership of the beds and waters and the right to manage the fisheries in the interest of the public.¹²⁶ Under English common law, the right to navigable (tidal) waters is considered usufructuary; the land under the water, the fishery, and other rights incidental to water cannot be owned by anyone to the exclusion of others. As such, title rests with the Crown, which manages them as a commons. Riparian rights on inland streams and rivers are linked to ownership of the land. Thus, the owner of land adjacent to water has the exclusive right to the water, land under the water, and the fishery generally from the water's edge to the *usque filum aquae*, or centre, so long as these actions do not impede the rights of adjacent owners to enjoy the same privileges.¹²⁷ At the same time, these incidental rights of exclusivity (land, fishery, shoreline, wharf or dock, etc.) may be severed and leased or sold by the landowner. Using this legal logic, First Nations on lakes and rivers should at minimum hold riparian rights to the beds, waters, and fisheries fronting their reserves to the middle of the body of water.¹²⁸ But they do not. Even in the cases of Walpole Island and Wikwemikong First Nations, whose lands remain unceded and part of the original Indian Territory, the Crown (Canada) does not acknowledge riparian rights adjacent to reserve land. But even if it did, the Crown holds Indian lands and resources in trust for First Nations, and, after 1850, assumed the exclusive right to manage leasing and the monies arising from their lease or sale.¹²⁹

The location of so many of Ontario's First Nations on the shores of the Great Lakes is also a factor in determining rights to water. English

common law has been altered to accommodate the unique circumstances of the Great Lakes, which, in addition to being navigable by ship, but non-tidal, are international boundaries.¹³⁰ An international joint commission established by the 1909 Boundary Waters Treaty, two provinces, eight American states, municipal governments, First Nations communities, and other interest groups manage use and access to the Great Lakes under the doctrine of the public trust.¹³¹ Under English law, public trust doctrine prohibits private ownership of air, water, fish, game, and other items deemed to be of national significance and necessary to human survival. In theory, the Crown acts as a trustee on behalf of the public to manage and protect resources whose interests are paramount to those of any private individual or corporation. In practice, however, what is perceived to be in the interest of the broader public is not always the same for First Nations, and though the law is evolving to address some gaps, the public interest is often constrained by private property rights.¹³² While federal and provincial regulatory regimes, though applied equally to all, appear on the surface to be fair, what is often ignored is that Aboriginal peoples suffer disproportionately from closed seasons, licencing, and catch limits.

The Manitoulin Island Treaty of 1862 only confirmed this. In 1836, Bond Head acknowledged that Aboriginal peoples held rights above and beyond those of non-Native settlers through a priority of access, but this right was substantially and deliberately reduced in 1862, when non-Natives were “guarantee[d]” the same access. The Treaty pitted Natives and non-Natives against each other, denying the Anishinaabe their exclusive right to the fishery, stating that, “all the rights and privileges in respect to the taking of fish in the lakes, bays, creeks and waters within and adjacent to the said island, which may be lawfully and exercised and enjoyed by the white settlers thereon, may be exercised and enjoyed by the Indians.”¹³³ Indian Agent William Keating, frustrated by fisheries regulations that appeared to override treaty guarantees, wrote, “I am at a loss to know upon what grounds it becomes necessary for the Indians to procure licences to cast their nets round an island [Manitoulin] secured to them, if not by the parchment usual among ourselves, by a title equally sacred to all right thinking men—the pledged word of Her Majesty’s Representatives.”¹³⁴ In 1848, George Ironside recommended that non-Native traders acquire licences simply to trade with Native fishermen, yet less than fifteen years



FISHERY REGULATIONS.

Public Notice

Is hereby directed to the following Close-Seasons for Fish, adopted by the Governor General in Council on the 3rd instant:—

PROVINCE OF ONTARIO.

Whitefish, - - -	From 10th November to 1st December.
Salmon Trout and Lake Trout, - - -	From 15th October to 1st December.
Speckled Trout, Brook or River Trout, - - -	From 15th September to 1st January.
Freshwater Herrings, - - -	From 15th October to 1st December.
Shad, - - -	From 15th May to 15th June.
Pickeral (Dore), - - -	From 15th April to 15th May.
Mackinong, - - -	do. do.

PROVINCE OF QUEBEC.

Whitefish, - - -	From 10th November to 1st December.
Salmon Trout, Lake Trout (or "Junge" and "Wassouche"), - - -	From 15th October to 1st December.
Speckled Trout, Brook or River Trout, - - -	From 15th September to 1st January.
Shad, - - -	From 15th May to 15th June.
Pickeral (Dore), - - -	From 15th April to 15th May.
Mackinong, - - -	do. do.

All well-disposed persons are requested to afford the Local Fishery Officers whatever information and assistance they can towards carrying out these provisions of the Fishery Laws. Cognizants will receive one-half of the fine imposed, and be paid for their costs and attendance as witnesses.

Such persons guilty of violating these Regulations is liable to fine and costs, or in default of payment is subject to imprisonment.

No person shall during such prohibited times, sell for, catch, kill, buy, or have in possession any of the above mentioned kinds of Fish.

By order of the Hon. Minister of Marine and Fisheries,

W. F. WHITCHER,

Department of Marine & Fisheries,
Ottawa, 25th April, 1876.

Commissioner of Fisheries.

Figure 4: When hunger occurred in closed seasons, Aboriginal people were prosecuted. Library and Archives Canada, RG 10, Vol. 1967, 5184.

later, the situation was nearly reversed.¹³⁵ Through the Fisheries Acts, the allocation of commercial licences and quotas were used slowly to wrest the fishery away from Aboriginal communities and give it to non-Natives.¹³⁶ They were also frequently used as a tool to punish communities who fought against the restrictions.¹³⁷

By 1867, Robinson Treaty "bands" were in a particularly vexing position, since their treaty with the Crown depended upon the Ontario government for enforcement—an entity able to benefit from non-compliance. While the provinces and the federal government fought each other in the courts for jurisdictional control over resources and development, neither was all too eager or capable of mustering the necessary administrative controls

to manage and protect them effectively.¹³⁸ Wildlife, minerals, timber, and fish were pillaged in the meantime, while Aboriginal peoples, upon whose lands much of this occurred, were reminded that they were not capable of managing them themselves. Thus, despite exercising exclusive fishing rights prior to contact and maintaining, defending, and enshrining them in the treaties thereafter, by the 1880s Native peoples were thought no longer to possess these rights in law.

If the British did not include beds and waters in the treaties because by the common law they were “naturally” fit to manage them, it seems just as reasonable that bestowal of such rights upon Aboriginal peoples by a benevolent Creator should carry the same weight of custodial responsibility. The notion that rights stemmed from the British Crown and did not exist prior to discovery allowed the Proclamation to be interpreted as a product of that legal tradition and not recognized *sui generis* as a declaration of existing Indigenous title to the lands and waters. These decisions were made during a crucial time in the “nation-building” process, when bureaucratic, regulatory, and jurisdictional apparatuses were in development.¹³⁹

Federal and provincial Crowns excluded First Nations from the design of conservation policy and economically marginalized them with its implementation. Nonetheless, government stewardship in the second half of the nineteenth century failed to protect the Great Lakes ecosystem.

The Legacy of the Lakes

Aboriginal communities in Ontario have suffered untold hardships as a result of the violations of the spirit and intent of their treaties with the Crown, despite a history of sound stewardship over the Great Lakes basin for thousands of years prior. Negotiating treaties with newcomers was part of a concerted strategy of survival, not only for the Anishinaabe themselves but for the sustainability of the resources upon which they depended, as would future generations, for their livelihood. The Anishinaabe agreed to share access to land and some larger islands with the British for specific purposes; however, the claim that most of the islands in the Great Lakes, the beds, waters, and fishery were included is without substance and has been vociferously rejected by Great Lakes First Nations since the time of the treaties. Retaining the right to hunt and fish on traditional territories was the only reason Anishinaabe people agreed to treaties at

all, and from the 1780s to the 1850s, these rights were recognized by officials. Anishinaabe peoples used and reserved resources for themselves, and leased access to them to others. They would not have voluntarily signed away their very means of survival without an economic strategy that replaced it. Depending upon local circumstances, some communities wished to continue hunting and fishing exclusively, while others recognized that resources alone could not support them. By 1850, communities on the North Shore required a combination of subsistence strategies. They requested blacksmiths and farming instructors, but also knew that reserve agriculture alone would not have met their needs.

Fishing was an important aspect of a diverse economy incorporating hunting, gathering, agriculture, and trade. The Dish with One Spoon Treaty, while recognizing individual spheres of tribal influence, represented a negotiated sharing of access between First Nations communities. This was the intent of later treaties with the Crown; consequently, treaties were not signed by Ontario's First Nations to acquire rights to land, but to have their existing rights affirmed in the Proclamation and acknowledged by colonial officials and settlers. By surrendering the exclusivity guaranteed to them in the Proclamation of 1763 in return for goods, Aboriginal peoples merely intended to share access to resources. This was a mutually beneficial arrangement, and not a wholesale cession of Aboriginal rights to the water, access to the water, the land under the water, or the fishery. In many cases, and with official sanction and enforcement, the rights to hunt and fish were specifically reserved by them.

Treaties for land between Lakes Ontario and Erie, for the Penetanguishene Harbour and for the Islands of Michilimackinac and St. Joseph, represent some of the earliest, most important and strategic cessions where water, beds, and fishing rights in the Great Lakes ought to and would have been acquired if this was indeed desired by the Crown. This was not the case because Europeans both implied and stated directly in negotiations with Aboriginal peoples that only the land was needed for settlement. Only the land was measured, described, mapped, and surveyed; therefore, claims beyond what Indigenous peoples were actually shown and told constitutes fraud.

By 1850, the North Shore was one of the largest areas unaffected by concentrated European settlement and suitable for an Indigenous

homeland.¹⁴⁰ The previous Upper Canadian cessions had been made to settle Europeans on farms; however, W. B. Robinson noted that this would not become a problem in the area covered by the Robinson Treaties.¹⁴¹ He assured the Anishinaabe that; “the lands now ceded are notoriously barren and sterile, and will in all probability never be settled except in a few localities.”¹⁴² Anishinaabe Chiefs negotiated the 1850 treaties in the spirit of past treaties-reserving access to their traditional territories and resources as a condition of the agreement. Unfortunately, as in the past, the Robinson Treaties were unclear and treaty promises depended upon the goodwill of the Departments of Fisheries and Crown Lands, hostile bureaucracies with mandates to alienate Indigenous resources as quickly and cheaply as possible. As a result, Aboriginal customary management of these territories, though legally protected, came under increasing attack in the 1850s by radical changes in law, government, and society.

While critics may argue that English common law is clear on the matter and that regulation, irrespective of ownership, benefits all, this is not true. Acknowledged in a “colonizing spirit” to have sufficient rights to surrender resources to the Crown, First Nations never possess enough rights independently to manage and profit from them.¹⁴³ Legal historian Sidney Haring concludes that, “the Indian’s legal right to hunt and fish was not clearly extinguished in the nineteenth century. Rather there was a dishonest pattern of selective enforcement.”¹⁴⁴

By 1876, officials in the Department of Marine and Fisheries were of the opinion that Indigenous rights to fish amounted to nothing more than “extravagant claims and extraordinary demands.”¹⁴⁵ Many northern communities are currently facing difficult economic situations as a direct result of such attitudes and the legislative encumbrances that followed. This is not only at odds with the future that First Nations envisioned for themselves, but with the intentions of officials prior to Confederation. A chief in the Treaty Three area concludes that, “had Treaty 3 been kept, had we retained control of the resources and shared in their development, we would not be in the present state of subjugation.”¹⁴⁶ The original intent of the Crown would not have been to provide housing, education, and farming instructors only to render reserves useless to the people who lived upon them.¹⁴⁷ Similarly, irrespective of the terms of the treaties, English law, jurisprudence, regulation, or simple morality and common

sense, Indigenous communities would not knowingly have condemned themselves to poverty. Though access to resources and a future say in development was negotiated and envisioned by Aboriginal peoples as the purpose of treaty making, this potential was instead siphoned off to fund personal fortunes and development of adjacent non-Native communities. The loss of the fishery is only one aspect of a larger appropriation of lands and resources that, over the course of 160 years, has affected all of Ontario's First Nations and remains unresolved today.

Endnotes

- 1 I would like to thank Dr. David T. McNab, Dr. Karl Hele, and Stacey Alexopoulos for reading drafts of this paper. An earlier version was presented at the Engaging Indigenous Communities Conference in August 2011. Many thanks also to members of the Garden River First Nation for offering suggestions and encouragement, and to the paper's anonymous reviewers for their commentary.
- 2 A confederation of Anishinaabe peoples, including the Ojibwa, Odawa, and Potawatomi.
- 3 Scott Hamilton, "A World Apart? Ontario's Canadian Shield," in *Before Ontario: The Archaeology of a Province*, eds. Marit K. Munson and Susan M. Jamieson (McGill-Queen's University Press, 2013), 77.
- 4 Jean Teillet, "The Role of the Natural Resources Regulatory Regime in Aboriginal Rights Disputes in Ontario" (Final Report of the Ipperwash Inquiry), 31 March 2005, 8, http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/pdf/Teillet.pdf; Rhonda Telford, "Anishinabe Interest in Islands, Fish and Water," in *Papers of the Thirty-First Algonquian Conference*, ed. John D. Nichols (Winnipeg: University of Manitoba Press, 2000), 409.
- 5 H. V. Nelles, *The Politics of Development: Forests, Mines and Hydro Electric Power in Ontario, 1849-1941* (Toronto: Macmillan, 1974), 51. See also Delia Opekokew, "Treaties and Treaty Rights," *Saskatchewan Indian* (April/May 1984), <http://www.sicc.sk.ca/saskindian/a84apr14.htm> (accessed 25 May 2014); and Rhonda Telford, "'The Sound of the Rustling of the Gold is Under my Feet Where I Stand, We Have a Rich Country': A History of Aboriginal Resources in Ontario" (PhD dissertation, University of Toronto, 1995). This would also include sub-surface oil and minerals.
- 6 Though it appears in the documentation, the term "surrender" is extremely problematic, and I have used it with reluctance and caution. The British and Canadian governments historically used the term interchangeably with "treaty" and "agreement." This is incorrect and a politically expedient way to suggest inferiority and a totality to the treaties that is not borne out by either text or oral history. Meeting as equals, Aboriginal peoples were not

- "surrendering" but "sharing" access to their resources with Europeans. Blaine Belleau, "Garden River First Nation and the 1850 Treaty," paper presented at the Engaging Indigenous Communities Conference, Sault Ste. Marie, Ontario, August 2010. The word "surrender" does not exist in Anishinaabemowin, which raises questions as to how the treaties were explained to Aboriginal peoples and what terms were actually used in exchanges with Europeans.
- 7 William Wicken, *Mi'kmaq Treaties on Trial: History, the Land and Donald Marshall Junior* (Toronto: University of Toronto Press, 2002), 3. Wicken argues Great Britain initially acquiesced to Indigenous demands and recognized oral agreements in their treaties with the Mi'kmaq. The British reinterpreted the treaties as they acquired military and political control, defining surrenders as broadly as possible and the rights retained by the Mi'kmaq as narrowly as the bare text would permit.
 - 8 David McNab, Bruce W. Hodgins, and Dale S. Standen, "'Black with canoes': Aboriginal Resistance and the Canoe: Diplomacy, Trade, and Warfare in the Meeting Grounds of Northeastern North America, 1600-1821," in *Technology, Disease, and Colonial Conquests, Sixteenth to Eighteenth Centuries: Essays Reappraising the Guns and Germs Theories*, ed. George Raudzens (Boston: Brill Academic, 2003), 244. Many studies have shown there is no legal or historical foundation to support claims made by the Ontario or Canadian governments that wholesale surrenders of resources in the treaties were included with the land. See works cited by Blair, Hansen, Kempton, Lytwyn, Telford, and Walters.
 - 9 David T. McNab, *Circles of Time: Aboriginal Land Rights and Resistance in Ontario* (Waterloo: Wilfrid Laurier University Press, 1999), viii, 6.
 - 10 Edward Benton-Banai, *The Mishomis Book: The Voice of the Ojibway* (St. Paul: Red School House, 1988), 99-100.
 - 11 David T. McNab, "Borders of Water and Fire: Islands as Sacred Places and As Meeting Grounds," in *Aboriginal Cultural Landscapes*, ed. Jill Oakes et al. (Winnipeg: University of Manitoba Press, 2004), 45.
 - 12 McNab, Hodgins, and Standen, "'Black with canoes," 243-44; Helen Hornbeck Tanner, ed., *Atlas of Great Lakes Indian History* (Norman: University of Oklahoma Press, 1987). Maps reveal that Aboriginal people might have been separated by land, but they were united by water.
 - 13 Victor P. Lytwyn, "Waterworld: The Aquatic Territory of the Great Lakes First Nations," in *Gin Das Winan: Documenting Aboriginal History in Ontario*, eds. Dale Standen and David McNab, Occasional Papers of the Champlain Society, no. 2 (Toronto: Champlain Society, 1996), 14; William G. Dean, "The Ontario Landscape, Circa A.D. 1600," in *Aboriginal Ontario: Historical Perspectives on the First Nations*, eds. Edward S. Rogers and Donald B. Smith (Toronto: Dundurn, 1994), 4.
 - 14 One of the most notable of these locations was the weirs at Atherly Narrows between Lakes Simcoe and Couchiching. J. Ross Robertson, *The Diary of Mrs. John Graves Simcoe* (Toronto: Prospero Canadian Collection, 2001), 161; Charles E. Cleland, "The Inland Shore Fishery of the Northern Great Lakes: Its

- Development and Importance in Prehistory," *American Antiquity* 47, no. 4 (October 1982): 770, 772, 768.
- 15 Dean Jacobs, "Indian Land Surrenders," in *The Western District: Papers from the Western District Conference*, eds. K. G. Pryke and L. L. Kulisek (Windsor: Essex County Historical Society, 1983), 62.
 - 16 Louise Erdrich, *Books and Islands in Ojibwe Country* (Washington, DC: National Geographic, 2003), 34.
 - 17 Cleland, "The Inland Shore Fishery," 766.
 - 18 Robertson, *The Diary of Mrs. John Graves Simcoe*, 214.
 - 19 David D. Plain, *Ways of Our Grandfathers: Our Traditions and Culture* (Trafford, 2007), 36-37; Robert M. Warner and Lois Groesbeck, "Historical Report on the Sault Ste. Marie Area," in *An Anthropological Report on Indian Use and Occupancy of Northern Michigan, Vol. 5: Chippewa Indians*, ed. Erminie Wheeler-Vogelin (New York and London: Garland Publishing, 1974), 328. Similar to buffalo pemmican on the Plains, fish on its own was smoked and flaked when dry, or mixed with fat for storage.
 - 20 Peter S. Schmalz, *The Ojibwa of Southern Ontario* (Toronto: University of Toronto Press, 1991), 225; Bruce G. Trigger and Gordon M. Day, "Southern Algonquian Middlemen: Algonquin, Nipissing and Ottawa, 1550-1780," in *Aboriginal Ontario*, eds. Edward S. Rogers and Donald B. Smith, *Aboriginal Ontario*, 65.
 - 21 Cleland, "The Inland Shore Fishery," 761, 764.
 - 22 Lytwyn, "Waterworld," 15.
 - 23 McNab, Hodgins, and Standen, "'Black with canoes,'" 256-57.
 - 24 They became the Six Nations in 1720 with the addition of the Tuscarora.
 - 25 Victor P. Lytwyn, "A Dish with One Spoon: The Shared Hunting Grounds Agreement in the Great Lakes and St. Lawrence Valley Region," in *Papers of the Twenty-Eighth Algonquian Conference*, ed. David H. Pentland (Winnipeg: University of Manitoba Press, 1997), 216.
 - 26 *The General Council of the Six Nations and Delegates from different Bands in Western and Eastern Canada. June 10, 1870* (Hamilton: Spectator Office, 1870), 9-10.
 - 27 Cleland, "The Inland Shore Fishery," 768.
 - 28 John Joseph Borrows, "Traditional Use, Treaties and Land Title Settlements: A Legal History of the Anishnabe of Manitoulin Island" (DJur thesis, Osgoode Hall Law School, York University, 1994), 101. In the nineteenth century, reserved Indigenous lands were specifically targeted by squatters and poachers because they often remained the only locales where resources remained in substantial quantities.
 - 29 Aboriginal people provisioned and guided Simcoe's party in 1793 and 1794 as they travelled from York to Detroit. For traders, surveyors, settlers, officers, and those housed in British military installations, Indigenous guides and provisioners were vital, and it is important to view their interactions and

exchanges as “commercial” enterprises. Though history shows this to be untrue, an effective lobbying strategy used by non-Native commercial and sports fishermen has been to deny this reality and to promote the myth that Aboriginal people fished for subsistence only. The Cree of the Upper Lakes engaged in a vigorous trade in isinglass (glue made from fish bladders) with the Hudson’s Bay Company. Victor P. Lytwyn, “Ojibwa and Ottawa Fisheries around Manitoulin Island: Historical and Geographical Perspectives on Aboriginal and Treaty Fishing Rights,” *Native Studies Review* 6, no. 1 (1990): 8, 11; Robertson, *The Diary of Mrs. John Graves Simcoe*, 148-221; Tim E. Holzkamm, Victor P. Lytwyn, and Leo G. Waisberg, “Rainy River Sturgeon: An Ojibway Resource in the Fur Trade Economy,” *Canadian Geographer* 32, no. 3 (1988): 194-205.

- 30 Evidence suggests that some First Nations charged tolls for access to certain water routes. Lytwyn, “Waterworld,” 15n2.
- 31 Royal Proclamation of 1763, excerpts. Derek G. Smith, ed., *Canadian Indians and the Law: Selected Documents, 1663-1972* (Toronto: McClelland and Stewart, 1975), 2. In particular, it proposed to solve the vexatious problem of irregular land sales and squatting on unceded Aboriginal lands by prohibiting non-Natives from the territory.
- 32 Borrows, “Traditional Use, Treaties and Land Title Settlements,” 78.
- 33 Royal Proclamation of 1763, 7 October (extract), 2; Peggy Blair, “Taken for ‘Granted’: Aboriginal Title and Public Fishing Rights in Upper Canada,” *Ontario History* 92, no. 2 (2000): 33. By the terms of the Proclamation, Europeans already settled in Indian Territory were to remove themselves immediately.
- 34 Lise C. Hansen, “Treaty Fishing Rights and the Development of Fisheries Legislation in Ontario: A Primer,” *Native Studies Review* 7, no. 1 (1991): 2.
- 35 Blair, “Taken for ‘Granted,’” 31.
- 36 These first treaties were for lands in Southwestern Ontario between the northern shores of Lakes Erie and Ontario and the southern shore of Lake Huron, as well as a few strategic islands.
- 37 This is especially true after 1830, when Lieutenant Governor Sir Francis Bond Head announced the reduction and eventual elimination of presents and attempted to remove Aboriginal peoples to Manitoulin Island.
- 38 Aboriginal people did not agree to documents and treaties themselves but to the translations of the contents as they were given them at the time. Mary Duke, “Iroquois Treaties: Common Forms, Varying Interpretations,” in *The History and Culture of Iroquois Diplomacy*, ed. Francis Jennings (New York: Syracuse University Press, 1985), 85-98.
- 39 See Treaty No. 381, *Indian Treaties and Surrenders*, vol. 3 (1912; reprint, Toronto: Coles Canadiana Reprint, 1971), 196.
- 40 Originally this treaty was agreed to by the Seneca. Colonel Guy Johnson acknowledged in 1781 that the Mississauga also held interest in the land, though this had not stopped the British from settling on it prior to 1781. Robert J. Surtees, *Indian Land Surrenders in Ontario* (Ottawa: Indian and Northern Affairs, 1984), 9.

- 41 Indian Treaties and Surrenders, vol. 3, 196.
- 42 Indian Treaties and Surrenders, vol. 3, 196.
- 43 See Treaty No. 3, *Indian Treaties and Surrenders*, vol. 1 (1891; reprint, Saskatoon: Fifth House, 1992), 5. This Treaty joined the land between Treaty 2 (1790), bordered on the East by Catfish Creek, and the western four-mile limit of the Niagara Treaty. Officials realized after it was signed, on 22 May 1784, that the description of the land was incorrect and Lake Washquarter (Burlington Bay) did not meet the River La Tranche (Thames River). The boundaries were readjusted in a new agreement signed on 7 December 1792.
- 44 *Indian Treaties and Surrenders*, vol. 1, 5.
- 45 Alexander C. Flick, ed., *The Papers of Sir William Johnson*, vol. 4 (Albany: University of the State of New York, 1925), 328.
- 46 *Indian Treaties and Surrenders*, vol. 1, 6.
- 47 Blair, "Taken for 'Granted,'" 35.
- 48 *Indian Treaties and Surrenders*, vol. 1, 17.
- 49 See especially Treaties 6, 8, and 13 with the Mississauga and Chippewa in *Indian Treaties and Surrenders*, vol. 1; and Lytwyn, "Waterworld," 18-19.
- 50 Douglas Leighton, *The Historical Development of the Walpole Island Community*, Occasional Paper No. 22 (London, ON: Huron College, 1986), 12; Library and Archives Canada (hereafter cited as LAC), RG 10, Indian Affairs, Superintendent General's Office (Sir John Johnson) Correspondence, 1795-1796, vol. 9, p. 9171, reel C-11000, Alexander McKee, Speech to the Chippewa at Chenail Ecarté, 30 August, 1796; LAC, RG 10, Indian Affairs, Consecutive No. 7, Vol. 1840, IT 022-IT 028, Reel T-9938, Deed of Sale of Lands at Chenail E'Carte in Upper Canada from the Chippewa Nation to Alexander McKee, 7 September, 1796.
- 51 Surtees, *Indian Land Surrenders in Ontario, 1763-1867*, 29-30.
- 52 *Indian Treaties and Surrenders*, vol. 1, 15 (italicized in the text). See also Catharine Sims, "Exploring Ojibwa History through Documentary Sources: An Outline of the Life of Chief John Assance," in *Gin Das Winan: Documenting Aboriginal History in Ontario*, eds. Dale Standen and David McNab, Occasional Papers of the Champlain Society, no. 2 (Toronto: Champlain Society, 1996), 36-38.
- 53 The Final Conveyance refers to an attached "plan" that is not filed with the document. Library and Archives Canada has an undated map of Penetanguishene Harbour, which it suspects accompanies the surrender of 1798/05/22 and which resembles the more generous Copy of the Provisional Agreement.
- 54 LAC, RG 10, Indian Affairs Consecutive no. 5, vol. 1840/IT 019, Provisional Surrender, 19 May 1795.
- 55 Underlined in the original. LAC, RG 10, vol. 1840/IT 017, Original Conveyance, 22 May 1798.
- 56 In this case, officials may have misread Given's handwriting. In his script, "twenty" could be interpreted as "seventy." LAC, RG 10, IT 017 (Conveyance), IT 019 (Provisional Agreement), IT 020 (Certified Copy).

- 57 IT 018, IT 019, IT 020. Only the peninsula is shaded red.
- 58 Geographically speaking, a harbour refers to any sheltered navigable body of water where waters are of a depth sufficient for ships to enter a port or docking facility and set anchor. The British also desired land on the peninsula to build a base. However, the surrender extends well beyond this and seems to include the islands and waters east to Matchedash Bay. *Merriam-Webster Online*, <http://www.merriam-webster.com/dictionary/harbor?show=0&t=1285025997> (accessed 15 May 2014); LAC, Cartographic Material, Admiralty Charts, Microfiche NMC187203, Box 2000357955, Item 407, BA Georgian Bay, Penetanguishene Harbour under the superintendence of Captain W. J. L. Wharton, R.N., 25 July 1893.
- 59 John C. Bayfield, "Penetanguishene," in *The Canadian Encyclopedia Online* <http://www.thecanadianencyclopedia.ca/en/article/penetanguishene/> (accessed 20 May 2014).
- 60 Parks Canada, Beausoleil Island National Historic Site of Canada, Georgian Bay Islands National Park, Ontario, http://www.pc.gc.ca/apps/dfhd/page_nhs_eng.aspx?id=13111 (last updated 15 March 2012).
- 61 This quote is taken from an archived exhibit on the Library and Archives Canada website designed to educate students, teachers, and the public about Canada's Treaty relationship with Aboriginal peoples. The website also authoritatively links the undated map with Final Conveyance, despite the fact that the archival file description hesitates to make such a link without conclusive evidence of provenance. "Treaties, Surrenders and Agreements," Library and Archives Canada, <http://collectionscanada.gc.ca/aboriginal-heritage/020016-3104-e.html> (accessed 13 November 2009).
- 62 *Indian Treaties and Surrenders*, vol. 1, 15.
- 63 Blair, "Taken for 'Granted,'" 34.
- 64 Kate Kempton, *Bridge Over Troubled Waters: Canadian Law on Aboriginal and Treaty "Water" Rights, and the Great Lakes Annex* (Olthuis Kleer Townshend Law, 2005).
- 65 Canada, *Indian Treaties and Surrenders*, vol. 1, 1, 27-29. In the North Channel, Michilimackinac and St. Joseph Islands were strategically important holds against the Americans and had long been occupied by the British military. Michilimackinac was surrendered to the Americans under the terms of the 1794 Jay Treaty. St. Joseph's Island was then occupied in its place until the War of 1812. These islands became important places for Indigenous allies of the Crown and their families to meet for annual present distributions.
- 66 *Indian Treaties and Surrenders*, vol. 1, 1.
- 67 *Indian Treaties and Surrenders*, vol. 1, 27-29. Italics mine.
- 68 Shorelines, the banks of rivers and streams, and surveyed lines form the boundaries. In the case of the Christian Island lighthouse, the boundaries are far removed from the shoreline. See the agreement and accompanying map for a portion of Christian Island where it joins a previous surrender for ten acres. *Indian Treaties and Surrenders*, vol. 1, Treaty No. 120, 276-77.

- 69 David T. McNab, *No Place for Fairness: Indigenous Land Rights and Policy in the Bear Island Case and Beyond* (McGill-Queen's University Press, 2009), 10-11.
- 70 *Indian Treaties and Surrenders*, vol. 1, 28. Wabakangewana is identified as a witness to the agreement.
- 71 See Article 3 of the Treaty of Washington, 28 March 1836, in *Treaty with the Ottawa, etc., 1836, in Indian Affairs. Laws and Treaties: Volume II (Treaties)*, ed. Charles J. Kappler (Washington: Government Printing Office, 1904), 451.
- 72 In 1820, Lewis Cass negotiated the surrender of the St. Martin Islands simply to access a deposit of plaster of Paris. "Treaty with the Ottawa and Chippewa," July 6, 1820, *Treaty with the Ottawa, etc., 1836, in Indian Affairs. Laws and Treaties: Volume II (Treaties)*, ed. Charles J. Kappler (Washington: Government Printing Office, 1904), 188-89.
- 73 John Borrows, "A Genealogy of Law: Inherent Sovereignty and First Nations Self-Government" (LLM thesis, University of Toronto, 1991), 54.
- 74 Italics mine. "Message From His Excellency The Lieutenant Governor, With Sundry Despatches Relating to Affairs of Indians," Francis Bond Head, Government House, 29 January 1838. Upper Canadian House of Assembly, *Appendix to the Journal of the House of Assembly of Upper Canada*, Third Sess., Thirteenth Parliament (Toronto: W. L. Mackenzie, 1838), 180.
- 75 Borrows, "Traditional Use, Treaties and Land Title Settlements," 100-01, and Chapter 2. Despite receiving no payment for these lands, the Anishinaabe were naturally inclined to accept an offer that promised them secure title to the islands and freedom from the encroachments of settlers. Bond Head was taken at his word as a representative of the Crown, and it was believed these agreements would be renegotiable should circumstances change. Head's reference to the "Crooked Place," or the meeting at Niagara in 1764, carried deep symbolic meaning among Great Lakes First Nations, harkening back to Sir William Johnson's renewal of the Covenant Chain of Friendship. See also John Borrows, "Constitutional Law from a First Nation Perspective," *UBC Law Review* 28, no. 1 (1994): 28-29.
- 76 Peggy Blair, "Solemn Promises and Solum Rights: The Saugeen Ojibway Fishing Grounds in *R. v. Jones and Nadjiwon*," *Ottawa Law Review* 28 (1997): 130.
- 77 The Credit River fishery was well known. A Gazetteer from 1849 chronicles the destruction of this once-plentiful resource. "This river has long been celebrated for its salmon fishing, immense quantities having been annually taken, in the spring.... But from the great number of mills which have been erected during the last four years, the fishing is destroyed, the salmon being unable to make their way over the dams. Immense quantities of lumber are sawn at the mills...." William Henry Smith, *Smith's Canadian Gazetteer: Comprising Statistical and General Information Respecting All Parts of the Upper Province, Or Canada West...* (H. & W. Rowsell, 1849), 40; Peggy Blair, "Taken for 'Granted,'" 37.
- 78 *Indian Treaties and Surrenders*, vol. 1, 32-36. Treaties 13 and 14 reserve the Credit River fishery for the exclusive use of the Mississauga. Fed up with non-

- Native trespassing and poaching, the Mississauga surrendered the fishery along with portions of the reserve in 1820.
- 79 Blair, "Taken for 'Granted,'" 33.
- 80 "Proclamation to Protect the Fishing Places and the Burying Grounds of the Mississaugas," *Upper Canada Gazette*, 30 December 1797.
- 81 Schmalz, *The Ojibwa of Southern Ontario*, 106.
- 82 Blair, "Taken for 'Granted,'" 37.
- 83 The Crawford (1783), Collins (1785), and Johnson-Butler (1787-8) purchases, in particular, suffer from these deficiencies; however, it became a trend and perhaps even a strategy on the part of the British. See Surtees, *Indian Land Surrenders in Ontario, 1763-1867*, 13, 35.
- 84 Lawyer Paul Williams notes that oral traditions usually point him in the right direction, and most of his work consists of gathering documents confirming what Aboriginal peoples have already told him. Paul Williams, "Oral Tradition on Trial," in *Gin Das Winan: Documenting Aboriginal History in Ontario*, eds. Dale Standen and David McNab (Toronto: Champlain Society, 1996), 30.
- 85 Changes in measurements and markers present an additional argument unto themselves. Differences between leagues, chains, acres, and miles are significant, and whether this was adequately explained or even discussed with Aboriginal peoples is questionable. The distance that could be walked in a period of time, the travelling distance of a gunshot, the use of blazed trees, cairns, and even "imaginary lines" as markers cause these demarcations to be highly questionable for the purposes of accurately determining the boundaries of surrenders.
- 86 Jacobs, "Indian Land Surrenders," 67. The Treaty of Detroit signed in 1807 with the Odawa, Chippewa, Potawatomi, and Wyandot only extends to the international boundary. *Treaty with the Ottawa, etc., 1836*, in *Indian Affairs. Laws and Treaties: Volume II (Treaties)*, ed. Charles J. Kappler (Washington: Government Printing Office, 1904), 92-95; McNab, *Circles of Time*, 152.
- 87 McNab, *Circles of Time*, 152.
- 88 Blair, "Taken for 'Granted,'" 32. The Chenail Ecarté, Thames, and Mississauga Treaties included over one thousand fishhooks each. After 1818, when annuities replaced goods as payment, Anishinaabe Chiefs then requisitioned fish hooks, nets, and twine to be purchased out of their annuities for the benefit of their respective bands. Fishhooks and thread for net making were almost always included in presents. RG 10, Indian Affairs, Deputy Superintendent General Office Letterbook, 1846-1852, vol. 572, C-13373, Letter, George Ironside Jr., Superintendent, Manitowaning, to Major Campbell, Civil Secretary, 20 March 1848; 31 March 1851; to James Givens, Chief Superintendent, Toronto, 12 February 1852.
- 89 Telford, "Anishinabe Interests in Islands, Fish and Water," 414.
- 90 RG 10, vol. 268, p. 164214-164221, Memorandum, 6 March 1851.
- 91 1847 Report on the Affairs of the Indians, Appendix T, in the Appendix to the Sixth Volume, *Journals of the Legislative Assembly of the Province of Canada* (Montreal: Rollo Campbell, 1847), not paginated.

- 92 *Nowegijick v. The Queen* (1983), 1 S.C.R. 29; *R. v. Sioui* (1990), 1 S.C.R. 1025; *R. v. Badger* (1996), 1 S.C.R. 771.
- 93 David T. McNab, "'The Promise that he Gave to my Grand Father Was Very Sweet': The Gun Shot Treaty of 1792 at the Bay of Quinte," *Canadian Journal of Native Studies* XVI, no. 2 (1996): 296.
- 94 Kenneth R. Lister, "Dip Nets and Jacklights: Paul Kane's Views on Fishing the Great Lakes Region," *Ontario Archaeology* 92 (2012): 18.
- 95 Phil Bellfy, *Three Fires Unity: The Anishinaabeg of the Lake Huron Borderlands* (Lincoln and London: University of Nebraska Press, 2011), 83-130.
- 96 The former treaty permitted the construction of Fort Brady. Treaty with the Chippewa, 1820, and Treaty of Washington, 1836, both in *Treaty with the Ottawa, etc., 1836*, in *Indian Affairs. Laws and Treaties: Volume II (Treaties)*, ed. Charles J. Kappler (Washington: Government Printing Office, 1904), 330.
- 97 Blair, "Solemn Promises," 130.
- 98 L. G. Ugarenko, "Research Report on the Claim of the Chippewas of Sarnia, Kettle Point and Stoney Point, to the Bed and Water of the Southern Part of Lake Huron in Ontario," Office of Indian Resource Policy, Ministry of Natural Resources, 28 January 1993, 23; Lytwyn, "Waterworld," 18-19.
- 99 No. 18, Copy, Despatch, Lord Glenelg to Sir F. B. Head, 4 April 1837; Enclosure from Augustus D'Este to Glenelg, 20 March 1837; Glenelg to Augustus D'Este in *Great Britain Parliamentary Papers* 34, no. 323 (1839): 76-78.
- 100 LAC, RG 10, vol. 572, reel C-13373, Indian Affairs, Deputy Superintendent General Office Letterbook, 1846-1852, Letter, Superintendent George Ironside Jr., Manitowaning, to Superintendent General, Major T. E. Campbell, Montreal, 20-22 March 1848.
- 101 "Report of the Special Commissioners to Investigate Indian Affairs in Canada," Appendix 21, in Province of Canada, *Journals of the Legislative Assembly of the Province of Canada* (Toronto: Rollo Campbell, 1858), n.p.
- 102 R. T. Pennefather to Sir Edmund Head, 11 January 1859, Enclosure in No. 11, Canada, Indian Department, Return to an Address of the Honourable House of Commons ... for Copies or Extracts of Correspondence ... respecting Alterations in the Organization of the Indian Department in Canada, Great Britain, House of Commons, 25 August 1860, 27-29; Telford, "Anishinabe Interest in Islands, Fish and Water," 416.
- 103 LAC, RG 10, Vol. 572, Indian Affairs, Deputy Superintendent General Office Letterbook, 1846-1852, Letter, Superintendent George Ironside Jr., Manitowaning, to Superintendent General, Major T. E. Campbell, Montreal, 8 January 1848. This was not a universal phenomenon, and the fishery remained excellent in many locations including Manitoulin Island. As non-Natives depleted fishing grounds in other locales, those still viable on or near reserves were targeted, as had been the case in Southwestern Ontario in the earlier half of the nineteenth century. Borrows, "Traditional Use, Treaties and Land Title Settlements," 135; Frank Tough, "The Establishment of a Commercial Fishing Industry and the Demise of Native Fisheries in Northern Manitoba," *Canadian Journal of Native Studies* 2 (1984): 312.

- 104 Robert J. Surtees, *Treaty Research Report: The Robinson Treaties*, Treaties and Historical Research Centre (Ottawa: Indian and Northern Affairs Canada, 1986), n.p.
- 105 In violation of the Proclamation, non-Natives leased, trespassed, and mined on unceded Aboriginal land. Janet E. Chute, *The Legacy of Shingwaukonse: A Century of Native Leadership* (Toronto: University of Toronto Press, 1998), 130-36.
- 106 See Surtees, *Treaty Research Report: The Robinson Treaties*, n.p.; Union of Ontario Indians, "Robinson Treaty Promises Broken for 155 Years," Media Release, 8 September 2005, Turtle Island Native Network, <http://www.turtleisland.org/discussion/viewtopic.php?t=3926> (accessed 3 April 2014). In the end, the cession was enormous; it is estimated that in today's dollars the fifty thousand square miles (640 acres) were ceded for 66 cents per square mile. Keating recorded the reserve requests for the Robinson Treaties. See Telford, "The Nefarious and Far-Ranging Interests of Indian Agent and Surveyor John William Keating, 1837-1869," in *Papers of the Twenty-Eighth Algonquian Conference*, ed. David H. Pentland (Winnipeg: University of Manitoba Press, 1997), 372.
- 107 Surtees, *Treaty Research Report: The Robinson Treaties*, n.p.
- 108 Canada, *Indian Treaties and Surrenders*, vol. 1, 149.
- 109 Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories* (1880; reprinted Toronto, Coles Reprint, 1971), 19.
- 110 See the Royal Commission on Aboriginal Peoples (RCAP), Vol. 2: Restructuring the Relationship, Pt. 1, Ch. 2: Treaties. Indian and Northern Affairs Canada, 1996, <http://www.collectionscanada.gc.ca/webarchives/20071124125834> or http://www.ainc-inac.gc.ca/ch/rcap/sg/shm2_e.html (accessed 3 May 2014).
- 111 *Indian Treaties and Surrenders*, vol. 1, 149.
- 112 This was not new. Several Upper Canadian Treaties included locations reserved by Aboriginal peoples; however, they were included in the text. Because the surrenders overall were smaller, fewer Indigenous people were involved and the requested reserves were better known. While there were similar issues regarding boundaries and inclusions, on the whole they suffered from far fewer inaccuracies than the wide expanse covered by the Robinson Treaty territory. Power dynamics inherent in the colonial and later Canadian governments rendered all treaties with Aboriginal peoples open to miscommunication and outright fraud. *Indian Treaties and Surrenders*, vol. 1, 149.
- 113 Lise Hansen, "Chiefs and Principal Men: A Question of Leadership in Treaty Negotiations," *Anthropologica* 29, no. 1 (1987): 55-56; *Indian Treaties and Surrenders*, vol. 1, 149; Surtees, *Treaty Research Report: The Robinson Treaties*, n.p.
- 114 Surtees, *Indian Land Surrenders in Ontario, 1763-1867*, 62. J. E. Hodgetts, *Pioneer Public Service: An Administrative History of the Canadas, 1841-1867* (Toronto: University of Toronto Press, 1956), 119. Prior to 1860, "Land, timber and Indian agents, as well as fisheries overseers, were all at work here [on the North Shore] and all came under the direction of the Crown

- Lands Department." Following the transfer of Indian Affairs from Great Britain to the Dominion in 1860, the Commissioner of Crown Lands and the Superintendent General of Indian Affairs were the same person. This situation continued until 1867, when Indian Affairs was transferred to the Secretary of State, and then to the Department of the Interior in 1873. Aboriginal communities approaching the government to rectify omissions and errors in their reserves encountered a department charged with protecting Indian lands and resources while simultaneously encouraging development—a system that could only be riddled with conflict and self-interest.
- 115 See David T. McNab, Chapter 6, this volume.
- 116 RG 10, vol. 613, 378-380, C-13386, cited in "Assembled Tribes at Beaverstone (Point Grondine) Petition the Government...", *Ojibwe Cultural Foundation 2*, no. 5 (September 2007): 3. The complete petition is reproduced.
- 117 John William Keating, Indian agent and land surveyor, learned Ojibway while stationed at Walpole Island (Amherstburg) in Southwestern Ontario, where measurements almost always referred to miles. "Fort William First Nation Boundary Claim, A Brief History," Ontario Ministry of Aboriginal Affairs, October 2008, http://www.aboriginalaffairs.gov.on.ca/english/negotiate/fortwilliam/fw_history.asp (accessed 25 May, 2014).
- 118 In addition to the cash settlement, after 160 years and twenty-five years of litigation, Pie and Flatland Islands were finally added to their territory. Tanya Talaga, "Ft. William Reserve wins \$154M land claim," *Toronto Star*, 17 December 2011.
- 119 Even though they were reserved in the Robinson Treaty, Garden River and Batchewana, for instance, lost the use of Squirrel and Whitefish Islands, respectively. Both islands have since been returned in claims settlements, but the failure to respect Treaty promises has created acrimony between First Nations and non-Natives in the Upper Lakes. Batchewana recently launched another claim against the federal government for breach of fiduciary duty over the destruction of the whitefish fishery. The community argues that while they were prevented from accessing the resource, the government sanctioned commercial overfishing and ultimately failed to protect the fishery from collapse. Tom Mills, "Method behind Sayers Anger," *Sault Star*, 1 February 2013, www.saultstar.com (accessed 23 June 2014).
- 120 Surtees, *Treaty Research Report: The Robinson Treaties of 1850*, n.p.
- 121 Lytwyn, "Ojibwa and Ottawa Fisheries around Manitoulin Island," 18.
- 122 See Alan Corbiere, "Exploring Historical Literacy in Manitoulin Island Ojibwe," in *Papers of the Thirty-Fourth Algonquian Conference*, ed. H. C. Wolfart (Winnipeg: University of Manitoba, 2003), 57-80.
- 123 Telford, "Anishinabe Interest in Islands, Fish and Water," 414.
- 124 Borrows, "Traditional Use, Treaties and Land Title Settlements," 175.
- 125 Borrows, "Constitutional Law from a First Nation Perspective," 2.
- 126 Roland Wright, "The Public Right of Fishing, Government Fishing Policy and Indian Fishing Rights in Upper Canada," *Ontario History* 86, no. 4 (1994): 338.

- 127 Depending on jurisdiction, the water's edge can be defined by survey, by the highest or lowest water mark, or to the wet sand line. Blair, "Taken for 'Granted,'" 33-34; Jeffrey W. Henquinet and Tracy Dobson, "The Public Trust Doctrine and Sustainable Ecosystems: A Great Lakes Fisheries Case Study," *N.Y.U. Environmental Law Journal* 14 (2006): 331-32; Joseph K. Angell, *A Treatise on the Common Law in Relation to Watercourses* (Boston: Little, Brown, 1854). For application of the law in Canada, the United States, and Australia, see Mark D. Walters, "Aboriginal Rights, *Magna Carta* and Exclusive Rights to Fisheries in the Waters of Upper Canada," *Queen's Law Journal* 23 (1998): 301-68.
- 128 After the implementation of licencing, First Nations facing direct competition from commercial fishermen had to apply for licences to fish in the waters adjacent to their own reserves. RG 10, vol. 449, p. 630, Gibbard to Telford, April 1860; RG 10, vol. 453, C-9646, p. 474-75, Kettle Point Indian Reserve, Seasonal Licence for Fishing Station, Upper Canada, 1862. See also Ugarenko, "Research Report."
- 129 The 1849 Crown Lands Act amended the 1839 Act to make Indian lands Crown Lands. The 1850 Act for the Protection of the Indians in Upper Canada from Imposition, and the Property Occupied or Enjoyed by Them from Trespass and Injury prohibited "Indians" from engaging in commercial transactions with non-Natives for lands and resources, and empowered the Indian Department, a branch of the Department of Crown Lands, to manage sales and leasing on their behalf. An Act for the Protection of the Lands of the Crown in this Province from Trespass and Injury, 11 May 1839 (2 Vict. c. 15), An Act to Explain and Amend an Act of the Parliament of the late Province of Upper-Canada, passed in the second year of Her Majesty's Reign, entitled, An Act for the Protection of the Lands of the Crown in this Province, from Trespass and Injury, 25 April 1849 (12 Vict. c. 89); An Act for the Protection of the Indians in Upper Canada from Imposition, and the Property Occupied or Enjoyed by Them from Trespass and Injury, 10 August 1850 (13-14 Vict., c. 74).
- 130 In England, all navigable waters are tidal, making the application of this rule much more consistent. Kempton, *Bridge Over Troubled Waters*, 53-54; Blair, "Taken for 'Granted,'" 43-44.
- 131 Henquinet and Dobson, "The Public Trust Doctrine," 322, 325.
- 132 Henquinet and Dobson, "The Public Trust Doctrine," 325; Robert Haskell Abrams, "Walking the Beach to the Core of Sovereignty," *University of Michigan Journal of Law Reform* 40, no. 4 (Summer 2007): 875, 879. Public trust doctrine and federal and provincial management of the environment have not guaranteed either the sustainability of resources or the protection of the Great Lakes ecosystem. For an evaluation of regulatory regimes around the Great Lakes, see Henquinet and Dobson, "The Public Trust Doctrine."
- 133 *Indian Treaties and Surrenders*, vol. 1, 235.
- 134 Lytwyn, "Ojibwa and Ottawa Fisheries around Manitoulin Island," 20.
- 135 LAC, RG 10, vol. 572, C-13373, Letter, Superintendent George Ironside Jr., Manitowaning, to Superintendent General, Major T. E. Campbell, Montreal, 3 January 1848.

- 136 Blair, "Taken for 'Granted,'" 41. For the evolution and effects of fisheries legislation on Aboriginal peoples in Ontario, see J. Michael Thoms, "Ojibwa Fishing Grounds: A History of Ontario Fisheries Law, Science, and the Sportsmen's Challenge to Aboriginal Treaty Rights, 1650-1900" (PhD diss., University of British Columbia, 2004).
- 137 This is not a relic of the past. Batchewana First Nation had its quotas "reduced or taken away" by the Ontario Ministry of Natural Resources in the 1980s for continuing to fish over quota on their traditional territory. David T. McNab, ed. "'All in the Family': The Batchewana First Nation, Fishing and Land Rights, 1989-91," in *Circles of Time: Aboriginal Land Rights and Resistance in Ontario*, 138.
- 138 An unfortunate series of judicial decisions based on common law, rather than Aboriginal and treaty rights, led to a mistaken belief that Aboriginal title and rights to the lands and waters was "usufructuary" and existed only at the pleasure of the Crown. The decision rendered in *St. Catherine's Milling* stated that the Proclamation of 1763 was not a confirmation of existing Aboriginal rights but rather the sole source of them. If Aboriginal rights emanated from the Crown, then the Crown could reduce them substantially at will. *St. Catherine's Milling Co. v. the Queen* (1888), 14 A.C. 46. Native Law Centre, *Judgments of the Supreme Court of Canada*, <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/3769/index.do> (accessed 8 August 2014).
- 139 Canada, *Royal Commission on Aboriginal Peoples*, Vol. 1, Pt. 1, Ch. 6, Stage Three: Displacement and Assimilation, Section 6: Non-Fulfillment of Treaties.
- 140 Aboriginal peoples have continuously sought places of refuge away from the political and cultural interference of Europeans through treaties negotiated in the spirit of the Two Row Wampum. John Borrows, "A Genealogy of Law: Inherent Sovereignty and First Nations Self-Government" (LLM thesis, University of Toronto, 1991), 156.
- 141 Teillet calls the Robinson Treaties "the first development treaties," and writes that "early treaties are essentially land surrender agreements that contain no consideration with respect to harvesting or other resource rights. They had the primary purpose of providing agricultural land for settlers. With the Robinson-Huron Treaties, however, the government's purpose for entering into treaty begins to change." Teillet, "The Role of the Natural Resources Regulatory Regime," 17.
- 142 Morris, *The Treaties of Canada*, 17.
- 143 Walters, "Aboriginal Rights, Magna Carta and Exclusive Rights," 324. To prevent communities from earning income independent of the state, in the late nineteenth century the government demanded that First Nations formally surrender their resource rights on an individual basis before the Department would allow them to be leased to non-Natives. Hundreds of surrenders exist for timber, marshes, mill sites, quarries, and other resources.
- 144 Sidney Haring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto: Osgoode Society for Canadian Legal History, 1998), 122.

- 145 W. F. Whitcher, for the Hon. Minister of Marine and Fisheries, quoted in Blair, "Solemn Promises and Solum Rights," 138.
- 146 Opekokew, "Treaties and Treaty Rights," n.p.
- 147 Known in the United States as the "Winters Doctrine," the courts analyzed the intentions of federal government officials rather than entitlements under the law. In several decisions in 1908 and in the 1960s, the United States Supreme Court ruled that Indian reservations have water rights. The cases arose in the west, where sources of water on reservations were threatened by the actions of non-Natives in surrounding communities. The courts ruled that since the federal government established reservations with the intention that they would become self-sufficient, water rights, though not expressly reserved, must have been implied. Without access to a secure water source, the reserves would be useless and the people impoverished. Such a philosophy has broader application and is consistent with decisions in Canada where the courts have ruled that the Crown, as a trustee, has a fiduciary duty to Aboriginal peoples and must act with honour in decisions affecting their social and economic wellbeing. Harrold A. Ranquist, "The Winters Doctrine and How it Grew: Federal Reservation of Rights to the Use of Water," *Brigham Young University Law Review* (1975), 639-724; Leonard Ian Rotman, *Parallel Paths: Fiduciary Doctrine and the Crown-Native Relationship in Canada* (Toronto: University of Toronto Press, 1996), 13, 238, 290.

CHAPTER 8

Atikameksheng Anishnawbek/Whitefish Lake:

Glimpses of Three Generations under the
Robinson-Huron Treaty, 1850s–1920s

Peter Krats

Atikameksheng Anishnawbek, or Whitefish Lake First Nation, dwells in a place where human activity goes back over ten thousand years. But long-established lifestyles altered with the arrival of European influences. Treaties created new contexts, as did newly-arrived material, spiritual, and economic views. By the start of the nineteenth century, these developments were felt by the Whitefish Lake Band, but wider-ranging consequences awaited with the signing of the Robinson-Huron Treaty. That Treaty placed a series of pressures on the Band that were met with a resilience born of millennia on the north shore of Lake Huron. What follows examines changes emerging as three generations of Band members balanced the old and new.

Long-Established Lives

Over eons, a big-game hunting Palaeo-Indian culture on the north shore of Lake Huron adjusted to easing climatic conditions and resulting forest growth. The Shield Archaic culture (8000 BP) in turn evolved into a woodland culture some three thousand years ago. The Precambrian Shield environment influenced the whole of Anishnawbek life: dome-like, stick-based dwellings, birchbark canoes, snowshoes, and toboggans all reflected an emphasis on mobility. Local resources—bark and plant fibres, stone, skins, antler, wood—supported hunting, fishing, and wild food gathering.

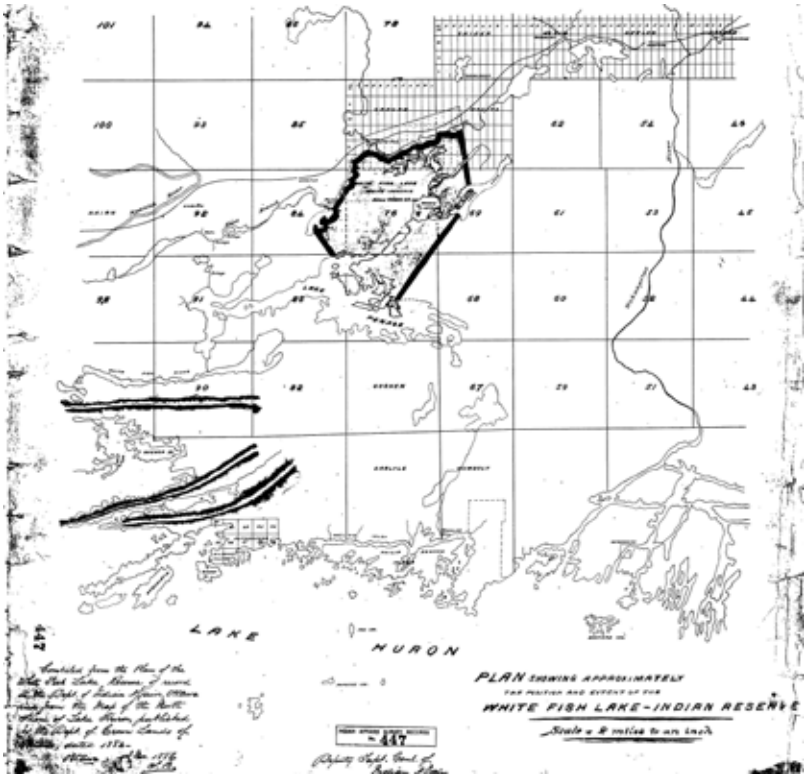


Figure 1: WLIR on North Shore map.

Trade with Iroquoian peoples to the south brought horticulture and new tools.¹

By clan, lifestyle, and language, these peoples were aligned quite differently from the Iroquoians to the south, but European observers mistakenly attached tribal labels to Anishnawbek clans. Inland from the Huron coast, at *Ab tik kah mak a shing*, peoples self-identified as “amik oododem” (“the Beaver is his *nindoodem*”[clan]). The Amikwa first received newcomer attention in 1636; over the next two centuries, French and then British missionaries and travellers provide only passing comment, but beaver *nindoodemag* appear fairly regularly on early documents, and a major river (the Spanish) was termed the “Amikoue.”² Based at Lake Penage, the Amikwa hunted, fished, collected food, grew corn, and

dwelt in mobile structures, occupying about 6,000 km. There was continuity between ongoing lives and an Amikwa past: fishing and trading on the north shore of Lake Huron, travel south in August to the islands near Shawanaga to harvest corn, and return to the interior for winters.³ Their home area was little known to Europeans who, as late as 1788, saw it a “great solitude, little known or frequented.”⁴ The Atikameksheng were aware of the newcomers, regularly attending gifting ceremonies from at least 1782, and supporting the British in the War of 1812. These activities surely reinforced memories of earlier Treaties that recognized Anishnawbek lands and powers, so the Treaties of the nineteenth century were not new phenomena.⁵ More detail emerges as renewed nineteenth-century missionary efforts saw both Roman Catholics⁶ and Protestants working among the north shore Anishnawbek.⁷

While Christian endeavour played a part, the fur trade was more influential in reshaping the Whitefish Lake experience. George Cowan, government interpreter for Lake Huron, established La Cloche post by 1784; a North West Company post at Fort Timiskaming (1790) also played a role.⁸ Outfits from Michilimackinac, Drummond Island, Newmarket, and Penetanguishene soon worked in the vicinity of Whitefish Lake; this crowded field challenged the Hudson’s Bay Company (HBC), which acquired the North West Company posts with the merger of 1821. Governor Simpson’s “defensive” strategy saw a seasonal post opened at Whitefish Lake by 1821.⁹ When Newmarket-based Joseph Vasseur—likely working out of French River—reached Lake Penage on 9 September 1827 with a “formidable” outfit, the HBC took action, building a permanent post at Whitefish Lake. The post gave convenient access to the Spanish, Wanapitei, Vermillion, and Whitefish river systems.¹⁰

By 1829, John McBean, factor at La Cloche, termed “White Fish Lake one of the most important points on the frontier of Timiscamingue.”¹¹ He gave the local Anishnawbek mixed assessments:

The Indians generally of this District are of mild disposition and would be the best to be met with, were it not that they have so many encouragements by the Trades to become rogues. They are now come to that state that it is dangerous to make them some

Advances. They are real Slaves to Liquor and in consequence there is nothing but what then can undertake to satisfy that passion.¹²

Among the Whitefish Lake individuals drawing McBean's attention were:

Boutton, Jeune de Wawanow (1827) Petawanaquit, Amica & family Manwash, wife and sons (1827) Weteakawa (Wetecawa) (1828) Jeune de Grand Diable (1828) "Shakay" (1829) Muskutaypense (1828) "Old Wawanow" (1828)

"Old Wawanow" was Chief; his son gained that status, at least in HBC eyes, by 1833.¹³

Blending traditional modes and the fur trade was a challenge: the Band travelled regularly to La Cloche—the post was near traditional fishing locations. They came not just to fish and trade, but for gifts of tobacco, corn, flour, sugar, and "grog," intended, wrote McBean, to fend off independent traders and dissuade the Band from travelling to government gifting ceremonies.¹⁴ The Band now won plaudits from McBean, who in 1830 wrote:

of the Indians at Whitefish Lake, I feel happy to find that they continue staunch to the Company, notwithstanding all the expenses and trouble your Opponent has undergone to render the reverse; consequently I hope that will exert themselves well between this and spring, so as to complete full the good opinion we have of them.¹⁵

As the Whitefish Lake post lay under siege by "opposition" traders from Penetanguishene, Newmarket, and elsewhere, the HBC used alcohol to "hunt the frontier area so hard as to keep competition out."¹⁶ Angus M. Anderson, a trader based at Lake Nipissing, swore out a complaint in 1836:

in the month of May ... he went to an Indian named Nawway-gehick—who was ... bout 80 or 90 miles from Lake Nipissing—to purchase some furs which he was aware the said Indian had in his possession.... The Indian refused, saying "I dare not do so—if the Big Trader (meaning the Hudson [*sic*] Bay Company) finds out, or even thinks that I have sold furs to any but his own people, he will beat or kill me, or otherwise ill treat myself and my family.... I would rather deprive myself and family of what things we actually want, and which you sell to us much

cheaper than the Big Trader does, than run the risk of being killed or beaten half to death by the Big Trade and his people.¹⁷

Such methods promoted the wholesale destruction of wild life. Governor Simpson conceded in 1841 that, "Lake Huron ... district is much exhausted in fur-bearing animals"; maintaining posts there would check "encroachments of rival traders."¹⁸ Making the best of it, in about 1830 the Whitefish Lake Band moved its main village north from Lake Penage to a site adjacent the post. The Band by then relied significantly on the trade. Numbering only about one hundred persons, the Band was "constantly exposed to the severest privations."¹⁹ Indeed, La Cloche reports frequently (in 1829, 1820, 1831, 1832, and 1835) noted that the Whitefish Lake Band was "starving," usually in the January–February period.²⁰

Dealing with More White Impositions

Privations to "Indians" could be ignored, but political and business demands for an open northern frontier prodded a long indifferent colonial administration into action. Pessimism and inaction were replaced by optimism: new Geological Survey and Crown Lands surveys were launched, most notably by Alexander Murray, assistant geologist to the Geological Survey, and A. P. Salter and his assistants for Crown Lands. The geologist and surveyors enthused about "valuable timber," "extensive tracts of land fit for settlement," and a "salubrious" climate.²¹

Optimism rose exponentially, given a mining boom on the American side of Lake Superior. By 1847, some forty-eight locations were licensed on Lake Huron; Upper Canada Mining's "Wallace Mines," twenty-five kilometres east of La Cloche, lay near Whitefish Band territory.²² Resource dreamers cast the Anishnawbek either as fading "remnants of the ancient lords," or, more often, barriers to the "public good."²³ The government moved: Alexander Vidal and T. G. Anderson were directed on 4 August 1849 to "ascertain the expectations of the Indians concerning the North Shore lands."²⁴ "Promotion" hung heavy over the process. Vidal was told to ascertain:

whether or not there be localities in which limits of land which may be rendered available for tillage exist in the vicinity of the Mining tracts or otherwise in situations which may some short time hereon be opened for development by an agricultural

population ... positive information from reliable sources is highly desirable.²⁵

Vidal and Anderson's report opposed cash payments, urging instead the reservation of tracts for the Anishnawbek, effectively limiting bands to "occupants," rather than proprietors of the land.²⁶ The resulting reserves, negotiated by the far-from-disinterested William Robinson, precluded much financial gain, so area Anishnawbek populations often sought "hard" goods (axes, saws, hoes, and other "useful articles") promised by the Treaty provisions. Bands living traditionally may also have deemed monies as less significant than "guarantee[s] of continued hunting and fishing rights, and the promise that they could keep their usual planting grounds."²⁷

As the Treaty-making unfolded, the dimensions and location of the Whitefish Lake Reserve remained murky. According to Vidal and Anderson, it lay "between the Lake Band and the height-of-land about White Fish Lake."²⁸ The Robinson-Huron Treaty granted Shawenakishick's Whitefish Lake Band "a tract of land now occupied by them, and contained between two rivers, called Whitefish River and Wanabitateke, seven miles inland."²⁹ On 14 July 1851, an Order in Council assigned the survey of all North Shore reserves to J. S. Dennis and J. W. Keating. When Dennis resigned for "family" reasons, the Whitefish Lake and nearby Wanapitei reserves were unsurveyed.³⁰ Keating saw no cause for worry:

Wé,nah,bi,té [Wahnapiatae] and Whitefish Lake ... are from six to three days travel inland with numerous Rapids and portages intersecting the difficult and barren country. There is no likelihood indeed hardly a possibility of the surrounding country ever being settled in the face of the obstacles of access and the sterility of the soil. I should therefore beg to suggest that in those two cases a mere indication by monuments of the extent of the tract should be considered sufficient thus avoiding the very great delay attending the transport of a large party with provisions into the interior & the expense of survey from which no commensurate benefits can be derived.³¹

Keating thus denied local Anishnawbek input into the size and location of their reserves.

Scrutiny, Assimilatory Pressures, and Responses

The lack of information and survey was portentous, for the Treaty gradually cost the Whitefish Lake Band lands and control. New, giant districts provided basic administration; officials then sought “improved communications.” Dreams of a “north shore” canal and a “Great Northern Road” collapsed, but a Shield-traversing railway scheme proved serious; Dominion Statute 36 Vic. 1873, C. 71 provided for construction of a railway line from Lake Nipissing to the Pacific Ocean. The Canadian Pacific Railway’s (CPR) “all Canadian” route bisected the Whitefish Lake Band’s traditional territory.³²

Railway access drew increased attention to the resource potential of the North Shore. Coastline timber berths were cut in the 1850s; by 1870, timber surveys reached the southern shores of Lake Penage, with the firm Staples & Schulenburg cutting on the Band’s doorstep.³³ The huge timber sale of 15 October 1872 drew timber surveys ever more inland: William Bell headed to Whitefish Lake to survey the outlines of berths 60, 61, and 43.³³ Through surveys of this sort, plus work by the Geological Survey, the Crown Lands Department could by 1877 provide considerable detail on the timber, soils, minerals, and topography of the region.³⁴

Even as surveyors pressed inland, the coastal fishery of the Whitefish Lake and other Anishnawbek faced new pressures from commercial fisheries in the North Channel. When Indian agents reported Aboriginal concerns, the Ministry of Marine and Fisheries issued a withering attack on “false sympathy with the pretended sufferings which it was alleged they [Indians] must sustain if prevented from indulging in their habitual preference for spearing fish on their spawning beds.” Charles Skene, of the Parry Sound Superintendency, counterattacked, charging that the fishery was threatened “more by pollution of the Rivers & spawning beds by throwing in Saw logs and other Mill refuse and by the great quantities of fish and game of all kinds killed by the white men for the purpose of sale than by the Indians spearing.” Six years later, Manitowaning Agent J. C. Phipps reported a “diminished take of fish for domestic use ... caused primarily by the [commercial] pound nest, which are now becoming numerous along the shores of the Georgian Bay.”³⁵

While resource exploitation, roads and rail, and potential settlement loomed large, the Whitefish Lake Band dealt with an Indian Affairs

bureaucracy that was paternalistic and assimilatory at best; periodic incompetence only made matters worse. Ottawa knew little about the Band prior to 1870; how matters evolved before then is part conjecture and part Band memory, as the documentary record is thin. Bits of “official” information emerge: the first “official” mention of the Whitefish Lake Band seems to date to 1846. Over the next three years, Band members were added to Indian Affairs rolls. Each year’s list is incomplete, averaging less than 80 individuals. Compiling the three years yields about 118 individuals; Indian Affairs census totals for 1850 give a figure of 114. The Annuity Paylist for 1850 lists just 64 persons, and the first Treaty payment lists only 72.³⁶ In 1858, “Shawanakeshick and his Band” reportedly held

land occupied by them at the treaty, and contained between two Rivers called Whitefish River and Wanabitsebe, seven miles inland. This Reserve also contains valuable mining locations, and on the Rivers are excellent mill sites; The land in the vallies [*sic*] between the hills is reported to be rich, and well adapted for tillage. The Census Returns of this year give 92 individuals as occupying this Reserve, and sharing the annuity. 10 families, numbering 28 persons, have joined the band, which in 1850 only comprised 62 people.³⁷

Among these people, HBC reports single out only a few individuals, if quite patronizingly. Among the individuals noted in the 1860s were “Old Deaf,” along with Wahbunemikie, Penaissie, Matigomin, Penaisiewakumekisk, and Mushkagesunaise. Overall, then, their inland territory gave the Whitefish Lake Band a low profile: family groups hunted, fished, and gathered the local flora; “garden locations” at Vermilion, Whitefish, and Fairbank Lakes provided corn, potatoes, and beans. Other goods came in exchange for furs, or, rarely, maple syrup.³⁸

Then, commencing in the early 1870s, surveyors, speculators, and the CPR main line slashed through Whitefish Lake lands; the Railway Syndicate’s Algoma Branch passed just north of Whitefish Lake. Easy access to the region via rail connections posed new challenges to a Whitefish Lake Band balancing long-established lifestyles with new situations. Annuities were more often spent, as Indian Affairs approvingly noted, on “hard goods,” ranging from axes to hoes, saws to ploughs, as the “Bands

of Indians settled on the main land” applied for “various implements of Husbandry and other useful articles.”³⁹ In 1871, the census reported 133 Indians living at some ten locations, most notably Vermilion Lakes — where there were “extensive gardens”—and also “Wanabetting,” Penage, Onaping, and Whitefish Lake. In 1875, the Band reportedly numbered 144 individuals, not many more than in 1850.⁴⁰ According to Indian Affairs, the Band was “orderly and well behaved” when compared to the Bands facing alcohol-induced problems prevalent nearer the coast.⁴¹ Spiritual views were in flux, with a large majority maintaining long-held views but also adopting Christian beliefs.

The slowly growing population faced renewed Christian missionary work, as the settlement frontier pushed ever nearer. In 1857, the Roman Catholic Rev. Hanipaux claimed 48 Whitefish Lake converts, with 45 “Infidels”; in 1875, Jesuits from Wikwemikong claimed the full allegiance of the Whitefish Lake Band. Yet the 1871 Census records 27 Catholics, 8 Protestants, and 98 “pagans.”⁴² Thus, Indian Affairs worried that the Band had “no opportunity for religious or moral training.”⁴³ That soon changed: a “regular” Indian mission existed at Whitefish Lake by the late 1880s. Originally for “Lac au Poisson Blanc,” under Fr. Jos. Specht and later Fr. Desautels, it expanded beyond “Atikamegoshing” to Onaping and Vermilion Lakes. From 1905, the mission refocused on the reserve, as the St. Guillaume/St. William mission of the Sault Ste. Marie Diocese.⁴⁴ New religious “enterprises” emerged: rail access aided a renewed Methodist mission about 1890. Construction of chapels by both churches led Indian Affairs in 1897 to praise the “lively religious interest” of the Band. The praise reflected standard assimilatory views; not surprisingly, it ignored still significant traditional beliefs.⁴⁵

The fur trade, too, persisted, but changing environments and a half-century’s exploitation took their toll. Transfer of Lake Huron operations to the Montreal Department in 1857, cash payment for furs, even servicing of the La Cloche post by steamship all spoke of change. New revenues earned through aid to government geologists and surveyors—hastening North Shore exploration and the recognition of its potential—speeded its demise. Pressure on local HBC personnel led to ever more aggressive tactics that did not bode well for the Whitefish Lake Band. In 1862, Joseph Boyer wrote to Peter W. Bell, his superior at La Cloche:

Dear Sir its reported by one of Whitefish Lake Indian that the oposition is Coming—they are now Redy to be up only waiting for their mens from the Sault Ste Maries—and coming with Whiskey—have they permission to sell Whiskey more then any others Cant we sell Whiskey gest as well as them of course they will doe something only for their Grog the licker is a great thing amongst the Indian they will refuse any thing and goe for whiskey—Cant I obtain permission from your to have a cuple of Barrels and pour like them—but all the Indians that noes their coming say they will not take any thing to them but some of them will steel away to them when they will find a chance—they say that their good and provisions are very low—but the saying of others is not all ways correck, their [the independent fur traders'] wintering Quarters is not far from Lake Huron Wm Murray Saw Mill at the end of the River there is a lack where is a house left by Logs cutter before where they will stop a good way from here ,,,, I heard that these Traders are not giving any Dets to any Indians but say they will Kepp trading wine. their winter quarter they have the waves from Lake Huron when it Blows hard so I am a good way from them but still I will my best for the Company as long as I can.⁴⁶

In less colourful language, James Cumming reported in 1872:

White fish Lake [is] a Small outpost of Lake Huron District situated some 7.5 miles north of Lake Huron.... The Indians at this place are on the whole faithful and attached to the Company's interests, and are industrious, active hunters and good gardeners. The Trade during the past 10 years does not present any very marked change, beyond that within the past few years a gradual falling off in the number of Beaver returned is observable, altho' the returns of that commodity for Outfit '71 are slightly in excess of the Year previous; at the same time the Minks have increased in corresponding ration, other skins have not materially decreased. The Indians attached to this post are in the habit of repairing Annually to Lacloche (the depot) for their Winter supply of provisions, the Establishment at White fish Lake being

closed in Summer; by this means they acquire a roving propensity and are frequently induced by the many retailers of intoxicating drinks to part with their furs to others than the Honb'le Company. A chance in this respect is very desirable so that if possible the Indians be induced to remain at their post during the Summer as well as Winter and, an improved transit is much to be desired. Transporting supplies with horse & sleighs has been in opporation [*sic*] at several of the Company's establishments for several years past, with more or less success; the same mode of conveyance might with success be applied to White Fish Lake.⁴⁷

By the 1880s, the Whitefish Lake Post was fast declining—desperation saw satellite posts opened “to protect the trade of White Fish Post, the Indians who formerly went there being cut off from White Fish Lake by the C.P.R.”⁴⁸ Better prices could be had in nearby Sudbury; the Band was “surrounded by Traders and Liquor sellers.” The Whitefish Lake Band won praise for remaining “more attached” to the HBC than other Anishnawbek populations, and “with few exceptions honest.” But with lumbering and mining taking over, “their hunting grounds are becoming poorer yearly, many of them having now to go a great distance in search of the chase.” Many local Anishnawbek, however, remained “hunters” on the HBC's “Indian Debt” list. Completion of the CPR's Algoma Branch saw the Whitefish Lake Post moved, in 1887, two miles north to a bluff just south of the Branch, serving as a general store until 1896.⁴⁹ The satellite posts were abandoned. Furs could be sold at Biscotasing or to Sudbury independents, but the trade was small. In 1889, HBC Inspecting Officer W. H. Adams reported that the Indians found “employment in the lumber camps more lucrative” than the trade.⁵⁰

As the fur trade faded, the Whitefish Lake Band faced many new challenges, highlighted by battles over the bounds of its reserve. The immediate catalyst was completion of the CPR's Algoma Branch and HBC concern about its property rights.⁵¹ The HBC first inquired about its posts in 1850; now Joseph Cozens, a provincial land surveyor, was hired to survey the Whitefish Lake property. Cozen's survey of 130 acres was rejected by Band Chief Mongowin as excessive. The HBC argued the land was not valuable; given the firm's firewood, garden, and pasture needs, “the quantity of land desired by the company is not excessive.” When matters came

to a head, the Band was told that the HBC would not be ejected until they ceased business. This arrangement, patently suitable to the firm, upset the Band, which demanded rent. That issue lingered, with the Band finally informed in 1895 that rent could be had only if it surrendered the land.⁵²

Even more challenging land issues arose with the CPR construction; the size of the reserve remained vague to government officials.⁵³ In 1880, Indian Agent J. C. Phipps took every opportunity of speaking with the Chief and the most intelligent Indians of that Band to ascertain from them the boundaries of the Reserved deemed as having been in their occupation at the date of the Robinson Treaty.... [It] will comprise parts of the following Townships as laid down in a Map issued by the Crown Land Dept. of Ontario dated August 1880, Nos. 69, 70, 75, 76, 77, 83 & 84 and will contain about fifty square miles. The Indians state that the Reserve has been occupied by them as a Hunting ground ever since the date of the Robinson Treaty and they desire to have it surveyed as they say the line of the Canadian Pacific Railway passes through it north of Whitefish Lake.

Phipps, not surprisingly, was unsympathetic: he “pointed out to the Indians that the Reserve claimed is of great extent, and inquired whether they would not be satisfied with a smaller area but they do not wish any change in the boundaries made.”⁵⁴

Little wonder: the Band’s traditional lands were substantial; even government documents like the 1871 census lists nine widely dispersed locations.⁵⁵ Phipps concluded that the suggested dimensions were even bigger than fifty square miles. “I cannot,” he wrote, “get their description to fit with any Map to which I have access, and the tract indicated by the sketch [map] would appear to be nearer twelve miles than three miles square.”⁵⁶ The sketch map depicts an area much larger than the eventual reserve, ranging from Kebesahwashkong (probably Lake Penage) on the south to the Spanish River on the west; on the north lay Matagaining and Anenbeninckaming (Vermillion and Mud Lakes) and perhaps even Onaping Lake; its eastern bounds extended past Kinowawing (Long Lake). These boundaries largely parallel the suggestion in the Band’s published history of a traditional territory ranging from “the valley of the Vermillion Rivers eastward to the valleys of the Wanapetei and Sturgeon Rivers, and from Lake Penage north to the watershed.” These glaring differences were “officially” put aside in 1883; given a CPR inquiry about the

limits of the Reserve, Phipps hired G. B. Abrey, a provincial land surveyor, to survey the (much smaller) reserve.⁵⁷

Thomas Johnson, Assistant Commissioner of Ontario Crown Lands, now urged delay:

P.L.S. Abrey is about to make a Survey of the Indian Reserve at White Fish Lake—Lake Huron, for your Department, this Department not being aware of any Indian Reserve there, has this season subdivided townships 70 and 77 as numbered on the Department map of North Shore of Lake Huron. On this plan the Indian Reserves are colored Red, and the Department was under the impression that all Indian Reserves were laid down thereupon. Under these circumstances, I am to suggest if it might not be advisable to instruct Mr. Abrey not to make the Survey at present, as when the Plan & Field Notes of these Townships are in our Office, an arrangement may be made with your Department's satisfaction, also [?] to the Indians and the Indian Department. Whereas if Mr. Abrey makes a survey map, the present inadequate information as given in the Treaty, complications may arise owing to the influx of settlers along the C.P. Railway. This Department does not question the existence of a Reserve there, but merely suggests the above as a mode of avoiding a possible clashing of two Surveys.⁵⁸

The Crown Lands Department surely knew more, for surveys of Waters and Graham townships adjoining Berth 76 were completed in 1883.⁵⁹ Moreover, Crown Lands surveyors were supplied out of the HBC post at Whitefish Lake since the 1850s, and many maps prepared by the Department showed the Band village.

Other complaints were heard, for Abrey's survey placed part of the CPR's Algoma Branch not just within the reserve but near "improvements made by the indians [*sic*]." ⁶⁰The Band, for its part, complained that the CPR was cutting reserve timber. Unbeknownst to the Band, it was the start to a century-long struggle over land and timber rights.⁶¹ In April 1887, CPR Engineer P. A. Peterson wrote Indian Affairs seeking accurate plans for the reserve. A tracing was sent, resulting in more correspondence from the CPR's barristers:

The Algoma Branch of the C.P.R. Line traverses the Townships of Graham and Waters and through those parts of each Township known as Indian lands. On behalf of the Company I have the honor to apply for the Land occupied by the right of way.... The Co. Have located a station in each Township which will be made the subject of a separate communication as I understand that it will be necessary to obtain an Order in Council before purchasing lands belonging to the Indian Department for Stations.⁶²

Clearly, the maps seen by the CPR showed a line through the Reserve! In response, an Indian Affairs memorandum of 24 August reported that the tracing supplied by the Department was incorrect—the CPR line lay north of the reserve. Presumably, the Syndicate was pleased, but cautious—as late as January 1889 the CPR was prepared to buy 83.09 acres of the “White Fish Lake Reserve.” Only in May of that year was the CPR convinced by Indian Affairs’ insistence that their line lay outside the reserve.⁶³

While the CPR was ready to pay, lumbermen hoped only for profit. Speculative holding of area lands dated from the great timber sale in 1872; those who now held the affected provincial berths raised an outcry over the federal “incursion.” Even Aubrey White, Assistant Commissioner of Crown Lands, held out “hope”: as late as April 1888, he referred to the “so called” Indian reserve at Whitefish Lake. Indian Affairs had Abrey’s survey notes on their side, and carefully ignored earlier reports from Agent Phipps. Abrey claimed that “head men” of the Whitefish Lake Band did not think “that their reserve extended to the Wahnapiatae River, but that the bounds which they pointed out to me and the same as now shown in the within returns, represents the reserve that they have always claimed and believed to be that given to them under the treaty.” The dimensions—outlined for the Courts in 1887 by Chief Mongowin, Second Chief Joseph Kabayate, and another band member, Joseph Foy—extended from Whitefish Lake north to Vermilion Lake and east to Wahnapiatae Lake. But Abrey’s much smaller reserve, with a small, separate reserve for the Tagawanini Band, was Indian Affairs’ determination.⁶⁴

Indian Affairs went further, urging the Band to sell its timber to Honoré Robillard, MPP for Ottawa, who applied for the Whitefish Lake timber rights on 18 October 1885. Robillard lobbied hard for the timber

rights. By January 1886, his claim was put forward by none less than Sir John A. Macdonald, who wrote Indian Affairs Deputy Superintendent General L. Vankoughnet urging him to:

instruct Phipps to go to the inland and see about getting the consent of the Indians to the surrender that Mr. Robillard, M.P.P. is interested in. It is so evidently in the interest of the Indians that the timber should be sold rather than be destroyed by fire or otherwise that the surrender should be pressed. If the answer is favourable, please write Mr, Robillard, who will be at Toronto attending the Provincial Legislature.⁶⁵

In April, Robillard wrote Indian Affairs, outlining why he deserved the rights. Having lost timber rights in Keewatin due to federal-provincial squabbling, he said, it “should now have [been] granted me (in lieu) of the limits in Keewatin a tract of timber territory known as the Whitefish Lake Indian Reserve.”⁶⁶ Indian Affairs acted: Phipps obtained a surrender by 1 July. The timber rights were sold on 14 October 1886 to Robillard and J. Riopelle, who quickly sold their \$395 purchase to Francis Bros. & Co. for about \$55,000.⁶⁷

Critics of these actions included the Band, which sent Sub-Chief Joseph Cabyyette to Ottawa in 1887 for discussions with Indian Affairs. The Band learned hard lessons in the machinations of law and government, even as they watched a massive cut take place during the 1888 and 1889 seasons.⁶⁸ Few observers were sympathetic to the Band, but some did suggest dishonesty. John Augustus Barron, MP for Victoria North, represented that view:

If any one will undertake to look at the map covering this Indian reserve, he will plainly see that the surveyors, whether under instruction from the [federal] Government or not I do not know, went out of their way to select this reserve where they did. The treaty speaks of an area of land between two particular waters. I have had an opportunity of seeing the map for a moment, and it was quite possible for the surveyors to have selected the Reserve at other places than where they did select it. It has been selected—so I have been informed, and I have every reason to rely upon the information—where the very best pine is to be found

in the original berths sold by the Ontario Government. That Government, in 1872, sold berths 70, 76, 69, 75, 84 and 83, and the surveyors have angled among these berths in such a way as to take the very best pine that they contain. Hon. gentlemen opposite will see that this must cause a conflict between the purchasers from the vendees of the Ontario Government and the Dominion Government.... I think this is a matter which involves very important rights. If this Government are to resurrect old treaties and lay out Indian reserves, and thereby take away pine and other property which had been sold by the Ontario Government and sell it to their friends, I think we have a right to know it.⁶⁹

This issue of jurisdiction—and competing levels of patronage—wound up before the courts, but not before Francis Bros. & Co had cut some ten thousand logs and one thousand pieces.⁷⁰

The case—*Attorney General of Ontario v. Francis et al.*—has a high profile among scholars of Native law.⁷¹ The case also drew extensive attention at the time because of its political element, not to mention its counsel, which featured no fewer than three QCs and one MP (Barron). Initiated by timber issues, the case took on broader parameters. As Mr. Justice Ferguson wrote in his judgement,

As the locality of the reserve had to be determined, and as it had to be found as a fact whether or not the cutting of timber complained of had taken place upon the reserve, it was thought for various reasons that it would be convenient to take the evidence of the Indian witnesses at or near the place in question, and this evidence was so taken. During the time of taking the evidence I was led to think that the only question to be determined between the contending parties was as to whether or not the timber, the cutting of which was complained of, had been cut upon land outside of the boundaries of the reserve, it being, as I thought, conceded that if it had been cut upon the reserve the cutting was done under proper authority so to do, but if done upon land not part of the reserve, it was wrongly done without any authority. These statements were certainly made more than once by counsel. Upon the final argument, however, counsel dissented

from this as being the sole matter and contended that whether the cutting was done upon the reserve or not the property in the land and timber being (as was contended) vested in the Ontario Government, the cutting complained of was wrongful and could not be justified under any licenses issued under the authority of the Dominion Government. The plaintiff asks, as I have said, that the true locality of this reserve should be declared.⁷²

Ferguson relied heavily on Band testimony, taken at Naughton for four days beginning 12 September 1888, and gave considerable weight to the rights and powers of the Band council. "I think that," he wrote, "for this or a like purpose this band of Indians should be considered in the same position as any other high contracting power or government." Chief Mongowin, representing the Band council, drew special plaudits. Ferguson praised Mongowin's testimony, notably his description of the reserve's boundaries as defined in 1850:

Shawenakishick was my father and the chief before me. I remember my father getting a message to go to the Sault to see about a reserve for the band.... I remember my father calling a council in consequence of getting the message. The meeting was held where I now live at Whitefish Lake. I was present for the meeting. My father told or asked the people: "shall I reserve so much", and they answered "Yes".

Mongowin also testified that Shawenakishick met privately with W. B. Robinson, outlining the Band's reservation expectations. Ferguson's praise notwithstanding, his January 1889 judgement reduced the extent of the reserve by some 6,911 acres; the CPR property lay north of the new limits.⁷³

Lands could be lost or altered in more direct ways. Massive timber cuts had obvious yet little documented impacts; clearly, the environmental costs of lost white and red pine, hemlock, spruce, and more were significant. Less well recognized was the impact of lumbering and pulp cutting on rivers and lakes. Long encumbered seasonally with timber (the Vermilion saw some 1.3 million logs pass the reserve about 1903), waterways became resting places for debris and sunken logs. No less significant were "improvements" to the Vermilion, Spanish, and Whitefish

watersheds; the Vermillion River Boom Company, for instance, maintained the river for timber-running purposes from at least 1902 to 1930.⁷⁴ Among the typical improvements were dams that raised water levels. One such dam, built in 1890 by the Chew Lumber Company at the exit of Lake Penage, raised water levels about four feet, drowning the reserve's southwestern fringes. Some lands were regained when the dam collapsed in the 1920s; a replacement dam built in 1933 raised waters about half as much. The Band would struggle for a century to gain compensation for the lost lands.⁷⁵

While jurisdictional issues eased from the non-Native viewpoint, rights to pine on the reserve passed through several major operators, including the Saginaw Salt and Lumber Company, until winding up in the hands of the Traders Bank in 1902. The Band tried to earn some income in the remaining forest, petitioning in 1893, 1895, and 1900 to cut spruce and other trees for pulpwood and cordwood. The new century would see a move toward tie and telegraph-pole cutting. Ironically, in 1900, officials at Indian Affairs warned the Band to be careful not to cut pine and other reserve timber in the hands of Saginaw Salt and Lumber! The Michigan firm, for its part, surely cut most of the remaining quality timber, for they paid over \$26,000 in timber dues between 1900 and 1903.⁷⁶ Indian Affairs also sought control over the reserve's remaining forest resources, winning a surrender of hemlock, spruce, and tamarack in 1903—estimated at 5.6 thousand feet, board-measure (MFBM) hemlock and 115,000 hemlock and tamarack railway ties). Only four hundred acres of forest were reserved for the Band.⁷⁷ Determining who had timber rights became a tale of twists and turns. Deciding what trees could be cut on the reserve, who could do it, and who held the power to make those decisions, caused many headaches. One of the best examples of these dilemmas arose over a lumber “depot” on the reserve, erected for the convenience of firms cutting to the south and west. Significantly, the firms had an easier time of it when the Band did not approve. When the Band saw some advantages in allowing use, Indian Affairs stepped in to prevent “problems.”⁷⁸

In 1896, local businessman Michael O'Brien, from the then-thriving village of Whitefish, some sixteen kilometres to the north, hoped to open a combined lumber “depot” and store on the north shore of Lake Penage.⁷⁹ His application for a fifty-acre lease had backers: John Bertram of the

Collins Inlet Lumber Company wrote:

We are informed by Mr. Michael O'Brien of Whitefish P.O. that he is making application to your Department for a lease of Fifty Acres of land on the North 254 Shore of Lake Panage [*sic*]. . . . Mr. O'Brien is favourably known to us and we have the honor to request that his application be granted. A number of our Employees have to leave our camp in the bush at different times through the Winter and as the distance is considerable from our Camps to the nearest station of the C.P.R. they sometimes have to stay out all night on the trail to their serious risk. The land Mr. O'Brien desires to lease is in a direct route from Lake Panage to Whitefish and as he contemplates building a House or stopping place it would be a great concession to our men and also to those of other Concerns who will soon be operating in the same neighbourhood. For these reasons if the application is in accordance with the Policy of Your Department we would recommend that it be granted.⁸⁰

The well-orchestrated effort was for naught: Indian Affairs files contain both a nondescript reply refusing the application and a more provocative draft reply. The latter suggested the depot was perhaps necessary, but should not be operated by O'Brien. Instead, "a good Indian might be induced to take up land there, build a house thereon and give the required accommodation." But Indian Affairs officials seemed doubtful that a "good Indian" could be found; the logic behind that refusal was that "liquor would undoubtedly be sold" at the depot. With a local entrepreneur rebuffed, the timber interests decided upon direct action. In March 1896, noted lumbermen Thomas Hale and J. R. Booth sought two leases on the northeast shoreline of Lake Penage, well within the reserve; Booth assured Indian Affairs that the Band approved. Hale and Booth confidently undertook surveys while awaiting the grant.⁸¹

The Band wrote Indian Affairs to protest:

We the undersigned Chiefs of the Whitefish Lake Reserve beg leave to inform you that Mr. Thos. Hale Lumberman has surveyed out a site whereon to build a depot on Lake Penage on one of the Islands belonging to our Reserve. Said Thos. Hale has not

consulted us in the matter and therefore did not get permission to build on this part of the Reserve from us.

We therefore humbly Pray you that said Thos. Hale be removed as we do not wish to have him occupy an Part of the Reserve.⁸²

The letter from Chiefs Wahbenimeke and James Cabayette caused a stir. A handwritten note on the reverse of the Band's letter indicates there was some thought that Hale "mislead" Indian Affairs. But there was support for the lumbermen: Hayter Reed, Deputy Superintendent General of Indian Affairs, "regretted that this [survey] action was taken before the Indians were consulted, and it may have the effect of making it difficult to obtain a surrender." Indian Affairs lobbied for Hale and Booth, urging the Band's consent. Only when the Band again refused did Indian Affairs turn down the lumbermen's request. A last effort by Thomas Hale failed to sway the Band, so the issue seemed dead.⁸³

Not so. Hale and Booth's failure encouraged Michael O'Brien, who in the fall of 1897 again sought permission to establish a "trading post" at Lake Penage. Lessons had been learned: O'Brien assured Indian Affairs that a petition of support from the Whitefish Lake Band was on its way. O'Brien, who now wished to buy, argued that the post would aid the Band, which had seen the HBC post close over a year earlier. A veteran of seven years trading with the Band, O'Brien insisted the post would pay, as it was on a traditional Indian canoe route west and linked by lumber trail to the CPR. Such a post was, in his view, vital: the Whitefish Lake Band was "exceedingly poor and will continue to be that way unless some enterprise is started in their behalf like the one herein described." O'Brien closed with an "additional" note offering one more incentive: he would not even run the store. Instead, "two Indians who are favourably known to their brethren and to your Department will be there constantly to do the trading with the Whitefish Lake Indians."⁸⁴

O'Brien pressed his case at year's end, hoping both for a quick response and a low price, "as the location is in a very remote place being 9 miles from railway communications (from here [Whitefish]) and only a trail [for travel] as yet." The request for so broad a lake frontage (ten acres frontage, five acres deep) was curious; in any case, O'Brien produced what Hale and Booth could not: a Band petition of 30 December 1897 agreed

to surrender fifty acres to O'Brien. "We conclude," said the petition, "this is a grand opportunity ... and trust the proposition to take effect without fail."⁸⁵

Ironically, with the Whitefish Lake Band behind him, O'Brien now faced as opposition Indian Agent B. W. Ross, who urged no more than a ten-year lease. Even that arrangement, he felt, required strict rules of behaviour, backed by a threat of forfeiture. When senior officials offered such terms to O'Brien, he was much "surprised that an unfavourable report has been received from your Local Supt. Manitowaning, and such have been received is due to a jealous rival in business who is evidently better acquainted with your local Supt. than I." O'Brien pointed out that he had undertaken ice cutting on Lake Penage and was collecting sawdust for that ice; the goal, he wrote, was to preserve fish he hoped to get from the Band. Surely such clear commitment deserved at least a twenty-year lease. But a ten-year lease was all that was offered.⁸⁶ As winter wore on, the bureaucratic noose tightened. Letters in February and March reported that the once-eager Band had changed its mind. On 18 February 1898, a Band meeting of fourteen family heads, recorded (organized?) by Ross, confirmed the anti-O'Brien stance. Second-Chief Cahbeate (Cabayette) spoke for the group: "Our forefathers kept this Reserve for their children & it is our duty to keep it. We have surrendered a large portion of this Territory to White men—& only reserved a small portion of the land. There is plenty of land outside of the Reserve. Let him build there." The Band now formally opposed O'Brien's plans, and even claimed O'Brien never had its support. "Whoever," the Band wrote, "sent our names to the Indian Department has forged them." What was noted only in a covering letter from Indian Agent Ross was that the Band admitted to discussing the matter with Joseph Esquimaux (who represented O'Brien).⁸⁷

Armed with these letters, Indian Affairs officials warned O'Brien to stop spending on his project; still, he moved ahead with a survey. "Surely," he wrote, "at this critical moment I will not be defeated." O'Brien also launched a counter-offensive. He intended, he wrote, "getting out of [the] Hotel business" if his Lake Penage venture reached fruition. All for naught—notice of refusal was sent on 2 March 1898. O'Brien tried a new tack: would an Indian be granted a site of "say Fifty acres"? The answer: yes. Soon afterward, a letter in O'Brien's hand requested a location

for Dominic Pinae of Whitefish Lake and the aforementioned Joseph Esquimaux of Whitefish River. Pinae soon quit the arrangement, supposedly “afraid of the [other] Band members.” He was replaced by John Chimonence. At this juncture the tale dissolves; the Indian Affairs records provide no further details.⁸⁸

New timber-based troubles began in 1906, when Dan O’Connor acquired the rights to most of the reserve’s hemlock, spruce, and tamarack. Substantial correspondence followed, as O’Connor and others argued over timber rights—even as Indian Affairs urged limit holders to cut timber and even threatened speculators with loss of license. But for naught—as a retrospective of Berth 68 put it, during “the period 1906 to 1916 no effort was made to operate, the licensee giving various excuses which were accepted by the Department and renewals granted.” When W. G. Gooderham acquired Dan O’Connor’s limits but did not cut, Indian Affairs finally acted. J. D. McLean wrote in 1914 that timber rights not worked would be cancelled: “the Indians interested are not being fairly treated by such continuous non-working of this limit.” Yet the Department wanted timber cut. In April 1916, the Indian Affairs consented to include “the pine timber in the license ... on payment of royalty of \$5.50 per MFBM and on condition that the license finally must cease on April 30th 1922.” The offer saw some 695,733 feet, board-measure (FBM) cut by spring 1920; the Band’s dues were a smallish \$999.63.⁸⁹

Perhaps it was with such smallish amounts in mind that the Whitefish Lake Band adamantly refused to surrender its hold on the paltry four hundred acres not yet granted to timber firms. The Department certainly tried: Timber Officer H. J. Bury visited the Band to “advise” the Chief and councillors to surrender their last remaining timber rights. Bury arrived with blank forms establishing the surrender. Interestingly, the Band rejected his “advice,” retaining their small timber patch. Chief Petahtagoose told Indian Agent Lewis that the Band “would not surrender under any consideration ... the timber was reserved for their use by their forefathers and they intend to retain it for their own use and for the use of their children.... They would not listen to any proposition.”⁹⁰

Matters took a new twist in 1915–16, as the Band confronted the issue of pollution. War brought a boom to the area’s nickel mining industry, and the resulting pollution from Canadian Copper’s roast yards annoyed

the populace in Copper Cliff and Sudbury. The “solution” was moving the roast yards farther away, or, put another way, much closer to the reserve. As Frank Cochrane, Minister of Railways and Canals, wrote:

This will serve as an introduction to you of a personal friend of mine Mr. G. R. Silvester, Assistant President of the Canadian Copper Company, Copper Cliff. As the ore that this company is smelting contains considerable sulphur, they have a good deal of difficulty in connection with their roast yard, as in certain weather the fumes drop down and vegetation is injured. With a view of trying to destroy as little property of their neighbours as possible, the company suggests to move their roast beds, but their removal as planned may perhaps affect some of the timber on the White Fish Indian Reserve. For this reason he would like to discuss the proposition with you. I shall be please to vouch for Mr. Silvester and the Canadian Copper Company, and you can rest assured that any promises made by Mr. Silvester, or any agreement you may reach with him will be faithfully carried out.

Canadian Copper need not have worried. After an “interview” with Silvester, J. D. McLean wrote:

in regard to the question of any possible claim that may be made for damages in the Whitefish Lake Indian reserve by sulphur fumes from the proposed sulphur beds to be established by your company some miles northwest of the reserve, I beg to say that no action for damages could be instituted by the Indians themselves. If any complaints should be made to the Department by the Indians of damage done, the same would be fully investigated by an officer of the Department, and the company would be called upon to pay whatever might be found to be the value of the actual damage done. As to the timber on the reserve. I may say that any claims for damage to the spruce, hemlock or tamarack would be a joint one by the Department on behalf of the Indians and the timber licensee, Mr. W. G. Gooderham, of Toronto. Any damage done to other classes of timber would be required to be adjusted with the Department. As far as the Department has information,

the merchantable pine timber has been cut and removed from the reserve. Your company can rest assured that in dealing with any claims that may arise, there will be no effort made to ask or demand more than reasonable compensation for damage.⁹¹

Soon, sulphur dioxide emitted by Canadian Copper's O'Donnell roast yards was killing white pine and severely damaging many other plants on the reserve.⁹² Little wonder: the yards lay just to the north, so winds easily delivered the acidic smoke. Taken aback, in 1916, the Band sought compensation from the Company; Assistant President Silvester promised to "look into it." More complaints followed. In September 1917, G. M. Miller, the district Crown attorney, wrote to Indian Affairs. Miller had learned from Jim Nootchtai, "Indian Policeman at the Whitefish Lake Indian Reserve," that "unless something is done, the Reserve will not be a fit place for the Indians to live in as the atmosphere is continually charged with sulphur fumes, and the trees and crops on the Reserve are being killed."⁹³

Indian Affairs finally took the sulphur damage more seriously, sending timber inspector H. J. Bury to assess the situation. He was shocked by the primitive open roasting; the yards, he wrote, were "large heaps of low grade nickel and copper ore ... burned in the open air." Bury felt that some seventeen thousand acres, about a third of the reserve, was seriously damaged. It was, he remarked, difficult to determine compensation, since the merchantable timber was not in Indian hands. Young dead pine, too, were a difficult matter; Bury estimated a "future" value of \$4,675 for pine lost. He then applied a principle of "future loss," reducing the value to a sum that might, with three percent interest, achieve that sum in the time it took pine to mature. The "present" total, wrote Bury, would be \$793.50. As for individual Indian gardens, he supported personal claims. Bury claimed that Canadian Copper was ready to "pay all just claims."⁹⁴ Three Band members received \$140, but the firm found the claims an annoyance. Not much could be done about individual complaints, but to eliminate timber compensation, the firm purchased the timber rights to Berth 68 in the reserve.⁹⁵

Indian Affairs, as ever, wanted timber sales, arguing that the sulphur damage and the ever-present danger of fire made it imperative to sell all

usable standing timber. In 1919, it despatched Indian Agent Lewis to make the case. The Band thought otherwise:

On July 23rd last, ... I put the question of surrendering the balance of the timber, such as birch, poplar, etc., to the Department of Indian Affairs to be sold to The International Nickel Company [as cordwood for the roast yards], before the members of the Band but did not get much satisfaction from them. Before I left the Reserve they informed me that the Band might surrender the timber within three miles of the Canadian Pacific Railway but they would not surrender the balance of the timber on the whole Reserve, and that they would talk the matter of surrendering the timber near the Railway over between themselves and would advise me as to their decision at a later date.⁹⁶

J. D. McLean informed John Lyons Agnew of INCO in 1920 that “the Indians are averse to surrendering this class of timber.”⁹⁷

The Band now opposed sales of *any* sort. Lumberman Conrad McGuire sold his lumber shanty to William A. Hunter of Whitefish, who would use it as a “half way house” for tourists journeying from Whitefish to Lake Penage. These were not new issues for the Band. Chief Joseph Cabayette had claimed rights to lumber firm buildings as early as 1893; Indian Affairs’ response then was that materials should be left behind or dues be paid on them.⁹⁸ To ensure some gain for the Band, Chief Michel Faille seized the building. Hunter now sued McPherson and McGuire, seeking to recover the \$125 charged by the Band. The Courts determined that as limit holders, the firm owned the lumber and the right to sell. The implications to the Band were significant: if Hunter had a rest spot, he would be “in active competition with the Indians who at present earn a considerable livelihood by transporting tourists through their Reserve to Lake Penage.” In the end, then, the Band saw the courts reject their claims.⁹⁹

Meanwhile, the firm Ludgate & Thompson began operating in the winter of 1924–25. Even at this late date, their cut was haphazard, with the firm cutting beyond its limit. As R. J. Lewis put it:

Through some error of the Chief of the Whitefish Lake Indians in pointing out the boundary the company cut some three or four hundred saw logs on the four hundred acres reserved for the use

of the Indians.... In conversation with the Chief of the Band he admitted that the logs were cut through his mistake in pointing out the boundary line to the manager of the company, and it was not any fault of the company whatever.¹⁰⁰

Remarkably (predictably?), “responsibility” was put on the Band! Between the two firms, McPherson & McGuire and Ludgate & Thompson would cut more than two million FBM of hemlock, spruce, and pine during the winters 1924–25 through 1926–27. As ever, the Band’s gain was minimal, with attention to getting the timber cut.¹⁰¹ Only when the Great Depression took full hold, ending outside interest in the timber, did Indian Affairs consider Band rights. When the Department received an application to cut a hundred-or-so logs for the construction of camp buildings on an island in Lake Penage, it was refused. The applicant was told to buy timber from the local Band. The Department, having sold the reserve limits many times over, finally opted to “protect” the timber (now largely second growth). A query from Chapleau lumberman George Nicholson drew the response: “the Indians of the band are apparently well satisfied to retain this timber for their use, and the Department would not be disposed to consider placing the reserve under timber license again, without first securing their consent.”¹⁰² Timber control had, in part, returned to the Band after a very long absence.

This change reflected depressed economic circumstances, but also sprang from an increasing determination by the Whitefish Lake Band to control its timber. After rebuffing Indian Agent Lewis in keeping four hundred acres for itself, in 1924 the Band asserted control over the timber in the broader reserve by cutting cordwood for sale. The cutting raised the ire of Allan McPherson, who protested that the Band had no right to cut cordwood in his limit.¹⁰³ Chief Joseph Petahtegoose responded to Indian Affairs with his sights set on McPherson:

Kindly inform me when that portion of Whitefish Lake Indian Reserve which is in Louise Township was sold and who sold it. Also, how it is the Indians of this reserve were not notified of the sale, as they do not know anything about it. The present License holder is Mr. Allen [*sic*] McPherson and he claims all the

merchantable timber on this portion of the Reserve. Kindly let us know all the information you have on this matter.¹⁰⁴

The Chief and council visited R. R. McKessock, a Crown attorney in Sudbury, seeking legal advice. McKessock wrote Indian Affairs indicating the Band's concerns. A brusque response stated that the limits were McPherson's: the "Indians have no reason to complain that their rights are unnecessarilyily [*sic*] curtailed. An extensive area of the reserve is still available for their own use."¹⁰⁵ The Band, through McKessock, gave a quick rebuttal, pointing to

...a decision in that case [*Attorney General of Ontario v. Francis et al.*] whereby no Indian lands or timber could be disposed of on this reserve without the Indians having first passed a resolution agreeing to it and that no such resolution was passed in this [McPherson] case. They fail to see why anyone had the right to dispose of the timber in question without such resolution and they have asked me to enquire at whose instance this was done.¹⁰⁶

McKessock also forwarded a petition of complaint by the Band. Indian Affairs insisted there was "no agreement"—but the Superintendent General assured the Band that when the present license expired on 30 April 1926, it would not be renewed. Significantly, if vaguely, he noted that "in future in connection with any such matter the wishes of the Indians will be given due consideration."¹⁰⁷ In May 1925, Chief Petahtegoose wrote again in a determined tone:

You say this portion of the reserve was sold to Allen McPherson in 1919, or at least the timber was. How is it the Indians of this reserve know nothing [of] that sale nor have they any record of sale of timber on that portion of the reserve? The reason of my writing you is this: the Indians have had permission in the last few years for cutting wood for sale to the Victoria Harbour Lumber Co. at Penage Lake from Mr. R. J. Lewis Indian Agent at Manitowaning and Does [dues] for same having been paid to the Indian Department. Now as in former years the Indians have been cutting wood there for sale. Now they have been notified to stop cutting and are not allowed to remove what they have cut.

The present owner claiming to be one John Ajola and is claiming compensation from Victoria Harbour Lumber for 700 cords cut in former years. Was the hardwood also sold? And does this Timber revert to the Indians when the five years are up.¹⁰⁸

Clearly, the Band was not sanguine about controlling timber cutting, a stance borne of both experience and a sound assessment of Allan McPherson. In April 1927, Indian Affairs, after many pleas for dues, finally seized timber cut for McPherson due to non-payment.¹⁰⁹

Lifestyles in Evolution

Even as the forests presented challenges, the natural settings of the Whitefish Lake territory offered opportunities that proved crucial as non-Native exploration, resource extraction, and population influx saw a new emphasis on cash income.¹¹⁰ The HBC encouraged cash transactions after about 1850. But debt long persisted, with most Band members in debt at the Whitefish post until it closed. Other early sources of cash were the surveyors working for Crown Lands or the Geological Survey of Canada, who needed aid in working through the terrain. A new influx of surveyors working timber berths and CPR lines followed in the 1870s. Whitefish Lake was ideally located, as provincial surveyor W. R. Burke put it, for “engaging Indians ... on surveys.” Indian Affairs itself added a new economic element through annuity and interest payments. Indian Agents and the regulations that they enforced also hastened other social changes.¹¹¹

Predictably, cash economies and the decline in the roving lifestyle of the fur trade was applauded by Indian Agents, who in about the mid-1870s began providing detailed reports on Band “progress.” Formal education won particular praise as a key element in assimilation. The comparatively isolated position of the Whitefish Lake Reserve temporarily kept it beyond easy reach of Indian Affairs education policy, but a school opened in 1879; on 31 July 1880, an Order in Council authorized a \$200 annual payment for a teacher from the Indian School Fund. Funding for a school building commenced in 1881.¹¹² Classes were held in “the house of an Indian who lent it during the summers for that purpose,” with James McKay the first teacher and Indian Agent Phipps as the visiting superintendent. A “suitable” building was erected in 1885, with a classroom on the ground floor and teacher’s residence above, and materials supplied by

the Roman Catholic mission. The educational road was rocky—at least twelve different persons taught at the school in its first fifteen years of operation.¹¹³ Matters took on new complications, as religious competition saw education divided between two schools—Roman Catholic and Methodist—from 1890 to 1905, when the Methodist school in nearby Naughton closed. Given the Band's meagre resources, covering the costs of two schools was impossible.¹¹⁴

In any event, for the children of Whitefish Lake, schooling remained a brief experience for many years to come. Local lifestyles adjusted to the new institution only slowly: the school mostly operated during the summer, as many families departed for hunting grounds in the fall. In keeping with broader Indian Affairs attitudes, the emphasis was on basic literacy—reading, spelling, and arithmetic—with only a handful of students staying on long enough to reach the higher forms. But the school, as was the case across Canada, had an impact. In the 1880s, Indian Agent Phipps praised teacher Kate Horrigan for her efforts at teaching English.¹¹⁵ A quarter-century later, Indian Agent Sims commended the practical education received and the language impact:

On first entering the service as teachers to the Indians some do not realize the difference in heredity and home environment between white and Indian children, and also the fact that most Indian children when they enter school cannot speak or understand the English language, and that they require constant drilling to gain even a rudimentary knowledge of our language. I am pleased to say that by persistent efforts on the part of the teachers, the adoption of teaching pupils English has been secured in all the schools and the children soon acquire a working knowledge of the language, in fact it is a very rare occurrence to meet with any of the younger Indians, who cannot read, converse and understand English to a marked degree.¹¹⁶

This conclusion flies in the face of census data: in 1911, many Band members had very little English. Cultural differences—Julia Petahtagoose recalled “white” teachers—and practical realities played important roles. After all, how important was English in 1911, and how did one go to school if away at hunting grounds? Limited education surely also reflected

frequent teaching turnover and marginal school buildings, both symptoms of very limited budgets.¹¹⁷

While Indian Affairs was eager for educational activity, it was less enthusiastic about the payment of annuities and interest payments to the Band. Ontario, for its part, wanted nothing of such costs incurred prior to Confederation, so annuities issues were a matter of constitutional and legal dispute. The arguments were technical; the results yielded a halting dispersal of funds. Treaty annuities rose from one dollar to four dollars per capita in 1875, but disagreements over eligibility were constant. In 1876, a “Council of Chiefs” at Manitowaning sought confirmation of annuities to deserving Anishnawbek, notably those born in the United States. A year later, the region’s bands, meeting at Killarney, launched efforts to collect back payments for the years 1850 to 1875.¹¹⁸

Payments mattered, for the Band at times found faced “emergency” situations. Among those who struggled was Cahgahke, an elderly Band member who had lost his sight; he was by 1887 “exceedingly poor, being dependent upon the charity of the Band.” The Band sought aid—the response was five dollars—from the Department. Provincial actions worsened such frugality, as Crown Lands tried to control hunting and fishing.¹¹⁹ It was not just the elderly or ill who struggled: pleas for aid arose several times late in the nineteenth century, as the Band faced a landscape radically altered by lumbermen, miners, and settlement by whites as never before seen.

Following the advice of the Indian agent was risky or worse. Frost or pests, like the newly arrived Colorado potato beetle (c. 1880) might end any chance of sustaining a garden. Indian Affairs files on the local situation show various pleas for the “starving” Band, providing an unfortunate continuity from similar evidences of starvation in the HBC records. Some thirty-three persons were reported “starving” in 1889. According to local HBC officer Thomas B. Ross:

As you know, the potato & corn crops were a complete failure in this section of the country, and to make matters worse, they got little or no fish during the fishing season. I have advanced them all some provisions to prevent death from starvation among them and will continue to do so until I hear from you. I think it would

be advisable for you to come up yourself and see to the wants of these starving Indians.

A bleaker account arrived three days later from the Rev. P. Nadeau:

I am just coming back from a visit to White Fish Lake, where I found the Indians in a fearful state of misery. Unless prompt help from the Government or Indian Dep [*sic*] is soon given them a good many of them would die of starvation. Some of them also are very sick and cannot recover unless they get proper nourishment.

Indian Agent Phipps took matters in hand, Indian Affairs-style, suggesting to Ottawa that each “distressed Indian” get an additional hundred pounds of flour—a value of about three dollars—which could “be deducted from the annuity payment of the Indians concerned.... The arrangement suggested would be preferable to giving them money, as it might be expended in the purchase of articles not strictly necessary.”¹²⁰ Having to starve before getting attention was not unique to the Whitefish Band, but being inland made it more difficult to get the attention of the Indian agent. Better communications and bigger bureaucracy had lightened the burden slightly by the 1890s, when advances on annuities and “relief” payments became regular features in Indian Affairs’ recapitulations of Band behaviour.

Similarly, these reports noted the Band lived off the hunt, while growing corn, potatoes, and beans in smallish quantities. “Lodges” were home to all but two HBC-employed Band members in 1871, so not all had changed. While almost no one had literacy in English, by 1871 there were hints of change—European names became more common. Yet older ways persisted: the presence of forty-three canoes and forty-six nets suggested that in 1874 much remained as before. As this Indian Affairs report noted, “The Band maintains themselves by hunting. They come to the lake shore about the end of June each year, and usually visit the Hudson [*sic*] Bay Company’s post at Lacloche, to dispose of their furs and obtain supplies, returning inland after a short stay.”¹²¹ The influx of timber surveyors, and perhaps missionaries, seemingly brought issues to a “tipping point,” when lives changed more dramatically. In 1876, James Phipps provided

an extended but ultimately compelling discussion of the changes on the North Shore:

The decline in value of furs has diminished the earnings of the hunting Indians on the North Shore ... the loss is more imaginary than real, as ... those who have gone to work on their farms will find themselves, better provided with food for the coming winter than if they had followed their customary employment, as it frequently happens that the Indian expends his earnings, to but little useful purpose, leaving himself and family without food for winter. The hunting Indians have been partly compensated for diminished value, by an exceedingly large catch of furs. The most serious check to their prosperity ... took place last fall, when an unusually early frost destroyed more than half of the corn crop ... the crops [nevertheless] proving sufficient to maintain the Indians during the winter, although in many cases the seed grain had to be made use for food. The past winter, although less severe than usual, was not a healthy season for the Indians, many deaths having taken place; much of the sickness can, however, be traced to careless habits of living, and the absence of those comforts which a higher degree of civilization will bring to them.... Practically the Indian is susceptible of much improvement.... On the whole, the condition of the Indians may be considered as favorable. A fair degree of progress has been made. What is now needed is, by means of education, to overcome the inertia of the Indian character, so that their natural indolence and apathy may be replaced by more energy and industry. The enfranchisement of the most intelligent will doubtless help in leading to this desirable result, and, by raising the status of the Indian, and stimulating his ambition, he will be induced to emulate the industrious habits of the White man.¹²²

Phipps' condescending view exemplifies what the Band faced; so long as they continued in familiar roles, Indian Affairs saw them as failures.

Even within the Indian Affairs mindset, what was to be done? Climate, terrain, and pests limited agriculture to small gardens; after decades of

“encouragement,” the reserve had just 13.75 acres of cultivated land.¹²³ Phipps reported in 1889 that,

White Fish Lake Band numbers one hundred and forty-one, a decrease of seven by deaths. The death rate of this band has been high. They raised last year seven hundred and sixty bushels of potatoes. The most intelligent and energetic man of the band (Joseph Faille) died this spring, of consumption, which is much to be regretted, as he set a good example and will be missed. The Department presented the band with seed potatoes, grain and garden seeds this spring, which, if properly utilized, should make the agricultural statistics of the band wear an improved aspect next year. This band was badly off last winter, and some families had to be assisted by the Department through the Hudson’s Bay Company, who have acted most kindly and liberally to the Indians.¹²⁴

He followed up the next year:

The White Fish Lake Indians are mainly hunters, with them agriculture being comparatively a new occupation is followed to only a very limited extent. They have an extensive reserve, part of which is well timbered. It contains tracts of good land. Excellent crops are raised, considering the rough mode of cultivation and the little attention paid to agriculture. These Indians earn money during the summer by voyaging for the Hudson’s Bay Company and acting as guides and canoemen for explorers, for which their services are frequently in demand. In winter many live at their hunting grounds, a few only remaining at their village. They complain that fur is getting less plentiful, but will not become farmers at present, although they will be forced by the scarcity of game to follow that occupation before long.¹²⁵

Phipps catches the temper of the times, if unsympathetically. Christianity took a firm hold, at least officially; “clean” and “comfortable” log houses replaced lodges; and two churches and two schools symbolized change. The times were indeed changing, but often painfully: too often one reads that the Band was “badly off last winter.” Population figures

suggest that transition to the new social model was difficult. Deaths from European diseases were frequent, with “consumption” deaths especially persistent, whether looking at the 1861 census or reports of it being “prevalent” in 1903. In an odd turn of phrase, in 1911 Indian Affairs proclaimed the Band to be of “healthy and robust” health, while also reporting “quite a percentage of these Indians are afflicted with tuberculosis.” This insidious disease ravaged the Band early in the twentieth century; senior Band members interviewed in 1984 recalled the ever-present threat. But even a “cure” had consequences; Julia Petahtagoose recalled that children sent to Gravenhurst for treatment “lost” their language. The sorry tale of lives altered or ended early saw Band numbers dip in the 1880s, even as a never-generous Indian Affairs bureaucracy approved regular (Band-financed) medical service. Illness and death were frequent visitors: “many” were sick in 1889, typhoid took a toll in 1895, and smallpox sickened at least nineteen persons in 1900–01.¹²⁶

Even when health was not an issue, sustenance was needed. Ever practical, the Band retained old ways—all adult males were trappers as late as 1891—while also entering lumber, mineral, and other fields, where their old skills remained useful. Sales of meat, fish, maple syrup, birch bark and leather items, snowshoes, and canoes added to the mix. New sources of sustenance won praise from Indian Affairs, with boasts of a Band “decidedly improving in general status.”¹²⁷ “Improving” meant working for wages, whether on the CPR, as guides, or otherwise. Timber cutting was a key new field of wage labour; very large operations nearby included the Saginaw Lumber & Salt Co., the Victoria Harbour Lumber Co., A. Pack Lumber, Collins Inlet Lumber, and McFadden Lumber. Smaller, local market mills operated nearby, and many other mills operated a little farther afield. The Band itself petitioned to cut spruce as pulpwood by 1893, and cutting cordwood was a regular feature of the Band economy. More income could be had cutting railway ties, often of tamarack. Cedar from the swamps were sold for telegraph poles and fence posts. Maple provided paddle-making material.¹²⁸

A few other opportunities emerged: working on the reserve as constables and firefighters added income for a few individuals. Also among the most important modes of sustenance was hunting. Though dismissed by Indian Affairs as a “nominal” activity by 1897, it remained crucial: the

1911 manuscript census lists most adult males as “Hunters,” not so different from the census of fifty years earlier. Outside observers saw this blend of old and new quite differently from the Indian agents: while Indian Affairs reported “decidedly improving” circumstances, Michael O’Brien reported that the Band was “exceeding poor”; and fifteen years later J. H. Stovel, manager of the nearby Long Lake gold mine, deemed them “not a prosperous” group. Incomes certainly were not high. When, in 1898, annuity payments were delayed, Chief Wahbinimiki wrote Indian Affairs pleading for timely payment, as “we are in great need of it.”¹²⁹

The need was real, for the blend of old and new was firmly set. The Band continued on this mixed path for decades. By 1920, whitewashed log and occasional frame buildings were standard in a community of about thirty-five structures; typically, squared pine logs were used to build two-storey homes, with one large room on the main floor, bedrooms above, and a cellar below. A Roman Catholic frame chapel built about 1916 was perhaps the most substantial building in the community. Smaller groups of Band members lived at nearby Black Lake and Round Lake. Education of a nominal level was normal, and wage work blended with income borne of older skills: berries, canoes, snowshoes, bark products, fish, fowl, and venison all added to livelihoods. Older modes also sustained traditional social contacts. Blueberry picking drew Anishnawbek from as far as Wikewemikong and Sagamok, because the sulphur-ravaged lands near the reserve were ideal for acid-loving berry plants. Blueberries and cranberries were sold to local white settlers and merchants in Sudbury. The traditional served the modern, and the modern served the tradition.¹³⁰

As the new century took firmer hold, an assimilatory federal Indian bureaucracy saw the “temperate” Band in a positive light, with a few caveats. Local disinterest, or practical rejection of agriculture, was met with insistence that, “[w]ere they to give more attention to agriculture, good results would follow.” Aforementioned efforts at gaining control of timber and lands were never welcome. All in all, however, the Band won praise as “steady, industrious, law-abiding and fairly well-to-do.” But only by Indian Affairs’ measure—low incomes limited purchase of necessities at J. D. Gemmell’s general store in Whitefish, or, later, at his son’s location on Lake Penage.¹³¹ Agency-wide, Robin Brownlie calculates that in 1932 the per capita Anishnawbek income was thirty-five dollars—a shockingly

low figure given that \$1,040 per annum for a family was considered the minimum standard. Little wonder that Indian Agent R. J. Lewis authorized substantial relief in the 1920s, so long as the Indians were “really” in “trying circumstances.”¹³²

Given low incomes, new options were welcome—and needed. Tourists, as Patricia Jasen suggests, sought wilderness and “imagined” Indians.¹³³ There is insufficient data to determine what travellers or Band thought of one another, but Lake Penage, with its crystal-clear waters, spectacular shorelines, and abundant fishery was a popular spot. Travellers from far afield arrived early and often—fishermen from Ohio, acquainted with the lake by fellow Ohioans who ran Canadian Copper—were among the pioneers.¹³⁴ Local vacationers spent less, but may still have offered some opportunities: tourists needed guides, supplies, help over the rough tote road, and more. By 1915, Penage featured well known sportsmen’s camps: Dan Sheehan’s was among the first (1913?), with several more, including Gylden’s Pine Hill Resort, opened by the 1920s and 1930s. The lands around the lake drew hunters, for the region reputedly was “teeming with deer” as second-growth timber took hold.¹³⁵

Aiding such “outdoorsmen” was a far cry from Band lifestyles of three generations earlier; the onslaught of the non-Native population with its European social settings and values provided both problems and opportunities for members of the Whitefish Lake Band. As in earlier dealings with fur traders, missionaries, resource seekers, surveyors, and administrators, new challenges were handled with resilience. The Atikameksheng Anishnawbek “demonstrated that in the face of formidable odds they could still maintain a milieu conducive to the development of their culture in all its social, economic and political manifestations.”¹³⁶ Many challenges followed the signing of the Robinson-Huron Treaty, but the Band, with its millennia of collective experience, made the best of unsteady, changing circumstances. Old ways provided sustenance and stability; new opportunities were taken. Real gains, if infrequent, provided the path to a resurgent Anishnawbek presence.¹³⁷

Endnotes:

- 1 Local evidence of Palaeo-Indian culture has succumbed to acidic Shield soils. Helen Devereaux, "Sudbury: The Last Eight Thousand Years," *Polyphony* 5 (Spring–Summer 1983): 17–20; Edwin J. Higgins (in collaboration with the Whitefish Lake Indian Reserve), *Whitefish Lake Ojibway Memories* (Cobalt: Highway Book Shop, 1982), 9–15. Among many general works: Joan A. M. Lovisek, "Ethnohistory of the Algonkian Speaking People of Georgian Bay—Precontact to 1850" (PhD diss., McMaster University, 1991); R. C. Harris, ed., *Historical Atlas of Canada, Vol. 1, From the Beginning to 1800* (Toronto: University of Toronto Press, 1987), plates 6–8, 9, 14; Kenneth C. A. Dawson, "Prehistory of the Interior Forest of Northern Ontario," *Boreal Forest Adaptation*, ed. A. Theodore Steegman (New York: Plenum Press, 1983) 5584; Charles Bishop, *The Northern Ojibwa and the Fur Trade: An Historical and Ecological Study* (Toronto: Holt Rinehart and Winston, 1974), 3, 7–8.
- 2 The Amikwa plus nearby Oumisagi and Achiligouans numbered an estimated four hundred persons. Conrad Heidenreich, *Huron: A History and Geography of the Huron Indians* (Toronto: McClelland and Stewart, 1971), map 42; Reuben G. Thwaites, ed., *The Jesuit Relations and Allied Documents; Travels and Explorations of the Jesuit Missions in New France, 1610-1791*, 76 Vols. (Cleveland: L. Burrows, 1896-1901), 10: 322, 18: 231, 33: 149, 47: 317, 54: 133; Charles A. Bishop, "Northern Ojibwa Emergence: The Migrations," *Papers of the Thirty-Third Algonquian Conference*, ed. H. C. Wolfart (Winnipeg: University of Manitoba, 2002), 13–109, see especially three maps: for 1649: 26, for 1700: 50, and for 1745: 72; Heidi Rosemary Bohaker, "Nindoodemag: Anishinaabe Identities in the Eastern Great Lakes Region, 1600 to 1900" (PhD. diss., University of Toronto, 2006), 43–44, 75, 78, 84. The River "Amikoue" (spelling varies) appears on many period maps; today it is known as the Spanish. As late as 1884, "Whitefish Lake" was noted on a survey as "Ah tik kah mak a shing." Ontario, Department of Lands and Forests, "Surveys," reel 109, G. B. Abrey, "Traverse Sheet of Survey of White Fish Lake Indian Reserve No. 6," 20 June 1884. The Crown Lands references are based on microfilm copies, D. B. Weldon Library, University of Western Ontario, London, Canada, citing source and reel numbers. A note on spelling: Anishnawbek is local use today, so I have used that spelling. Whitefish Lake is also spelled White Fish Lake and WhiteFish Lake; this paper uses Whitefish. Lake Penage is officially referred to as Lake Panache, but the older, local preference of spelling is used herein.
- 3 See an early "gifting" record (10 September 1782) in John Coates, "Number of Indians Resorting to Michilimackinac," *Michigan Pioneer and Historical Collections* (Lansing, MI) 10 (1908): 635. Gifts locations shifted east, reaching Manitowaning in 1836. On gifts, see Catherine A. Sims, "Algonkian-British Relations in the Upper Great Lakes Region: Gathering to Give and Receive Presents, 1815–1843" (PhD diss., University of Western Ontario, 1992), 403. Local participation noted in Joseph Hanipaux, Manitowaning, to Pere provincial, 5 November 1849, *Lettres des nouvelles du Canada 1843–1852*, ed. Lorenzo Cadieux (Montreal: Les editions Bellarmin, 1973), 600; Higgins and WLIR, *Whitefish Lake Ojibway Memories*, 39, 52–54.

- 4 Captain Gother Mann, 1788, quoted in Don W. Thomson, *Men and Meridians: The History of Surveying and Mapping in Canada*, vol.1 (Ottawa: Queen's Printer, 1966), 185.
- 5 John Joseph Borrows. "Traditional Use, Treaties and Land Title Settlements: A Legal History of the Anishnabe of Manitoulin Island" (DJur thesis, York University, 1994).
- 6 Fr. J. B. Proulx, a Roman Catholic priest from Penetanguishene, arrived in 1835 or 1836; J. P. Oné, S.J., on 9 July 1844; J. U. Hanipaux, S.J., in August 1845. Holy Cross Roman Catholic Mission, "Calendar of ... Wikwemikong Mission" is a detailed account. Lorenzo Cadieux and Robert Toupin, "Les robes noir a l'Île du Manitou 1853-1870," *Documents historique de la Société historique du Nouvel Ontario (Documents historique)* 75 (1982): 8-12. Twenty-three Jesuits served the Mission from 1844 to 1880; sheer numbers and a more nuanced view of conversion were great advantages.
- 7 Four Methodist missionaries arrived in July 1837. T. G. Anderson, the Rev. Adam Elliot, and the Rev. C. C. Brough started Church of England work. John Webster Grant, "Rendezvous at Manitowaning," *The Bulletin of the Committee on Archives of the United Church of Canada* 28 (1979): passim; Harold A. Seegmiller, "The Colonial and Continental Church Society in eastern Canada," (DD diss., [Need name of university], 1966), 516-20; Wesleyan Methodist Missionary Society, *The Report of the Wesleyan Methodist Missionary Society 1838* (London: The Society, 1839), 87, 91-96; Adam Elliot, "Journal of the Rev. A. Elliot Travelling Missionary, Home District," 23 June 1835, in *The Stewart Missions; A Series of Letters and Journals Calculated to exhibit to British Christians, the Spiritual Destitution of the Emigrants Settled in the Remote Parts of Upper Canada*, ed. W. J. D. Waddilove (London: J. Hatchart & Son, 1838), 83.
- 8 The route north from La Cloche via the Spanish River was known to the French by the 1650s. Thwaites, ed., *Jesuit Relations*, 44: 243 provides a 1657 description by Fr. Gabriel Druilletes. Cowan was also known as John Baptiste Constant, Constance, and de Couagne. E. A. Cruickshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe with Allied Documents* (Toronto: Ontario Historical Society, 1925), 2: 75n1. On La Cloche: Elaine Mitchell, *Fort Temiskaming and the Fur Trade* (Toronto: University of Toronto Press, 1977), 38, 138.
- 9 Petty traders were a North Shore "nuisance." Gov. George Simpson to HBC Committee, London, 5 September 1827, quoted in Murray Leatherdale, *Nipissing from Brule to Booth* (North Bay, ON: North Bay Chamber of Commerce, 1975), 154. On the defensive strategy: Harold Innis, "Introduction," *Minutes of Council: Northern Department of Rupert's Land, 1821-1831*, ed. R. H. Fleming (Toronto: Champlain Society, 1940), xlii-xlvi, li-lv; and E. E. Rich, *The History of the Hudson's Bay Company 1670-1870* (London: Hudson's Bay Record Society, 1959), 2: 432-37.
- 10 Vasseur, from Newmarket, likely worked for Robinson Brothers or Borland & Rowe. Hudson's Bay Company Archives (hereafter cited as HBCA), La Cloche Post Journals, B 109/1/4, "Letter, McBean to A. McKay, Whitefish Lake." The

- post (Lat. 40°22'48") lay west of Whitefish Lake. Geological Survey of Canada (GSC), *Topographical Plan of Part of the Spanish and Whitefish Rivers by A. Murray, Esq., Asst. Prov. Geologist 1848–56* (Montreal: G. Matthews, 1857). 80 chains = 1 inch. Mitchell, 146, 159; Chris Blomme, "The Hudson's Bay Post at Naughton, Ontario," *Archaeological Notes* 78, no. 6 (November–December 1978): 41; George Stock, "Whitefish Lake Post 1827–1896, Naughton Ontario," n.d., Sudbury Public Library, Regional Collection.
- 11 HBCA, B.109/a/4, John McBean, La Cloche, to George Simpson, 8 September 1831.
 - 12 HBCA, B 109/e/1, micro #1m779, fo. 3, John McBean, "Report on the state of the Posts, Indian Trade & Character of the Indians in Lake Huron District 182/28," La Cloche, 16 June 1828.
 - 13 Compiled from La Cloche Post records, especially HBCA, B 109/a/1-9. On the new chief, in 1833, McBean remarks that, "Lajeune Wawarum & Band" arrived. HBCA, B 109/a/5 fo.26b, 28 March 1833.
 - 14 HBCA, La Cloche "Journal," B 109/a/2, fo. 227, January 1829; B 109/a/4, fo. 49, 26 May 1831; B 109/1/3, fo. 22, 15 January 1830; B 109/1/4, fo.36, 28 February 1831; B 109/1/9, fo. 15, June 1835. To prevent travel: B 109/1/5, fo. 2, 16 June 1831.
 - 15 HBCA, "Correspondence out of La Cloche," B 109/b/3, 25–26, John McBean, La Cloche, to Henry Sayer, Whitefish Lake, 18 March 1830. Andrew Mitchell was based in Penetanguishene. <http://www.francoidentitaire.ca/ontario/texte/T0162.htm>.
 - 16 J. A. Hamilton, J.P., at Penetanguishene, wrote that the HBC was "selling to the Indians whiskey & other spirits without limitation." Rev. Frederic O'Meara condemned "traders who do not spare ardent spirits" and Rev. Charles C. Brough claimed traders "inculcate proportionably lying, drunkenness [sic] &c. upon the poor Indians." Public Archives of Canada (hereafter cited as PAC), RG5 A1, Vol. 203, 112545–112546, Civil Secretary's Correspondence, Upper Canada Sundries, J. M. Hamilton, Penetanguishene, to Sir George Arthur, 29 August 1838. Rev. Frederic O'Meara, "Evidence of the Rev. F. O'Meara, Manitowaning, 2 February 1843," *Journals of the Legislative Assembly of the Canadas* (hereafter cited as *JLAC*) (1847), App. T, sub-app. 36.
 - 17 PAC, RG 5, A1, Civil Secretary's Correspondence, Upper Canada Sundries, vol. 169, 92616–92617. Angus M. Anderson, sworn statement before Andrew Mitchell, J.P., Penetanguishene, 25 September 1836. See PAC, RG 5, A1, Civil Secretary's Correspondence, Upper Canada Sundries, vol. 172, 94079–94080 for a letter supporting his claim.
 - 18 Sir George Simpson, Red River, to Hudson's Bay Committee, London, 20 June 1841, in *London Correspondence Inward from Sir George Simpson, 1841-42*, ed. Glyndwr Williams (London: Hudson's Bay Record Society, 1973); J. D. Cameron, La Cloche, to James Hargrave, York Factory, 26 April 1842, termed the trade "worsen and worsen." *The Hargrave Correspondence*, ed. G. P. de T. Glazebrook (Toronto: Champlain Society, 1938), 397.

- 19 Population: Harris, ed., plate 69; Thomas G. Anderson, "Answers of Mr. Superintendent Anderson, to the Questions of the Commissioners of 1840, Manitowaning, 20 December 1839, 4 February 1840," *JLAC* (1847), App. T, sub-app. 24. Blomme, "The Hudson's Bay Post," has details. "Past and Present Condition of the Indians," Section II, "Indians of Canada West," "Report on the Affairs of the Indians in Canada, Laid Before the Legislative Assembly, 20th March 1845," *JLAC* (1844–45), App. E.E.E. On the difficulties, see the "Reports on the Affairs of the Indians in Canada" for 1834, 1839, and 1845, especially Joseph Hanipaux and M. Ferand, "Report upon the Present State of the Great Manitoulin island and upon that of the Nomadic Bands of Tribes on the Northern Shore of Lake Huron," "Report of the Commissioners appointed under 9 Vic., C. 38, to Investigate Indians Affairs in Canada," *JLAC* (1858), App. 21, sub-app. 26, Section IV.
- 20 HBCA, La Cloche "Journal," B 109 /a/2, fo. 22, 7 January 1829; B 109/a/4, fo. 49, 26 May 1831; B 109/1/3, fo. 22, 15 January 1830; B 109/1/4, fo. 36, 28 February 1831; B 109/1/9, fo. 1, 5 June 1835, "starving most dreadfully"; B 109/a/5, fo. 18, 7 January 1832. HBCA, B109/3/7, fo. 1b, John McBean, "Report on the state of the Post, Indian Trade & Character of the Indians in Lake Huron District," 31 May 1835.
- 21 On Murray: GSC, *Report of Progress 1848–49* (Toronto: Lovell and Gibson, 1849), 7–46, esp. 31; GSC, *Report of Progress 1853–54–55–56* (Toronto: John Lovell, 1857), 155–166. The work of Albert Pellew Salter and assistants P. S. Donnelly, Arthur Jones, T. W. Herrick, James Johnston, and T. N. Molesworth are covered in various reports of the Commissioner of Crown Lands; many are reprinted in "Return ... in connection with the sale of Timber Berths on Lake Huron," Ontario, *Sessional Paper* (hereafter cited as *SP*), 1873, no. 11, 21–43.
- 22 Anna M. Wright, "The Canadian Frontier 1840–1867" (PhD diss., University of Toronto, 1943), 36–59. Dianne Newell, "Technological Change in a New and Developing Country: A Study of Mining Technology in Canada West—Ontario, 1841–1891" (PhD diss., University of Western Ontario, 1981), 71–82; Province of Canada, "Return ... licences for opening and working mines of Lakes Huron and Superior," *JLAC*, 16 June 1851, App. U; William Gibbard, "Report of Inspection of Mining Locations," *JLAC* (1861), *SP* 15, App. 21. For a full list of sites: *JLAC* (1857), App. 25, sub-app. 8.
- 23 Rhonda Telford, "'The Sound of the Rustling of the Gold is Under My Feet where I Stand; We Have a Rich Country': A History of Aboriginal Mineral Resources in Ontario" (PhD diss., University of Toronto, 1996), 80–87, 126–33, 167–89; Alan Knight and Janet Chute, "A Visionary on the Edge: Allan Macdonell and the Championing of Native Resource Rights," in *With Good Intentions: Euro-Canadian and Aboriginal Relations in Colonial Canada*, eds. Celia Haig-Brown and David A. Nock (Vancouver: University of British Columbia Press, 2006), 87–105; J. Chute and Alan Knight, "Taking Up the Torch: Simon J. Dawson and the Upper Great Lakes' Native Resource Campaign of the 1860s and 1870s," in *With Good Intentions*, 106–31.
- 24 "Order in Council of 4 August 1849. Crown Lands, "Instructions to Surveyors," Book 5, reel 125, 140–41, J. H. Price (Montreal) to Alexander Vidal, Port Sarnia, 7 August 1849.

- 25 Crown Lands, "Instructions to Surveyors," Book 5, reel 125, 143, J. H. Price, Montreal, to Alex. Vidal Esq., Dpt. Prv. Surv., Pt. Sarnia, 29 August 1849.
- 26 Crown Lands, "Letters Received," Roll 21, vol. 18, reel 169, 425–449, 519–520, Alexander Vidal and Thomas G. Anderson, "Report of Commissioners appointed to investigate the claims of Indians on the north shores of Huron and Superior," 5 December 1849. PAC, RG 1, E1, vol. K, 34, 181, Province of Canada, Executive Council State Books, 15 February 1850, 16 April 1850. Janet Chute, "Pursuing the Great Spirit's Plan: Nineteenth Century Ojibwa Attitudes towards the Future of Logging and Mining on Unsurrendered Indian Lands North of Lakes Huron and Superior," *Social Relations in Resource Hinterlands: Papers from the 27th Annual Meeting of the Western Association of Sociology and Anthropology*. ed., T.M. Dunk (Thunder Bay: Lakehead University, 1991), 192.
- 27 Requests for such items in fall 1850: National Archives of Canada (hereafter cited as NAC), RG 10, Vol. 613 (see pp. 1, 372), R. Bruce to G. Ironside, 6 January 1851, "Northern Superintendency Correspondence." Historical memory of Treaty-making is discussed in Borrows, "Traditional Use, Treaties and Land Title Settlements," 1994, esp. from page 135. See also James Morrison, "The Robinson Treaties of 1850: A Case Study," research report prepared for the Royal Commission on Aboriginal Peoples, Treaty and Land Research Section, 1996, section 10.2. The Treaty was proclaimed in *The Canada Gazette* XIII, no. 7, 18 February 1854. On the Treaty: Morrison, "The Robinson Treaties"; Robert J. Surtees, "Treaty Research Report: The Robinson Treaties," Treaties and Historical Research Centre, Indian and Northern Affairs Canada, 1986, and J. Douglas Leighton, "The Historical Significance of the Robinson Treaties," Paper for Annual Meeting, Canadian Historical Association, 1982.
- 28 Whitefish Lake lay in Division 1 of the Northern Superintendency; in 1898, it was divided, with Whitefish Lake placed in the Manitowaning Agency. See PAC, IA, RG 10, FA 10-157, Guide to IA Field Office Organization in Ontario. Key Indian agents at Manitowaning were William Plummer (–1873); James Charles Phipps (1873–93); Benjamin Walter Ross (1893–96); Charles L. D. Sims (1899–1912); William McLeod (1913–15), and Robert J. Lewis (1915–39).
- 29 Vidal and Anderson, "Report," 446; Crown Lands, "Tracing Shewing Indian Reserves N. shore of Lake Huron," August 1849; Crown Lands, "Indian Reserve Surveys," reel 105, 2497.
- 30 On the aborted survey: Crown Lands, "Letters Relating to Surveys," vol.1, reel 137, 382, J. H. Price to J. S. Dennis, 6 June 1851; Crown Lands, "Instructions to Surveyors," Book 5, reel 125, 204, J. H. Price to J. S. Dennis; Crown Lands, "Instructions to Surveyors," Book 5, reel 125, 223, A. Ross to J. S. Dennis, 18 June 1853. A letter had assigned the cancelled task to J. W. Bridgland on 11 June 1853. Crown Lands, "Instructions to Surveyors," Book 5, reel 125, 224.
- 31 IA, RG10 Vol. 198 part 1 Reel C-11514, J. W. Keating to Col. R. Bruce, 6 August 1852, Letter 6, quoted in Michael Marlatt, "The Calamity of the Initial Reserve Surveys under the Robinson Treaties," *Papers of the 35th Algonquian Conference*, ed. H. C. Wolfart (Winnipeg: University of Manitoba, 2004), 300.

- 32 Talk of a French River canal (1830s) led only to maps and surveys. PAC, Civil Secretary's Correspondence, Upper Canada Sundries, September 1836, RG 5 A1 Vol. 170, 92969–92971, David Thompson, Montreal, 10 September 1836 to Thomas McKay. The Great Northern Road was serviceable only near Sault Ste. Marie and just north of Parry Sound. Crown Lands Report, *JLAC* (1859), 12, 17; 1865, x, xvii–xviii; Robert Dorman, *A Statutory History of the Steam and Electric Railways of Canada 1836–1937* (Ottawa: King's Printer, 1938).
- 33 William Bell considered timber roads crucial: William Bell, "Field Notes of the Survey of Timber Berths 61, 60, 43" (1873), Crown Lands, Surveys, Book 4, no. 1930, reel 65, 1.
- 34 A.W. Powell, "Woods and Forests Return of Licenses, Huron and Superior," Crown Lands Report, *JLAC* (1857), App. 25. Ontario, *SP*, 1873, no. 75, 2. Timber sales compiled in Ontario, Crown Lands, Timber Sales Branch, Register of Licences, RG1, Series E, Sub-Series E-3-A. Volumes 11–17 cover 1859–93. Laurentian University Library, Regional Collection, Ontario, Crown Lands, Map to Accompany "Report on Timber Berths." This map, scale of c. 6 miles = 1 inch, details timber, soil, and topography. GSC work is meticulously dealt with in Morris Zaslow, *Reading the Rocks: The Story of the Geological Survey of Canada 1842–1972* (Toronto: Macmillan/Department of Energy, Mines and Resources, 1975).
- 35 R. J. Whitaker, for the Hon. Minister of the Marine and Fisheries, to L. Vankoughnet, 13 September 1878. Charles Skene, Parry Sound, to Wm. Buckingham, Esq., Deputy Minister of the Interior, 22 October 1878. See: "Headquarters—Reports on Indian Fishing Rights by Superintendents William Plummer, Charles Skene, and J. C. Phipps," PAC, IA, RG 10 vol. 2064, file 10,000 1/2, microfilm c-11148. The Ministry's letter is on p. 6; Skene's on p. 12. Jas. C. Phipps quoted in Canada, Report of the Department of Indian Affairs, "SP 3 (1885), 7. Even inland Whitefish Lake fisheries were under some pressure, for the HBC post targeted five thousand herring annually, and by 1835 had a boat for trout fishing on Lake Penage. HBCA, B 109/1/9, fo. 17, La Cloche Journals, 27 September 1835; B 109/e/5, fo. 1, John McBean, "Report on the state of the Post, Indian Trade & Character of the Indians in Lake Huron District," 14 June 1833 (that year 5,539 herring were caught for the Whitefish Lake post).
- 36 William B. Robinson, "A Statement in detail of the Expenditure of 5,000 less 800—refunded—disbursed by William B. Robinson, Esq. to the Indians on Lake Superior, 26 September 1850," *JLAC* (1851), App. II. Notwithstanding the title, Vouchers 8 and 11 concern the Whitefish Lake and Tagawinini Bands north of Lake Huron. "Voucher No. 8," Province of Canada. "Return ... dated the 2nd ultimo ... and a statement in detail of the Expenditure of £5000 less £800 refunded, paid to ... W. B. Robinson, Esq., ... to be by him disbursed among the Indians..." *JLAC* (1851), App. I.I., 4 July 1851. Voucher 8 was disbursed on 13 September 1850 at Manitowaning.
- 37 "Report on the Present State of the Great Manitoulin Island and upon that of the Nomadic Bands or Tribes on the Northern Shore of Lake Huron." "Evidences of Captain Ironside, Rev. D. O'Meara, Rev. J. Chance, Rev. Hanipaux,

- and Ferard, Rev. M. Choné," Province of Canada, *JLAC* (1858), App. IX, no. 21, Part II.
- 38 See, for example, HBCA, B 109/c/1, Correspondence in to La Cloche, Joseph Boyer, Whitefish Lake to Peter Bell, La Cloche, 31 March 1867. On the Band's lifestyle, see the various government commissions cited above, and Diane Delorme, "Les Indiens du nord-est Ontario au XIXe siècle," *Documents historiques* 73 (1981): 1–10.
- 39 IA, RG 10, Vol. 613, reel c-13, 386, Northern Superintendency Correspondence, R. Bruce to G. Ironside, 6 January 1851, 1. Annuity payments listed in the Archives of Ontario (hereafter cited as AO), Aemilius Irving Papers, MU 1464 (26/41/1). For discussion of change as assimilatory pressure, see Morrison, "The Robinson Treaties," sect 3.5.3.
- 40 NAC, RG 31, Census 1871, reel C-10, 023, East Algoma District, Spanish River sub-district, schedule no. 1, 21–28. Totals are estimates: the enumerator relied on Hudson's Bay Company employees for information on "40 families" of Indians "scattered throughout the interior of the country" (21). Varied spelling of locations adds to the difficulties. A. P. Salter noted the gardens in his 1856 survey of meridian lines. Ontario, *SP* 11 (1873), 23. See also IA, RG 10 Volume 1963, file 5045-2, James C. Phipps, "Ojibbeways of Lake Huron Northern Suptcy, White Fish Lake Band." A notation suggests that data for 1851 through 1855 were "Probably destroyed by fire." An extant source is AO, Aemilius Irving Papers, MU 1464 (26/31/1).
- 41 Canada, Indian Affairs, "Report of the Deputy Superintendent General of Indian Affairs," 1874, App. 6, 33; 1875, App. 5, 15.
- 42 Holy Cross Roman Catholic Mission, "Calendar ... Wikwemikong Mission," 20 April 1857. The 1861 census lumps North Shore Indians together, with 225 Roman Catholics, 217 "Heathens," and 78 Protestants.
- 43 Holy Cross Roman Catholic Mission, "Calendar ... Wikwemikong Mission," 20 April 1857, 80; "Report of the Special Commissioners to Investigate Indian Affairs in Canada," Province of Canada, *JLAC* (1858), App. 21; PAC, Canada West Census, 1861; PAC, RG 31, C-1091, Algoma Enumeration District no. 4, folios 1–14; PAC Census 1871, East Algoma, Spanish River sub-district, schedule no. 1, 21–28. The census gives no locations. Canada, Indian Affairs, 1874, App. 5, 15, App. 6, 33; 1875, App. 5, 15.
- 44 AO, Indian Genealogical Records, F277, vols. 5–6, "Status Animarum"; *Le Canada Ecclésiastique* (Montreal: Beauchemin, 1907).
- 45 The census for 1891 reported 99 Roman Catholics, 23 Methodists, and no "pagans." Census of Canada, 1891, RG 31 T-6323, Algoma Enumeration District, Graham to Hallam, 5–11. Indian Affairs statistics are similar, though giving the Methodists some brief gains. See "praise" in Canada, Indian Affairs, 1897, 19.
- 46 HBCA, "Correspondence in to La Cloche 1829–1863," B 109/c/1, Joseph Boyer, Whitefish Lake, to Peter W. Bell, La Cloche, 23 October 1862. Boyer was in charge from 1862 to 1872, followed by James C. Cumming (1872–??), and Thomas B. Ross (1878–91).

- 47 HBCA, "Correspondence in to La Cloche 1872," B 109/c/2, fo. 4-4b, J. Cumming, White Fish Lake, to Roderick McKenzie, La Cloche, 25 June 1872.
- 48 Wahnapiatae Post, 1879, was the first satellite. HBCA, B 364/3/1, fo.2-5, Ric. Hardisty and E. K. Beeston, "Post Report—Whitefish Lake L. H. 1888," 22 June 1888.
- 49 HBCA, B 355/3/5b , microfilm #1, M1259, Series II, "Lake Huron District Report 1889," 16 November 1889; B 134/e/6 microfilm # 1 M1257, p. 62, D. C. McTavish, "Post Report Montreal Department 1890," 2 December 1891; B 364/e/1, fo. 8, microfilm Series II, reel 1, M1260, Ric. Hardisty, E. K. Beeston, Winnipeg, 20 June 1888, HBCA Post Report—Whitefish Lake L Huron 1888; B 355/e/2, fo. 4, "Report Sudbury Post," 1-2 August 1889. Onaping post closed in 1888; Lake Wanapitei in 1891; Larchwood in 1892; Post Lake soon thereafter; and on 31 May 1896 Whitefish Lake Post closed. The HBC store in Sudbury persisted until 1898.
- 50 J. C. Rae, "Whitefish Lake (Lake Huron Dist.) Report 1897," HBCA Post Report—Whitefish Lake L Huron, B 355/e/2, fo. 4, On the later trade: Ralph Bice, *Fur: the trade that put Upper Canada on the map* (North Bay, ON: Ontario Trappers' Association, 1983).
- 51 IA, September 24, 1850, RG 10, vol. 411, 490-99, "Letters submitted re: Treaty." A "sleigh road" was completed by January 1883; a rudimentary Algoma Branch completed in 1884 lay dormant for several years. *Manitoulin Expositor*, 13 January 1883; Omer Lavallee, *Van Horne's Road*, (Montreal: Railfare Enterprises, 1974), 119, 134. The Waters Township survey (1883), beside the reserve, shows the rail, tote, and telegraph lines.
- 52 The HBC site was variously reported as 124 or 135 acres. IA, RG 10, vol. 2299, file 59576, George McLean, Deputy Superintendent General Indian Affairs, Ottawa, to Chief Wahbemeniki, Whitefish Lake, 29 November 1896.
- 53 As late as 1877, an offer of Timber Berths gave no hint of a reservation in the area. AO, "Report Books—Timber Limits offered for Sale 1877" (copy in Laurentian University Library).
- 54 IA, RG 10, vol. 10267, file 411/30-8-6, Jas. C. Phipps, Manitowaning, to Superintendent General of IA, 30 March 1883.
- 55 Spellings of several locations vary, but only one offers difficulty. Individuals lived at Nebewapuing, Netewagenwang, and Nonwategung lakes; these may be different, or the same.
- 56 Jas. Phipps, Manitowaning, to IA, Ottawa, 30 December 1880, IA, RG 10, vol. 10267, file 411/30-8-6. In this letter, Phipps calls three miles square "a square three miles each way." In other words, twelve miles square would be 12 miles by 12 miles, or 144 square miles. Higgins and WLIR, *Whitefish Lake Ojibway Memories*, 1, 79. That the Reserve appears "undersized" is not surprising: Karl Hele argues that all reserves were smaller than the Anishnawbek anticipated. Karl Hele, "'By the Rapids': The Anishinabeg—Missionary Encounter at Bawating (Sault Ste. Marie), c. 1821-1871," (PhD diss., McGill University, 2002), 151.

- 57 IA, RG 10, vol. 10267, file 411/30-8-6, "Fascimile of sketch made by Whitefish Lake Indians of their Reserve," 1880. Phipps was ordered on 15 September 1883 to arrange the survey. See letter of 15 September 1883. IA, RG 10 vol. 10267, file 411/30-8-6. The traditional lands cover the equivalent of perhaps 120 townships!
- 58 IA, Department of Lands and Forests, "Letters re: surveys," vol. 15, reel 140, fo. 243, Letter, Thos. Johnson, Assistant Commissioner Crown Lands, Survey Branch, to L. Vankoughnet, Deputy Superintendent, 11 August 1883. Abrey's survey remarks upon the reduction.
- 59 W. O. Johnston, "Report and Field Notes Graham," no. 1241, book 26. The 1884 survey of Louise Township omits part of the township as lying within the reserve. "Field Notes Reports of White Fish Lake Indian Reserve No. 6, Ontario," 30 June 1884, printed in "Crown Lands Reports," Ontario, *SP*, 34, 1884, 48-51; *SP* 30, 1885.
- 60 G. B. Abrey, "Field Notes and other Returns of the White Fish Lake Indian Reserve (No. 6)," 20 June 1884 quoted in Leonard G. Ugarenko, "A Research Report on Whitefish Lake Indian Reserve #6 and the Flooding of Indian Reserve Lands Adjacent to Lake Panache," Ontario Ministry of Natural Resources, May 25, 1982. Sketches dated 15 March 1885 and 14 October 1885 show the CPR line within the reserve. IA, RG 10 vol. 10267, file 411/30-8-6.
- 61 The CPR partially finished the Branch in 1883-1884, cutting timber for bridges and ties without license. Higgins and WLIR, *Whitefish Lake Ojibway Memories*, 130; see the continuing objections of Chief Wabuminiiki in 1895: IA RG 10, vol. 2299, file 59576.
- 62 IA, RG 10, vol. 2067, File 10, 307, pt. 1, 281, Scot, McTavish & Scott, Barristers &c., R. W. Scott to L. Vankoughnet, Esq., Deputy Superintendent IA, Ottawa, 10 August 1888. On McNaughtonville station: 309-10, "Application for Indian Lands, William Allan Ramsay for the C.P.R.," 14 August 1888.
- 63 IA, RG 10, vol. 2067, File 10, 307, pt. 1, 282, "Memorandum 24 August 1888 to Acting Deputy Minister." The December letter is IA, RG 10, vol. 2067, File 10, 307, pt. 1, 380, R. W. Scott to Lands Branch, IA, 4 January 1889. See the note from Scott to IA seeking plans confirming that the line lay "outside," IA, RG 10, vol. 2067, File 10, 380, 22 May 1889.
- 64 IA, RG 10, vol. 17, reel 141, fo. 566, Aubrey White to W. L. Gordon, Toronto, 5 April 1888. Abrey, "Field Notes of Flooded Reserve Lands," quoted in Ugarenko, 5. At the reserve's south end, some islands in Lake Penage were included, some not. No reason for the selections provided in the field notes.
- 65 Macdonald Correspondence, MG 26-A, Vol. 526/2, reel c-34, 367, John A. Macdonald to L. Vankoughnet, 25 January 1886.
- 66 Robillard lost timber rights when Ontario bested the federal government in *St. Catherines Milling and Lumber v. Ontario*. See: John A. Macdonald Correspondence, 28 April 1886, MG 26-A, vol. 425, microfilm C-1776, 207271-207275, "Robillard H—Timber Limits Applic.;" Macdonald Correspondence, 25 [sic] May 1886, MG 26-A, vol. 425, microfilm C-1776, 207939-207941, Honoré Robillard, Ottawa, to Sir. John A. Macdonald, 23 May 1886.

- 67 The cost was \$316 plus \$79 (\$1 per square mile). Timber dues were also owing. The sale was reported at between \$43,000 and \$55,000. John A. Barron, M.P. for Victoria North, headed the attack. See Canada, House of Commons, *Official Report of the Debates*, 50–51 Vic., 6 June 1887, 802–03; Ontario, “Return ... respecting any claim for arrears or annuities due ... for ... territorial rights on the shores of Lakes Huron and Superior,” *SP* 81 (1884); AO, RG 22 series 4, File 621, High Court records; AO, Aemilius Irving Papers, Box 42, File 42, Item 3, Box 27, File 31, Item 8; IA, RG 13-A-3, vol. 630, 4, 25, Canada, Department of Justice Records; IA, Lands and Timber Branch, 15 March 1916, “Memo to Deputy Minister re Timber License of Whitefish Lake Indian Reserve,” in IA, RG 10, vol. 2318, file 63, 375–76, “Manitowaning Agency—Correspondence Regarding Timber Licences & Timber Operations in the Whitefish Lake Reserve”; *Ottawa Journal*, 11 June 1887, 2 October 1888, and 25 April 1889; *Toronto Mail*, 5 September 1887, 15 and 18 September 1888, and 21 January 1889; *Ottawa Free Press*, 22 January 1889; *Ottawa Citizen*, 23 and 25 April 1889; *Globe*, 21 January 1889; *Toronto News*, 21 January 1889; *Toronto Empire*, 21 January 1889; Higgins and WLIR, *Whitefish Lake Ojibway Memories*, 130–35.
- 68 The Band remained angry about CPR cutting, and the decision that the Algoma Branch ran north of the reserve, but their complaints were futile. Higgins and WLIR, *Whitefish Lake Ojibway Memories*, 133, 135. Indian Affairs reported timber dues of some \$7,600, indicating a massive cut.
- 69 Canada, House of Commons, *Debates*, 6 June 1887, 802.
- 70 The cut was in Berths 69 (the northeast corner in reserve), 70 (the southwest corner in reserve), and 76 (virtually all reserve).
- 71 The case was in the Ontario High Court, Chancery Division; the final judgement came 19 January 1889. Brian Slattery et al., eds., *Canadian Native Law Cases, Volume 2, 1870–1890* (Saskatoon: University of Saskatchewan Native Law Centre), 1981, 6–25.
- 72 Slattery et al., *Canadian Native Law Cases*, 12–13. Case quotes included in the trial discussion are from this source.
- 73 Naughton court sessions were held in a tent: *Toronto Mail*, 18 September 1888. The boundaries as defined ranged from Black Lake on the east to Kusk Lake on the west, and south to Lake Penage; the northward extent is less obvious, but certainly included (east-west) Mud, Simon, and McCharles Lakes. While the Band was ignored, losing firms were compensated. R. H. Klock & Company, for instance, received compensation of \$13,000. Ontario, Public Accounts, 1897, 401. The case reached a different conclusion with *Whitefish Lake Band of Indians v. Canada (Attorney General)*, 2007 ON, CA, 744. The federal government admitted a breach of fiduciary duty, but disputed the compensation. The Court accepted the idea of compound interest, but only for the duration of the modern complaint. Canadian Bar Association, National Aboriginal Law Section, Bill C-30: Specific Claims Tribunal Act I, April 2008, Ottawa, 8–9, <http://www.cba.org/CBA/submissions/pdf/08-22-eng.pdf>.
- 74 *Sudbury Journal*, 12 March 1902, notes the firm’s start; it operated until at least 1930. *Sudbury Star*, 1 March 1930, 4.

- 75 Band complaints were ignored until 1980; reaction took twenty more years. The Walker lake dam raised Lake Penage levels, and, in turn, Lake LaVase. Abrey, "Field Notes," quoted in Ugarenko, 7.
- 76 IA, RG 10, vol. 7815, file 30019-7, passim, "Manitowaning Agency—Correspondence regarding timber ... on the Whitefish Lake Reserve ... 1893–1930." A local source felt that O'Connor was buying the tamarack, spruce, and hemlock. *Sudbury Journal*, 8 March 1906. Dues noted in the financial statements on the Band in Canada. *Sessional Papers*, "Annual Report of the Department of Indian Affairs." (hereafter *Indian Affairs Annual Report*).
- 77 IA, Lands and Timber Branch, "Memo to Deputy Minister re Timber License of Whitefish Lake Indian Reserve," 15 March 1916, in "Manitowaning Agency—Correspondence Regarding Timber Licences & Timber Operations in the Whitefish Lake Reserve," PAC, RG 10, vol. 2318, file 63,375–6.
- 78 Building a tote road south from Whitefish through the reserve was simpler for lumber firms because it was "necessary." The depot gets far more attention in IA files than the road.
- 79 The O'Brien material is found in "Manitowaning Agency—Application of Michael O'Brien to Lease 50 Acres on the North Shore of Lake Penache, IA, RG 10, vol. 2835, File 170,803.
- 80 IA, RG 10, vol. 2835, File 170,803, John Bertram, Toronto, to IA, 4 February 1896. Additional letters of support from the local manager of the Collins Inlet Company and from other timber firms followed; O'Brien's application for a lease closed with the note "P.S. could forward a petition if required." IA, RG 10, vol. 2835, File 170,803, Michael O'Brien, Whitefish, to Superintendent General IA, 5 February 1896. Letters of support are dated within a week of the application.
- 81 IA, RG 10, vol. 2835, File 170,803, Correspondence for 13 March and 16, 21, and 24 April. The first lease site totalled 97.5 acres; the size of the latter lease was not specified.
- 82 The Band's letter does not provide an exact date but with a response from IA sent on 6 May, the Band's missive could not have been sent later than the start of that month. IA, RG 10, vol. 2835, File 170,803, Correspondence for 13 March and 16, 21, and 24 April.
- 83 IA, RG 10, vol. 2835, File 170,803, Hayter Reed to Hale & Booth, 6 May 1896; Hayter Reed to Chiefs of the Whitefish Lake Band, 6 May 1896. The response from Chief "Wabenimikie" (spelling varies) is dated 2 June 1896. Hale & Booth received a refusal from D. C. Scott, Acting Deputy Superintendent, on 6 June. IA, RG 10, vol. 2835, File 170,803. According to IA files, Thomas Hale may have visited the Band after rejection of the lease. This action, noted Hayter Reed, "should have been done before making survey of the small piece of land required." See IA, RG 10, vol. 2835, File 170,803, Hale & Booth, Lumbermen, to IA, 11 June 1896.
- 84 As post operators, O'Brien named "Joseph & Wilson Esquimaus" of the Whitefish River Band. O'Brien sought "at least" fifty acres, citing the need to raise vegetables and other crops. IA, RG 10, vol. 2835, File 170,803, M. O'Brien, Whitefish, to Superintendent General of IA, 24 October 1897.

- 85 Signatories: Chief Moses Wahbahnimiki, Sub-Chief James Cabayette, Peter Omiskow, George Pepequis, James Pinae, Alex Osahwahgoosh, Patrick Kinisaigozhig, Michael Wanjagisinah, J. R. Shahbwahnuhqua, James Pehategoos, John Pepegewis, and S. Commanda (spellings as per petition). See: IA, RG 10, vol. 2835, File 170,803, Petition, Whitefish Lake Band, 30 December 1897; M. O'Brien, Whitefish, to IA, 2 January 1898.
- 86 Compiled from: IA, RG 10, vol. 2835, File 170,803, B. W. Ross, Manitowaning, to IA, 6 January 1898; Michael O'Brien, Whitefish, to IA, 22 January 1897; A. N. McNeill, Assistant Superintendent IA, Ottawa, to M. O'Brien, Whitefish, 21 February 1897. IA, RG10, vol. 7815, File 30019-7, "Manitowaning Agency—Correspondence regarding timber ... on the Whitefish Lake Reserve ... 1893–1930," Chief Wahbenimeke and Second-Chief Cabayette to IA, 18 February 1898; Chief Wahbenimeke and Sub-Chief Cabayette to IA, 18 February 1898. The minutes of the meeting, held on 18 February at the Whitefish Lake school house, are also in this file. The letter would seem the result of the meeting.
- 87 Michael O'Brien, Whitefish, to Rod Mac [illeg.], 19 February 1898. In this private letter, O'Brien sought information about Agent Ross. It is not clear why a private letter is in IA files.
- 88 IA, RG10, vol. 7815, File 30019-7, "Manitowaning Agency—Correspondence regarding timber ... on the Whitefish Lake Reserve ... 1893–1930," IA to M. O'Brien, Whitefish, 2 March 1898; M. O'Brien, Whitefish, to IA, 23 May 1898; IA to M. O'Brien, 26 May 1898; Dominic Pinae, Whitefish Lake, to IA, 19 August 1898; John Chimomence, Whitefish Lake, to IA, 29 August 1898; IA to Chimomence, September 12, 1898. Ironically, a depot existed by 1890, with a new building erected about 1907. A marginal note in the Pinae letter stated that the letter is in O'Brien's hand. Located on 1.5 acres cleared by Band member Coucroche, the new depot was located at the southern terminus of the tote road from Whitefish, near La Vase creek. IA RG10 vol.7815, file 30019-7, "Manitowaning Agency—Correspondence regarding timber ... on the Whitefish Lake Reserve ... 1893–1930," C. L. D. Sims, Manitowaning, 6 February 1907. A photo is in Higgins and WLIR, *Whitefish Lake Ojibway Memories*, 136.
- 89 IA, RC 10, vol. 2318, file 63,375–6A, H. J. Bury, Memorandum to Mr. Caldwell, 1 March 1923; J. D. McLean to D. Pasken, Esq., Barrister &c., Toronto, 26 August 1914. There was not much at stake for Gooderham; the limits had cost only \$207. See IA, RG 10 vol.2318, file 63,375-6, Pasken to McLean, 21 May 1912. It was not clear whether O'Connor paid his fees.. The quote: IA, RC 10, vol. 2318, file 63,375–6A, H. J. Bury, Memorandum to Mr. Caldwell, 1 March 1923.
- 90 IA, RC 10, vol. 2318, file 63,375–6A, Letter, D. C. Scott to H. J. Bury, 17 March 1916. Bury accompanied R. J. Lewis, Indian agent, on the latter's annuity payment visit in April. Quote: R. J. Lewis to Secretary, IA, 19 July 1916. About twenty-five Band members were present when Lewis visited 15 July 1916.
- 91 PAC RG 10 vol. 2318, file 63,375-6, Frank Cochrane to D. C. Scott, 2 December 1915; J. D. McLean, Ottawa, to G. R. Silvester, Copper Cliff, 2 December 1915. The yards were about three miles northwest of the reserve.

- 92 Two extensive works on roast yard pollution are: M. Sheena Symington Sager, "The Environmental and Social History of the O'Donnell Roast Yard and Townsite near Sudbury Ontario" (master's thesis, Trent University, 1999); and Daniel Bouchard, "Pollution et Destruction de la Nature à Sudbury (1883–1945): Derrière l'écran de fumée" (PhD diss., University of Ottawa, 2003). Neither touches upon the reserve issues.
- 93 PAC, RG 10, vol. 2318, file 63,375-6, G. R. Miller, Sudbury, to Deputy Superintendent, IA, Ottawa, 17 September 1917.
- 94 PAC, RG 10, vol. 2318, file 63,375-6, "H. J. Bury, Investigation of Damage to Timber of the Whitefish Lake Reserve Due to the Action of Sulphur Gases." For later complaints: PAC, RG 10, vol. 2318, file 63,375-6, R. J. Lewis to Secretary, IA, 25 October 1916. IA wrote Canadian Copper in November and got a response. PAC, RG 10, vol. 2318, file 63,375-6, 7 November 1916; 15 November 1916.
- 95 By the purchase date of September 1918, Canadian Copper had been reorganized as INCO. IA, RG 10, vol. 2318, file 63,375-6, p521877IA, Lands and Timber Branch, "Manitowaning Agency—Correspondence Regarding Timber Licences & Timber Operations in the Whitefish Lake Reserve," 15 March 1916, "Memo to Deputy Minister re Timber License of Whitefish Lake Indian Reserve." Summarizing the convoluted history of INCO's acquisition required five typed pages: IA, RG 10, vol. 2318, file 63,375-6, 549467-549471, Osler, Hoskin & Harcourt, Barristers & Solicitors, Toronto, to IA, 29 December 1920.
- 96 Quote: IA, RG 10 vol. 2318, file 63,375-6, 534557, R. J. Lewis, Manitowaning, 27 December 1919, to The Secretary, IA, 29 March 1919. See also his letter to the Secretary, 29 March 1919 indicating support for the cut. PAC, RG 10, vol. 2318, file 63,375-6, 521877.
- 97 Agnew, Vice-President of the firm, wanted twenty thousand cords of wood annually: IA, RG 10, vol. 2318, file 63,375-6A, Agnew to McLean, 23 January, and response, 29 January 1920.
- 98 McGuire and Allan MacPherson operated just to the west in Louise Township along with a four-thousand-acre limit [No. 180] on the southwest edge of the reserve. They acquired the limit in 1906, but did not cut until 1919. IA, RG 10, vol. 2710, file 143,216, "Manitowaning Agency—Correspondence Regarding A Letter, From Chief Joseph Cabayette of the Whitefish Band, Asking If Lumberers Have the Right to Remove Buildings Which They Have Built, From the Reserve." It is not clear why McGuire wanted to buy land given that by law he could build a camp on his limit with local timber so long as he left it behind when abandoning the limit.
- 99 Indian Agent Lewis claimed McGuire was rebuffed because the Indians were protective of mineral rights, but the long history of lost timber rights surely was influential. IA RG 10, vol.2318, file 63,375-6A, Lewis to IA, [Need date here.]; IA, RG 10, vol. 2318, file 63,375-6B, R. R. McKessock, Barrister, Sudbury, to IA, 20 September 1926, and R. J. Lewis to IA, 27 September 1926. On tourist competition: IA, RG 10, vol. 2318, file 63,375-6B, J. D. McLean to R. R. McKessock, 29 September 1926.

- 100 Coverage of 1920s timber issues relies on IA, RG 10, vol. 2318, file 63,375-6A, "Manitowaning Agency Correspondence Regarding Timber Licenses and Timber Operations in the Whitefish Lake Reserve 1918-1925." The erroneous cut was mainly hemlock, with a few white pine, balsam, and spruce. PAC, RG 10, vol. 2318, file 63,375-6A, R. J. Lewis, Manitowaning, to The Secretary, IA, 8 January 1925. The Company agreed to pay an additional \$5 per thousand feet, board-measure (MFBM) for the timber, or about \$62.25.
- 101 See IA, RG 10, vol. 2318, file 63,3756A, R. J. Lewis, "Memo—Timber out Ludgate & Thompson Winter 24-25"; "Memo Dues No. 68 Licensee"; "Memo 22 June 1925 Season 24-25 Louse portion." The cut: 236,166 FBM of white pine, 210,603 FBM of spruce and 635,278 FBM of hemlock, producing dues of \$2567.73. "Memorandum on Dues Limit 68," 27 September 1927. By late 1927, IA struggled to get any dues, finally cancelling the Ludgate & Thompson license on 31 April 1931 owing to inactivity. IA, RG 10, vol. 2318, file 63,375-6B, Charles Stuart, IA, to James Ludgate, Naughton, 10 December 1927; T. R. K. MacInness to Ludgate, 7 September 1932.
- 102 IA, RG 10, vol. 2318, file 63,375-6B, T. R. L. MacInness to McCrea and Valin, Solicitors, 9 September 1932. The quote: illeg. Lands and Timber Branch, to Geo. B. Nicholson, Chapeau, 21 September 1934.
- 103 John Ojala, a Finnish immigrant leasing part of McPherson's limit, initiated complaints about "illegal" cutting by the Band. IA, RG 10, vol. 2318, file 63,375-6A, R. J. Lewis, Manitowaning, to IA, 24 February 1925; A. McPherson, Orillia, to IA (attention A. P. MacKenzie), 14 October 1926. Victoria Harbour Lumber stated that it bought "cordwood from the Indians, in accordance with arrangements made with your local agent, and has paid dues to him." IA, RG 10, vol. 2318, file 63,375-6B, R. S. Waldie, Toronto, to IA, 8 August 1926.
- 104 Lewis notes the Indians were unaware of any "infringement." IA, RG 10, vol. 2318, file 63,375-6A, R. J. Lewis, Manitowaning, to IA, 24 February 1925; Response to Chief Petahtegoose: A. P. Mackenzie, Acting Asst. Deputy, to R. J. Lewis, 2 March 1925; Chief Joseph Petahtegoose, Naughton, to IA, 30 December 1924. The Chief signed with his mark; the letter was witnessed by Michel Faille. The letter is on Ludgate & Thompson stationary.
- 105 IA, RG 10, vol. 2318, file 63,375-6A, Superintendent General, IA, to R. R. McKessock, Sudbury, 10 February 1926. The complaint had been sent 5 February.
- 106 IA, RG 10, vol. 2318, file 63,375-6A, R. R. McKessock, Sudbury, to Honourable Charles Stewart, Minister of Interior, 20 February 1925.
- 107 IA, RG 10, vol. 2318, file 63,375-6A, Superintendent General, IA, to R. R. McKessock, 23 March 1925.
- 108 IA, RG 10, vol. 2318, file 63,375-6A, Chief Joseph Petahtegoose, Naughton, to IA, 10 May 1925, responding to a letter from IA dated 5 May.
- 109 Lewis seized stockpiles of timber cut by subcontractor John Ajola awaiting shipment at Whitefish Station on the Algoma Branch of the CPR. The correspondence reveals McPherson as skilled at avoiding fees. IA, RG 10, vol. 2318, file 63,375-6B.

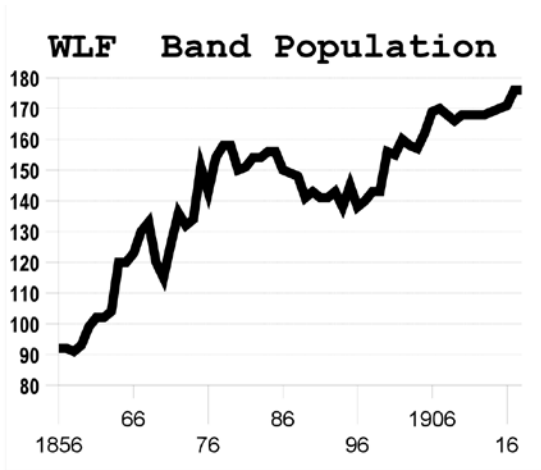
- 110 For general discussion of Aboriginal participation in the Northern Ontario money economy, see Thomas W. Dunk, "Indian Participation in the Industrial Economy on the North Shore of Lake Superior, 1869 to 1940," *Thunder Bay Historical Museum Society Papers and Records* XV (1987): 3–13. Dunk notes how adeptly the Aboriginal population took up a monied economy.
- 111 W. R. Burke, "Report and Field Notes Survey of Dowling," Ontario, Department of Lands and Forests, Book 32, no. 1128. Earlier surveyors like Alexander Murray, A. P. Salter, and their assistants regularly stopped at the village. They make only brief mention of these stops, but it seems inevitable that they sought local knowledge and supplies.
- 112 J.C. Phipps reported the school open in his 1879 report: *Indian Affairs Annual Report*, 1879, 298. On the funds: Canada, Privy Council Order, 31 July 1880, copied in IA, RG 10, vol. 2118, file 22,435, "Whitefish Lake Reserve—Order in Council Authority \$200 Per Annum to the School Teacher." The building was reported under construction in *Indian Affairs Annual Report*, 1881, xlix, 21, 306.
- 113 IA, RG 10, vol. 2315, file 62,757, "Manitowaning Superintendency—General Correspondence Regarding the Indian School at White Fish Lake 1885–1888," provides detail. Teachers left in part because the \$200 pay was insufficient, given that "everything [was] dear" at the HBC store. See letter of 12 November 1886; Indian Agent and School Superintendent J. C. Phipps failed in a bid to get more money from Indian Affairs. See letter of 28 November 1887.
- 114 Ontario, Report of the Minister of Education, 1886, *SP*, no. 7, 1887, 93; Phipps's report of 23 August 1890 in *Indian Affairs*, 1890, 5, notes that Mr. [Silas?] Huntington started the Methodist school "July last." Ontario, Report of the Minister of Education, 1893, *SP*, no. 7, 276, reports some funds from the Methodist Missionary Society, but the Band paid upkeep and salary. The Methodist school closed 30 September 1905
- 115 IA, RG 10, vol. 2315, file 62,757, "James C. Phipps to IA, 12 November 1886, Manitowaning Superintendency—General Correspondence Regarding the Indian School at White Fish Lake 1885–1888." Miss Horrigan's name is sometimes spelled Hourigan.
- 116 Sims quoted in *Indian Affairs Annual Report*, 1910, Part I, 294.
- 117 *Indian Affairs Annual Report*, 1910, Part I, 293. Attendance fluctuated wildly; school costs compiled from Financial Reports in the *Indian Affairs Annual Reports*. Salary ate up most funds. A variety of school buildings were used until a new building was constructed (1913); it may have been destroyed by fire, for the Roman Catholic church again doubled as a school and teacher's quarters in 1919–20. A cottage was moved and renovated to serve as the reserve school in 1921. Some Whitefish Lake children attended off-reserve schools in Waters, Louise, or Graham townships, which were nearer their homes.
- 118 IA, RG 10, vol. 1996, file 6990, items 2, 3, "Manitowaning—J. C. Phipps Sending an Account of the Proceedings of a Council of Chiefs and Indians held at Manitowaning, August 21st, 1876." The minutes state that, "Indians

of the North Shore of Lake Huron" were represented. On back payments: Canada, "Return ... of all correspondence between the ... Dominion and ... Ontario, in reference to the arrears due to the Indians or due to the Dominion on account of Indian Land claims on Lakes Huron and Superior," *SP*, 1879, no. 127; Canada, "Return... Correspondence which has taken place in the past two years ... in reference to the arrears due to the Indians of Lakes Huron and Superior," *SP*, 1882, no. 76. The courts soon took over. See: "*The Province of Ontario v. The Dominion of Canada...*", Canada, *Reports of the Supreme Court of Canada*, vol. 25 (Ottawa: Queen's Printer, 1896), 434–40.

- 119 IA, RG 10, vol. 2398, file 82,386, "Manitowaning Agency: Application for a Grant for Cahgahke of the White Fish Band," James C. Phipps to Superintendent General of IA, 30 December 1887. Even in the 1920s, Agent Lewis was dismissive of "bush" Indians. Robin Jarvis Brownlie, *A Fatherly Eye: Indian Agents, Government Power, and Aboriginal Resistance in Ontario, 1918–1939* (Toronto: Oxford University Press, 2003), xiii. On pressures placed upon bands within the Robinson Treaty: Morrison, "The Robinson Treaties," section 12.11.5.
- 120 All the comments were in the Indian Affairs files vol. 2439, file 91,333. Aid started in March, at twenty pounds per family per fortnight. IA, RG 10, vol. 2439, file 91,333, items 30–31, T. B. Ross, Naughton, to J. C. Phipps, Manitowaning, 15 February 1889 (his emphasis); IA, RG 10, vol. 2439, file 91,333, items 32–33, Rev. P. Nadeau (illeg.), Bracebridge, to Phipps, 18 February 1889; IA, RG 10, vol. 2439, file 91,333, items 34–35, Phipps, Manitowaning, to IA, 26 February 1889; IA, RG 10, vol. 2439, file 91,333, items 37–38, Unsigned letter, Ottawa, to Thomas B. Ross, Naughton Station, 2 March 1889. IA insisted it did "not hold itself responsible for any issues of provisions made ... previously to the rec't of this letter."
- 121 *Indian Affairs Annual Report*, 1874, pt. I, 33; (1875) pt. I, 15.
- 122 *Indian Affairs Annual Report*, 1876, 18–19.
- 123 *Indian Affairs Annual Report*, 1898, 542. The yield was 1,065 bushels of potatoes, 55 bushels each of beans and turnips, 25 bushels peas, 5 bushels oats, and 7 tons hay. Ten tons of "wild" hay added fodder.
- 124 *Indian Affairs Annual Report*, 1889, 6. These were hard times: the Band relief support of \$354.25 in 1884 was the biggest sum in the entire period under study.
- 125 *Indian Affairs Annual Report*, 1890, 6.
- 126 Julia Petatagoose and Nora King, "Interviews," 1984, Canadian Plains Research Centre, <http://hdl.handle.net/10294/620>. Mrs. Petatagoose was born in 1907. *Indian Affairs Annual Report*, 1911, 17. On illness: HBCA, B134/e/3, "Post Report Montreal Department," 1890, 12; IA, RG 10, vol. 2811, file 164,526, "Typhoid at Spanish River"; *Indian Affairs Annual Report*, 1901, xviii; F. G. Finley, "Notes on an Epidemic of Mild Smallpox," *Montreal Medical Journal*, 30 (April 1901): 17. On "prevalent" consumption: *Indian Affairs Annual Report*, 1903, 13. Adding insult was a bill of \$594.26 for a quarantine camp and additional medical attention. Dr. W. H. Howey served in the 1880s and

- 1890s, Dr. R. H. Arthur from about 1900 to 1910. Fees and smallpox costs noted in the Band financial statements.
- 127 *Indian Affairs Annual Report*, 1890, 6, has criticism of the “old” ways. The manuscript census for 1891 lists all adult males as “trappers.” NAC, RG 31, Census 1891, reel T-6323, Algoma East Division, Hallam to Graham Townships, 5–11. *Indian Affairs Annual Reports* provide yearly assessments of “progress.”
- 128 Pulpwood cutting was hindered by IA insistence that timber rights be sold to outsiders. On the 14 December 1893 petition: IA, RG 10, vol. 7815, file 300197, “Manitowaning Agency—Correspondence regarding timber ... on the Whitefish Lake Reserve ... 1893–1930.” Cordwood was cut by 1895; sales to Canadian Copper for roast yards started no later than 1900. IA, RG 10, vol. 7815, file 300197, “Manitowaning Agency—Correspondence regarding timber ... on the Whitefish Lake Reserve ... 1893–1930,” 27 December 1895 and 21 February 1900.
- 129 *Indian Affairs Annual Report*, 1896, 24; 1897, 19–20; Michael O’Brien, Whitefish, to Superintendent General IA, 24 October 1897, IA, RG 10, vol. 2825, file 170,803, “Manitowaning Agency—Application of Michael O’Brien to Lease 50 Acres on the North Shore of Lake Penache”; J. H. Stovel, *A Mining Trail 1902–1945* (n.p.: privately printed, 1956), 12. Firefighting was emphasized before the second wave of cutting: payments listed in the Financial Statements, 1913–16. Related memorandum in IA, RG 10, vol. 2318, file 63,375–6.
- 130 See Julia Petatagoose, “Interview.” She and Nora King suggest that the first three decades saw reliance on traditional methods and products, but limited transfer of them to future generations. Also: Higgins and WLIR, *Whitefish Lake Ojibway Memories*, 109, and *passim*.
- 131 These phrases or similar ones are found in Annual Reports from about 1895 to 1913. The quotes are from *Indian Affairs Annual Report*, 1914, 16. On Gemmell: personal knowledge of the author, and Julia Petatagoose, “Interview”; Higgins and WLIR, *Whitefish Lake Ojibway Memories*, 104.
- 132 Brownlie, 27. In 1932, immigrants living just west of the reserve had cash incomes in the same range; these were neither a prosperous time nor a prosperous setting. But at least the Finnish immigrants in Louise Township only experienced a limited form of assimilatory and racist pressure. Robin Brownlie, “A Fatherly Eye: Two Indian Agents on Georgian Bay, 1918–1939” (PhD diss., University of Toronto, 1996), 79–85, 165, 375–76.
- 133 Patricia Jasen, *Wild Things: Nature, Culture, and Tourism in Ontario 1790–1914* (Toronto: University of Toronto Press, 1995), especially chapter 4.
- 134 *Sudbury Star*, 2 June 1917, 7. Notes vacationers from Cleveland from at least 1914. Ohioans returned to Lake Penage into the 1960s. Personal knowledge.
- 135 IA, RG 10, vol. 2318, file 63,37506A, R. J. Lewis to IA, 19 March 1923. On camps: Ontario, Department of Lands and Forest, Surveys, Book 19, no. 2057, reel 70, “Report and Field Notes of the Survey of Lake Penage and Part of the Whitefish River in the District of Sudbury.”
- 136 Janet E. Chute, “A Century of Native Leadership: Shingwaukonse and His Heirs” (PhD diss., McMaster University, 1986), 411.

137 Old Whitefish Lake Village emptied (1942–52) as the Band moved nearer the Trans-Canada Highway. Higgins and WLIR, *Whitefish Lake Ojibway Memories*, 91–148, provide the Band's view on this more recent history.



Indian Affairs 1846–48, Whitefish Lake "Roll"¹

Name	# in Family	Name	# in Family
Cai gaw ni be noo	5	Now quo um	6
Cai Ketaw ne be noose	5	Pe she kee	6
Caw gaw bui kajekick	3	Puck quaw naw che	6
Caw gaw kee	3	Quai caw betung	4
Cho gaw bai kegick	4	Quaw naw che	7
Saw wance	4	Saw gutch e wais kum	1
Meshe beshence	7	Sha now quoum	6
Miaw wassegaw	5	Shawonakejick	4
Min is e no	4	She she dwaw	6
Missucke Kejegooquai	2	Tau naw tes	3
Miz in awquish kung	2	Wa binessiamie	8
Mong quose	6	Waw we sance	6
Nai wai on ance	3	We to caw caw	5
Nin doew kejick	5		

1850 Robinson Treaty Annuity Paylist 1850²

Name (Male)	Females	Children	Total
Showonakakizhik Shawahquoum	1	3	5
Waibineseme	1	2	4
Naiwaiobane	1	1	3
Mishebesence	2	3	6
Indowekezhik	1	3	5
Gahgobaikeshikuk	1	2	4
Mishniahquaishkung	1	1	3
Pequahotche	1	2	4
Kewitahnehinoose	1	1	3
Mongoose	2	1	4
Towahtis	1	1	1
Osawanse	1	1	3
Sahgutchewaishkung	1	1	3
Quishekekeghikaquai	-	1	2
Kahbawis	1	1	3
Kahkahkes	1	-	2
Maitwaikeuskishkung	1	1	2

Geographical Distribution, 1871³

Lake	Pop.	Lake	Pop.
Round	8	Wonebing	9
Penage	4	Vermillion	41
Maslong	2	Wenabiting	23
Nebeawapuing	15	Whitefish	22
Bawitchewenga	9		

Religious Affiliation, Whitefish Lake (Census)

Year	Traditional	Roman Catholic	Protestant
1861	115	47	1
1871	94	30	9
1881	--	77	5
1891	--	122	12
1901	--	80	13
1911	--	124	7

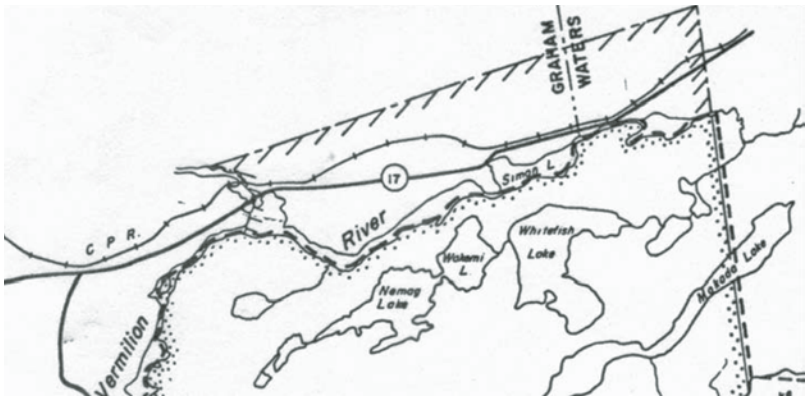
Whitefish Lake Sustenance (Census)

Year	Hunter/ Trapper	Farmer/Hunter	Wage Labourer/ Entrepreneur
1861	26	15	
1871	29		
1881	11	1	2
1891	20		
1901	6	1	2
1911	2	2	24

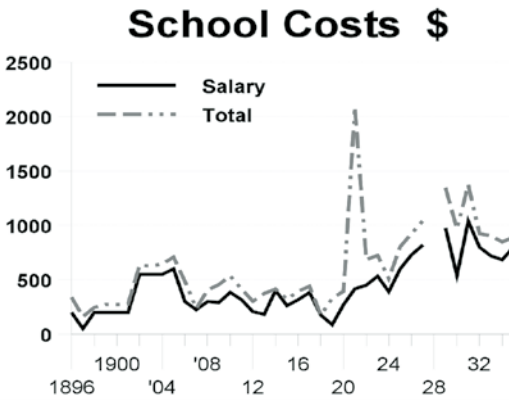
H.B.C. "Indian Debt" List, 1888⁴

Papkena	Hunter WFish	Naboque	Hunter Wfish
S. Martin	"	Ahmagenewaykejuke	"
Shabagnotte	"	Ahmagenewaykejuke's wife	
Cabumete	"	Maskewgis	Dead
Wandanaw	" dying	Ackwenza	
Kaneuwagpeich	Hunter WFish	Kesegoupenses	
Joseph Faille	Hunter 1/2 breed	Matawum	
M. Faille	"	Neemakesyat	
Sawakoush	Hunter	Messalay	
Wabinimakie	"	Peasquecheons	
Tonadis	"	-----	daughter
Jack Mungenakesish	"	-----	son
Angus Concroch	"	-----	wife
Conerouchis' wife		Ouswascoquam	
Apilakegich	Hunter	Quawsence	
Ga bodan	"	Shawenconpenase	
Papeguish	"	Wahsewabkehay	
Pashegwan	"	E. Eustaquaraw	
----- D	Annuity Dept	Oqusketaa	
Lagachewasking	Sick	Memejawe	
Amagewaykesick	Hunter WFish	Omemce	
Kenewaykesick	"	John Langevin	
Wanekisinaw	Dead	Jorinay	
R. Commanda	Hunter Wfish	Shabwasen	
Wengekininaw	"	Shashewnabin	
T. Mekiskinae	"	Nezauchon	
Naponse	Hunter Wfish	Waweakesick	

Dual Boundaries, North End of Reserve⁵



School Costs Compiled from IA



Financial Statistics, Whitefish Lake (IA Annual Reports)⁶

Year	Timber Dues & Bonus	Other Timber & Land Fees	Interest Earned	Interest Paid Out	Relief Monies
1887	316	79	na	na	na
1888	2,534.53	316	15.8	na	10
1889	5,055.05		108.88	200.41	10
1891	751	410.75	318.56	163.23	75
1894	2,213.55	627.93	438.89	300	35
1895	2,000	405	508.2	300	30
1896	11,252.81	1,220.28	483.1	416.48	
1897		211.77	922.44	409.99	
1898		217.30	865.76	na	
1899			807.26	na	
1900	10,182	1,221.79	801.76	572.14	20
1901	8,409.42	1,051.94	1,095.57	na	
1902	7,683.45	24	1,317.86	528.35	25
1903	604.44	654.44	1,520.31	660.7	
1904			1,540.75	752.65	52
1905		53	1,544.3	865.2	55
1906	5,000	753	1,539.2	1,011.9	45
1907			1,267.74	489	45
1908	828.14	287.81	1,695.32	975	35
1909		229.6	1,714.06	1,003.35	31
1910	75	212.5	1,720.99	973.9	10
1911	150	220	1,722.39	906	50
1912	66	205	1,730.25	1,002.6	121.6
1913	26.52	218.25	1,736.12	824	53
1914		307.36	1,746.96	1,043	120
1915	75	222	1,849.56	1,013.2	91.75
1916	153.45	207	1,857.73	852.7	129

Year	Timber Dues & Bonus	Other Timber & Land Fees	Interest Earned	Interest Paid Out	Relief Monies
1917		471	1,868.65	1,039.25	216.95
1918	793.5	207	3,127.07	900.5	125
1919	753.06	344	3,252.12	1,427.01	159.5
1920	1,375	207	3,362.4	2,424	309.5
1921	1,516.7	358.01	3,405.57	2,568	250
1922	553.42	233	3,412.6	2,296	512.5
1923	76.2	233	3,364.04	2,126	389
1924	55.5	233	3,343.5	1,968	291.5
1925	169.2	233	3,314.53	1,889.5	429
1926	1,271.95	na	3,448.84	1,733.75	12.5
1927	3,037.97	247.65	3,517.3	1,843.75	1,193.85

Endnotes for Appended Materials

- 1 Indian Affairs, Northern Superintendency, RC 10, Vol. 621, p.246, 252, 433, 461, 478. Reel 1338, 5. Handwritten material (spelling speculative). Number in family varies between lists.
- 2 PAC, RG 10, vol. 9501, reel c-7167, 109, "Robinson Treaty Annuity Paylist," 13 September 1850. Similar lists available for 1857, 1861–68, 1884–85, 1887, 1889, 1890–93. See PAC, RG 10, vol. 9501, reel c-7167, 110–156.
- 3 Spellings vary, but only one combination presents doubt. Nebewapuung, Netewagenwang, and Nonwategung lakes may be different lakes, but they are considered as one for this chart.
- 4 HBCA Post Report—Whitefish Lake, L Huron 1888, B 364/e/1, fo. 8, micro Series II, reel 1M1260, Ric. Hardisty, E. K. Beeston, Winnipeg, 20 June 1888. Handwritten list (spelling speculative).
- 5 Plan of the Whitefish Lake Indian Reserve #6 as surveyed by George Brokitt Abrey, June 30, 1884, RG 10, Vol. 2318, File 63375-6, Plan of the White Fish Lake Indian Reserve no. 6, Ontario, 1884.
- 6 No detail until 1887. After 1927, only grand totals. The key land fee was the collection for the Indian Land Management Fund. The Band also gathered \$297.41 in "liquor fines" in the 1890s. Health monies included support to destitute, ill/hospitalized, and very occasional burials. Annual doctor's fee of \$300 [Dr. W. H. Howey], increase [Dr. R. H. Arthur] to \$350 in 1910 not included. Key sums, c. 1916–17, were compensation payments for timber damaged by sulphur dioxide. Canadian Copper Company/INCO.

CHAPTER 9

The Hudson's Bay Company at Fort La Cloche:

How the Company Took the Land from the
Sagamok Anishnawbek

Victor P. Lytwyn

Fort La Cloche was an important fur trade post during the eighteenth and nineteenth centuries. The name “La Cloche” was taken from a rock located on a nearby island that emitted a sound like a bell when struck.¹ The post was situated on the North Channel of Lake Huron, at the mouth of the La Cloche River, about twenty-five kilometres east of the Spanish River. The La Cloche River was a preferred canoe travel route, providing access to the Spanish River by a short portage, and bypassing the more circuitous route to the main river mouth westward along the coast. A sketch map drawn in 1827 by Hudson's Bay Company (HBC) Chief Factor John McBean (based on Aboriginal information) showed the location of the post and canoe route (see Figure 1). The HBC took over the La Cloche trading post in 1821 when it merged with the North West Company (NWC). Prior to that date, the NWC and other Montreal-based traders had operated in the La Cloche area for many years.² The site of the original NWC post was on La Cloche Island.³ It was likely moved to the mouth of the La Cloche River when the NWC expanded its trading operations north of Lake Huron in the 1790s. When the HBC took over in 1821, La Cloche became the headquarters for the Lake Huron District.⁴ Initially it prospered, but during the latter part of the nineteenth century the fur trade in the region declined, as railroads and timber operations developed and the HBC closed Fort La Cloche in 1890.

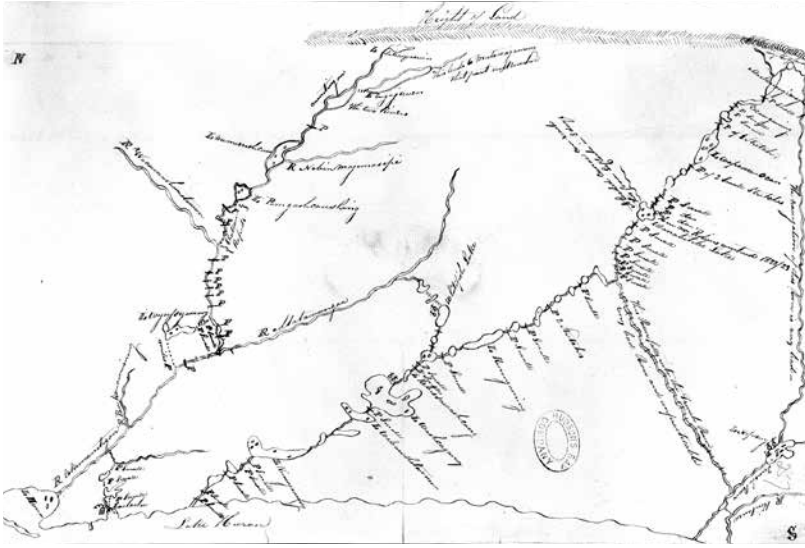


Figure 1: Map of HBC La Cloche District by John McBean, 1827. Source: *Journal of Occurrences and Transactions at La Cloche, Lake Huron, Hudson's Bay Company Archives, B.109/a/1*.

The Aboriginal people who occupied the La Cloche region are known today as Sagamok Anishnawbek. The term Anishnawbek means “original people,” while the name “Sagamok” derives from a point of land near the mouth of the Spanish River. Oral tradition holds that long ago, the water level was higher, and the point cut by a water channel, creating an island. The Anishnawbek name for the Spanish River is Mentigoseebee, meaning “the river of many islands.”⁵ A French map from 1725 named the river “Osquimanetigon,”⁶ and HBC fur trader John McBean recorded the name “R. Eskimanitigon,” a phonetic variant, on his 1827 map of the Lake Huron district.⁷ An 1860 map likely drawn by George Ironside identified the river as “Sk,me,nete,kong.”⁸ In 1882, geologist Robert Bell recorded the name as “O-skim-a-nit-a-nit-a-gong,” which he was told meant “new moon river.”⁹ It is also possible that the name derives from the Anishnawbek name for the kingfisher. According to Frederic Baraga’s *Dictionary of the Ojibway Language*, the kingfisher was known as “ogishkimanissi.”¹⁰ According to an oral tradition told by Sarah Owl, the name “Spanish” derives from a woman who was captured a long time ago

by an Anishnawbek raiding party that travelled a long distance to the south. The captive woman spoke Spanish, and taught the language to her adoptive family. HBC records from the post at La Cloche in the 1830s identified a man called "Frisee" or "Curly Hair," who was also known as Espagnol, or the Spaniard. In the 1850s, a man named Louis Espagnol was identified as one of their chiefs. His Anishnawbek name was Saquaikezhik, and a marriage registration of 3 June 1863 between Louis Espagnol and Angelique Beaudry noted that his grandfather had once been a "prisoner." That document gives support to the oral tradition of a Spanish captive, although in this case the captive was male instead of female.¹¹

The Sagamok Anishnawbek allowed Euro-Canadian fur traders to build trading posts on their land. No written contracts were made at the time, but the initial agreement has been kept in their oral tradition. It was recited in 1997 as follows: "The trader said, we don't want the land, we'll just leave whenever we are finished trading with you. We'll leave the land as it is, we do not wish to stay here permanently. The land will remain yours while we are here, it will be yours when we leave. So the Indians consented to allow this individual to set up camp at the mouth, the Indians would be able to secure supplies when they needed without having to travel a great distance to trade."¹² The verbal agreement between the Sagamok Anishnawbek and the fur traders was broken when the HBC did not give the land back following the post's closure in 1890. Instead, the HBC sold the land and profited handsomely in the transaction.

Anishnawbek Occupation of the Fort La Cloche Site

The Anishnawbek who live in the La Cloche area have occupied the Fort La Cloche site for countless generations. Archaeological investigations at Fort La Cloche have revealed that people have lived there for over a thousand years. Thor Conway, who conducted archaeological fieldwork in the La Cloche area during the 1970s, identified pottery fragments dating to about A.D. 300 and noted that other artefacts were produced at a much earlier date. Conway explained: "Judging from the masses of fire shattered rock which have migrated down the slope of the ramp and into the clear pool above the waterfalls, the site was popular and repeatedly used in prehistoric times."¹³ Archaeologist Christopher Hanks excavated a site on nearby Fox Lake and concluded that human occupation there

had spanned seven thousand years.¹⁴ Hanks also surveyed sites along the Spanish River, and concluded that the river “was both historically and prehistorically a transportation corridor by which people moved from Lake Huron to Biscotasing¹⁵ and the height of land.”¹⁶

Early fur traders who visited the area reported that there was an Anishnawbek village called La Cloche. In 1760, for example, Alexander Henry (the elder) described a “large village” on La Cloche Island. Henry visited the village and “bartered away some small articles among them in exchange for fish and dried meat.”¹⁷ When the British built a military garrison at Michilimackinac, Anishnawbek from La Cloche were regular visitors. On 25 October 1790, Charles Gaultier noted the arrival of a Chief from La Cloche named “Nakakoi.”¹⁸ Thomas Duggan, who was the storekeeper and clerk at the British garrison at Michilimackinac from 1795 to 1801, noted the arrival of many Anishnawbek from La Cloche. He recorded the names of a number of Chiefs from La Cloche, including: Ogaw (the Pickerel), Miscoopenissy (Red Bird), Attique (Caribou), Aumaniscotayway, Okemanssenissy, Negasham, Kaigoquoy, Nawanakam, and Espagnol.¹⁹ Chiefs from La Cloche were also active in political and military relationships with the British in Upper Canada. On 22 May 1796, a delegation of chiefs from Lake Huron visited Niagara and met with the British military commander, Major Shank. He recorded their names, which included Omascenascoutewe, Chief of La Cloche.²⁰ On 12 June 1805, three unnamed chiefs from La Cloche visited Amherstburg and met with British Indian Superintendent William Claus.²¹

During the mid-nineteenth century, the La Cloche post served as the headquarters of the HBC’s Lake Huron District, which included posts at Mississagi River, Green Lake, Whitefish Lake, French River, Shawanaga, and Sault Ste. Marie. The HBC post journals, account books, and letter books from La Cloche provide insights into the fur trade way of life in the nineteenth century. In spring, Anishnawbek harvesters who had spent the winter on trap lines and hunting grounds brought furs into the post. Maple sugar was processed from sugar bushes nearby, and surplus sugar was sold to the HBC. During the summer, some Anishnawbek camped on islands in Lake Huron that served as fishing stations, while fields of corn were also cultivated. La Cloche continued to be an important summer village site. In the summer of 1835, T. G. Anderson, Superintendent of Indian Affairs, visited La Cloche

and reported that he found "the Chief Shoewin-e-ke-jack, with 4 lodges."²² Fall fisheries were located around the many islands in the North Channel of Lake Huron. Fish and fish products, such as isinglass, made from the swim bladders of sturgeon,²³ were sold to the fur traders. By the time winter arrived, many Anishnawbek left the vicinity of the La Cloche trading post to travel to northern trapping and hunting grounds.

Hudson's Bay Company Attempts to Obtain a Grant of Land at La Cloche

For many years, the HBC showed little interest in obtaining title to the land about its trading post at La Cloche. This changed in the 1840s, however, when minerals were discovered in the region. The resulting mining rush prompted the HBC to petition the government of Upper Canada for the land around its trading posts to prevent the land from being given to the mining companies. In the fall of 1845, the British colonial government began to issue mining licenses giving individuals the right to explore the area along the northern shores of Lake Huron and Lake Superior. These licenses also enabled prospectors to apply for tracts of land, called mining locations, in areas where minerals were discovered. The mining tracts covered rectangular areas of two miles along the lakeshore by five miles in depth (ten square miles, or 6,400 acres). The price was four shillings per acre, a £150 down-payment, and five annual instalments with interest. By 1849, sixty-six mining licenses had been issued and £11,260 collected in license fees by the provincial government.²⁴

The mining rush prompted the HBC to petition the provincial government to protect the land under and around its trading posts from being licensed to mining companies. HBC Governor George Simpson learned about the government's plans for mining development in the Lake Huron and Lake Superior region before the public was aware of these plans. In a letter dated 30 September 1845 to John Ballenden, who was in charge of the HBC post at Sault Ste. Marie, Simpson reported that, "the Government are not at present in a position to grant Leases in that quarter for mining purposes." However, Simpson also advised that he had positioned himself to become an investor in a mining company if any valuable minerals were found, and he invited Ballenden to join him in such a venture.²⁵ Simpson wrote again to Ballenden on 11 December

1845, and confided, "I shall confer with the commissioner for crown lands on the subject of obtaining titles for the sites of our establishments on Lakes Huron and Superior and at the Sault de Ste. Marie; but I am very doubtful the Govt. will give us the grant of the frontage which is the public highway, and from the earliest days of the fur trade has been open to all who chose to pass by it."²⁶

Despite Simpson's private pessimism about gaining ownership of land, he wrote to Denis-Benjamin Papineau, Commissioner of Crown Lands, and applied for a grant of land around the Company's trading post at the mouth of the Michipicoten River. Simpson specified that the Company wanted a tract of land measuring two by five miles, the same area that government regulations had established for mining claims. In pressing the Company's claim, Simpson advised that the HBC claim was based on its long occupation of the site.²⁷ Simpson wrote again to Papineau on 20 January 1847 to extend the Company's claims to all other posts on Lake Huron and Lake Superior. He urged Papineau to "issue instructions that the Company's possessory rights be respected, and that no sales or grants of land be made in the immediate vicinity of their posts."²⁸

While Simpson lobbied the government for the HBC, other parties were also rushing to claim mining tracts on the north shore of Lake Huron. John W. Keating, a former Indian agent, was one of the first to stake a claim.²⁹ He had gained information from Aboriginal people on St. Joseph Island about a copper deposit on the north shore of Lake Huron across from the island. Keating then formed a partnership with Arthur Rankin and James Cuthbertson to purchase the location. By December 1846, miners began to work the mine, which was called the Bruce Mines, in honour of James Bruce, Lord Elgin and Governor General of Canada. The partnership grew into the Huron and St. Mary's Copper Company. Other investors were added, including provincial government Executive Council members Francis Hincks and W. H. Merritt. Stewart Derbishire, Queen's Printer, was elected president, and William Benjamin Robinson, member of the provincial legislative assembly and former Executive Council member, was appointed superintendent of the mining operations. In July 1847, the Bruce Mines shipped two hundred tons of copper valued at \$5,000. The mining operation was sold soon after to the Montreal Mining Company for over \$33,000.³⁰ As he had presaged,

HBC Governor George Simpson became a director of the Montreal Mining Company in 1848.³¹

On 28 October 1847, T. Bouthillier of the Crown Lands Department advised Governor Simpson that another application had been made for a mining tract in the vicinity of La Cloche, and suggested that the HBC submit a sketch map showing the extent of land that the Company required around its trading post. By that time, four licenses had already been granted for mining locations near the Spanish River. The license holders were Henry Chapman, G. S. Tiffany, Michael Meighan, and Charles Thompson.³² In the summer of 1848, Assistant Provincial Geologist Alexander Murray visited the area and reported that, "A party of miners were employed on the spot who had opened out the lode for a short distance along the surface, and had begun to sink a shaft."³³

In the summer of 1848, provincial land surveyor Alexander Vidal was sent to survey the boundaries of mining and HBC claims on the north shore of Lake Huron. On 22 August 1848, Vidal arrived at La Cloche, and the next day he noted in his diary: "waited on Mr. Buchanan, the H.B.Co's agent, for information regarding the claim, then selected a base and placed several flags." Vidal described the La Cloche tract as follows:

This tract lies at the La Cloche River, extending both East and West of it, the centre of the tract (in width) being the Flag-staff at the Hudson's Bay Company's Post. The rectangular width (East and West) of two miles, is marked by posts and stones similar to those placed at the Boundaries of the Mining locations. Those at the west limits stand on a prominent rock point, forming the west side of the small bay west of the larger one into which the La Cloche river discharges—the front post is at some elevation above the water and conspicuous for some distance, the rear one stands about 10 chains north of it on low, wet, marshy ground. The posts at the East limit of the tract are about a mile east of the mouth of the River; —the front one is conspicuously placed but the rear one being in the woods is not seen, except when viewed along the line cut out.³⁴

Vidal's survey plan (see Figure 2) shows the mouth of the La Cloche River and the location of the HBC buildings on the right bank of the

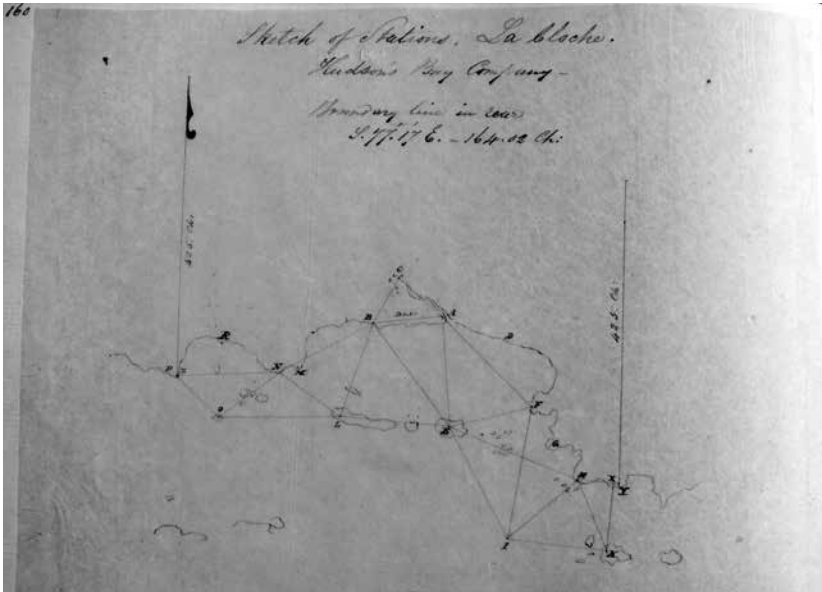


Figure 2: Alexander Vidal's Sketch Map of the HBC La Cloche Tract, 1848. Source: *Note Book on the Survey of the Mining Locations on Lake Huron together with Astronomical Observations, Diary and Report*, by Alexander Vidal, P.L.S., Field Note Book No. 369, Survey Records, Ontario Ministry of Natural Resources, Peterborough.

river near the waterfall. Vidal did not travel upriver beyond the HBC post, and his survey plan shows only a small section of the La Cloche River; the remainder is depicted with a dotted line. Two survey posts were planted at about one mile on either side of the La Cloche River. From these points, Vidal cut a survey line about ten chains (660 feet, or one-eighth mile) deep, planted a second set of survey posts, and projected sketch lines on his survey plan running north for five miles, enclosing a total area of 6,400 acres.

In 1849, Alexander Vidal and Thomas G. Anderson were jointly appointed by an Order of the Executive Council of the Province of Canada to investigate the willingness of the Anishnawbek to enter into a treaty with the British Crown. Vidal arrived first, on 6 September, and spent eight days at Sault Ste. Marie reading documents and interviewing people about land claims and other matters. He spent one day visiting the HBC post, and was granted permission to research documents and books in the

Company's library collection. Anderson arrived on 14 September, and the pair left three days later for Lake Superior.

HBC Governor George Simpson was keenly interested in the activities of Commissioners Vidal and Anderson. At his headquarters in Lachine, near Montreal, Simpson was kept informed by letters from William Mactavish, who was in charge of the HBC post at Sault Ste. Marie. On 14 September 1849, Mactavish wrote to Simpson and noted that Vidal had arrived at Sault Ste. Marie the previous week, and Anderson was expected any day with instructions from the government. The details were unknown, but Mactavish was told that the Commissioners were to hold a council meeting with the Anishnawbek somewhere on Lake Superior. Mactavish expected them to fail because most Anishnawbek were already heading toward their winter hunting grounds. He advised Simpson, "the Indians about are loud in their demands for money, and threatened to stop operations at the mining locations if they do not receive immediate compensation." He added that Allan McDonell³⁵ had also recently arrived and was providing advice to the Anishnawbek. Mactavish believed that McDonell was giving bad advice, and was only interested in his own speculation in mining. James Ermatinger was also at Sault Ste. Marie, and he had made claims on behalf of his family to the land at the Sault.³⁶ Mactavish remarked that these competing claims were creating a "struggle after the loaves and fishes."³⁷

On 20 September 1849, Mactavish wrote to Governor Simpson and reported that Vidal and Anderson had gone to Fort William to hold a council meeting with the Anishnawbek of Lake Superior. Allan McDonell and James Ermatinger had followed them in order to advance their own claims. Vidal was the leading Commissioner and Anderson was relegated to the role of assistant. Mactavish confided, "Captain Anderson said nothing but after his long service he cannot but feel the slight." McDonell had informed Mactavish that the Commissioners had been instructed to purchase the land around Sault Ste. Marie. The local Anishnawbek chiefs had told Vidal and Anderson that they had already sold some land to the NWC. This must have been comforting news to Simpson, who was worried that the Company's claims would go unheeded by the provincial government.³⁸

On 13 October, Vidal and Anderson returned to Sault Ste. Marie and prepared for their trip along the north shore of Lake Huron. Mactavish learned about the Fort William council meeting and reported to Simpson that the Lake Superior Anishnawbek were willing to make a treaty. Vidal and Anderson had confided that the positive outcome had been the result of “the good management of the H.B.Co.” Le Peau du Chat, one of the Fort William chiefs, had acted as spokesman and had demanded \$30 per person annuity, while one of the Michipicoton chiefs had asked for \$100 per annum. Vidal had confided to Mactavish that he had expected the cost to be much lower. Vidal believed that a treaty could be made in return for a small amount in annual presents and the provision of several schools by the government. However, Mactavish advised Simpson that Alan McDonell continued to advise the Anishnawbek, and could potentially prevent a treaty from being made. The HBC manager at Fort William, John McKenzie, had advanced the Company’s claim to land around the post. Mactavish advised Simpson to send documents supporting the HBC’s claim to Vidal, who promised to include them in his report.³⁹

Vidal and Anderson travelled back to Sault Ste. Marie, where they met with a number of local Anishnawbek Chiefs. Once again, Mactavish wrote to Simpson and provided a detailed report on what had transpired at that council meeting. Mactavish noted that among the first questions raised by Vidal was whether the HBC had been given any land at Sault Ste. Marie. Two chiefs agreed that land had been given to the HBC, but as Mactavish observed, “a useless scoundrel rose up and said that the H.B.Co. had not fulfilled their part of the agreement as part of the bargain was that the Indians were annually to receive a feast on the arrival of the first canoe from Montreal which had not been given for many years past.” Allan McDonell acted as the agent for the chiefs, a situation that infuriated Vidal. When McDonnell pressed him to explain the issue of mining leases, Vidal stormed out of the meeting on the second day and refused to have any more discussions with them.⁴⁰ Mactavish wrote again to Simpson after Vidal and Anderson had left, and noted that they had conducted further business at Garden River, Mississauga, La Cloche, and Manitoulin Island. However, he had not learned what transpired at those places.⁴¹

Vidal and Anderson's diaries provide additional information about their activities at La Cloche. On 23 October 1849, Vidal and Anderson arrived at La Cloche and were greeted by HBC post manager A. W. Buchanan. Vidal's diary recorded that they "Took up our abode at Mr. Buchanans H.B.Co. and were most kindly received."⁴² Anderson's diary noted that they "landed at Hospitality Hall (Mr. and Mrs. Buchanan, LaCloche) where, as usual at the Hudson Bay posts, we were bedded and boarded with the greatest kindness."⁴³ Both Vidal and Anderson noted that the Sagamok Anishnawbek Chiefs were not present at La Cloche when they arrived. Anderson reported that they "Had to despatch Indians to bring in the Chiefs."⁴⁴ Vidal noted that they "Sent for Spanish River chiefs on our arrival," and he explained the next day (24 October) that, "The messenger returned at noon only to say that the Spanish River chiefs had gone to the Sault and therefore had a talk with those present."⁴⁵ Anderson's diary recorded a different scenario. He stated: "The Indians having arrived our business with them was settled."⁴⁶ On 24 October 1849, just before sunset, Vidal and Anderson left La Cloche to resume their eastward return journey.

Vidal and Anderson's report to the government (Vidal actually wrote the report) was an amalgam of notes on meetings with chiefs, observations about the nature of the country and the Aboriginal people, and recommendations on proceeding with a proposed treaty. Vidal explained, "The advanced period of the season at which the instructions were received precluded the possibility of gathering any large numbers of the Indians together, as the greater part of them had already left the shores of the Lake, and scattered themselves through the interior on their several hunting grounds, before your commissioners arrived."⁴⁷ The onset of winter was particularly evident when they arrived at La Cloche, and they had to hurry in order to return home safely. On the subject of general treaty terms, Vidal observed, "There is a general wish expressed by the Indians to cede their territory to the Government provided they are not required to remove from their present places of abode—their hunting and fishing not interfered with and that the compensation given to them be a perpetual annuity but some diversity of opinion exists as to the amount and mode of payment required."⁴⁸ In regard to reserve areas desired by the chiefs, Vidal noted that, "they are of generally limited extent and intended as places

for residence and cultivation.”⁴⁹ He also observed that, “The reservations selected by the Indians for themselves, seem to be generally chosen with a regard to the capabilities of the soil for cultivation, or to the convenience of the position for fishing.”⁵⁰

Appendix B to the report provided a list of the different nations (bands), their chiefs, settlements, populations, and the locations of their territories. This information was also roughly sketched on a map accompanying the report. Under the “La Cloche and Spanish River Band,” Chief Penaiseseh⁵¹ was identified as a leader of 250 people who resided at La Cloche. Their territory was described as: “From Nid d’aigle [Eagle’s Nest, located about four miles west of the mouth of the Spanish River] to La Cloche River and back to the Inland Band.”⁵² Appendix D to the report listed “reservations which the Indians wish to make.” For the “La Cloche and Spanish River Band,” Vidal described it as “A reserve on the banks of the Spanish River, locality not determined upon.”

HBC Governor George Simpson was very interested in the outcome of the Vidal and Anderson investigation. In a letter to William Mactavish at Sault Ste. Marie dated 20 January 1849, Simpson advised: “the information you gave me in reference to the proceedings of the Commissioners sent up to form a treaty with the Lake Superior Indians for settling their claims for indemnity for the loss of the mineral lands, is very interesting and I have to beg you will keep me duly advised.”⁵³ Furthermore, in what appears to have been a move to consolidate the Company’s interests, Simpson agreed to give Anderson’s son, Gustavus, a missionary for the Church of England, permission to lodge at the Company’s Sault Ste. Marie post during the upcoming winter.⁵⁴

Less than a week after Vidal and Anderson completed their investigation, an armed party of Anishnawbek and Métis from the Sault Ste. Marie area took over the Quebec Mining Company’s mine at Mica Bay on Lake Superior. Once again, William Mactavish provided Governor Simpson with updates on the developments. He confided that the party was nominally led by the Chiefs, but the real ringleader was McDonell. Mactavish explained that the anger was directed against mining superintendent John Bonner and the “Quebec Directors,” and no resistance was expected from the miners themselves.⁵⁵ On 20 November 1849, Mactavish provided a fuller report to Governor Simpson on the Mica Bay incident. He stated

that the party “went to Mica Bay and claimed that location as being the property of the Indians, which demand Mr. Bonner manager of the Quebec Mining Company not being in a position to resist ... he is on his way to Quebec having dismissed his people and entirely broken up the establishment at Mica Bay ... the Indians and halfbreeds got there during the night, they got actually into Mr. Bonner’s house before their presence was suspected, Messrs. Allan McDonell and Metcalfe armed with knives and a pistol rushed into the sitting room and when Mr. Bonner in his dressing gown came out of his bedroom they called on him to surrender as the place was taken.”⁵⁶

The Mica Bay incident accelerated the provincial government’s resolve to settle a treaty with the Aboriginal peoples of Lake Huron and Lake Superior. Francis Hincks, a provincial government minister, sought advice from HBC Governor Simpson on how to arrange the proposed treaty. Simpson advised Hincks to delay the treaty until the summer, explaining that “no benefit would arise from sending up a Commissioner immediately, as the Indians at this season are scattered all over the Interior Country so that he would see very few of them.”⁵⁷ Simpson promised that the Company would assist the government in making the treaty. In a letter to Hincks dated 13 December 1849, Simpson confided: “It will afford us great pleasure to be useful to Government in that or any other matter, which you can take an opportunity of making known in the proper quarter.”⁵⁸ In a follow-up letter Simpson explained: “In offering the services of the Hudson’s Bay Company in this matter [treaty], I can assure you I am altogether uninfluenced by any motive of self interest as regards the Company being actuated by an earnest desire to benefit the Indians and to be useful to Government.”⁵⁹

The 1850 Robinson Treaties

William Benjamin Robinson was appointed Treaty Commissioner by the Executive Council of the Province of Canada on 11 January 1850. Robinson was a member of the provincial legislature for Simcoe County. He was also a former member of the Executive Council, but had been removed in 1848, after the formation of the Baldwin-La Fontaine administration. At the same time, he lost his job as Commissioner of Public Works. However, he soon found a new job as a superintendent of the

Montreal Mining Company, which had an active operation at Bruce Mines on the north shore of Lake Huron.⁶⁰ As superintendent, he was engaged in overseeing the Bruce Mines operation and in visiting other locations of interest to the Montreal Mining Company. Robinson's employment with the Montreal Mining Company also brought him into close association with Executive Council members Francis Hincks and W. H. Merritt, who were company shareholders.

Robinson made a preliminary trip to Sault Ste. Marie in late April 1850. On 1 May 1850, he held a council meeting with a number of chiefs at Garden River. Robinson advised them of his plans to return in August to negotiate a treaty with all of the Lake Huron and Lake Superior chiefs. Robinson's formal treaty expedition departed from Toronto on 14 August 1850, and arrived at Sault Ste. Marie four days later. On 7 September 1850, Robinson obtained the signatures of the Lake Superior Chiefs on the treaty document. After prolonged negotiations with the Lake Huron Chiefs, Robinson obtained their signatures two days later. The written terms of the Lake Huron Treaty referred to the HBC in only one specific place—in the description of the reserve to be set apart at the Spanish River. In a section on reserves to be set apart, the treaty stated: "Namassin and Naoquagabo and their bands, a tract of land commencing near La Cloche, at the Hudson's Bay Company's boundary; thence westerly to the mouth of the Spanish River; then four miles up the south bank of said river and across to the place of beginning."⁶¹

A. W. Buchanan, HBC post manager at La Cloche, was at Sault Ste. Marie at the time of the treaty and made a report of the proceedings to the Governor Simpson:

The treaty was held on the 5th inst. by Mr. Robinson at the Company's store at the upper end of the portage, and continued till the day before yesterday when all was settled. The Indians of Lakes Superior and Huron agreed at once to the terms proposed.

The terms of the treaty are that the Indians are to receive £4,000 now to be divided amongst the whole of them, and £1,000 are to be paid them annually forever, liable to be increased until the sum amounts to £1 for each Indian should sales of land be made to afford that sum, and in return they are to give up the whole of

the country to the height of land, including Michipicoton Island etc., reserving a small portion at various places for each Chiefs party, the largest reserve by far being at Garden River, and the Indians of Lake Superior are to receive their presents and annual payment for their lands at Michipicoton.... Mr. Robinson's management of this whole business seems to have been good and has given satisfaction to all except Macdonell and his allies among whom may be included the Ermatingers and who seem grievously disappointed at the issue of the treaty.⁶²

Surveying the 1850 Treaty Indian Reserves

On 19 July 1851, provincial land surveyor John S. Dennis was appointed to survey the Indian reserves as set out in the 1850 treaties. He was supplied with copies of survey plans of the Lake Huron and Lake Superior areas made by Bayfield and Vidal, and a copy of the 1850 treaties and accompanying schedules of reserves. He was also instructed that, "A Gentleman appointed by the Indian Department will accompany you to point out the limits of the Reserves."⁶³ The person appointed to assist Dennis was John W. Keating, the former Indian agent, mining and timber speculator, and provincial land surveyor, who had assisted Robinson with the Treaties. Keating's appointment came too late for the first season of survey work on Lake Huron. Dennis set out from Toronto on 2 September 1851, accompanied by provincial land surveyor Charles Unwin, who acted as chain bearer, and eleven other men, including interpreter Gabriel Le Gris. The late departure of the survey party made it possible to survey only three reserves during the first season (Point Grondine, Whitefish River, and Henvey's Inlet).

Dennis carried out his second season of survey work in the summer of 1852. This time Keating, who acted as interpreter and negotiator, accompanied him.⁶⁴ The survey party also included Charles Unwin, Arthur Bristow, H. C. Girdlestone, and John Hamilton, who acted as assistants to Dennis. By the time they finished surveying the reserve at Mississagi River it was mid-September, and Dennis feared that the remaining reserves could not be surveyed in the same manner before the onset of winter. As a measure of expediency, Dennis decided to split up the survey party; he and Keating would proceed to the French River and Lake

Nipissing, while Arthur Bristow would be in charge of the reserve surveys at Serpent River and Spanish River. Dennis noted that this was “a proceeding not authorized by the instructions,” but went ahead with the plan because of time constraints.⁶⁵

Dennis and Keating proceeded quickly to the French River, but made brief stops at Serpent and Spanish Rivers. They ascended the Spanish River, crossed over the La Cloche portage, and descended the La Cloche River to avoid the dangerous stretch of open water along Lake Huron’s North Channel. They briefly visited the survey post located one mile west of the La Cloche River that had been planted by Alexander Vidal in 1848. Dennis made the following observations: “We then went on to Spanish River ascending by it and crossing the portage to La Cloche on account of stress of weather outside. After visiting and marking and confirming Mr. Vidal’s post at south west angle of H.B. Comp. tract at this place as the East limit of the Reserve to be laid off here, upon which occasion we were attended by the Chief interested.”⁶⁶ Dennis’s diary did not mention the attendance of any Chief during his quick survey of the Spanish River Reserve.

Wemyss Simpson, who was in charge of the Hudson’s Bay Company post at La Cloche, kept Governor Simpson informed about the surveys. On 6 July 1852, he reported that, “Mr. Dennis and Mr. Keating are soon to be at LaCloche for the purpose of surveying the Indian reserves and by my being on the spot I may pick up some cash.”⁶⁷ On 8 October 1852, Wemyss Simpson reported to the Governor: “There have been several parties of surveyors here this fall, one party are now employed running the line on the west side of the Companys lot, to divide it from the Indian reserve. Mr. Dennis the Chief Surveyor is now at Lake Nipissingue in company with Mr. Keating, and is to return by White Fish Lake, and down the Spanish River to this Post, which will complete their operations for this season.”⁶⁸

As noted above, Arthur Bristow was placed in charge of the survey of the Spanish River Reserve, while Dennis and Keating made a cursory examination of the area en route to the French River. Bristow was a provincial land surveyor, but had joined Dennis’s crew because of the adventure of the trip. Dennis noted that Bristow was “a friend who had accompanied me as a chainbearer, but principally from a desire to see the

country.” Bristow was also handicapped because neither Keating nor any other person familiar with the circumstances of the 1850 Treaty negotiations accompanied him. Hampered by very bad weather and swampy conditions, Bristow took a week to survey part of the Spanish River Reserve’s eastern boundary line. Dennis later reported that Bristow’s survey of the eastern boundary line measured three hundred chains (3.75 miles) north of Lake Huron to a point that met the Spanish River. Bristow’s survey field notes provide some information about his survey of the Spanish River Reserve. He began the survey at the survey post that had been planted by Alexander Vidal in 1848. Bristow noted that he found the post, and marked the initials “I.R.” on the western side of the post and “H.B.C.” on its eastern side. Bristow and his crew followed a line due north from Vidal’s post to the Spanish River, where another survey post was planted on the south (left) bank of the river. This completed the survey of the Spanish River Reserve—a single line from Lake Huron at Vidal’s post marking the western boundary of the Hudson’s Bay Company’s La Cloche mining tract claim northward to a point on the Spanish River. No other survey work was done because the treaty described the reserve boundary as following the Spanish River down to Lake Huron.

Bristow’s survey of the Spanish River Reserve was completed without a council meeting with the Chiefs. No negotiation between the Chiefs and Keating took place as had been done at the other reserve locations. Although, as noted above, Dennis claimed that a Chief was present when they visited the survey post planted by Vidal in 1848, there is no evidence that a meeting was held to clarify the reserve boundaries. Bristow simply followed orders to run the line from Vidal’s post due north to the Spanish River. There is no evidence to suggest that Bristow’s work was done with the approval of any Chiefs.

A year after the Lake Huron Reserve surveys, the Executive Council approved an Order in Council that confirmed the revisions to reserve boundaries that differed from those in the Treaty descriptions.⁶⁹ However, the Spanish River Reserve was not altered from the Treaty description because no meaningful meeting between Dennis and Keating took place with the Sagamok Anishnawbek Chiefs.

HBC Patent for the La Cloche Tract

In order to obtain legal title to land, Governor Simpson used his influence to lobby the government for patents.⁷⁰ William Robinson continued to be a friend within the government upon whom Simpson could count for support. After the Treaty, the relationship between Robinson and Simpson continued to be cordial. Both men expected and received favours from one another. On 28 February 1851, Simpson called on Robinson to help influence government decision-making in favour of the HBC. Simpson wrote, "I must apologize for troubling you so often on our affairs, but I find that without friends at Court, it is hopeless to bring any negotiations with Government to an issue."⁷¹

Although Robinson had been instrumental in inserting references to the HBC in the 1850 treaties, he lacked sufficient influence to secure free patents for the Company. When J. H. Price, Commissioner of Crown Lands, suggested that the HBC pay for land, Governor Simpson was outraged. However, he continued to curry favour by taking a measured approach with Price. In a letter to Price dated 11 March 1851, Simpson explained, "If the circumstances of the Hudson's Bay Company having been in possession of their posts on those Lakes from time immemorial be not considered by the Government sufficient to entitle them to free grants of the sites of those posts and adjoining farms, they will, when the country is surveyed and opened for settlement, expect the preemption right of purchasing such quantity of land at each post as they may require for the purposes of their trade."⁷² Meanwhile, Simpson retained Stewart Derbishire, former member of the legislative assembly, Queen's Printer, and president of the Montreal Mining Company, as a lobbyist for the HBC. Derbishire was well connected to colonial and imperial government officials, and his role was to seek favourable decisions from the government on matters relating to the Company's affairs.

On 10 March 1853, Governor Simpson wrote to Derbishire and asked him to help the HBC obtain title deeds to land in the vicinity of its posts on Lake Huron and Lake Superior. At La Cloche, Simpson advised Derbishire that the Company was seeking a "grant of a mining location of two miles frontage on the Lake and five miles deep."⁷³ Governor Simpson was optimistic that the government would give free grants of land around its trading posts. The Company received encouraging news about its land

claims from John W. Keating. John Swanston, in charge of the HBC post at Michipicoten, wrote Simpson and reported that Keating had assured him that the land claimed by the HBC around its trading posts would be secured to the Company.⁷⁴ While Keating may have been optimistic about the government's willingness to secure to the HBC all the land it claimed around its trading posts, other government officials were beginning to question the Company's legal right to such land grants. By 1854, the Colonial government had reviewed the legal basis for the HBC land claims and decided that the Company had not been entitled to acquire Indian land prior to the treaty.⁷⁵ William Spragge, Chief Clerk of the Crown Lands Department, rejected the HBC land claims, but recommended that the Company be given preferential treatment in purchasing land around its posts. Spragge advised that the HBC be allowed to purchase land at the rate of four shillings per acre instead of the current price of seven shillings and sixpence per acre.⁷⁶ Under Spragge's scheme, the HBC would have to pay £1,280 for the 6,400-acre tract at La Cloche.

Governor Simpson was upset that the colonial government was seeking to treat the HBC claims to land around its trading posts on the same basis as it did mining tracts. On 4 March 1854, Simpson wrote to Derbishire and explained that the HBC had initially asked for surveys of land around its posts as mining locations because that was the only way to apply for land.⁷⁷ Derbishire's lobbying efforts appeared to pay off when a report of a Committee of the Executive Council recommended granting tracts of land to the HBC. The report made reference to the "memorial papers and plans" submitted by Governor Simpson as documents that influenced the Committee's decision. The Committee recommended that the HBC be granted the lands "at a nominal value of 50 pounds, reserving there-out such parts as are affected by counter claims."⁷⁸ On 3 July 1854, the Executive Council passed an Order in Council approving the granting of tracts of land to the Company. The Order in Council authorized a "grant of two miles in front by five miles in depth at each of their other posts, at La Cloche, Mississauga, Batchawand, Michipicoton, Pic, and Nepigon, by right of preemption, they being in Occupation with improvements."⁷⁹

On 10 August 1854, Governor Simpson informed Derbishire that the HBC was prepared to accept the terms set out in the Order in Council. Simpson advised him, "When I asked for mining locations in 1847 at

the Company's posts I never supposed we should be called upon to pay for them at 4/ an acre, and I merely adopted the term in reference to the Company's lands to define the quantity we wished to obtain at each post."⁸⁰ On 14 August 1854, Governor Simpson wrote a confidential letter to Derbshire in which he expressed concern about the wording of the colonial government's Order in Council regarding the HBC titles. He also disclosed the fees that Derbshire would receive from the HBC for facilitating the acquisition of titles. Simpson confided that, "I have also received the Crown Lands Commissioner's official notice of the compliance with the Company's application for titles, but it is carefully worded and very much fenced in, and before replying to it I think it would be important to have some explanations which nobody but yourself can afford.... I should be enabled to hand you £500 in cash which I think preferable to remitting a cheque or bill payable to your order in Quebec. I need hardly say your travelling expenses would not be saddled on yourself."⁸¹

On 16 August 1854, Governor Simpson wrote to A. N. Morin, Commissioner of Crown Lands, and indicated the Company's satisfaction with the Order in Council.⁸² On 24 August 1854, Governor Simpson wrote to Derbshire and intimated that the Order in Council had been influenced by a cash payment from the HBC. Simpson noted: "I have just received your letter of 22 inst. with the letter from the Crown Lands Dept. by Order of Council for the Grants of the Company's lands on Lakes Superior and Huron. I think you acted wisely in clinching the bargain by making this payment, for which you will please accept my thanks, I send enclosed a cheque in your favour to re-imburse you the amount paid on account of the Company."⁸³ Governor Simpson also acknowledged that Derbshire's close relationship with Francis Hincks played a key role in obtaining the Order in Council and the deed. Simpson wrote to Hincks on 7 November 1854, and noted: "Having the pen in my hand to write you, I cannot let pass the opportunity of thanking you most cordially for the many instances of your friendly disposition which I have experienced and for the powerful influence you have brought in favour of the Hudson's Bay Company, whereby long pending questions with the Government were satisfactorily disposed of."⁸⁴

On 31 August 1854, the HBC received a title deed from the Province of Canada for the tract of land at La Cloche for £50.⁸⁵ The land was

described as the parcel surveyed by Alexander Vidal in 1848, containing 6,400 acres (two by five miles). However, deeds to land around other HBC posts were not issued, as proper surveys had not been completed.⁸⁶ The deed to the La Cloche tract was issued days before the provincial government was defeated in an election. The defeat of the Hincks administration in the election of September 1854 signalled the beginning of the demise of the HBC's influence within the colonial government. The new administration, led by Alan Napier MacNab was much less favourable to special treatment for the HBC.

Sensing that time was critical, Governor Simpson attempted to speed up the process of surveying the Company's land by lobbying senior officials in the colonial government. On 15 September 1856, Simpson wrote to Joseph-Éduard Cauchon, Commissioner of Crown Lands, and appealed for a speedier processing of the Company's patents. The HBC had completed surveys (carried out by Alexander McDonald) of all the tracts around its trading posts, and Simpson was impatient over the provincial government's lack of movement on issuing patents.⁸⁷ Simpson's next letter to Cauchon, dated 2 October 1856, thanked him for his help and added a postscript advising that he had sent some marten pelts as a token of his appreciation.⁸⁸ In the weeks after this exchange, Simpson continued to press Cauchon to use his influence within government. On 20 November 1856, Simpson wrote: "If the matter awaits the decision of the Council in reference to the details, your influence in getting it brought under consideration without further delay, I should esteem a great favor."⁸⁹

The HBC's aggressive pursuit of titles to land in the area around Lake Huron and Lake Superior did not go unnoticed by the press. An editorial article in *The Globe* dated 15 December 1856 provided details about the HBC's application for titles. The editor, George Brown, was outraged that the Company's claims were receiving special attention from the government. Brown wrote, "We hope that the Government, before committing itself to the recognition of any particular rights in that country, will first ascertain how far those rights are honest or just. ...the Hudson's Bay fort at La Cloche; two acres of land there comprise the whole extent upon which are all their improvements."⁹⁰

Under increasing public pressure against the HBC, the Colonial government passed an Order in Council on 19 January 1857, which rescinded

the 1854 Order in Council and directed that no further title deeds be granted to the HBC until a committee investigated the matter and made recommendations to the government.⁹¹ In 1857, William McDougall Dawson testified before a committee of the legislative assembly, stating that, “the Hudson’s Bay Company have no right or title whatever, except what they have in common with other British subjects. Wherever they have any possession or occupancy there [Rupert’s Land] they are simply squatters, the same as they are at Fort William, La Cloche, Lake Nipissing, or any of their other posts in Canada.”⁹²

HBC Governor George Simpson died on 7 September 1860, and with his passing, efforts by the HBC to press for further land claims diminished. Edward M. Hopkins took over the HBC’s Montreal (Lachine) headquarters administration, but he was less effective in dealing with government officials. Stewart Derbshire, however, continued to work as a lobbyist. The HBC had sent Derbshire twelve buffalo tongues to be used as gifts for government officials. Derbshire wrote to Hopkins and reported: “Sir Edmund Head [the Governor General] has just arrived from England, and had his first dinner party yesterday. I sent him, through Captain Retallock, A.D.C., five of the tongues and received a message of thanks, with the special assurance that there was ‘nothing of the kind he liked better than these tongues.’ I shall use these but sparingly myself, but can make them available for good in influential quarters, it being my intention to offer my humble advice to the Company to make a formal demand at once upon the Canadian Government to complete and deliver the Patents without further delay.”⁹³ On 27 June 1861, Derbshire reported that colonial government affairs were focused on the upcoming election, but indicated that he had been busy lobbying individual members and devising a strategy to obtain the additional patents. Derbshire wrote, “I have been canvassing the members of the Government separately to determine what the initial action of the Council may be when the matter comes up for final adjudication.”⁹⁴

In 1864, the provincial government amended its regulations concerning mining lands, and subsequent grants of land for mining purposes were restricted to four hundred acres. The new regulations also prohibited the mining tracts from having frontages on the lakes of more than forty chains (2,640 feet, or a half-mile).⁹⁵ A report to the legislative assembly

dated 4 July 1866 reviewed previous correspondence between the government and the HBC regarding lands around its trading posts on the north shores of Lakes Huron and Superior. The report praised the HBC for its conduct throughout protracted negotiations, but concluded: "The claim was before the Government for years. It was solemnly decided upon. There is evidence that all the details as to the extent of land and the boundaries, the conditions of the grant, the opposing claims of others, were maturely considered and the interests of the public carefully guarded."⁹⁶

After Confederation in 1867, the new Dominion government continued to take a hard line against HBC land claims outside of the Company's chartered territory. HBC fur trader Roderick McKenzie inquired about the Company's standing with the new government in a letter to Hopkins dated 15 January 1868 at La Cloche. McKenzie wrote, "How are the affairs of the H.B.Co. to be dealt with by the Parliament of the New Dominion? The speech of the Premier is rather ominous when he said that we were mere squatters in the territory."⁹⁷

The HBC at La Cloche after 1850

The fur trade in the Lake Huron area changed rapidly after the 1850 treaties. Mining and timber speculators came to the region in greater numbers, and many traded in furs to supplement their livelihood. There was also an increase in cash sales as a result of annual payments made by the Indian Department in Treaty money. Manitowaning, the regional headquarters of the Indian Department, attracted greater numbers of Aboriginal people to Manitoulin Island. In 1856, Governor Simpson tried unsuccessfully to relocate the HBC post from La Cloche to Manitoulin Island.

The arrival of greater numbers of lumbermen in the 1860s had a negative effect on the fur trade. Clear-cutting vast areas damaged animal habitats, and the increase in man-made forest fires added to habitat degradation. The few furs available were sought after by increasing numbers of independent operators. In 1867, Roderick Mackenzie, in charge of the HBC post at La Cloche, reported on the location of "opposition" traders. He noted: "Old Mr. Thebo at Killarney" (outfitted by Legrove of Montreal), "Lamorandiere and Egan at Killarney," "Thompson's people," "Smilie, Abray and McCarty at Little Current," and "Dixon and Dodds" at Spanish River.⁹⁸ The HBC was forced to adapt to these new pressures.

One way of competing against other fur traders was to open additional trading posts to collect more furs and starve out competitors. In 1867, an HBC outpost was established at Birch Lake. Other outposts were established at Pogumasing and Biscotasing after the Canadian Pacific Railway line was built in the 1880s.

In 1878, George McKenzie, now in charge of La Cloche, wrote to Montreal-based HBC Agent James Bissett and complained about the inroads made by competing fur traders. McKenzie reported: "The opposition in this district is far greater than anybody outside of the District has any idea of.... On the Spanish River we have Corbier and the people at Spanish Mills and two others."⁹⁹ In 1880, Alexander Sinclair who had replaced McKenzie made similar complaints. In a letter to Samuel Parson dated 29 October 1880, Sinclair noted, "We are so surrounded by Traders and Shantymen this winter, that I shall require to have a considerable amount of cash to purchase Furs with, that would otherwise find their way into the hands of those parties."¹⁰⁰

By 1882, railway construction in the area attracted many Anishnawbek who gave up fur trapping for wage labour. Alexander Sinclair reported that at La Cloche "comparatively little Trade has been done throughout the Outfit consequent on various other modes of earning a livelihood opening to the Indians; in connection with the Railways, Surveys and Sawmills."¹⁰¹ By 1884, non-Native trappers were encroaching on the hunting grounds of the Sagamok Anishnawbek and annihilating the fur resources. In a letter dated 5 December 1884, D. McTavish, in charge of the Lake Huron District, reported that, "Fur bearing Animals are decreasing very rapidly. White Trappers are killing all the Beaver etc."¹⁰² The completion of the Canadian Pacific Railway exacerbated the situation, and most fur hunting by the Sagamok Anishnawbek was done to the north of the railway line.

By the end of the 1880s, the HBC was winding up its fur operations at La Cloche. In 1889, the Company leased timber rights to the firm of Boswell and Company.¹⁰³ On 29 April 1889, HBC Commissioner Joseph Wrigley advised the London Committee of the HBC: "The head Post of the District of Lake Huron has been transferred from La Cloche to Sudbury as it was desirable that a change should be made without delay."¹⁰⁴ By the end of the year, the recommendation was made to close the La Cloche post, and, in the summer of 1891, the post was closed



Figure 3: Photograph of HBC buildings at La Cloche in 1887 prior to the post's closure. Source: Hudson's Bay Company Archives.

permanently. McTavish reported on the closure as follows: "I returned from La Cloche last night, we took the Inventory of all Articles in use etc. All that now Remains will be taken to Naughton, a steamer calls at La Cloche in passing up to Webbwood, so Ross can take the cow and mare and all the small things worth taking. Mr. Conlan¹⁰⁵ was not there but I shall have a Contract drawn out for Mr. Ross to take down and have them sign it before giving the place to Conlan."¹⁰⁶ A photograph taken in 1887 shows the HBC buildings before the closure (see Figure 3).

The La Cloche tract was leased in 1891 by the firm of J. and T. Conlan, which occupied the HBC buildings and may have cut timber on the tract. T. J. Patten, a land surveyor who worked in the region, recalled the period after the HBC abandoned the post. Patten observed that, "After the abandonment of the post by the Company it was occupied for some time by Messrs. J. and T. Conlon, of Thorold and Little Current, as a residence and office for their manager, Mr. John Sunstrum."¹⁰⁷ A photograph supplied by Patten shows the Sunstrum family on a sleigh in front of the HBC buildings (see Figure 4).



Figure 4: Photograph showing La Cloche buildings, 1891. Source: T. J. Patten, "Hudson's Bay Company's Post LaCloche," *Mer Douce, The Algonquin Historical Society Magazine* (1923).

The HBC buildings continued to be used after the Sunstrums left the area. As T.J. Patten recalled, "The post was afterwards used as a road-house for the mail teams on the winter mail route between Little Current and Massey, on the Sault Ste. Marie branch of the Canadian Pacific Railway. Occasionally, on account of a severe storm on Lake Huron, the mail and passengers were obliged to remain overnight at the post. On the completion of the Algoma Eastern Railway from Sudbury to Little Current, in 1913, the winter mail route through LaCloche to Little Current was discontinued, and the buildings of the post were soon torn down and burned. There remains today only the huge stone chimneys to mark the spot."¹⁰⁸

During the 1920s, timber was clear-cut on the La Cloche tract. In 1933, the HBC received compensation from the Ontario government for allowing unlawful cutting on its property and for patenting some land within the tract.¹⁰⁹ However, the settlement with Ontario also raised further questions about the HBC patent at La Cloche. A major issue concerned the deed's original designation of the La Cloche tract as a mining location and the implications of not working the property as a mine and of non-payment of mining taxes. G. R. Mickle, in charge of administering Ontario's Mining Act, advised the HBC that the government was investigating the issue. In a letter dated 16 May 1933, HBC solicitor D. H. Laird reported on a meeting with Mickle:

We also discussed with Mr. Mickle, who is in charge of the Mining Act, the question of payment of mining tax on this property. He referred to his reply to your letter, and a reference to his article in the *Journal of the Canadian Mining Institute* for 1909,¹¹⁰ but we did not have an opportunity of fully considering the claim he makes there. Briefly, he contends that according to his records this land was “granted ... under or pursuant to the provisions of any statute, regulation or law at any time in force authorizing the granting or leasing of Crown Lands for mining purposes.” He admits that there was no statute authorizing the patenting of land for mining purposes in 1854, but claims that the Government issued patents for mining claims under Order in Council in each case. He produced what is known as a reference book, containing short summaries or abstracts of each patent issued as a mining claim. The La Cloche Reserve appears as No. 4 in this book. A statement in reference to it sets forth the Company’s name, and a short description of the land and reservations, and that the Company paid ,50 for this and other tracts, and at the foot has “Min. Des. No. 4.” This he claims is his official record, and indicates that it was a mining location.¹¹¹

D. H. Laird investigated the HBC patent at La Cloche, and obtained a copy of the 1854 Order in Council granting land to the HBC. Laird gave an opinion that the grant conveyed the land to the HBC because of a “right of pre-emption.” He advised senior HBC officials that, “If you approve, we shall send to Mr. Mickle a copy of this Order in Council, and press for removal of the Reserve from the payment of this tax.” However, Laird also pointed out that Mickle’s investigation had opened up the general issue of provincial taxes, and he concluded that “we think you should be fully satisfied that taking it out of this statute [the Mining Act] and bringing it within the Provincial Land Tax will not be more burdensome.”¹¹²

HBC Sale of the La Cloche Tract

The provincial tax issue was undoubtedly a major reason for the HBC’s decision to sell the La Cloche tract. On 7 November 1935, C. E. Joslyn, manager of the HBC Land Department, wrote to the Company’s fur

trade commissioner, R. Parsons, and reported on efforts to sell the La Cloche tract. Joslyn wrote, "This Reserve contains 6,108 acres and the present price we have on the property is \$15,000. During the past two years we have received several inquiries for parts of the property but we have been reluctant to sell any small parts until we are assured that a sale of the whole property en bloc was not probable. ... We had felt that this property is unique in that we have clear title to such a large acreage on lake frontage; approximately 10,000 to 12,000 linear feet."¹¹³ Parsons advised Joslyn to open negotiations with the federal Indian Department. Parsons contacted senior Department officials in Ottawa, and learned that the Department was not interested in purchasing the land. They recommended, however, that "the Indians themselves might possibly like to do something about it as they have considerable funds and he suggested we write to the Indian Agent, C. Rothera at Thessalon P.O., to find out what the Indians think."¹¹⁴

On 13 February 1936, Parsons wrote to Agent Rothera and explained the HBC's offer to sell the La Cloche tract:

We have lately been in communication with the Department of Indian Affairs at Ottawa regarding the La cloche reserve which is a piece of land owned by us adjoining the Spanish River Indian Reserve on the east side. The Department stated that this property might be of interest to the Indians on the reserve and suggested we write you to ascertain if they would be interested in purchasing it.

This property contains 6,108 acres and has a frontage on Lake Huron 10,000 to 12,000 feet. It runs back from the Lake a distance of some 5 miles. You will, no doubt, be familiar with the fact that it includes a considerable amount of good timber, also Lake La Cloche which might be of interest from the standpoint of fish since we understand the Indians have no lake on their reserve. If the Indians should be interested in this property, we shall be glad to send you all details in connection with it.¹¹⁵

On 17 February 1936, Rothera wrote to Sagamok Chief William Toulouse about the HBC offer and asked him to "Kindly let me know what the Indians think of this, might say the Department has not written

me about this only the Hudson Bay Company. If the Indians are at all interested as to purchase this will write for more details in connection with it."¹¹⁶ On 4 March 1936, Chief Toulouse wrote a letter in reply, explaining the position of the Sagamok Anishnawbek with respect to the La Cloche tract:

In answer to yours of Feb. 17th re. the land adjoining the Spanish River Res. The Indians are interested in purchasing said Hudson Bay land. But what we would like to say is this. We do not know if the Hudson Bay Co. had paid anything on that land, we understand the Hudson Bay Co. had given the Indians 10 gallons of whisky and some clay pipes also some tobacco, (This was just treating the Indians) then he promised that the head man of the Hudson Bay Co. would come later on, to pay the Indians for the land.

But he has not come yet, of course we have no writings of any kind about the land, so we leave it to you to apply to the Dept. of Indian Affairs Ottawa. The H.B.Co. might have paid the Department for this land, we do not know. But the H.B.Co. havent paid the Indians anything for it yet. They had gotten the land before the Reservations were Reserved. Hoping to hear more about this in the near future.¹¹⁷

In 1978, Sagamok Anishnawbek elder William Bob related the following oral tradition about the HBC trading post: "The Hudsons Bay never paid us for using our land. Used to be located at Ft. LaCloche. ... they used to have the best of everything. They didn't pay for anything because they had a piece of paper that says so ... Hudson Bay Co. were told when they leave they weren't supposed to take anything."¹¹⁸

On 11 May 1936, Parsons directed that negotiations be opened between the Land Department and the Sagamok Anishnawbek through Indian Agent Rothera. Parsons advised C. E. Joslyn, the Company's Land Department manager, that, "We suggest that you get in direct touch with the Indian Agent and it may be that you can make a good deal with the Indians, who, we believe, have a fairly substantial sum of money in care of the Indian Department at Ottawa."¹¹⁹ Parsons wrote again to Indian Agent Rothera on 22 May 1936 and asked him to promote the

purchase of the La Cloche tract to the Sagamok Anishnawbek. Parsons observed that the HBC “would be willing to consider a sale of the property for \$15,000.”¹²⁰ Rothera wrote to A. F. MacKenzie, secretary of the Department of Indian Affairs, and noted that the Sagamok Anishnawbek had called a meeting of the whole band to discuss the HBC issue.¹²¹ In 1978, Mrs. Louise Toulouse recalled the 1936 meeting to discuss the purchase of the La Cloche tract:

They had a meeting to see whether the Indian people will buy Fort La Cloche. That’s when the buyer at the Fort dropped it when he use to own it. And the Indian Agent asked if they want to buy it back. Nobody spoke up when it was asked, how much they would pay for it. They should have said they didn’t sell it in the first place and they could have got it for free.

There could have been more and that would have belonged to the reserve from the Fort to the bridge down the river a little ways from the bridge. And the houses at the Fort they would have owned the houses themselves.¹²²

Another recollection of that meeting was recorded as follows:

Many years later, an Indian Agent came to ask the Anishinabek, who owned the property at Fort LaCloche and what it was used for. The Anishinabek told him, the land was used by the Hudson Bay Company for a trading post. The Indian Agent said to the Anishinabek, “Do you have money, \$15,000 it will cost to buy it back, you pay \$17,000 and you will get the land back” [these statements were witnessed by an elder who was interviewed]. A former chief was the interpreter for the Anishinabek. The Anishinabek said, “Yes, we will have more land.” They later heard that the land had been sold to Whiteman for \$15,000. The Indian Agent had come to lie to the Anishinabek, he wanted to find out if they would speak up and claim the land. The Anishinabek should have spoke up and told him the land never had been sold to the Hudson Bay Company, it belonged to the Anishinabek.¹²³

A. F. MacKenzie refused to give Indian Department approval to proceed with the purchase, citing the fact that most of the La Cloche tract’s

timber had been cut. He concluded, "These Indians have 28,000 acres on their own reserve, and no useful purpose would be served by acquiring an additional area of 6,400 acres, and it is therefore not thought wise to consider any proposal which would involve the purchase of the land."¹²⁴ Although Rothera filed no follow-up correspondence on this issue, it is evident that he agreed with MacKenzie and that no further negotiations with the HBC appear to have taken place.

The HBC finally sold the La Cloche tract in 1951. The sale was registered on 2 October 1951, and the purchaser was Lynn Vincent Salton¹²⁵ of Winnipeg, who paid \$15,000 for the land. The HBC retained the mineral rights to the property, and also held a mortgage of \$8,000, which was registered against the title. The mortgage was discharged on 28 September 1955. Salton built an executive lodge at La Cloche, which was apparently used by executives of the T. Eaton Company.

Other parties continued to be interested in purchasing the tract. In 1950, Dr. G. D. Morris of Owen Sound approached the Department of Indian Affairs for information on access to the La Cloche tract. A road ran through the Spanish River Reserve, but the Sagamok Anishnawbek would not allow public access to La Cloche. This point was made by R. P. G. Laurence, Sault Ste. Marie Superintendent of Indian Affairs, in a letter dated 17 May 1950 to D. J. Allan, Superintendent of Reserves and Trusts. Laurence explained that permission to use the road would be difficult because the Sagamok Anishnawbek were still interested in obtaining the La Cloche tract. He reported, "In regard to the Hudson Bay Property, the Indians of the Spanish River Reserve have always wanted to obtain this parcel of land. They claim in the past it was taken from them and really should be part of their Reserve."¹²⁶

In 1956, Salton sold the tract to a group of businessmen from Toronto represented by Charles W. Clark for \$40,000. The sale was registered on 13 January 1956 (registration no. T-2927). On 29 July 1960, Clark transferred the title to his company, La Cloche Reserve Limited (registration no. T-31883). According to Sagamok Anishnawbek oral tradition, the La Cloche tract was initially offered to them:

In 1956 the Hudson Bay Company [perhaps the T. Eaton Company?] approached the Anishnawbek of the day at the hall that was in existence across from Ruby Toulouse's place and next

door to Henrietta Toulouse's place. They had made an offer to the Anishnawbek of the day to purchase the parcel of land if the Anishnawbek wanted to purchase the parcel of land for a dollar. The Anishnawbek said "why should we buy it, this is our land," and this was as early as 1956 and they were still under the belief that the parcel of land was Indian land and they didn't want to buy it.¹²⁷

Ontario Purchase of the La Cloche Tract

The Province of Ontario became interested in acquiring the La Cloche tract as early as 1955. In the spring of that year, W. G. Cleavelly, assistant district forester in Sudbury, inspected the La Cloche area and reported on the potential value of the area for a proposed park development. J. M. Whalen, district forester in Sudbury, summarized Cleavelly's findings in a report to W. B. Greenwood, chief of parks for the Department of Lands and Forests in Toronto. Whalen reported positively on the natural and historical features of the property: "The area has a number of features which would serve as excellent attractions for tourists, namely, (a) a fine rushing river running from LaCloche Lake to Lake Huron which might provide excellent fishing if stocked with trout; (b) a few historical ruins dating back to the old Hudson's Bay Company Post established about 130 years ago; (c) excellent natural harbour at the mouth of the La Cloche River on the shores of Lake Huron; (d) fairly accessible from Massey although the road would require improvement and is over the Indian reservation."¹²⁸ Another reason for Ontario to be interested in the La Cloche tract was pressure from local sportsmen, who lobbied the government for public access to the site for fishing.

As early as January 1967, the Department of Lands and Forests began to investigate the history and archaeology of the La Cloche area in preparation for acquiring the tract for park use. On 3 January 1967, the Department's historian, Gary D. Sealey, wrote to Dr. Emerson Greenman of the University of Michigan, who had conducted archaeological fieldwork in the Killarney area. Sealey explained that the Department was interested in the archaeology of the La Cloche Lake area, and asked whether he had ever visited the area, seen any reports, or formed an opinion on the archaeology of the area.¹²⁹ The Sudbury District of Lands

and Forests investigated the La Cloche tract and filed a report describing the natural and man-made features of the site. The report noted that the "Ruins of the Hudson's Bay Post are stone slab foundations and a stone fireplace. This area is quite scenic, situated below a water fall and within view of the North Channel of Lake Huron."¹³⁰

In 1967, the Sudbury District of the Department of Lands and Forests advised senior officials in Toronto that the La Cloche tract was for sale. On 4 August 1967, W. G. Maslen, Supervisor of Land Acquisition for the Department of Lands and Forests, advised the district forester in Sudbury about recent developments. He noted, "The property formerly belonged to the Hudson's Bay Company who obtained a grant to these lands prior to Confederation. The wording in the Deed evidently provides for the patent to include the water including the river. . . . The area has some history significance in that the trading post and buildings of Old Fort La Cloche were located in the area where the main lodge now stands and there remains remnants of the fireplaces that were in the buildings of the trading post and these can be seen from the main lodge. There is also a cemetery where some of the Factors of the trading post were buried some 100 years ago."¹³¹

On 11 August 1967, Maslen wrote to R. D. K. Acheson, Assistant Deputy Minister of Lands and Forests, and informed him about the Department's position on the proposed purchase. Maslen noted that the owners were asking \$175,000 for 6,078 acres, and that the Department of Public Works had appraised the property at just \$148,500. On 12 September 1867, La Cloche Reserve Limited submitted a written offer to sell the tract for \$150,000, which included all the land, standing trees and building improvements, comprising a one-storey frame cottage, a two-storey frame club house, a Delco Hut with generating plant, a caretaker's residence, and a boathouse with utility shed.¹³²

On 17 October 1967, an indenture to purchase the La Cloche tract was made between Ontario, as represented by the Minister of Public Works, and La Cloche Reserve Limited. Soon after the agreement, Sudbury district forester G. A. McCormack applied for funding to develop the site. His request was initially turned down by P. Addison, chief of the Parks Branch. But McCormack persisted, explaining that, "this park is of historical importance to the Province. It is a known fact that American

groups have looted the area of artifacts in the past¹³³ and may do so again once it is learned that the area is not now private property.”¹³⁴ Despite a lack of funding, McCormack went ahead with plans for the park. These plans included meetings with the Sagamok council to discuss the future of the site. On 18 December 1967, McCormack wrote to Chief Richard Nahmawin to request an easement through the reserve for a road to the La Cloche site. There followed a meeting with Chief Nahmawin and the council at Sagamok on 18 January 1968.

Meanwhile, complications threatened to jeopardize the completed purchase. These stemmed from the HBC's continuing rights to minerals on the La Cloche tract. In a letter dated 17 January 1968, G. H. U. Bayly, Deputy Minister of Lands and Forests, outlined the problem to E. J. Parker, manager of the Department's Real Estate Branch: “the Hudson Bay Company is the owner of the rights to gravel on the La Cloche Reserve. ...there will be a need to use existing gravel deposits on the site. It would therefore be appreciated if your Property Section would negotiate acquisition of those rights still held by the Hudson Bay Company.”¹³⁵ J. A. Sword, Acting Regional Supervisor of Public Works in Toronto, investigated the mineral rights issue and reported that the HBC still held such rights at La Cloche. Yet, a site survey had found no gravel deposits on the tract. With that issue resolved, in January 1968, the Province of Ontario purchased the La Cloche tract, containing 6,078 acres, for \$150,000.¹³⁶

Historian Gary D. Sealey continued to work on the historical background of the La Cloche area. In a letter to Dr. Emerson F. Greenman dated 29 January 1968, Sealey wrote, “I am very grateful for having been able to contact you, especially since our parks development programme requires fast action in order that we can preserve and sensibly develop the La Cloche site.”¹³⁷ In addition to consulting Greenman, Sealey studied HBC archival material on microfilm in the National Archives in Ottawa. Sealey also recommended that oral history be collected from residents of the area, as well as an archaeological site investigation.

During the summer of 1968, archaeological fieldwork was conducted at La Cloche by Richard Kolowicz and Robert Pammatt. Their brief report focused on artifacts associated with the HBC trading post. Aboriginal artifacts such as pottery fragments and flint scrapers were identified but not

interpreted. They also noted that, "Various verbal reports of [an] Indian graveyard on the east side of the creek but nothing found to date."¹³⁸ The following year, Richard Orlandini and Michael Shaughnessy investigated the site, but no report was written. Dr. Walter Kenyon¹³⁹ of the Royal Ontario Museum was invited to become involved in the archaeological review of the La Cloche site. On 13 August 1968, P. Addison reported that Kenyon was "most enthusiastic about the richness of the area for representative fur trade historical material. He is also extremely interested in the structure and location of the H. Bay Post buildings and would like to locate the original North-West Company Post as well."¹⁴⁰ Kenyon agreed to serve as an advisor to the La Cloche archaeological project. In the summer of 1970 he led a field investigation at the site with a crew from the Royal Ontario Museum. Peter Storck, a museum staff archaeologist, continued with fieldwork in the area in the summer of 1971. Between 1975 and 1977, Thor Conway conducted extensive archaeological investigations in the area. In 1981, Conway, who was employed by the Ministry of Culture and Recreation, identified La Cloche as a significant heritage site: "Our branch has researched the archaeological resources of the La Cloche Reserve for six years. During that time, we have discovered seven important archaeological sites. The grouping of sites, ranging in age from 2,000 years ago to the fur trade era forms an archaeological resource of provincial significance. There is high potential for more sites within the park reserve on La Cloche Lake, on the present Lake Huron shoreline, on raised beach ridges, and on the offshore islands [underline in original]."¹⁴¹

Sealey continued to undertake historical research among the HBC's archival documents, and he corresponded with the Company's archivist, J. Craig, in London. Sealey asked, "Could you also supply me with some information as to why or how the Company received the 6,400 acre grant on 31 August, 1854 (according to Reel 1M 879)?"¹⁴² Craig's response to Sealey has not been located, but a subsequent reply from Sealey dated 7 January 1969 indicates that an answer had been sent: "Your comments on my question of the Company's acquisition of the 6,400 acre La Cloche Reserve are extremely interesting, and have set me in the right direction. With these in mind, I will consult old Province of Canada files for further information."¹⁴³

A major complication in developing La Cloche as a park was the issue of road access. It was known that a right of way was needed to use the road through the Sagamok Reserve, but this was initially viewed as a minor problem. A meeting between Department of Lands and Forests representatives and the Sagamok Council was held on 27 May 1968. B. T. Cannon, chief forest ranger from Espanola, attended the meeting and reported, "From the discussion, I would say their main concerns are: snow plowing from Massey to where our road branches off; dust control; fencing along the built-up area to keep their domestic animals off the road, and finally the annual rental. I understand it is their policy to not sell Indian Land. The Ontario Hydro has a lease with the Band for their Right-of-way at a cost of \$25.00 per year."¹⁴⁴

By November 1968, the Sagamok Anishnawbek Council had drafted a resolution approving an easement for a road through the reserve. On 22 November 1968, G. A. McCormack wrote to P. Addison, and remarked, "We strongly recommend that some action be taken before the Indian Band changes their mind and we are left without an access to the area." However, McCormack also suggested that some of the proposed conditions were unacceptable. He noted that, "While some of the conditions outlined by the Band are not unreasonable, we consider unacceptable any suggestion this Department maintain and snow plow the road from the bridge at Massey to the boundary of the Indian Reserve (3.6 miles)."¹⁴⁵ Deputy Minister Bayly also found some of the conditions unacceptable. In a memorandum dated 31 December 1968, Bayly stated, "We would prefer a permanent access arrangement involving either outright purchase of the road right-of-way or an easement across the existing road. We do not wish to accept any stipulations that requires this Department to maintain and snow plow the road from the Massey bridge to the Indian reserve boundary."¹⁴⁶

Negotiations between Ontario and Sagamok Anishnawbek collapsed soon afterward. In a letter dated 12 March 1969, W. Maslen reported that the Sagamok Council had issued a resolution stating that, "we the Band and Council are not interested in selling our road allowance, the access road to the Provincial Park site that the Province of Ontario is developing into a Provincial Park." Maslen advised putting the issue in abeyance for one year. Addison agreed to suspend the negotiations, but

G. A. McCormack was less supportive. On 27 March 1969, he wrote, "It is expected that negotiations with the Indian Band will be a long process. As we intend to develop La Cloche as a Provincial Park in the near future we are wondering why there is going to be a 10 month delay in acquisition proceedings."¹⁴⁷

McCormack initiated further discussions with the Sagamok Anishnawbek in April 1969. He reported, "The Indians refuse to sell any land for access as they felt that their reserve was all that they had left. We indicated that we accepted this principle and agreed that it was the Indians' best rights not to sell a part of the reserve to the Department in this case." McCormack proposed a lease arrangement with employment opportunities for road maintenance and access to archaeological and other studies. He reported that, "The Chief indicated that he would report to his Council on our discussions and we requested a meeting with [him] after the next Council meeting." McCormack's efforts to revive interest in the La Cloche park development were blunted by lack of support from colleagues within the Department and an apparent lack of funds. On 11 September 1970, P. Addison informed McCormack, "At this particular time we do not have any concrete plans for development in this area nor are there funds available. Therefore if a recommendable agreement can be reached with the Indians concerning some sort of lease arrangement to provide access through the reserve we would have no objections. Outright purchase at this point would be premature."¹⁴⁸ Talks between the Sudbury District and the Sagamok Anishnawbek continued for several more years, but an agreement was forestalled because of a lack of corporate commitment from Ontario.

The Sagamok Anishnawbek Claim to the La Cloche Tract

As noted above, the Sagamok Anishnawbek have never acknowledged the rights of the HBC and others to own the La Cloche tract. Their negotiations with the government of Ontario in the 1970s over access to the "park" sparked a new wave of activism among community members. Peter Kokoko became the leader of a movement to claim ownership of the La Cloche Tract. In 1991, the Sagamok Anishnawbek formally notified the Ontario government about their interest in the La Cloche tract. Several meetings took place at the staff level, but no progress was made on

reclaiming the land from Ontario. In 1992 and 1993, meetings took place between Minister C. J. (Bud) Wildman and the Sagamok Anishnawbek Council, but no action was taken on returning the land. In 1993, a large delegation of Sagamok Anishnawbek, including women, men, children, and elders, marched onto the La Cloche site and proclaimed the tract as Sagamok Anishnawbek territory. In 1995, Chief Angus Toulouse and several councillors met with Ontario government representatives to discuss the La Cloche tract. At that meeting, Chief Toulouse informed the government officials that the tract was part of Sagamok Anishnawbek reserve territory. The officials from the Ontario government listened, but took no helpful action. In 1999, the Sagamok Anishnawbek filed a statement of claim to the La Cloche tract with the Government of Canada. As of today, no response has been received. Regardless, the Sagamok Anishnawbek remain convinced of their right to the La Cloche tract. Peter Kokoko said it best:

On many occasions she [Kokoko's aunt, Lucy Stonypoint] would finish the dishes and sit down to tell us the history of the reserve. It was expected of those at the table to listen to her. She would sometimes tell of the trader moored at the mouth of river at the Fort. The people that lived near the fort were acquainted with the trader (Chi-di-a-nini), they traded furs, maple sugar and fish for flour, salt and other goods they needed. An agreement was made to allow this man to come ashore and trade with the Indians. The trader would stay only for a short time, so they helped build a cabin for him. They allowed him to fence in a small parcel of land, used for some animals which he eventually brought with him. The Indians did not sell or give the trader, rights to the land, he would only trade with the Indians, when he was ready to go away; he would leave everything behind. The land would remain as it had always been.¹⁴⁹

Endnotes

- 1 Sir George Simpson visited La Cloche Island in 1841, and noted that it was "celebrated for a stone which, when struck, emits a musical or metallic sound" (George Simpson, *Narrative of a Journey Round the World During the Years 1841 and 1842*, vol. 1, London: Henry Colburn (1847), 27.
- 2 In 1796, American General Anthony Wayne obtained information on the locations of trading posts on the Great Lakes and identified one at La Cloche. Letter from General Anthony Wayne to Oliver Wolcott, Secretary of the Treasury, 19 August 1796, in *The Territorial Papers of the United States: The Territory Northwest of the River Ohio, 1787–1803*, vol. 2, ed. Clarence Edwin Carter (Washington: Government Printing Office, 1934), 569–72).
- 3 In 1822, surveyor David Thompson visited the island and noted the location of the "old house" on La Cloche Island. Archives of Ontario (hereafter cited as AO), F-443, series 1, bound volume 21: 5, 244, David Thompson's Journal.
- 4 The American Fur Company operated a trading post at La Cloche, but its exact location is unknown. In 1821, the trader in charge was Etienne Lamorandiere, but by 1822 it was abandoned after the international boundary line was finally surveyed. Chicago Historical Society Archives, American Fur Company Papers, Box #7, file 31, Letter from Robert Stuart, American Fur Company Agent, Michilimackinac, to Thomas G. Anderson, Drummond Island.
- 5 Personal communication from Peter Kokoko, Sagamok Anishnawbek.
- 6 Library and Archives Canada (hereafter cited as LAC), National Map Collection, NMC Ph900, 1725, Carte de la Nouvelle France Fait A Quebec (par chaussegros de Lery) [Map of New France by Chaussegros de Lery], 28 octobre 1725.
- 7 Hudson's Bay Company Archives (hereafter cited as HBCA), D.5/2: 257, La Cloche Post Report.
- 8 Burton Historical Collection, Detroit Public Library, George Ironside Papers, Map, Box 15 (1860–1863) vol. maps.
- 9 LAC, Robert Bell Papers, MG 29, B 15, vol. 15, file 8, "Indians, Place Names, 1882–1909."
- 10 "Kingfisher," in Frederic Baraga, *Dictionary of the Ojibwa Language* (1878; St. Paul: Minnesota Historical Society Press, n.d.), 151.
- 11 AO, Indian Genealogical Records, 11,936, vol. 2: 16, Record of a marriage between Louis Espagnol and Angelique Beaudry.
- 12 Transcript of interview with Sagamok Anishnawbek elders Henry Southwind, Liza Nahmiwan, Maddona Toulouse, Tom Trudeau, Dolphus McGregor, and Martin Assinewe, in discussion with the author, Sagamok Community Centre, 26 November 1997, translated from Ojibwa to English by Peter Owl Sr. (Peter Kokoko).
- 13 Thor Conway, "Rescue Excavations of a Middle Woodland Component at the La Cloche Fur Post Site," unpublished report, Ontario Ministry of Natural Resources Library, Peterborough (1977), 3.
- 14 Christopher C. Hanks, *The Foxie Otter Site: A Multicomponent Occupation North of Lake Huron* (Ann Arbor: University of Michigan Press, 1988), 1.

- 15 Biscotasing, or “Bisco,” is situated at the headwaters of the Spanish River.
- 16 Christopher C. Hanks, “The Archaeology of the Spanish River,” unpublished report prepared for Inco, Sudbury (1981), 30.
- 17 Alexander Henry, *Travels and Adventures in Canada and the Indian Territories between the Years 1760 and 1776 by Alexander Henry, Fur Trader*, ed. James Bain (Toronto: George N. Morang and Company, 1901), 34.
- 18 LAC, RG 10, vol. 26: 14,980–14,982, “Journal of Charles Gaultier at Michilimackinac.”
- 19 William Clements Library (Ann Arbor), Thomas Duggan’s Journal at St. Joseph Island.
- 20 “Speech from Indian Chiefs,” in *The Simcoe Papers, vol. 4: 1795–1796*, ed. E. A. Cruikshank (Toronto: Ontario Historical Society, 1926), 272.
- 21 LAC, MG 19, F1, Claus Papers, vol. 9, Diary of Colonel William Claus, Deputy Superintendent of Indian Affairs, Amherstburg, 211.
- 22 Metropolitan Toronto Public Library, Anderson Papers, Letter from T. G. Anderson to his wife (Elizabeth), dated “Near Mr. McBeans” (HBC post, La Cloche), 23 June 1835.
- 23 For more information about sturgeon isinglass, see Tim E. Holzkamm, Victor P. Lytwyn, and Leo Waisberg, “Rainy River Sturgeon: An Ojibway Resource in the Fur Trade Economy,” *Canadian Geographer* 32, no. 3 (1988): 194–205.
- 24 *Journal of the Legislative Assembly of Canada*, 1851, Appendix U.
- 25 HBCA, D.4/33: 141–43, Letter from Simpson to Ballenden.
- 26 HBCA, D.4/33: 231–33, Letter from Simpson to Ballenden.
- 27 HBCA, D.4/35: 115–16, Letter from Simpson to Papineau, 16 November 1846.
- 28 HBCA, D.4/35: 201–02, Letter from Simpson to Papineau.
- 29 For more information on the involvement of Keating in mining and Aboriginal affairs, see Rhonda M. Telford, “The Nefarious and Far-Ranging Interests of Indian Agent and Surveyor John William Keating, 1837 to 1869,” in *Papers of the Twenty-Eighth Algonquian Conference*, ed. David Pentland (Winnipeg: University of Manitoba Press, 1997), 372–401.
- 30 E. J. Leahy, “First Copper Mining Town in Canada,” in *A Forest for All Seasons* (Sault Ste. Marie, Forestry Capital of Canada: n.p., n.d.), 31–33.
- 31 John S. Galbraith, Biography of George Simpson, *Dictionary of Canadian Biography*, vol. 8 (Toronto: University of Toronto Press, 1985), 815.
- 32 *Journal of the Legislative Assembly of Canada*, 1851, Appendix U. The Meighan and Chapman locations were near the mouth of the Spanish River, within an area that would later become the Spanish River Indian Reserve.
- 33 Alexander Murray, “Report of Progress, Geological Survey of Canada,” Appendix V, *Journal of the Legislative Assembly of Canada*, 14 Victoria, A. 1850.
- 34 Ontario, Ministry of Natural Resources (Peterborough), Field Note Book No. 369, Survey Records, Alexander Vidal, “Note Book on the Survey of the Mining

- Locations on Lake Huron together with Astronomical Observations, Diary and Report," 191.
- 35 Allan McDonnell was a lawyer and a former partner in the Quebec and Lake Superior Mining Company.
 - 36 For more information about the Ermatinger family, see Brian W. Stewart, *The Ermatingers: A 19th Century Ojibwa-Canadian Family* (Vancouver: UBC Press, 2007).
 - 37 HBCA, D.5/26, 76–77, Letter from Mactavish to Simpson.
 - 38 HBCA, D.5/26, 123–24, Letter from Mactavish to Simpson.
 - 39 HBCA, D.5/26, 288–89, Letter from Mactavish to Simpson.
 - 40 HBCA, D.5/26, 299–300, Letter from Mactavish to Simpson.
 - 41 HBCA, D.5/26, 434–44, Letter from Mactavish to Simpson.
 - 42 Vidal Family Papers, Weldon Library, University of Western Ontario, Main Regional Box 4,437, Alexander Vidal, "Journal of Proceedings on my Mission to the Indians 1849," 8.
 - 43 AO, F 450: 27 (typescript) (original in Baldwin Collection, Metropolitan Toronto Reference Library), "Diary of Thomas G. Anderson."
 - 44 Anderson, "Diary."
 - 45 Vidal, "Journal of Proceedings," 8.
 - 46 Anderson, "Diary," 28.
 - 47 National Archives of Canada (hereafter cited as NAC), RG 10, vol. 266: 163,121–163,122, Alexander Vidal, Report of Commissioners Vidal and Anderson.
 - 48 Vidal, Report, 163,127–163,128.
 - 49 Vidal, Report, 163,136.
 - 50 Vidal, Report, 163,137.
 - 51 Vidal noted that Chief Penaiseseh was one of the "Chiefs with whom the Commissioners have conversed." Since Vidal explained that no chiefs were present at La Cloche, it is possible that a meeting with Chief Penaiseseh took place at Sault Ste. Marie or some other place along their journey.
 - 52 Vidal was here referring to the Sagamok Anishnawbek who wintered in the vicinity of the HBC post at Green Lake. They were later associated with the HBC post at nearby Biscotasing Lake.
 - 53 HBCA, D.4/40, 34, Letter from Simpson to Mactavish.
 - 54 HBCA, D.5/26, 123, 289, Letter from Simpson to Mactavish.
 - 55 HBCA, D.5/26, 444–445, Letter from Mactavish to Simpson.
 - 56 HBCA, D.5/26, 547–548, Letter from Mactavish to Simpson.
 - 57 HBCA, D.4/40, 120–121, Letter from Simpson to Hincks.
 - 58 HBCA, D.4/40, 108–109, Letter from Simpson to Hincks.
 - 59 HBCA, D.4/40, 122, Letter from Simpson to Hincks.

- 60 On 13 May 1848, *The Globe* carried an article on the Bruce Mines, which noted that the "Superintendent, the Hon. W. B. Robinson, passed the mine on his way up," and predicted that the mine would prosper "under the care of a gentleman so experienced and practical as Mr. Robinson." *The Globe*, 13 May 1848, 3.
- 61 NAC, RG 10, vol. 1844, n.p., Lake Huron Treaty.
- 62 HBCA, D.5, vol. 28, 589–90, Letter from Buchanan to Simpson.
- 63 Ontario, Ministry of Natural Resources (Peterborough), Letterbook of Instructions to Surveyors, vol. 5, 204–05 (microfilm reel 2).
- 64 Keating's report has not been found. In 1888, a careful search was made in the Crown Lands Records, but his report was not located. AO, Surveyor General's Letterbook, 1886–1888: 654.
- 65 AO, Surveyor General's Letterbook, 1886–1888: 654.
- 66 AO, Surveyor General's Letterbook, 1886–1888: 654.
- 67 HBCA, D.5/34, 45–46, Letter from W. Simpson to G. Simpson.
- 68 HBCA, D.5/35, 43–44, Letter from W. Simpson to G. Simpson.
- 69 LAC, RG1, E8, 25,974, 25,976, 25,978.
- 70 Many people recognized the influence that Governor Simpson could exercise with the government and sought his assistance in matters requiring government approval. For example, George K. Smith wrote the following to Simpson in a letter dated 21 October 1850: "Having made application to the Gov. Gen. of Canada to allow me to take up another tract of land in lieu of the one on which I have been unsuccessfully mining during the past 2 summers, and to allow the amounts I have paid thereon to apply on the new selection, I take the liberty of soliciting a word from you to the Executive Council in my favor, knowing as you do that I have for the past four years aided in some degree in developing the mineral wealth of the Canada shore." HBCA, D.5/29, 90–91, Letter from Smith to Simpson.
- 71 HBCA, D.4/43, 25–26, Letter from Simpson to Robinson.
- 72 HBCA, D.4/43, 3839, Letter from Simpson to Price.
- 73 HBCA, D.4/46, 216–17, Letter from Simpson to Derbyshire.
- 74 HBCA, D.5/37, 721, Letter from Swanston to Simpson.
- 75 The 1858 Report of the Special Commissioners to Investigate Indian Affairs in Canada came to the same conclusion. That report concluded, "A question may here be asked whether the Government are not pledged to abide by the proclamation of 1763, a document on which many of the Tribes rest their claims, in part at least to the lands now occupied by them. We are convinced that the Executive would be unwilling to lend their sanction to any arrangements, which involved even the semblance of a breach of faith towards the Indians.... No territory can be taken possession of except by a voluntary surrender from the Indians, while they are aware to a certain extent, of both the strong and the weak points of their title, and feeling the pressure of the tide of immigration, refuse to cede a part of their possessions for a fear of being deprived of the whole. The unwillingness on the part of the Indians to surrender has been greatly increased by the losses they have suffered through the carelessness and dishonesty of those

- appointed to watch over their interests." *Journal of the Legislative Assembly of Canada*, Appendix 21, n.p.).
- 76 AO, RG 1, 273-2-1.1, no. 6.
 - 77 HBCA, D.4/47: 145–46, Letter from Simpson to Derbishire.
 - 78 Canada, Sessional Papers, 1866, No. 33: n.p.
 - 79 NAC, RG 1, E8, vol. 51.
 - 80 HBCA, D.4/48, 141–42, Letter from Simpson to Derbishire.
 - 81 HBCA, D.4/48, 142–43, Letter from Simpson to Derbishire.
 - 82 AO, RG 1, 273-2-1.1, no. 6, Letter from Simpson to Morin.
 - 83 HBCA, D.4/48, 157–58, Letter from Simpson to Derbishire.
 - 84 HBCA, D.4/49, 137, Letter from Simpson to Hincks.
 - 85 HBCA, B.109/z/1, 13.
 - 86 The HBC tract at Mississagi River surveyed by Alexander Vidal in 1848 was resurveyed because it was determined that part of the land was within the Mississagi River Indian Reserve. Deeds were approved for tracts of land around the HBC posts at Mississagi River (6,238 acres), on 12 December 1856, and at Pic River (6,300 acres), on 30 December 1856, but both grants were later cancelled.
 - 87 HBCA, D.4/52, 39, Letter from Simpson to Cauchon.
 - 88 HBCA, D.4/52, 66, Letter from Simpson to Cauchon.
 - 89 HBCA, D.4/52, 112, Letter from Simpson to Cauchon.
 - 90 *The Globe*, 1856, 2.
 - 91 AO, RG 1, 273-2-1.1, no. 6.
 - 92 Elizabeth Arthur, ed., *Thunder Bay District, 1821–1892: A Collection of Documents* (Toronto: University of Toronto Press, for The Champlain Society, 1973), 23.
 - 93 HBCA, B.134/c/81, 327, Letter from Derbishire to Hopkins.
 - 94 HBCA, B.134/c/82, 583–583d, Letter from Derbishire to Hopkins.
 - 95 AO, RG 1-273-2-1.1.
 - 96 Canada, Sessional Papers, 1866, no. 33: n.p.
 - 97 HBCA, B.134/c/109, 50–50d, Letter from McKenzie to Hopkins.
 - 98 HBCA, B.134/c/105, 262–262d, Report by McKenzie.
 - 99 HBCA, B.134/c/138, Letter from McKenzie to Bissett.
 - 100 HBCA, B.134/c/145, Letter from Sinclair to Parson.
 - 101 HBCA, B.134/c/150.
 - 102 HBCA, B.109/e/9.
 - 103 AO, RG 1, E-2, vol. 2.
 - 104 HBCA, A.12/29.
 - 105 J. and T. Conlon were wholesale lumber dealers whose head office was located at Thorold, Ontario.

- 106 HBCA, B.134/c/172.
- 107 T. J. Patten, "Hudson's Bay Company's Post LaCloche," *Mer Douce, The Algonquin Historical Society Magazine* (1923): 17.
- 108 Patten, "Hudson's Bay Company's Post LaCloche," 28.
- 109 HBCA, RG7/1/170.
- 110 The article referred to above was published in the *Canadian Mining Journal*, on April 1, 1909. In that article, Mickle discussed the effect of a new acreage tax of ten cents per acre on mining lands in Ontario. He traced the early history of mining claims, noting, "It was intended originally to grant five square miles, or 3,200 acres, but this was never carried out, and the first grant of land as a mining land was in a location of ten square miles, or 6,400 acres, the block being 5 X 2 miles, five miles being laid out along the supposed course of the vein."
- 111 HBCA, RG7/1/170.
- 112 HBCA, RG7/1/170.
- 113 HBCA, RG7/1/170.
- 114 HBCA, RG7/1/170.
- 115 HBCA, RG7/1/170.
- 116 LAC, RG 10, vol. 11, 325, file 6-22.
- 117 NAC, RG 10, vol. 77-78/110, file 6-22.
- 118 Sagamok Anishnawbek oral history file.
- 119 HBCA, RG7/1/170.
- 120 HBCA, RG7/1/170.
- 121 NAC, RG 10, vol. 77-78/110, file 6-22.
- 122 This oral tradition was recorded in 1978, and a note explained that, "Old Charles Toulouse, Fort LaCloche and Toulouse Bay; Big Toulouse; Simmanah claimed La Cloche River; Graveyard across the stream by the rocks."
- 123 Sagamok Anishnawbek file. In 1874, the Department of Indian Affairs identified the La Cloche area as one of the reserves retained by the Sagamok Anishnawbek. A return of Indian reserves in the Province of Ontario listed one reserve at the "peninsula east of the mouth of the Spanish River," and another "near LaCloche." A note explained that the "areas [of these reserves were] not ascertained." Canada, Sessional papers, 1875, vol. 7, no. 8: 99.
- 124 LAC, RG 10, vol. 77-78/110, file 6-22.
- 125 Salton was an executive of the T. Eaton Company.
- 126 LAC, RG 10, vol. 11345, file 13/18-12, pt. 1.
- 127 Sagamok Anishnawbek file.
- 128 Sagamok Anishnawbek file.
- 129 AO, RG 1, IB-4, file 26-19-3.
- 130 Sagamok Anishnawbek file.

- 131 Sagamok Anishnawbek file.
- 132 Sagamok Anishnawbek file.
- 133 This may have referred to vandals who desecrated graves at the site. A newspaper article in the *Manitoulin Expositor* on 17 November 1955 noted that, "Grave robbers dug out five graves in the little old cemetery of historic Fort LaCloche some time during the late summer or fall of this year. A formal complaint was laid with the Ontario Provincial Police. ... The little cemetery at one time contained at least 15 graves. The site of Fort LaCloche nearby across the creek was occupied for more than a century, finally falling into disuse about 50 years ago." *Manitoulin Expositor*, 1955.
- 134 AO, RG 1, IB-4, file 26-19-3.
- 135 AO, RG 1, IB-4, file 26-19-3.
- 136 AO, RG 1, IB-4, file 26-19-3.
- 137 AO, RG 1, IB-4, file 26-19-3.
- 138 Robert Pammett and Richard Kolowicz, "Archaeological Site Survey Report, Fort La Cloche," unpublished report, Ontario Ministry of Natural Resources (1968): n.p., copy in Sagamok Anishnawbek files.
- 139 Kenyon struck a deal with the Department of Lands and Forests to obtain samples of artifacts for the museum in return for working on the site. This was confirmed in a letter dated 21 April 1969, from P. Addison, Chief of the Parks Branch, to L. Davey in Sudbury. Addison reported that, "during the last few months Dr. Kenyon's staff has sorted out, classified, and catalogued the La Cloche artifacts and has placed them in a place for safekeeping. The arrangement was made last summer that all artifacts obtained from the dig would remain in the ownership of the Department. However, in return for the most valuable services of R.O.M., Dr. Kenyon would be given one example of each type of artifact found, subject to our veto." AO, RG 1, IB-4, file 26-19-3.
- 140 AO, RG 1, IB-4, file 26-19-3.
- 141 Sagamok Anishnawbek file.
- 142 AO, RG 1, IB-4, file 26-19-3.
- 143 AO, RG 1, IB-4, file 26-19-3.
- 144 AO, RG 1, IB-4, file 26-19-3.
- 145 AO, RG 1, IB-4, file 26-19-3.
- 146 AO, RG 1, IB-4, file 26-19-3.
- 147 AO, RG 1, IB-4, file 26-19-3.
- 148 AO, RG 1, IB-4, file 26-19-3.
- 149 Transcript of interview with Peter Owl Sr. (Peter Kokoko), in discussion with the author, Sagamok Community Centre, 26 November 1997.

Spatializing History in the Lake Huron Treaty Atlas

Stephanie Pyne

The production of narratives about the founding and settling of Canada that reflect a linear, teleological concept of the past and present facilitates the closing off . . . of the radical potential of aboriginal rights claims to challenge the existing political and legal parameters of the Canadian state. It is here that the spatial (and temporal) dimensions of law and history present us with the possibilities of a rupture of existing relations of power and the possibility of justice. The move towards “spatializing history”—where our understanding of the past is “wrenched” from a linear and temporal ordering so as to shape and determine how we understand and live in the present—opens up new possibilities for political agency and change.¹

The cybercartographic Lake Huron Treaty Atlas² (hereafter “the Atlas”) responds to Brenna Bhandar’s call to “[spatialize] history in a nonlinear, nonteleological way, [which] could open up possibilities for political change and transformation.”³ The project is a broad approach to reconciliation, a process that requires inclusion and involves both forward- and backward-looking elements, in addition to other important criteria.⁴ In the case of the Lake Huron Treaty process, successful reconciliation involves visiting the historical geography of Lake Huron Treaty-based relationships (including their political economic dimensions) from a variety of perspectives. The project to create the Lake Huron Treaty Atlas provides a way to gather these perspectives and presents them in a way that questions the epistemological and ontological assumptions associated with modernism, including the foundations of colonialism.

Working within the cybercartographic framework at the intersection of historical geography, critical geography (including critical cartography/geographic information systems, or GIS), decolonizing Indigenous methods, and incorporating insights from studies in development and deliberative democracy, this online Atlas-making project employs a collaborative, investigative method that involves broad community participation. The aim is to contribute to the reconciliation of Treaty-based relations by enhancing awareness of the historical geography of these relations over time and across space. The project addresses the need to “spatialize” history at a variety of interrelated scales (or in a variety of interrelated spheres or spaces) and from a variety of perspectives. This approach contributes to the type of understanding and awareness required for successful reconciliation to occur.⁵ Through lessons learned from the development of the Atlas, the project has the potential to contribute in a unique and useful way to the reconciliation processes that have begun to develop in contemporary Canadian nation-state–Anishinaabe relations.

As a broadly postfoundational project,⁶ the process of “telling the story” of Lake Huron Treaty-based relationships through time and across space can be seen as an effort to engage in a socially responsible manner in knowledge construction. Guided by and contributing to the cybercartographic atlas research framework, the Atlas project provides the basis for critical considerations of relationships in many interrelated spheres, including the identification and analysis of culturally influenced assumptions—for example, assumptions related to “territory” and “governance.”⁷

The Lake Huron Treaty Atlas contains a series of online interactive maps that encourage knowledge sharing and critical reflection along a variety of interrelated dimensions: historical, geographical, legal, political, economic, social, and cultural. The Atlas has been evolving in an iterative manner since it began eight years ago as a pilot project to create several maps in the Treaties Module of the cybercartographic Atlas of Indigenous Perspectives and Knowledge. This initial pilot phase of Atlas work was funded by a one-year Inukshuk Wireless grant, and was intended to provide sample content to demonstrate the potential of the cybercartographic approach to tell stories in a multidimensional and collaborative way. Subsequently funded by a three-year 2009–12 Social Sciences and Humanities Research Council (SSHRC) grant, the Treaties Module has

grown into an Atlas containing thirty maps-in-progress and with more potential maps planned, as the result of collaborations with Anishinaabe and non-Anishinaabe community members interested in sharing their perspectives, contributing historical geographical multimedia content, and exposing assumptions implicit in the Western worldview.⁸ To date, these maps include: biography maps; maps related to Anishinaabe language and culture; historical background maps; and maps relating to current affairs. Although it is an ongoing project that is always in the making, the Atlas has been publicly accessible via the World Wide Web since May 2012 as a transdisciplinary research and education tool.⁹ The processes involved in knowledge dissemination and facilitating online community-based contributions to the Atlas were the focus of a SSHRC Outreach Grant, which began in the summer of 2012 and wound up at the end of 2013. A significant aspect of research conducted under this grant involved improving the Atlas' technological base, better to enable people to log into the Atlas website, add multimedia content to the existing maps, and, in some cases, make maps of their own. This work continues into the present with a renewed focus on the project's Residential Schools component.

During the preparation of the pilot Treaties Module between May 2007 and April 2008, it became clear that a multidimensional presentation of stories related to the Treaty process over time and across space would contribute to greater awareness of this living history. Such awareness is necessary in a broad reconciliation context that extends to constitutional interpretation. In this regard, Brenna Bhandar argues that the law is flawed in the way it administers justice and mediates Crown–First Peoples relationships—a situation that recurs over time through an iterative process of Supreme Court judgments that fail to question the founding narrative that underlies the assertion of Crown sovereignty. In this view, the authority of the law rests on a founding narrative that reflects a linear, teleological approach to history. In order to authentically reconcile these relationships, it is necessary to “open up the law” by “spatializing history” in a non-linear, non-teleological fashion that unsettles the founding narrative on which the myth of Crown sovereignty rests.¹⁰

“Spatializing history” is a concept that links directly to what the cybercartographic Lake Huron Treaty Atlas project does. Although the Atlas design and development process was already well on its way to

spatializing history, Bhandar's conceptual developments have come to function as a further guide in the ongoing Atlas-making process. The relationship between Bhandar's paper and the Atlas project is an example of a holistic process: the Atlas work puts into practice Bhandar's concept of "spatializing history" by engaging collaborative research in holistic, non-teleological ways, thus contributing to re-telling history in new, more inclusive ways—a key factor in the project to transform Crown–First Peoples' relationships, according to Bhandar. In the context of the need for authentic or meaningful reconciliation, the Atlas project is committed to working toward a critical, decolonizing understanding of the past that deconstructs colonial and related approaches and reconstructs knowledge by including perspectives ignored by the colonial worldview.¹¹ This project takes a critical decolonizing approach to history by spatializing its approach to the past. After a brief consideration of Bhandar's concept of spatializing history, which focuses on the interplay between history and law, this chapter will outline several ways in which history is spatialized in the Lake Huron Treaty Atlas by focusing in particular on the design and development of the Survey Journeys maps.

Spatializing History, Narrative, and Reconciliation

Speaking around the concept of spatializing history to the importance of narrative, Bhandar considers the relationships between law, history, and narrative in her analysis of the mythical narrative foundation of subsection 35(1) of the Constitution Act, 1982, which, following Derrida,¹² she interprets as being a particularly violent constitutional provision. In the context of deconstructing the meaning, origins, and basis of subsection 35(1), Bhandar provides examples of narrow Supreme Court of Canada (SCC) interpretations of "reconciliation" that continue to reinforce unequal relations between the Canadian government and First Peoples, and thereby fail to achieve reconciliation in a broader, richer, more meaningful way. An important example is the SCC's "long-awaited judgment in *Delgamuukw v British Columbia*," which concerned "the right to aboriginal title under section 35(1)" and included a limited definition of "reconciliation":

In delineating the right, the Court stated that the purpose of section 35(1) is to reconcile the prior presence of aboriginal

peoples on the land with the assertion of Crown sovereignty (*Delgamuukw v British Columbia* 1997, paragraph 141). The Supreme Court of Canada reiterated earlier judgments in positing “reconciliation” as one of the main purposes behind the enactment of section 35(1). In *R v Gladstone*, the Court reaffirmed *Van der Peet* with respect to the objects of this reconciliation: “first, the means by which the Constitution recognizes the fact that prior to the arrival of the Europeans in North America the land was already occupied by distinctive aboriginal societies, and as, second, the means by which that prior occupation is reconciled with the assertion of Crown sovereignty over Canadian territory” (*R v. Gladstone*, 2 SCR, 723, 1996, paragraph 72).¹³

Bhandar joins John Borrows in his concern that the act of defining “reconciliation” in this manner “risks undermining the very purpose of subsection 35(1) by perpetuating the historical injustice suffered by aboriginal people at the hands of colonizers who failed to respect the distinctive cultures of preexisting aboriginal societies,”¹⁴ thereby failing to “question the legitimacy of the founding violence of colonial settlement.”¹⁵ Brian Egan tells a similar story with different details in his discussion of the modern treaty-making process in Hul’qumi’num territory, where he regards the Crown’s reconciliation process as a weak one.¹⁶ And, a little closer to home, previous writing on the Lake Huron Treaty Atlas project includes commentary emphasizing the economic implications of this situation:

In today’s reconciliation context, governments are publicly acknowledging their roles in past wrongs toward the original peoples of colonized lands and promising new approaches for the future.... However, the continuing political and economic struggles faced by First Nations striving to create healthy treaty-based relationships with the federal and provincial governments of Canada demonstrate that achieving this objective is easier said than done. In the words of Isadore Day, Wiindawtegowinini, Lake Huron Regional Chief and Chief of Serpent River First Nation, “The truth is that one dish is empty and one is full; our

treaty partner the Crown has all control and access to the wealth of our lands; and we struggle to obtain a share of the inherent wealth left to us by the Creator.”¹⁷

According to Kader Asmal et al., a richer and more meaningful approach to reconciliation involves facing

unwelcome truths in order to harmonize incommensurable world views so that inevitable and continuing conflicts and difference stand at least within a single universe of comprehensibility.... Reconciliation, in this its rich and meaningful sense, is thus a real closing of the ledger book of the past. A crucial element in that closing is an ending of the divisive cycle of accusation, denial and counter-accusation; not a forgetting of these accusations and counter-accusations, but more a settling of them through a process of evaluation—like the accountant’s job of reconciling conflicting claims before closing a ledger book.¹⁸

Priscilla Hayner expands on what is meant by this:

In countries where simmering conflict and violence have returned in cycles, a root problem has sometimes been a fundamental difference in perceptions of the past. Such stark differences in understanding may keep reconciliation superficial. There is never just one truth: we each carry our own distinct memories, and they sometimes contradict each other; but debunking lies and challenging dishonest denial can go far in allowing a country to settle on one generally accurate version of history. There are some facts that are fundamental enough that broad acceptance of their truth is necessary before any reconciliation can take place.¹⁹

The legal system, which is based on and includes the Constitution, both affects people’s lives and is perpetuated by the worldviews, beliefs, and values of those very people. Those who speak for a full, rich, and meaningful reconciliation all point to the need to include more stories and perspectives from more people, especially those who have been negatively affected by colonial processes, in order to enhance awareness and enrich the general world view of the society in which the law exists:

In playing with and constructing different stories and strands of fiction, the objective becomes the production of “different strands intertwined in constructive friction, rather than in mere conflict and mutual strangulation.”²⁰ The power of historical narrative in constituting the nation (and nationalism) should not be undermined. The project of reconstituting and decolonizing a colonial settler state is reliant upon the creation of new histories, in which certain strands and stories of colonial injustice and dispossession become the predominant ones.²¹

A “spatialized” approach to history acknowledges the need to overcome incommensurabilities and hegemonic barriers when it comes to achieving reconciliation, which means approaching knowledge acquisition in new ways:

Spatializing history means letting go of a linear, teleological understanding of progress as moving from a point of origin to an absolute end point. The images and narratives of the past that we create or construct need to be carried into the present not as relics or artefacts to be acknowledged and observed but as living, active memory that shapes the contours of present relations between individuals and communities.²²

Spatializing history involves adopting a nonlinear approach in which the ultimate value is balance. This stands in contrast to the linear approach, which values progress in terms of such things as amassing wealth as an end in itself. It also means being inclusive, not only with respect to people, voices, and stories of today, but with respect to the people, voices, and stories of yesterday and tomorrow, as well: “Re-conceptualizing history so that the past conditions the possibility for justice in the present and future requires that the past not be contained or closed off, that images of the past are, in the words of Brown, ‘conceptually wrenched from temporal ordering.’”²³

In order to adopt a nonlinear, non-teleological approach to history, it is necessary to approach knowledge in a non-dualistic manner that dispenses with many of the binary distinctions associated with the Western worldview that underlies colonialism. In order for reconciliation to be

accomplished in any meaningful way, colonialism itself must be transformed. Taking a two-pronged approach to collaborative design and development, the Lake Huron Treaty Atlas project combines the intersecting sets of critical academic approaches and Anishinaabe perspectives, knowledge, and approaches in order to create an ongoing series of maps reflecting a multidimensional—spatialized—understanding of the treaty-related history and geography.

Spatializing History in the Survey Journeys Maps of the Lake Huron Treaty Atlas

The ongoing collaborative project to create the Lake Huron Treaty Atlas is a critical cartographic effort to spatialize history by creating geonarratives that:

1. Participate in the critical cartographic movement
2. Assume a relational approach to space that emphasizes the performative
3. Are multidimensional
4. Give rise to emergent knowledge (i.e., are non-teleological)
5. Bring together past and present
6. Emphasize context
7. Involve a holistic view of development
8. Make knowledge accessible for people

(i) Critical Cartography—A Brief Overview

Critical cartographers seek to rethink and redo mapping by acknowledging and transcending a colonial past in which maps were used by nation-states primarily to assert their territorial claims.²⁴ Today, mapping practices are increasingly being understood and employed as central components of the solutions to complex social and economic challenges. The movement began with an emphasis on decolonizing history by Brian Harley, who focused on deconstructing colonial maps to understand the ways they were used to exercise and promote colonial authority.²⁵ Over time, critical cartographers began to look more deeply into the ontological status of maps themselves. They came to view maps as processes that give rise to emergent knowledge and are never complete.²⁶ They considered

epistemological issues, as well, such as overcoming incommensurability in the mapping of Indigenous perspectives and knowledge.²⁷

One of the main issues in critical approaches to cartography and GIS is that geospatial technologies²⁸ are not capable of accurately presenting unique understandings of space, environment, and culture that are necessary in a reconciliation context. Indeed, concerns have been raised within the critical GIS literature with respect to the need to address the tensions that exist between GPS (Global Positioning System) and GIS technologies, on the one hand, and Indigenous worldviews and approaches to mapping, on the other. Specifically, positivist assumptions underlying GPS and GIS are seen to be incommensurable with Indigenous and postfoundationalist approaches to knowledge; because of this incommensurability, it is felt that geospatial technologies are incapable of reflecting multiple ontologies of space. There are some who reject the use of geospatial technologies in favour of mapping practices such as sketch mapping, which are “personal and centered on the exploration of emotional meanings in the landscape.”²⁹ Others acknowledge the benefits of geospatial technologies, but feel it is necessary to change the way we think about cartography. An important critical cartographic strategy is to adopt a non-representational, performative approach to mapping.³⁰ This approach has two facets: “One is that meaning, understanding and knowledge are based in embodied practices. The other is that the performance of knowledge practices and their attendant knowledge spaces and artefacts simultaneously structure and shape our sociocultural world in a process of coproduction. We make our world in the process of moving through and knowing it.”³¹

Approaching the process of mapping from a performative perspective includes everything from the practices involved in “making” the map to the intellectual-emotional acts of interpreting maps each time they are perceived. A map is more than just ink on paper, or a digital display on the computer screen; it is the processes that go into its making and remaking. This perspective flies in the face of claims to neutrality, objectivity, or truth.³² Critical cartographic approaches generally recognize, first, the significant ways in which maps are social constructions;³³ second, how many maps have excluded certain perspectives;³⁴ and third, how such exclusion has been systemically guided by imperialistic and colonial goals.³⁵

Identifying features of such approaches includes seeing maps as processes, as media of expression with the potential to rectify previous exclusionary practices through alternative mapping approaches.³⁶

The cartographic dimension of the Lake Huron Treaty Atlas contributes to the project's ability to spatialize history by sheer virtue of its concern with where events occurred. The critical cartographic approach contributes further by dissolving the binary between object and action, between maps as objects and practices related to the making, use, and interpretation of maps. In this vein, viewing the Atlas as a performance provides a further way to spatialize history. One example of this how the stories describing the making of the Atlas are integral to understanding the stories presented in the various maps themselves. Together, these stories comprise the overall geonarrative, which includes the online Atlas format and extends to people's memories of interactions concerning aspects of the Atlas project, conference presentations, journal articles, book chapters, and other written material.

Over the past six years, the Atlas has developed in an iterative approach along a variety of dimensions.³⁷ Iterative processes give rise to emergent knowledge³⁸ and represent a non-linear, cyclical view of development where past elements can be incorporated, new ones can be brought forward, and certain elements can be left behind, with the possibility of re-integrating them into the development process after any number of project iterations.³⁹ Collaborative relationships are a central aspect of the types of iterative processes that give rise to the Atlas, and iterative processes occur along at least four interrelated dimensions: conceptual, financial, technological, and narrative. The iterative interplay between theory (or concepts) and practice is a hallmark of the cybercartographic atlas-making framework, which has guided the critical cartographic Atlas project.

(ii) Cybercartography: A Distinctive Critical Cartographic Approach

Cybercartography is a set of concepts and tools that provides an effective atlas-building framework for approaching complex social, political, and economic phenomena, include reconciliation processes.⁴⁰ Cybercartography participates in the critical turn in cartography in terms of theory and application, and represents a processual approach

to mapping and the politics of space. The cybercartographic framework makes mapping practices possible that are both responsive to and part of reconciliation processes along a variety of dimensions. The approach to maps as practices is consistent with the “ontogenetic” conception of mapping practices, which is “a radical departure in ontological thinking concerning maps: a shift from ontology (how things are) to ontogenesis (how things become), or from the nature of maps to the practices of mapping ... they are not ontologically secure representations, but, rather, a set of unfolding practices.”⁴¹

Understanding the evolution and existence of the Lake Huron Treaty Atlas with reference to “a set of unfolding practices” is not only the most apt way to describe and explain the Atlas, it is also an example of spatializing history. In addition, both the cybercartographic atlas-making framework and the Atlas project it supports emphasize interactivity and broad community participation. They are transdisciplinary and holistic in nature, with an emphasis on storytelling, knowledge sharing, and enhancing awareness of different perspectives. The name of the software developed to create atlas modules—Nunaliit—illustrates the community orientation of the project. The word “nunaliit” means “settlement,” “community,” or “habitat” in Inuktitut (the name applied to the dialects of the Inuit language in Canada). This name was given to the cybercartographic framework to emphasize the community-based approach driving the development of the software in different domains: (1) open specification approaches; (2) modularity; (3) “live” data; (4) geospatial storytelling; and (5) audio-visual mapping.⁴² Cybercartographic atlases develop over time through a series of iterative processes involving design, implementation, and testing phases. Prototypes, both paper and digital, are developed throughout these phases. Discussions of the cartographic possibilities occurring around these prototypes result in alterations to map structure and function over time. Discussions between team members with differing knowledge specializations result in design and development decisions. The iterative development of the Lake Huron Treaty Atlas is a function of the relationships and communications between the software design and information infrastructure team, on the one hand, and those responsible for the geonarrative content, on the other. Although they fall into two relatively distinct knowledge domains, these two groups share intersecting

knowledge and responsibilities when it comes to atlas design and development, and the expansion of knowledge that results from their interactions results in the emergence of maps.⁴³

(iii) The Cybercartographic Lake Huron Treaty Atlas: Early Days in Spatializing History

Since the Atlas' inception in May 2007 as the Treaties Module pilot project, there have been many examples of spatializing history in its iterative development. The Treaties Module began to spatialize the history of the Lake Huron Treaty negotiation, signing, and survey processes (1) through the cybercartographic presentation of archival documents and artifacts, and (2) by reflecting the involvement and contributions of an initial group of Anishinaabe individuals in the Lake Huron Treaty region, as well as contributions from other individuals. The iterative transformation of the Treaties Module into the Lake Huron Treaty Atlas has continued to consider the relational nature of the Lake Huron Treaty negotiation, signing, and survey processes in a broad cartographic context that brings together events of past and present.⁴⁴

The prototype Treaties Module includes four sub-modules or atlas parts. The first three sub-modules provide the context for interacting with and understanding the fourth, which is based on the surveyor's diary of J. S. Dennis.⁴⁵ The Spirit sub-module represents in story form the spirit and intent of the Treaties Module: to put together the various parts of the Lake Huron Treaty process story in a way that enhances awareness of the ethical aspects of its many interrelated dimensions, and can contribute to knowledge of how to engage in healthy and fair Treaty-based relationships today. The Welcome sub-module includes guiding concepts for a critical learning approach. For example, it draws attention to the existence of different perspectives, identifies four important criteria of "good" Treaty relationships (fairness, balance, care, and mutual understanding), and invites viewers to assess the Treaty process according to these criteria. The Background sub-module involves a timelined account of some relevant historical background to the Lake Huron Treaty survey journey process.⁴⁶ Finally, the stories describing the design and development of the maps in the Survey Journeys sub-module, including the method

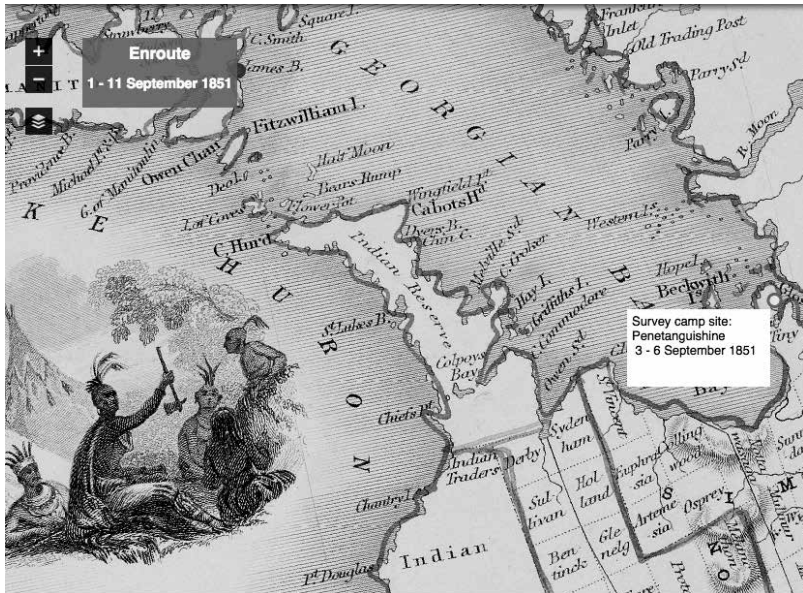


Figure 1. Screenshot from the most current version of the Lake Huron Treaty Atlas showing the Enroute map for Season One of the Survey Journeys set against John Tallis' 1851 map of "West Canada."

of geo-transcription, which emerged during the map-making process, combine to present a spatialized history of the survey journey process.⁴⁷

In the Survey Journeys sub-module, the 1851 survey diary of J. S. Dennis is transcribed and mapped out with the aid of diary descriptions, survey plans, current and historical maps, and satellite imagery.⁴⁸ In addition, each overnight stop in his journey has been overlaid on one of two significant historical background maps. The "Enroute" and "Return" maps show a series of camp stops set against a standard settlement map, which tells a story in itself, and illustrates the potential for maps in general as effective spatial narrative vehicles (see Figure 1). This standard government settlement map was chosen for a variety of reasons, including the fact that it shows Dennis and his party leaving the settled and "jurisdictionally demarcated" north shore of Lake Ontario and travelling through settler-entrenched territory toward what is clearly marked on the map as "Indian Territory." To further reinforce the "uncharted" nature of these lands and waters, artistic images of "Indians" engaging in "Indian activities" are included where there is a lack of survey information.

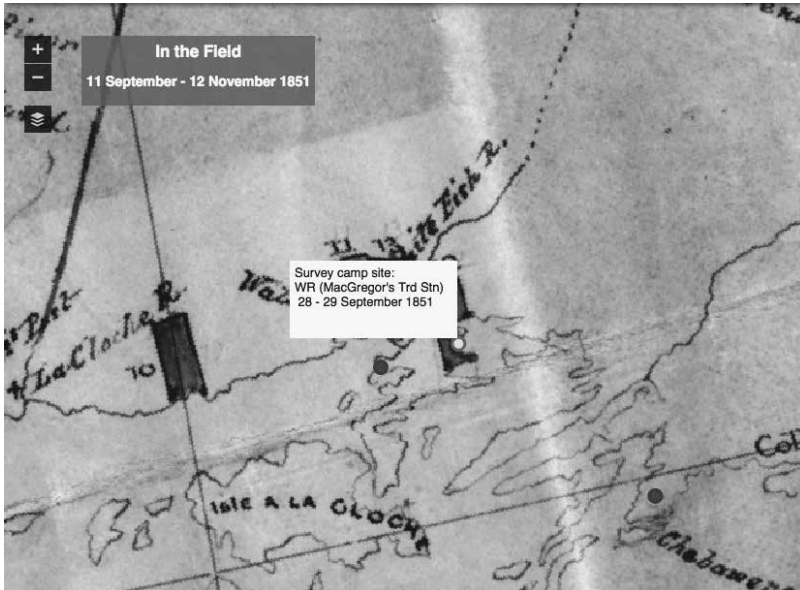


Figure 2. Screenshot from the most recent version of the Lake Huron Treaty Atlas showing *In the Field* map for Season Two of the Survey Journeys set against Commissioner Alexander Vidal's 1849 sketch map.

The “In the Field” camp stops are set against a map drawn during the 1849 pre-Treaty investigations by Commissioner Alexander Vidal, depicting his impressions of Anishinaabe nation territories in the Lake Huron region, along with mining lots that had been applied for by prospectors within the officially demarcated “Indian Territories” (see Figure 2).⁴⁹ The diary entries associated with these stops are included to the right of the map, together with an audio clip of a voice representing Dennis. The diary entries are transcribed from Dennis’s original handwritten report.

The development of the geo-transcription method in the Survey Journeys maps provides a good example of spatializing history.⁵⁰ This method would not have developed without interactions between people concerned in some way and to some degree with the history. An important example of the collaborative role of Anishinaabe community members and other individuals in giving rise to the geo-transcription method and the Survey Journeys maps is provided by the story of how the Treaties Module came to be focused on Lake Huron Treaty-based relationships.

At the beginning of the pilot project, the task at hand was to produce some sample content illustrating the capacity of cybercartography to convey “Indigenous knowledge and perspectives” related to territorial claims in a unique and innovative way. Initial research involved learning about the cybercartographic atlas framework, learning about treaty history, thinking about how and what to map, and beginning to work through a formal process, with M’njikaning First Nation, on a community-oriented conceptual map based on the graphic of Yellowhead’s wampum belt. Throughout this exploratory phase, I was working with a fairly loose geographical definition of the Great Lakes region and the understanding that after a certain period was allowed for preliminary background research, a decision would need to be made with respect to the nature and scope of the historical and geographical focus.⁵¹

Seven weeks into the research project, I was referred to Michael Marlatt’s essay, “The Calamity of the Initial Reserve Surveys under the Robinson Treaty,” by Alan Corbiere, an Anishinaabe Lake Huron Treaty region historical researcher and former director of the Ojibwe Cultural Foundation. Marlatt’s work includes a relatively detailed description of the extended survey process for the Lake Huron and Lake Superior Treaties of 1850.⁵² After reading it, I was sure that the story of the Lake Huron Treaty signing and survey processes would be the ideal story to map for the Treaties Module.⁵³ Marlatt’s work is instructive for a number of reasons, including its critical surveyor’s perspective and its spatialized account of Treaty history. In addition, Marlatt describes the political and economic context of the Treaty signing and survey processes, and, drawing on the original surveyors’ reports, it includes a nation-by-nation narrative tabulation of the various errors and omissions in the surveys themselves. Thus, in following this reference lead provided by an Anishinaabe community member I ultimately arrived at a decolonizing focus for the geonarrative development of the Treaties Module.

From this point, I began to work with the Geomatics and Cartographic Centre team at Carleton University (Ottawa, Ontario) to construct an interactive map based on Marlatt’s essay. Using a basic timeline, the map would track the surveyor from community to community, and include a summary of Marlatt’s findings regarding the survey outcomes at each place. At the same time, I prepared an abstract from Marlatt’s essay

detailing some of the relevant contextual prehistory to the survey process, including details about the treaty signing ceremony for inclusion in the Background sub-module. I now had the basic geonarrative focus and the beginnings of the geotranscription method, and was ready to begin discussing the project and its progress to date with community members.

In the interim, through links made via Dr. Heidi Bohaker, a historical researcher on our project, I was invited to the 39th Algonquian Conference in Toronto, where I was able to meet a core group of historians specializing in the history of the region, and to describe to them the ideas related to mapping history that were beginning to emerge in this project. During this period, I was connected, via Bohaker, with a former senior archivist at Library and Archives Canada, who has since contributed hours of her time to understanding and interpreting history from a critical archival perspective. Out of our meetings, the idea for the Governance (or Legislative) Paper Trail map emerged, and mapping strategies were discussed. Through another Algonquian Conference contact, I was able to connect with Michael Marlatt, who contributed his copies of Dennis's report, diary, and field notes, and the reserve survey sketches, and who has since been an ongoing support to the project. Considering the involvement of leadership in the Treaty process, I decided to contact, via telephone, the chief representatives (the Gimaahs)⁵⁴ of the treaty's signatory nations to talk with them about our emerging work to map the survey journey and about Treaty history in general. In all cases, I described the cybercartographic atlas framework and the postcolonial approach of the Treaties Module, and followed up by emailing a letter describing the project.

It was quickly determined that it would be unreasonable to expect to develop collaborative, investigative relationships with representatives from all seventeen signatory nations in the space of several months, especially as this would involve community visits. Therefore, I decided to continue building on the collaborative, investigative relationships that had begun to develop with the Gimaahs (and one band councillor) in four signatory nations situated from east to west along the Lake Huron Treaty region. Throughout this process, our collaborations involved the mutual sharing of various kinds of knowledge in various forms that included historical texts, stories, and maps. Following through with the project's community-oriented objectives, I began to plan a trip to the Treaty region for February

2008, when I planned to have face-to-face meetings and demonstrate the pilot Atlas, including the Survey Journey map based on Marlatt's essay.

Then, in January 2008, after participating with Alan Corbiere (mentioned above) in mapping the traditional story of Nenboozhoo and the creation of Mindemoya Island and M'Chigeeng First Nation for the "Culture" section of the Living Cybercartographic Atlas of Indigenous Perspectives and Knowledge,⁵⁴ the geonarrative focus shifted to a consideration of a more direct "tracking" of the surveyor. Although an initial map idea had already been generated and discussed, the experience of mapping out Nenboozhoo's journey to Mindemoye had inspired a new, but related, map idea: to transcribe and map J. S. Dennis's survey diaries, the primary document upon which Marlatt's essay was based, and to map Marlatt's essay as a critical geonarrative summary of the survey diaries. Dennis's diary referred to more than a hundred distinct camp sites, provided details additional to Marlatt's essay, and was far easier to follow when translated into geonarrative form. This iterative shift in focus has not only created new possibilities for analysis and critical understanding, but has also helped shape ideas for additional geonarratives for inclusion in the Atlas.⁵⁵

In February 2008, I travelled to the Lake Huron Treaty region to visit with the community representatives, who had begun to engage enthusiastically in the collaborative investigations. Much of the visit with the Anishinaabe community participants involved discussing the multidimensional nature of the treaty process over time and across space, outlining the vision to expand the Treaties Module into an atlas, and demonstrating the working version of the Module. Approaching this interactive mapping process from a combined deconstructive and collaborative mapping perspective, I had it in mind to look at old maps in new ways by including previously excluded information—excluded not only from maps, but from general knowledge of the history itself. The construction process for the Treaties Module pilot was exploratory and experimental. Similar to the decolonizing methodologies discussed by Linda Tuhiwai-Smith,⁵⁶ this process was not "preordained" by any Western scientific method, but remained open to the insights and directions of the Anishinaabe representatives from the Treaty's signatory communities, and involved the development of relationships in a rhizomatic manner.⁵⁷

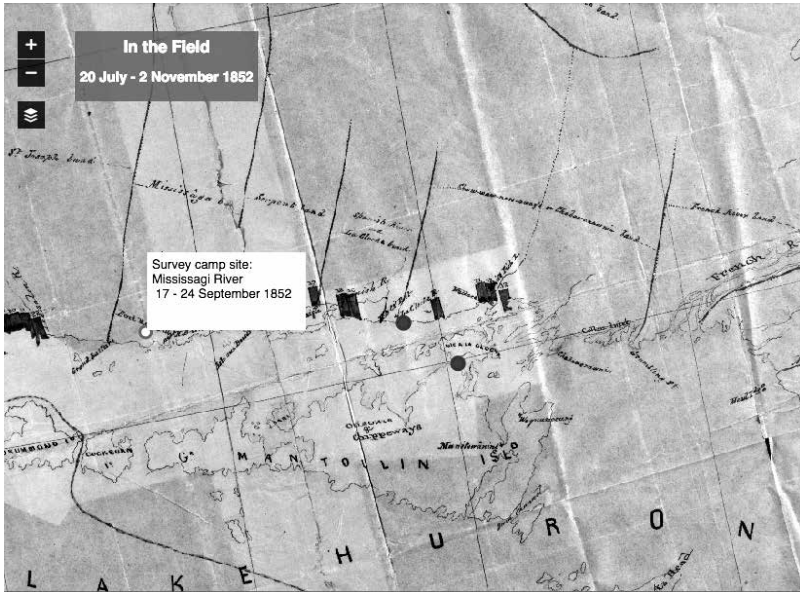


Figure 3. Screenshot from the most recent version of the Lake Huron Treaty Atlas showing separated survey trails on the “In the Field” map for Season Two of the Survey Journeys. Bristow’s stop on this journey is marked by the green dot, and the two stops made by Dennis during the same time period are marked by red dots. This screenshot shows Bristow at Mississagi River on 24 September 1851, while Dennis was at Sheguiandah on Manitoulin Island.

The vision to expand the Treaties Module into the Lake Huron Treaty Atlas, which emerged during phase I of the project, began to take form during the second funding phase under a SSHRC Standard Research Grant between May 2009 and May 2012. In this phase, the Survey Journeys maps were converted to a new technological framework intended to facilitate information uploading and improve user interface and design; these became the first maps in the Cybercartographic Atlas of the Lake Huron Treaty Relationship Process. I met with Glenn Brauen, a team member with expertise in both programming and cartography, to discuss initial design considerations for the creation of a series of geonarratives that would be built around the Survey Journeys maps.

One important topic concerned the Survey Journeys maps themselves. Upon examining the “In the Field” map for the second season of the journeys, it became clear that the lead surveyor, J. S. Dennis, and his assistant,

Arthur Bristow, split up at a certain point and divided the survey tasks between them. This was shown in Dennis's survey diary via a separate entry summarizing Bristow's survey work listed at the bottom of each daily entry for Dennis's own work. This realization presented a challenge in terms of finding a way to map the situation. A cartographic software solution was found to map two separate journey tracks simultaneously, thus drawing attention to the surveyors' deviation from their official instructions, and adding a new dimension both to the geo-transcription method and to the Atlas' functionalities.

The Survey Journeys maps would not be what they are today without the constitutive map-making processes that went into their production. These processes involved interactions between people exchanging knowledge and perspectives. Now, in the third, "outreach" phase of Atlas, the main challenge in developing the Survey Journeys maps concerns how to create a critical comments layer that will allow people to log in and comment on various map points and entries.⁵⁸ Including other stories and perspectives alongside the surveyor diary entries provides another way of spatializing history in the manner described by Bhandar.⁵⁹

Discussion: Development of a Holistic Approach to Spatializing History

Not only does the Atlas spatialize history both in terms of how it is made and in its multidimensional geonarrative content; people using it can also navigate the multimedia Lake Huron Treaty Atlas in a nonlinear way. For example, one may choose to skip from one of the Survey Journeys maps to a Biography Map for surveyor J. S. Dennis, which offers greater detail concerning the life and character of the individual who led these surveys. Within a particular map, one may find content related to context; learn about historical events and characters; interact with past, present, and future; and have the ability to comment and contribute.

Matthew Sparke advocates a "postfoundational geographical sensitivity" that includes an emphasis on "instability, decentering, openness and anti-essentialism (often dubbed post-structuralist, sometimes discussed as post modern, but really better bracketed as postfoundational)."⁶⁰ The making of this story shares postfoundationalism's broadly educational goals of raising awareness of previously under- or unconsidered political, cultural,

historical, geographical, and economic dimensions—and of working toward addressing the dualisms and binaries associated with colonialism and the Western scientific worldview. It does this in part by including previously excluded information on historical map backgrounds. The vision is to produce an atlas that makes specialized knowledge and information more accessible to a broad audience, including Anishinaabe students and community, the wider Canadian public, researchers from a variety of academic disciplines, and policymakers involved in Treaty-related issues.

Cybercartography attempts to achieve inclusion in mapping by allowing a number of different narratives to be presented without privileging any one of them in particular. The Lake Huron Treaty Atlas takes cybercartography in a new direction, in this regard, by adding a critical edge to its inclusiveness.

Not all perspectives and understandings of the Lake Huron Treaty's historical geography will be included in the research behind the development of the module. In an effort to contribute to the reconciliation of Lake Huron Treaty-based relationships today, the Atlas incorporates the perspectives of people from the Lake Huron Anishinaabe communities and critical postcolonial perspectives, while the "colonial" perspective is incorporated only insofar as it is being critiqued. This is consistent with Bhandar's view referred to above, where "the project of reconstituting and decolonizing a colonial settler state is reliant upon the creation of new histories, in which certain strands and stories of colonial injustice and dispossession become the predominant ones."⁶¹

Theory and practice are integrated in an explicitly holistic manner throughout the work to produce the Atlas, which is being designed and developed to address challenges associated with reconciling approaches to knowledge often thought of as "incommensurable."⁶² In this respect, the Atlas pushes cybercartography toward further developing and expanding its holistic dimension through an emphasis on synthesizing critical academic approaches and Anishinaabe perspectives in the design and development of the Lake Huron Treaty geonarratives. This is necessary for a comprehensive understanding of the Lake Huron Treaty process that reflects the perspectives of the previously excluded or marginalized. In this regard, the Atlas' concern with holism extends to the problem of incommensurability between diverse knowledge systems and perspectives,

especially when it comes to the issue of accurately portraying “alternative” perspectives and understandings, which are themselves often holistic in nature.⁶³

Through the production of a comprehensive geonarrative of the Lake Huron Treaty historical geography, the Atlas demonstrates the potential of cybercartography “to express the geographies of human experience and place in the map,”⁶⁴ a significant challenge to any critical cartographic endeavor. The narrative dimension being developed in the Treaties Module both gives “experience its own layer”⁶⁵ and maps “personal trajectories of experience across the digital map using GPS,”⁶⁶ techniques that are being used increasingly in geography, art, and community mapping. In addition to the potential for the Treaties Module geonarratives to reflect personal experience, they may also have the capacity to elucidate inter-scalar relationships—for example, those that exist between individuals and institutions.

Conclusion

Conventional cartographic representations often fail to adequately reflect and communicate experience, sense of place, and diversity of worldviews in a non-dominating manner.⁶⁷ Moving beyond the concept of traditional representational cartography, the cybercartographic atlas framework allows for the development of novel approaches to the mapping process, with the potential to create geospatial modes of expression capable of presenting traditional and contemporary Indigenous knowledge and understandings, and critical postcolonial perspectives in a non-dominating manner. As the work to create the Lake Huron Treaty Atlas evolves, it draws cybercartography in new directions through its explorations with geonarrative and by weaving multiple perspectives into its design and development. As a response to Brenna Bhandar’s call to “spatialize” history,⁶⁸ it is hoped that this ongoing atlas project will contribute to enhanced awareness and improved Treaty-based relationships across a variety of dimensions now and into the future.

Endnotes

- 1 Brenna Bhandar, "Anxious Reconciliation(s): Unsettling Foundations and Spatializing History," *Environment and Planning D. Society and Space* 22 (2004): 831–45.
- 2 This process could otherwise be referred to as the "Robinson" Huron Treaty Process, since the "official" treaty title is the Robinson-Huron Treaty. However, replacing "Robinson" with "Lake" would be consistent with the 2008 decision of the Lake Huron Treaty Commission to refer instead to the Treaty as the Lake Huron Treaty. This choice is an example of how the Anishinaabe perspective is reflected in the telling of the Lake Huron Treaty Process story.
- 3 Bhandar, "Anxious Reconciliation(s)," 831.
- 4 See Susan Dwyer, "Reconciliation for Realists," *Ethics and International Affairs* 13 (1999): 81–98.
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Decolonizing the Emotions?

Affective¹ Challenges in Theatre
Re-Membering Indigenous Claims to Land

Margot Francis

This chapter investigates the affective problematics of an Anishinaabek theatre workshop held at Garden River First Nation in August 2009, a performance that dramatized the contemporary legacy of Treaty making and land dispossession on the north shore of Lake Huron. My interest is to explore how the actors and audience members (Anishinaabek, mixed-race, and white youth) negotiated the “contact zone” of intercultural theatre. If contact zones constitute “social spaces where disparate cultures meet, clash, and grapple with each other, often in highly asymmetrical relations of power,”² as Mary Louise Pratt argues, then this paper will explore the contradictory possibilities for intercultural theatre in witnessing these traumatic legacies. Drawing from open-ended interviews with the audience and cast, I explore the discursive work of emotion in navigating the cultural politics of colonial relations. This research responds to a significant strain in anti-racist/decolonization studies, which stresses the pedagogical importance of *not* making white people “feel bad” for fear that such feelings might make white racism worse or simply intensify white guilt, which can often be narcissistic.³ My interviews with white, mixed-race, and Anishnaabek youth, however, highlighted the inevitability and even the importance of confronting “bad feelings”⁴ in relation to white settler dispossession of Anishinaabek land. This chapter will explore the

emotional and discursive contests that emerged in relation to a theatre performance on land dispossession, highlighting how youth dealt with deeply ambivalent feelings of “ignorance,” “shame,” and refusal, as well as, for some, a profound sense of the “gravity” of the colonial encounter. In particular, I examine how these “bad feelings” worked, sometimes to acknowledge white settler *un*belonging in the territory now called Canada, while at others covering over the violence of contemporary colonial relations. Thus, I interrogate the limits and possibilities of inter-cultural theatre, which attempts to witness Indigenous–white settler conflict in the colonial *present*.

My involvement in this project first began in 2004–05, when I accepted a faculty position in the sociology department at Algoma University, located in Sault Ste. Marie, just adjacent to the Garden River and Batchewana First Nations. As a white scholar with an interest in artistic work that challenges the legacy of colonial, racialized, and hetero-patriarchal relations, I became interested in Garden River and Batchewana’s history of inter-cultural theatre, which spanned the period from 1900 to 1968—a legacy about which I have written elsewhere.⁵ As a result of that research, I joined the newly forming Garden River Arts Committee in 2005. From 2005 to 2011, this group worked with Anishinaabek and Cree scriptwriters and with a local, allied white director, to revive and re-invent Anishinaabek theatre in that region. These productions have been supported by the Garden River Band Council, as well as by the provincial and federal arts councils. From 2007 to 2011, my research was funded by a SSHRC Strategic Grant, whose principal investigator was the Anishinaabek historian Karl Hele, director of First People’s Studies at Concordia University in Montreal and a member of Garden River First Nation.

The *Treaty Daze* project started development with a script workshop in April 2009, which brought together elders, youth actors, academics (my colleague Karl Hele and myself), and theatre professionals, including Anishinaabek scriptwriter Alanis King (former artistic director of the Saskatchewan Native Theatre Company) and allied white director Sue Barber, of Shot in the Dark Productions in Sault Ste. Marie. There were two objectives for the workshop: the first was for team members to deepen their understanding of the local history of treaty rights and land

dispossession; the second, to take the story concept, developed by Joe Corbiere, a member of Batchewana First Nation, and expand it through consultation with actors, activists, and elders in the Garden River and Batchewana communities. This discussion provided a context for participants to talk about the implications of these early agreements for present-day land conflicts. For example, one person recounted the story of the first Indigenous protest on the Trans-Canada Highway in 1963, led by Alice Corbiere, which pressured the federal government to recognize the community's right to compensation for lands confiscated for the highway's construction. This early lobby with Jean Chretien, then Minister of Indian Affairs, was a crucial moment in the long process of trying to influence the government to recognize that Anishinaabek communities would no longer tolerate living with no running water, no paved roads, no electricity, and no municipal services. In addition, youth actor Teddy Syrette spoke about the experiences of present-day racism in school classrooms—a particularly important intervention given that Garden River, like many other reserves, has a seventy-percent dropout rate from secondary school. After that initial workshop, the team of actors met regularly for rehearsals and occasionally to learn more about the contemporary implications of land disputes and the intergenerational impacts of residential schools. In the final production, *Treaty Daze*, the central character is a contemporary Anishnaabek teenager, Didjamawyn, who learns about the historical struggle for land and resources through a wry series of flashbacks to key moments in the treaty negotiations between Anishinaabek leaders and the colonial state. *Treaty Daze* was performed from August 14 to 16, 2007, at the Garden River Powwow. I was a participant/observer for the script workshop, for periods during rehearsals, and for the weeks before and after the Powwow. I attended all the shows, interviewed the cast, and selected youth in the audience for interviews the week after the production.

Moving now from description to analysis, I will highlight the role of emotions in three *discursive contests* that emerged from interviews with the cast and youth audience members about their responses to this production. I started this project with the assumption that white settler silence regarding the history of land displacement was a characteristic of a community where whiteness is co-produced with silence in ways that keep the majority in a position of constructed “innocence.” What I hadn't

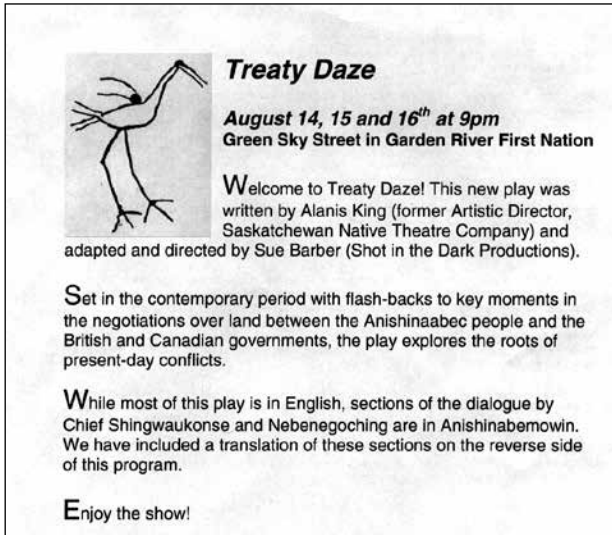


Figure 1: Broadsheet given to audience at the *Treaty Daze* play.
Photo: Karl S. Hele

anticipated was the extent to which, in different ways, *all* of the youth, including the Anishinaabek, mixed-race, and white actors and audience members, would describe their own relation to the legacy of land dispossession through a discourse of “informed ignorance”—a term coined by one of the Anishinaabek audience members. This theme first emerged at the script development workshop, and continued into the interviews with actors and audience members after the production. The emotional impact of this sense of “informed ignorance” is well illustrated in three excerpts from the interviews. The first is from a young white woman in the audience:

I mean, everybody’s heard ... the “white man came and stole the land” sort of thing, [it’s] even in ... Disney movies for heaven’s sake, but I didn’t know where that came from ... [or] have any examples to fall back on. But now that I learned about them, they were really, I mean, it affected me. It made me think about it a lot. And, you know, feel guilty [laughs] for a minute there. I was like, “wow, we suck!” [laughs].⁶

The second comment is from a lead Anishinaabek actor in the production, who is a descendent of Chief Shingwauk, a key leader during the Treaty negotiations:

I had no idea what the ... Treaties actually meant and what they meant for me. I knew we lived on a reserve for a reason, but I had no idea what [role] the treaties played in all that, and I realize now that they played, like, a major, major role.

The third excerpt is from a mixed Anishinaabek-white youth actor who lived off-reserve, and who, until his involvement with the play, had little knowledge of Indigenous politics:

I just didn't realize how actually crazy and disorganized it was. How everything was just totally, totally up in the air, you know? White settlers just came in and just started settling on Indian land and there were no treaties or boundaries or anything, they just kind of came in and took over. It was ... psycho.

Importantly, the felt narratives of each of these informants suggest their actual knowledge of land displacement is *both* present and absent. Clearly the Anishinaabek actor who had grown up on the reserve knew, at the most visceral level, the experience of being separated on reserve land that is “across the tracks” from the white areas of Sault Ste. Marie. In his description of the “major, major role” of the treaties, he expresses his sense of surprise about the legal history that shaped his everyday sense of the space of the reserve: “I knew we lived on a reserve for a reason, but I had no idea ... [what the treaties] meant for me.” Here, the actor’s sense of “informed ignorance” results from not understanding, prior to his involvement in the play, the *specific process* through which “race” had come to be naturalized as “place,” or how state colonization came to be embedded in the geography of racial segregation. A related set of emotions can be heard in the other two interviews: first, with the white audience member who is attempting to navigate and deflect her newfound knowledge, and then the mixed-race Anishinaabek-white actor noting his astonishment at the “crazy ... disorganization” of colonization and how white settlers just came in a settled “on Indian land ... [with] no treaties or boundaries or anything.... It was ... psycho.”

For the lead Anishinaabek actor, then, the emotional impact of the play comes, first, from learning how the racial geography of colonization has formed the template for his taken-for-granted sense of “difference” on the space of the reserve. But for the other two interviewees, the texture of their responses was formed, as the white audience member notes above, by hearing an “example” illustrating how land dispossession was accomplished: i.e., locally. For these interviewees, a crucial aspect of their learning came from the presentation of Anishinaabek perspectives on this legacy. Indeed, the centrality of Anishinaabek points of view in the *Treaty Daze* narrative provided a rare and important outlook, which seemed key to participants’ felt sense that Indigenous dispossession was a *legitimate* object of emotion.

Given the importance of historically specific analysis in the response to *Treaty Daze*, I provide three brief examples of the Anishinaabek engagement during the Treaty-making process taken from Janet Chute’s fine history of the Garden River First Nation. Chute documents how the efforts of the Anishinaabek leadership to lobby for their land and resource rights prior to the 1850 Robinson-Huron Treaty included a wide range of tactics. For example, in the years leading up to the Treaty-making process, the Anishinaabek sent numerous petitions to the government, travelled to Montreal to meet with the governor general (a visit widely celebrated in the local press), and were involved in the peaceful occupation of an illegal white settler mining operation at Mica Bay (for which they were vilified as violent savages in the Montreal press and briefly jailed). Furthermore, unlike the romanticized notion that Indigenous people had no concept of land ownership, the Anishinaabek leadership were well aware of Western notions regarding the value of the land and negotiated forcefully to gain, in particular, access to mineral and timber rights. For example, in a speech published in the *Montreal Gazette*, Chief Shingwauk noted that,

The Great Spirit ... placed these rich mines on our lands, for [our] benefit.... We will sell you lands, *if* you will give us what is right and at the same time, we want pay for every pound of mineral that has been taken off our lands, as well as for that which may hereafter be carried away [italics added].⁷



Figure 2: Extra Extra Read All About It! Indian's Attack Mining Location!
Photo: Karl S. Hele

Turning now to the Canadian government's negotiating tactics: the person the government selected for Treaty negotiations was William B. Robinson. Robinson was considered a "clever political appointment" because just two years earlier he had been manager of the Montreal Mining Company, which had opened mining stakes in Anishinaabek territory. To highlight the implication, here: the government of Canada sent, as its representative, the former manager of a mining company that stood to benefit from resource extraction in the very territory contested by the Treaty-making process. It was this man who would negotiate the Robinson-Huron Treaty, a document that ensured the Anishinaabek people would have access to *none* of the revenues from the mineral resources on their land.

The *Treaty Daze* production highlighted the multiple forms of protest, savvy negotiating, and legal maneuvering undertaken by the Anishinaabek leadership, and the legal and populist tactics by which the Canadian state denied or limited Anishinaabek access to mineral and timber resources, and ensured that hunting and fishing were also restricted. In this context, it is not difficult to understand how the play provided testimonial evidence, as one white actor put it, of "how two-faced white people were."



Figure 3: Chiefs Shingwaukonse (T. Syrette) and Nebenagoching (K. Burton) signing the 1850 treaty. Photo: Karl S. Hele

Indeed, for some the production provoked a move away from the banal and easily disregarded references to “land theft” found in Disney movies, to a more difficult engagement with the systemic corruption evident in colonial relations. Attending to this knowledge produced the possibility of an encounter which broke through a primary defense that many use to protect themselves from a felt awareness of indigenous genocide: namely, the prolonged indifference to indigenous dispossession.

This move from “informed ignorance” toward a confrontation with colonial power was facilitated, however, not only by new knowledge, but also by the dramatic “container” provided by the *Treaty Daze* performance. Audience members said they were engaged by the contemporary script, music, and especially the Anishinaabek humour. Some Anishinaabek audience members commented that the humour was particularly important, as the contents of the play were too “overwhelming” to endure without laughter. In contrast, the white audience members occasionally found themselves on the “outside” of this satiric exchange. As one white audience member noted:

Watching it, I knew that there were some jokes that I didn't get. I was like, "ok, that was a joke, right? ... Some of the dialogue was hilarious, but there were jokes where I was like, "what's going on?" It's kind of like a role reversal ... when you think about it, you're on the outside when you're with them ... [so it made me wonder], how do they feel when they're with you?

Here it is important to note that while many of the youth involved in this project connect in a myriad of contexts in daily and taken-for-granted ways, it is primarily the Indigenous youth who are bi-cultural, in the sense that they are proficient in interpreting the social symbols of both Anishinaabek and white-dominated society. Thus, despite the frequent contact between white and Anishinaabek youth, it is still rare, as the audience member above notes, for Anishinaabek cultural forms and political perspectives to take centre stage. In this context, the humour that characterized the *Treaty Daze* performance was not only reflective of Anishinaabek culture, it was also *productive* of a range of cultural identifications. For Indigenous and mixed-race youth, insofar as *Treaty Daze* materialized specifically Anishinaabek kinds of humour, it constructed a shared sense of cultural solidarity while slyly critiquing colonial power. In these ways, humour was a powerful, flexible performative strategy that conveyed meanings that were, in most contexts, "unspeakable."⁸ And, as distinctively Anishinaabek performance strategies came to the foreground, whiteness, which is often experienced by white people as an absent-presence, became recognizable by contrast. Interestingly, this experience of being "outside" the narrative action seemed, at least for some white audience members, to promote a flicker of self-reflection: "it's kind of a role reversal ... [so it made me wonder], how do they feel when they're with you?"

Partly as a result of this production's ability to promote laughter, historical insight, and self-reflexivity in the audience, many suggested that *Treaty Daze* should be incorporated into local school curricula. As one white actor put it, "this stuff should be pumped into the kids—especially because ... it's more interesting to know about your own history; it's like, 'oh, this happened right here,' that's pretty cool." But when I asked why

this material was not *already* taught in public schools, the response by the white actors was emphatic—and here I quote from the group discussion:

Shame.

Yeah, it's shame.

Yeah, it's always as peacekeepers, that's the only history that we even learn....

When you look at the concept that Canada was pretty much killing off this culture ... like, it's hard to grasp that.... I think a lot of high school teachers don't touch that because ... they'd be asking so much more of the students....

Interestingly, cast members noted that it was not genocide itself that was difficult to speak about, as the legacy of the Holocaust was accepted both in schools and within their families. Instead, it was the acknowledgement that racially motivated forms of land displacement and genocide had happened in Canada. In this context, the commentary from some of the mixed-race Anishinaabek youth who lived off-reserve, and who had been, up until that time, disconnected from Indigenous history and culture, is particularly startling. For example, one member of the cast whose heritage was Hungarian and Anishinaabek noted that within his family, stories of his grandfather's traumatic flight from Hungary prior to the Second World War were well known. In contrast, although he had three uncles and two aunts who had been in residential schools, he knew nothing of that legacy. Indeed, after a cast workshop on residential schools, he commented that it was "a huge eye opener ... like, it really did happen in our own backyard ... it just kind of boggles my mind that it's not openly talked about even today."

While the discursive and emotional contests I have chronicled so far speak to the promise of the *Treaty Daze* performance to facilitate a politics of ethical engagement, the second set of reflections from my interviews suggest the opposite—namely, the limits of a witnessing relationship. In particular, some of the same white cast and audience members whose comments I have included above repeatedly *contested* the implications of whiteness, colonial power, and the testimonial encounter. These comments highlight the dramatic swings between engagement and resistance

expressed by white youth in response to this production. For example, one cast member was able, on the one hand, to acknowledge that, “we [white settlers] just took your land because we needed it . . . and we didn’t care,” and then, within a few sentences, he completely refused the idea that there might be contemporary obligations arising from that history. This reversal was accomplished through his drawing an erroneous “parallel” with the events associated with African American slavery. As he put it, “you don’t see, like, Black people . . . be like, ‘hey, your people made me pick cotton for like, hundreds of years, and you’re a piece of shit.’ Like, you don’t see that.” The implication, here, is that the descendants of those responsible for historical crimes (like slavery or colonization) can still be seen to have had, in the words of another cast member, “nothing to do with it.”

These dramatic swings between engagement and refusal highlight the ambivalent feelings that some white youth expressed regarding the ethical demands accruing from the past to the present, and the *contemporary* implications of the colonial present. While most interviewees were not this extreme in their responses, many nevertheless argued that with present-day human rights legislation, the separation of church and state, and a (then) newly elected African American president in the United States (!), no similar abuses could happen today. Indeed, often their sense of distress was about “how ignorant white people *used* to be,” as one audience member put it. Consequently it seemed that many white cast and audience members continued to be deeply invested in forms of subject and nation formation that relied on projecting the taint of genocide and dispossession back into another era, so that the contemporary manifestations of colonialism remained unacknowledged. This discourse, which says, in essence, “times have changed . . . things are not like that anymore,” disavows the harsh material and social consequences of present-day power arrangements, which are still visible everywhere—from the continuing dispossession of Indigenous communities from most of their land, to the deliberate organization of most reserve territory to be economically unsustainable, resulting in overwhelming rates of poverty and unemployment. Consequently, this “times have changed” discourse works primarily to rearticulate the Enlightenment narrative of progress and white racial “innocence,” and *through these* to refuse the testimonial encounter.

In the context of this resistance, it was the Anishinaabek actors and audience members who repeatedly challenged white denial regarding the impacts of colonialism. Here, I highlight three examples of Anishinaabek participants confronting expressions of white racial “innocence.” The first is by an audience member responding to the opening scene of the play, which is set in a contemporary secondary school classroom, where an Anishinaabek youth is being taunted about “Indians getting special privileges.” In this interview, I asked audience members “what they went away from the production thinking about.” This audience member responded:

Well ... the play was a good, accurate representation of some things that I went through ... in school. It was the same interactions between white people and Native people. And the part about our kind of getting harassed for being Indian, you get benefits ... that kind of thing, happens, like from the start to finish.

This comment is particularly interesting, as in the debriefing meetings after the show several white cast members had expressed the feeling that this scene had been “overdrawn.”

Second, I cite an Anishinaabek actor who attempted to respond to the comment (mentioned earlier) from a white actor, who argued (incorrectly) that the descendants of African American slaves are not demanding restitution for slavery; hence, Anishinaabek people should not demand compensation for land dispossession or systematic corruption in the Treaty process:

It’s still a lot ... the hurt is still there. Which we’re not going to get over it in a century or two. It’s still gonna be there. African American people, who still have that hurt, are [also] waiting for retributions from their ancestors’ slavery. It’s basically like, we understand that we’re not gonna get all of our land back, we understand that we’re not gonna get all the minerals that were extracted ... we’re not going to get that back all the trees that were cut down on our reserves ... they’re not just gonna grow back, because there’s cities and towns and other people living on that land. As an Aboriginal person, I understand that now, so I ... just hope that, for future generations, that nobody else forgets about it as well.



Figure 4: Talk About Justice!?! . Photo: Karl S. Hele

Finally, I want to return to the Anishinaabek audience member whose comments about “informed ignorance” I used in first section of this chapter. Here are his words in full:

I think there’s still some kind of informed ignorance ... people just kind of don’t, don’t get the gravity of what happened. My grandpa went to a residential school and that really messed up his life and his relationships with his kids and my mom and everything. And I’ve really seen how it washes down through the generations, firsthand. And with life, I’m just trying to block it out ... from continuing on in me and how I live.

These comments from the Anishinaabek youth actors and audience members draw our attention both to the *gravity* of historical and contemporary colonization and to the *remarkable persistence* necessary to challenge it. In this sense, *Treaty Daze*, for the Indigenous, mixed-race, and some allied white participants provided a crucial forum where they were determined to “show” the effects of injustice—through the retrieval of historical memory and via sly, witty commentary—and thus to try and imagine the

possibility of a different future.⁹ Yet, even in an Anishinaabek-led theatre production, this process was not uncontested; youth did not overcome the “bad feelings” brought up by the discursive contests mapped out here, although some of them began, at least, to establish a different relationship to them by making a different kind of intellectual and emotional sense of them. In this context, *Treaty Daze* served as a container for witnessing a story of injury that made certain demands on others, but was not always given a just hearing. Nevertheless, as Sarah Ahmed argues,

Testimonies about the injustice of colonization, slavery and racism are not only calls for recognition; they are also forms of recognition, in and of themselves.... Recognition is also about claiming that an injustice did happen; the claim is a radical one in the face of the forgetting of such injustices. Healing does not cover over, but exposes the wound to others: *the recovery is a form of exposure* [italics in original].¹⁰

In this sense, the labour of “exposure” seems to require repeating, and that repetition—which happened in the play, in my interviews with participants, and continues in innumerable informal conversations as well as in formal negotiations around land claims—is both political and emotional work. And in this process of “exposure,” as Ahmed argues, justice is not “*about* feeling better,” but theatre projects like *Treaty Daze* do provide a context where those who have been the target of injustice can negotiate a different relationship to those “wounds that get concealed by the ‘truths’ of a certain history.”¹¹ Thus, I argue that the process of decolonization does not detour around “bad feelings”; rather, and inevitably, it engages them through emotional as well as intellectual work. And if the process of coming to terms with this legacy is to build any sustaining forms of solidarity and alliance, that work requires enormous persistence and ongoing creativity.

But what about those “others” who seemed, at least in the moment they were interviewed for this project, to be the most “reactive” to the difficult knowledge represented by the production? Many of the comments from non-Indigenous participants seemed to indicate that they were frankly unsettled by the way the play confronted participants with their racially intersecting histories, challenging who they were and who they might

become. Indeed, those who seemed most reactive spoke about their relationship to the play through a discourse immersed in the possessive investments of whiteness. One way to manage this reactivity among the white youth actors might have been for the organizing committee to hire an Anishinaabek-only cast. However, there would have been clear disagreement with this policy from the Anishinaabek actors, who preferred that the production draw the best acting talent from a mixed group of youth in the region. In any case, the more generalized opinion that “times have changed,” which disavowed the present-day experience of systemic racism, would still be evident in some audience reactions. Thus, I want to explore how the literatures on white racialization and the cultural politics of emotion might allow for a rethinking of the conflicts voiced in my interviews.

Given that white reactivity and resistance became such a central theme, I will begin by briefly exploring conceptual frameworks for whiteness summarized by Rasmuseen, Klinenberg, Nexica, and Wray in order to place these conflicts in dialogue with the literature on white racialization. These authors highlight six intersecting strategies that scholars have used to articulate white racial experience:

1. whiteness as invisible and unmarked; 2. whiteness as an “empty category”; 3. whiteness as structural privilege; 4. whiteness as violence and terror; 5. whiteness as institutionalization of European colonialism; 6. critical whiteness studies as an antiracist practice.¹²

Returning, then, to the interview material with these categories in mind, we can see that *Treaty Daze* disrupted the empty and “unmarked” characteristics of whiteness,—for examples, as it drew connections between race, space, and colonial power, and in its use of specifically Anishinaabek humour and music, which sometimes left white audience members aware of their position “outside” the central narrative. Within the interviews, this process of “visibilizing” white racial positioning was also evident when some respondents described their shift from an understanding of land theft shaped by Disney movies to one that, to quote from a white youth in the audience, left her “with a whole different perspective on this region ... [because] we’re kind of like visitors here, ‘cause it’s not really ours.”

Thus, the play provoked a confrontation with race as a *relational experience*, which symbolizes structural privileges and colonial power. While none of the white interviewees were able to articulate an understanding of whiteness as racial terror, certainly this violence was implicit in their discussion of Canada “killing off [Indigenous] culture.”

Yet, despite the felt enthusiasm that *Treaty Daze* found a wider audience, the participants’ narratives of curiosity and engagement were also marked by reactivity and resistance in ways that repeatedly confounded movement toward a testimonial encounter. Here, something more complex was at work than the smooth assimilation of new knowledge. Amid the sometimes dramatic swings between defiance and engagement, the white cast members were unanimous about at least one aspect of their emotional discomfort: they named it shame. Consequently, I want to suggest that one way to take seriously the material emerging from this project would be to engage a more sustained analysis of the epistemology of shame.

In their writing on pedagogy and emotion, Margaret Werry and Roisin O’Gorman provide an imaginative definition of shame:

Shame, noun & verb—1 noun a) predominant ... [emotion] at work in the learning process. b) a taut delicate thread drawn between two persons, a ghost of the past waiting to haunt, taint, animate the present....

2 verb a) to wound, to punish.... b) [irregular usage] to connect, to acknowledge, to register, to know ... a state experienced in the aftermath of thwarted interest; a contingency of desire, passion.¹³

Most common associations with the word “shame,” then, also understand it as a *relational* experience often associated with efforts to wound and punish others, to assault their integrity. Thus, shaming another person or group is seen as a fundamentally “illiberal” thing to do. And it is this kind of “shame” that has been systematically employed against Indigenous people, for example, in the residential schools, which deliberately demeaned Indigenous culture, language, and spirituality, and separated children from their families in order to, as the well worn phrase put it, “kill the Indian in the child.”

Given that this negative form of shaming has played such a central role in the regulation of Indigenous communities, it is striking that for the Anishinaabek and mixed-race actors and audience members, the play worked precisely *through and against* that legacy. In this context, Silvan Tomkins's work provides an important conceptual framework, as she highlights how shame and pride, shame and dignity, and shame and performance are "different interlinings of the same glove."¹⁴ Eve Kosofsky Sedgwick expands on this, suggesting that shame has complex and transformational potential. We can see aspects of that potential in this excerpt from an interview with the actor who played Chief Shingwauk:

...I just felt it was ... an honour for me ... because being a descendant of Chief Shingwauk ... the pressure was on that I had to nail down this role and I had to do my research ... [and] after the production was done I was proud of myself ... and the entire show.... I think this is probably one of the major productions I've done ... as small as it was, it had a major affect on me, because it had its own emotional [context]....

In referring to this quote, I am not arguing that for the Anishinaabek youth *Treaty Daze* simply provided a context where shame was replaced with dignity and pride; for this idea of a straightforward undoing of shame is too linear a process to describe the complex emotions at work, here. Shame, as Sedgwick argues, is not a distinct and toxic part of a group or individual identity that can simply be excised—but it *can* be available for the work of metamorphosis and transformation.¹⁵ Some of the youth participants in *Treaty Daze* engaged in this potentially transformational process through wanting to "do the research" and "nail the role"; others through performing or learning from Anishinaabek humour; and still others through continuing to assert the "gravity" of present-day colonialism in the face of repeated refusals. In this context, the actor who avowed that, "we're not going to get over it in a century or two," highlights not a nativist *ressentiment*, but rather an Indigenous-specific claim to the necessarily unfinished work of land-based connections. This form of "healing" from the ongoing indignities of colonization does not "cover over," but instead asserts that *recovery can only take place through witnessing as a form of exposure*.

But how might we understand the perspectives of those youth who took up the language of “shame,” but then quickly moved on to assert that “times have changed” and disavowed the present-day experience of colonization? In this context, the individual acknowledgement of shame came with conditions and limits. Here I return to the words of the white actors who first responded to the question: “why is the history of land dispossession not taught in schools?” Their felt sense suggested that this topic was avoided because of “shame”—and, next, that schools only taught the supposedly “positive” aspects of national identity, such as the work of peacekeeping. Here, youth moved from engaging with a collective sense of shame, to sense of a *national* identity as inevitably focused on positive attributes. Indeed, several argued that despite its colonial legacy, Canada “is a kick-ass country.” This move—from the individual to the national—is telling. As Ahmed, in her analysis of discourses of reconciliation between white settlers and Indigenous people in Australia suggests, “the detachment of shame from individual bodies does a certain kind of work within the narrative.... What is striking is how shame becomes not only a mode of recognition of injustices committed against others, but also a form of nation building.”¹⁶

What I am saying, here, is not that individual shame is “the issue,” but rather I am remarking, with Ahmed, on how quickly some youth moved from acknowledging a collective sense of “shame” to asserting that this legacy makes no demands on the present. Here I want to highlight aspects of Ahmed’s analysis in order to reflect on yet another set of ways in which shame and pride, shame and dignity, and shame and performativity are “different interlinings of the same glove.” As I noted earlier, shame is a fundamentally relational emotion, one that “requires a witness,” and, in this case, a witness “who ‘catches out’ the failure of the individual to live up to an ego ideal.”¹⁷ In her analysis of reconciliation processes in Australia, Ahmed reflects on *Bringing Them Home* (1997), a report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. *Bringing Them Home* reports on the Stolen Generations in Australia, namely, those generations who were taken away from their families as part of a brutal policy of assimilation. In this context, Ahmed takes up the *sticky* nature of national shame, as the very ideals that have been violated are the ones that “stick” members of a

community together. Here, some individuals take on the failure of a nation to live up to its ideals as a mode of identification, and, through this, a form of recuperation. In Ahmed's words:

Those who witness the past injustice through feeling 'national shame' are aligned with each other as 'well-meaning individuals'; if you feel shame, you are 'in' the nation, a nation that means well. Shame 'makes' the nation in the witnessing of past injustice, a witnessing that involves feeling shame.... *By witnessing what is shameful about the past, the nation can 'live up to' the ideals that secure its identity or being in the present.* In other words, our shame means that we mean well, and can work to reproduce the nation as an ideal [italics in original].¹⁸

Once again, however, I am not arguing that those white youth who seemed to move quickly from collective shame to recuperate nationalist pride were simply turning from shame to the reverse emotion. For this idea of a straightforward reversal of shame is, for the white participants as well, too linear a process to describe the complex emotions at work here. Instead, I suggest that for all of the participants in *Treaty Daze*, the play presented an opportunity not simply to represent a *preconstituted* group, but rather to discursively enact desires for community, affiliation, and recognition, while at the same time articulating the terms of exclusion.¹⁹ In this context, for some youth the experience of shame became part of the performative reconstruction of national identity as implicitly white and well-meaning. Insofar, then, as discussions often revolved around "how ignorant white people *used* to be," whiteness was recuperated as shaped by particular kinds of "informed ignorance" about the nature of the colonial encounter; and then, through the very ability to feel shame about that encounter, some youth recovered the national project by asserting how the contemporary rule of law had remade the nation as no longer capable of such injury. This move of acknowledgement and recuperation of a soiled, but restored national identity has allowed for the endless deferral of responsibility for continuing colonial injustices—as land dispossession remains a key aspect of colonial relations, now, as it was in 1850 when the Robnson-Huron Treaty was first signed.

Conclusion

Perhaps it is not surprising that a theatre performance about conflict over land would return participants to the question of the nation, as the skin of the nation is formed and re-formed through the claim to land. Thus, a performance that attempts to unsettle the certainties of history regarding the legitimacy of the Canadian nation is bound, for non-Indigenous people, to be discomfiting. For some white audience members, the play left them feeling, as one young woman put it, as though “we’re kind of like visitors here, ‘cause it’s not really ours.” For others, the play made the present-day reserve system more intelligible, while also providing a language for the multiple displacements that have violated Anishinaabek territory and knowledge practices. In this context, Anishinaabek and mixed-race youth began to establish a different relationship to “bad feelings” by making a different *felt* sense of this legacy. And for others still, the project raised deeply unsettling questions about whether or not times *have* changed. These misgivings were often resolved through a recuperation of the nation as only momentarily shame-faced, so that whiteness was retrieved as not so bad anymore and Canada imagined has having moved into a new era where colonial violence was not a continuing event.

What interests me most about the *Treaty Daze* production is how conversations with members of cast and audience provide a window into the emotion-laden process that constitutes learning “difficult knowledge.”²⁰ In this context, *Treaty Daze* brought to the surface what Antonius Robben calls the “contestive relations” that keep opposing groups hostage to each other when a traumatic history remains unacknowledged. Yet a simple “acknowledgement” does not do justice to the complex emotional process of learning and unlearning that is necessary for decolonizing our everyday knowledge practices in regard to colonial relations. Indeed, this project of translation between the pain of history and the pain of the present²¹ is difficult particularly because the contemporary pain is not a one-time traumatic event, but the ongoing experience of *systemic* racism and *ongoing* colonization.

Insofar as theatrical performances like *Treaty Daze* are in the business of making present these brutal legacies, their affective charge demands that the audience relate to them intimately. We can see this process in one

interviewee's discussion of the different faces of shame. Indeed, *Treaty Daze* invited all its participants to look shame in the eye—but from the perspective of dramatically opposed histories, thus producing radically different *affective* results. My analysis highlights the limits of empathy in a context where Indigenous dispossession constitutes the very foundation of the Canadian nation. Here, as Ahmed argues, what is called for is an ongoing commitment to a different kind of “inhabitation,” namely action and politics based on the difficult process of building decolonizing alliances.²² This theatre project, *Treaty Daze*, was one such alliance-building project—and it illustrates all the messy and uncomfortable contradictions that mark many such efforts. I hope my analysis allows readers to reflect on the complex paradoxes implicit in what Megan Boler calls a “pedagogy of discomfort.”²³ As one of the cast members so eloquently put it, this process of building alliances is often not attempted, in part because it is “asking so much more of students....” Perhaps this different kind of “inhabitation”—in politics and in action—needs to ask “so much more” of all of us.

Endnotes

- 1 I use the terms emotion, affect, and feeling interchangeably, as my focus is on charting the emotional (as well as intellectual) labour associated with decolonization. However, within the scholarly literature there are distinctions. For further analysis see Michael Lewis and Jeanette M. Haviland Jones, eds., *Handbook of Emotions*, 2nd ed. (New York: Guilford Press, 2000) 3–15. Like Cheryl Suzack (2010), I follow the lead of Sianne Ngai, who understands these terms as “modal difference[s] of intensity or degree, rather than a formal difference of quality or kind.” Ngai, *Ugly Feelings* (Cambridge, MA: Harvard University Press, 2005), cited in Cheryl Suzack, 144. *Indigenous Women and Feminism: Politics, Activism, Culture*. Cheryl Suzack, Shari Huhndorf, Jeanne Perreault, and Jean Barman, co-editors and contributors (UBC Press, 2010), 144.
- 2 Mary Louise Pratt, *Imperial Eyes: Travel Writing and Transculturation* (New York: Routledge, 1992), 4.
- 3 Sara Ahmed, “The Politics of Bad Feeling,” *Australian Critical Race and Whiteness Studies Journal* 1, no. 1 (2005), 72–85; see especially 81–82. See also Bell Hooks, *Thinking Feminist, Thinking Black* (Toronto: Between the Lines, 1988); and Audre Lorde, *Sister Outsider: Essays and Speeches* (Trumansburg, NY: Crossing Press, 1984)
- 4 I borrow this term from Ahmed, “The Politics of Bad Feeling.”

- 5 Margot Francis, "Playing Indians," in *Creative Subversions: Whiteness, Indigeneity, and the National Imaginary* (Vancouver: UBC Press, 2011), 127–41.
- 6 This quote and all subsequent quotations from actors and audience members were taken from interviews with cast and selected audience members in Garden River First Nation and Sault Ste. Marie, August 17–18, 2009.
- 7 Janet Chute, *The Legacy of Shingwaukonce* (Toronto: University of Toronto Press, 1998), 117–18.
- 8 M. Crawford, *Talking Difference: On Gender and Language* (London: Sage, 1995), 152.
- 9 Sarah Ahmed, *The Cultural Politics of Emotion* (New York: Routledge, 2004) 191.
- 10 Ahmed, *The Cultural Politics of Emotion*, 200.
- 11 Ahmed, *The Cultural Politics of Emotion*, 201.
- 12 Quoted in Gust A. Yep, "Pedagogy of the Opaque: The subject of whiteness in communication and diversity courses," in *Whiteness, pedagogy, performance*. Eds. Leda Cooks and Jennifer Simpson, 87–110, (New York: Lexington Books, 2007) 89.
- 13 Margaret Werry and Roisin O’Gorman, "Shamefaced: Performing Pedagogy, Outing Affect," *Text and Performance Quarterly*, 27, (2007) 213–230; 213.
- 14 Quoted in Eve Kosofsky Sedgwick, "Shame, Theatricality, and Queer Performativity: Henry James’s *The Art of the Novel*," in *Gay Shame*, Eds. David M. Halperin and Valerie Traub, 49–62, (Chicago and London: The University of Chicago Press, 2008) 51.
- 15 Sedgwick, 59.
- 16 Ahmed, 102.
- 17 Ahmed, 108.
- 18 Ahmed, 109.
- 19 Leslie Roman, "Spectacle in the Dark: Youth as Transgression, Display, and Repression," *Educational Theory*, 46, no.1, (1996) 1–22: 9.
- 20 Deborah P. Britzman, *Lost Subjects, Contested Objects: Toward a Psychoanalytic Inquiry of Learning*, (Albany, NY: State University of New York Press, 1998).
- 21 Linda Griffiths and Maria Campbell, *The Book of Jessica*, (Toronto: Playwrights Canada Press, 1989/ 2005) 19.
- 22 Sarah Ahmed, "The Contingency of Pain," *parallax*, 8, no. 1, (2002) 17–34; 32.
- 23 Megan Boler, *Feeling Power: Emotions and Education*, (New York: Routledge, 1999).

APPENDIX 1

[Shingwauk's Statement to the Governor General]

Montreal Gazette
25 Nov. 1849

From the Montreal Gazette of 7th July last

We publish the following very characteristic and eloquent appeal from the Chippewa Indians, to the British Government, – and his Excellency's reply, – on the subject of the land recently granted to the various Mining Companies, on Lake Superior and Huron. The justice of the claims of our Red Brethren will admit of dispute; and sincerely do we trust, they will meet with something more than “due consideration,” – as understood and practiced by the Nobleman whom they address as their “Father:” –

To His Excellency the Right Honble, James Earl of Elgin and Kincardine, Kinght of the most Ancient and more Noble Order of the Thistle, Governor General of British North America, and Captain General and Governor-in-Chief, in and over the Provinces of Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, and Vice Admiral of the same, &c., &c.,

Father, –

Listen to the voice of a people who are now but the remnant of a nation once numerous and powerful, of a nation, whose sons were large whilst yours were small. Of that nation which, in times past, England's Sovereigns sought as allies.

Father, –

When your white children first came into this country, they did not come shouting the war cry and seeking to wrest our lands from us. They told us that they came as friends to smoke with us

the pipe of peace; they sought our friendship, we became brothers. Their enemies were ours, at that time we were strong and powerful, whilst they were few and weak. But did we oppress them or wrong them, No! And they did not attempt to do what is now done, nor did they tell us that at some future day you would.

Father, —

Time wore on and you have become a great people, whilst we have melted away like snow beneath an April sun; our strength is wasted; our countless warriors dead, our forest laid low, you have hunted us from every place as with a wand, you have swept away all our pleasant land, and like some giant foe you tell us willing or unwilling you now must go from 'mid these rocks and wastes, I want them now! I want to make rich my white children, whilst you may shrink away to holes and caves like starving dogs to die. Yes, Father! Your white children have opened our very graves to tell the dead, even they shall have no resting place.

Father, —

Was it for this we first received you with the hand of friendship, and gave you the room whereon to spread your blanket? Was it for this that we voluntarily became the children of our Great Mother the Queen? Was it for this we served *England's Sovereigns* so well and truly, that the blood of the Red Skin has moistened the dust of his own hunting grounds to serve those Sovereigns in their quarrels, and not in the quarrels of his own.

Father, —

Three years have passed since your white children, the miners, first came among us and occupied our lands; they told us that we should be paid for them, but they wished to find their value. With this reply, at the time we were satisfied; but our lands being still occupied and claimed by them we became uneasy, and sent some of our Chiefs to see you at Montreal. You promised that justice should be done us, a year passed, and there is no appearance of a treaty; again we sent, again the same reply, and again last Autumn we sent and still there is no appearance of a treaty.

Father, –

We begin to feel that those sweet words had not their birth on the heart, but that they lived only upon the tongue; they are like those beautiful trees under whose shadow it is pleasant for a time to repose and hope, but we cannot for ever indulge in their grateful shade – they produce no fruit.

Father, –

We are men like you, we have the limbs of men, we have the hearts of men, and we feel and know that all this country is ours; even the weakest and most cowardly animals of the forest, when hunted to extremity, though they feel destruction sure, will turn upon the hunter.

Father, –

Drive us not to the madness of despair; we are told that you have laws which guard and protect the property of your White Children, but you have made none to protect the rights of your Red Children. Perhaps you have expected that the Red Skin could protect himself from the rapacity of his pale faced bad brother.

Father, –

Last summer you caused a council to be called, when we learned that this was your intention, our hearts rejoiced, for we then hoped that you meant to treat with use for our lands, when we found no mention made respecting that, our disappointment was great. But our astonishment was greater, when you asked by what right we claimed these lands? Why ask us by what right we claim these lands? These lands where our fathers and their fathers, fathers lie buried, you must know it as every Red Skin does know it, that long long before your White Children crossed the waters of the rising sun to visit us. The great Spirit, the Red Man's *God*, had formed this land and placed us here giving it to his Red Children as their inheritance.

Father, —

Can you lay claim to this land? If as, by what right? Have you conquered it from us? You have not; for when you first came among us your children were few and weak, and the warriors of the Chippewas struck terror to the heart of the pale face. But you came not as an enemy, you visited us in the character of a friend, you have lived as our guest and your children have been treated as our brothers. Have you purchased it from us, or have we surrendered it to you? If so, when? and how? and where are the treaties?

Father, —

Your White Children tell us that the Long Knives ill-use and cheat the Red Skin when they buy from them any lands, they tell us that you only are kind and just; but where is your justice if you allow your White Children to plunder our lands and drive us from them against our wishes? Where is your kindness or justice if you take from us our lands without our consent? — Those unjust cheating Long Knives, altho' they have often deeply wronged the Red Skins, yet they have not done this which you are now doing — they have not take from the Red Skins any lands unless there was at least some kind of treaty entered into and a purchase made.

Father, —

Every year we behold the Red Skins on the other side of the Lake proceeding to La Pointe to receive tribute due them by the Long Knives for the South Shore, and our hearts are made sore, for we cannot avoid contrasting this conduct of the Long Knives with that of
you our Father.

Father, —

When the Great Spirit formed these lands, he also stocked it with abundance of animals whose flesh provided a sufficiency of food, whilst their skins served for clothing to his Red Children, who then roved the forests independent of famine or of want, and

who were then strangers to the miseries and degradation which the Pale Face has since brought upon us; for now whenever we turn our eyes we behold only wretchedness, poverty and trouble.

Father, —

The Great Spirit, in his beneficence, foreseeing that this time would arrive when the subsistence which the forests and the lakes afforded would fail, placed these mines in our lands, so that the coming generations of His Red Children might find thereby the means of subsistence. Assist us, then, to carry out this object of the Great Spirit, and enable us to reap that benefit intended for us, in as ample a manner as do the Red Skins on the other side of the Lake. Enable us to do this, and our hearts will be great within, for we will feel that we are again a nation.

Father, —

You cannot despoil us of these lands, the warrior with a strong hand and a brave heart can never wrong a faithful friend and Brother.

Father, —

These words we send live in the hearts of all our people, and they earnestly entreat you to call a Council of our nation as speedily as possible, to enter into some treaty with us for our lands, so that no bad feelings shall exist between your Red Children and your White Children.

Signed by the principle Chiefs of the Chippewa's on behalf of the nation,

Shingwakonce
Nebenegoging
Nacbergogiry
Kabeosa
Augustin
John Bell
Agamanpessossee
Marahayahoh

To which address His Excellency was pleased to reply on the following effect: –

My Children, –

Be assured that I regard with deep interest your welfare, and I cannot reflect but feelings of admiration and esteem upon the faithful services performed by my Red Children, in rendering assistance and adding strength to the forces of my White Children, when engaged in war.

The lands taken from you, of which you complain, were sold before I assumed the Government of this province. I will use every exertion in my power to the end that no injustice shall be done to you. In the meantime, let me advise you to return to your homes, leaving Mr. Macdonell, who is your friend, to attend to your matters here.

APPENDIX 2

British Colonist [A Toronto newspaper]

16 Nov. 1849.

The Indians on Lakes Huron and Superior*Proceedings of the Government Commissioners and the Indians in Councils*
(From a Correspondent)

It may be recollected that in the early part of the summer, a deputation of three or four Indian Chiefs, from the Lake Superior country, passed through Toronto, on their way to Montreal, with an address to His Excellency, relative to the occupancy of their lands by whites: repeated deputations had been sent previous to this one. To none of which had any other attention been paid, but cold indifference and marked neglect. The style of this last address to His Excellency, clearly showed their former treatment had not been forgotten by the Indians. The reply of His Excellency to this address, was to the effect that "their lands had been sold under a former administration, but that he would use every exertion to have justice done now." Having received this reply, they returned to their homes, not over and above pleased; however they were given to understand that there should be no delay in sending up Commissioners to conclude a treaty with them for the purchase of these lands. During the whole summer nothing more was heard relative to this matter, and the Indians were becoming impatient, though still they relied upon the promise made them. Near a month ago, without any warning or notice given to the Indians, for the purpose of collecting them, as is usual upon such occasions, two Commissioners arrived at Sault Ste. Marie. Notice was given that upon the following day a Council would be held at an Indian Village, some eight or ten miles distant; but upon the next day the Commissioners postponed it, and declared their intention of proceeding up the Lake to Fort William, and thence to coast it down, holding Councils with the

different bands. They were told that it was too late in the season to meet bodies of Indians, they having gone inland to their hunting. Nevertheless, the Commissioners started, and it occurred just as had been anticipated, they met but very few Indians along the coast. At Fort William they saw a few whom they collected at a moment's warning and proposed to them to sell their lands. But no treaty was made, in fact it was not such a Council as could conclude a treaty. At another locality the[y] met one Indian family, at another two, and at another five or six Indians, and without waiting to send word to Indians in the neighbourhood, or endeavour to collect any, they pushed on until they again arrived at the Sault Ste. Marie, upon the 16th day of October. Within the the [sic] vicinity of this place a number of Chiefs were anxiously expecting them, and notice was given that upon the following day, a Council would be held at the Hudson Bay Company's Fort. Accordingly about noon the Indian Chiefs and Indians met at the place appointed, and Mr. Commissioner Vidal, instead of opening the Council by explaining to the Indians the object of his errand and for what purposes the Council had been requested, as is usual upon all such occasions, he commenced his proceedings by asking a series of most absurd and childish questions, to which the Chiefs replied with a great deal of good humour and much patience, at every question expecting that the following one would tend to enlighten them as to what was the actual object of the gentlemen's mission. At length came some two or three questions which might be said to have some reference to their errand. One was "did you ever lease or lend to the Hudson Bay Company, any lands at this place." The reply was "we did, and we will hold it good now; the Company still shall have it." Another was, "have you leased or lent to Mr. MacDonell [sic], any lands upon the island of Michipicotton." "We have done so, and that we will hold good also, he shall have it to work for us." Again, "have you leased or lent to the Rev. Mr. Anderson, any land at your Village, at Garden River." "We have done so, and hold that good, we give it for a mission, he is a missionary among us." To these replies Mr. Vidal responded, I am instructed by the Government to inform you that it will not sanction such acts. Then came the questions, "*Will you sell your lands. Upon what terms.*"²

SHINGWAKONCE, replied, "This is a matter of very great importance, all the world, men and animals derive subsistence and support from the land."

Mr. Vidal, "Will you sell your lands, yes or no."

SHINGWAKONCE – We can not settle the question here whether we will sell or not, we will take the rest of the day to consult among ourselves, on to-morrow we will give you our answer at this place at ten o'clock. We are not unwilling to sell some of our lands.

MR. MACDONELL, then rose and said that some questions had been asked, which had a reference to himself, and that those questions had been put in such a way as might leave an impression to go abroad, that there was something improper in his transactions with the Indians; what he had done he had no motive or desire to conceal, the papers to which Mr. Vidal alluded, he was ready and willing to lay before him, he had not them with him there, by Mr. Vidal should have them in the morning.

The following day at the hour appointed, the Chiefs having taken their seats, Mr. Vidal asked them for their reply to the question of yesterday, namely if they would sell their lands &c. Shingwakonse then rose and said this is a question of vast importance to ourselves and to our children's children; four years have passed since the miners first came among us, seizing our lands and possessing themselves of the mineral which has been placed there for our use; when the time shall have arrived that it would become necessary for our subsistence, that time has now arrived, we have the example of our brethern upon the other side of the lake, to guide us in our transactions, they have sold all their lands, and they can only behold, but not share in the wealth which their lands produce, they have either been unfortunate or unwise. We do not wish to sell *all* our lands, we must keep some. When I saw our lands occupied without our consent, when I twice travelled to see our Great Father at Montreal, and asked in vain for justice. We sought assistance from several whom we hoped might aid us in our difficulties, at last we turned to one who had been among the first to come upon our lands, but who always said "you must be paid for your lands;" he became our friend, on him we place our reliance, and we can trust entirely to him, he knows our wants and our wishes, and he has full power and authority from us to act, and to conclude a bargain with you; our whole affairs are now in his hands, he is a white man like yourselves, you can understand one another, you are sent by the Government, he is sent by us; turning to Mr. Macdonell, he said my friend, it is for you now to settle with them, I have done. To this all the Indians present signified the approbation.

Mr. Macdonell then rose, when Mr. Vidal informed him that the Commissioners were sent to treat with the Indians, and demanded of them if they had more confidence in Mr. Macdonell than in the Government. All unanimously replied, yes, we have more confidence in Mr. Macdonell than in the Government, he alone shall act for us. Mr. Macdonell then addressed the Commissioners, saying that he insisted upon the right of appearing there as the agent of these people, whose determination had been express to him Mr. Vidal, by themselves; he said I am the servant of these people, free to choose whom they may employ to negotiate with you, the servants of a party bidding, for their lands. Mr. Vidal in a most flurried and nervous manner, interrupted Mr. Macdonell, saying that if he persisted, that the Council should *be broken up*, and *there should be no treaty*; – To which Mr. Macdonell replied, I will maintain the position in which this people have placed me; it would be base and dishonourable in me to desert it now, and as their agent I tell you, then be the Council dissolved, and let there be no treaty, but upon your head rest the blame.

Mr. Vidal then hastily gathered up his papers and rushed from the room, Mr. Anderson remained, while Mr. Macdonell addressed the Indians through an interpreter who repeated to the Indians sentence by sentence as Mr. Macdonell spoke it; he said, my friends the course pursued by these Commissioners is of so extraordinary a nature, that I can not avoid making some observations relative to the position which they have attempted to assume. If this assumption of power is in accordance with their instructions, than any remarks which I may make cannot be applicable to them personally, but to the Government whose servants they are, and I request that they may remain in this room in order that they may hear what I say. Upon an occasion less important than this or on a matter of less grave consequences to you, the power which they have attempted to assume might be treated as ridiculous and contemptible [sic], but in the present instance and under all the circumstances attending it, I must view it in another light; I can only look upon it as a most arbitrary and unjust attempt to compel a simple and unsuspecting people to accede to their views, to force you to accept such pittance for the surrender of your lands, which they may think proper to dole out to you from the large sums which they have received for the sale of those lands. To make just such a treaty as

shall suit their views, alike regardless of your present welfare or your future fate. The Government has committed such faults and errors, which renders it so necessary that it shall obtain your lands, that it would rob you of them; else why the attempt to prevent one who has your confidence, one who has been expressly employed by your to attend here and negotiate a treaty for you. These men, the servants of the Government, are sent here to ask you if you will sell your lands. By what right, by what authority can they presume to dictate to you whom you shall or shall not employ upon your part.

The Government cannot prevent any man or any set of men from employing whom they may choose as a counsel, an advisor or an agent, and the law makes no distinction between an Indian and a white man. If their intentions were honourable fair or just, would they object to hear me or any man in [sic] behalf; would one of them run away like a whipped dog to avoid hearing me; your own good sense my friends will say to you, there must be some bad intentions, something of which they are ashamed, when you see conduct like this exhibited at a grave and deliberative Council, called expressly at their request; it is an insult to you, a free people, before whom these Commissioners come as messengers from their employer, to ask a benefit at your hands.

You all know that I come here authorized by you, to offer such a treaty as would have been advantageous to the Government, whilst it would be beneficial to you. I was prepared to offer to surrender to the Government, from the Grand Buttine upwards, a tract of land whereon is included the Bruce Mine, the Copper Bay &c. &c., also the lands at the land laid out as a township, stipulating however, that you should make a reservation from below Garden River to Point au Perdiex upon the St. Mary River, and also that the Hudson's Bay Company should be secured in the property formerly assigned to them by your people, as well as every individual on such lands, as has been heretofore held with your consent, some of whom have held and farmed them for 40 years, and upwards, besides being of your own blood; and all this is but simple justice, in consideration of which I only ask them to pay over to you the money in their hands arising from the sale of your own lands, and pay the first instalment only of but a very small portion of the lands, which would thus be ceded; besides an annuity of £1250 per annum. The act of these men has this day refused our intended offer, they made none themselves.

They talked of a treaty, have they any where attempted to make one, they have not; and I here tell them to their face (Mr. Anderson is present), that they were not authorized to offer one shilling for your lands, let them contradict me if I say that which is not true. They have questioned much about our arrangements relative to the island of Michipicotton. The land is yours, and the rightful title can only come from you, when you shall have transferred that title to the Government, then let them talk of what they will sanction, or what they will not sanction. As it is, you can sell it, you can keep it, or you can farm it in what manner you think proper. You have come to the determination to reserve it for yourselves, and who shall say that you shall not. You have thought proper to enter into arrangements with me, whereby I become your servant, to farm or work it for you; and who dare say that you shall not employ me. I [sic] Will they tell you that you shall not employ a white man to plant or dig your potatoes if they will not say so. Then how can they declare that you shall not employ me to farm that which you know is far more valuable. Do not feel uneasy at the result of this day, all these lands are still your own, and be assured that every justice must yet be done you, if you be but true to yourselves. And it is fortunate for you that this occurrence has happened, you can now perceive what was their object in seeking to treat with parties here and there. You must combine from one end of the lake to the other, be firm, be united, and you will be strong. Let all the Chiefs meet at a general council, and there only receive proposals for a treaty. I will say no more at present, because I shall have many opportunities more suitable than this. Mr. Macdonell then left the room, followed by all the Chiefs and Indians present. And thus ended the mockery of a treaty upon the part of Government. Why not have sent up Commissioners, empowered to conclude a treaty as in the month of June last, was promised to be done without delay, particularly when the Government have *actually received in cash, upwards of ten thousand pounds*, the proceeds of the sale of these Indians' lands, being by the first installment of five.

Well did these Indians tell His Excellency, when referring to former promises like this his last one, broken and forgotten as soon as pledged, "Father we begin to fear that these sweet words had not their birth in the heart, but that they lived only upon the lips."

Sault de St. Marie, Oct. 19th 1849.

Endnotes

- 1 Reverend Gustavus Anderson was the Church of England missionary to Garden River in 1849. He was the son of Captain T. G. Anderson. Captain Anderson, as well as the government, fully expected the reverend to report on potential treaty demands, encourage the signing of a treaty, as well as anything else of note. The Reverend appears to have done just that, although his reports merely underline the various petitions and confrontations Shingwaukonse had already engaged in while highlighting a growing possibility of violence. In 1849, Reverend Anderson signed a treaty that surrendered the Garden River village to the Anglican Church. This was done after the government of Upper Canada issued a mineral lease that included the village. In doing so, Reverend Anderson was acting against the government and his father's wishes. Despite his apparent support of Anishinaabeg rights to their village, Reverend Anderson believing himself in danger fled Garden River in November 1849.
- 2 Under the terms of the *1763 Royal Proclamation* only the Crown could negotiate and take surrenders or leases of Indian land. Hence the lands 'leased or lent' to the Hudson Bay Company and Allan Macdonell, as well as others, were seen as illegitimate and illegal by the state.

APPENDIX 3

No, 60.
[Robinson-Superior Treaty, 1850]

THIS AGREEMENT, made and entered into on the seventh day of September in the year of Our Lord one thousand eight hundred and fifty, at Sault Ste, Marie, in the Province of Canada, between the Honorable William Benjamin Robinson, of the one part, on behalf of Her Majesty the Queen, and Joseph Peau de Chat, John Ininway, Mishe-muckqua, Totomenai, Chiefs, and Jacob Wasseba, Ahmutchewagaton, Michel Shebageshick, Manitosbanise and Chigenaus, Principal Men of the Ojibeway Indians inhabiting the northern shore of Lake Superior, in the said Province of Canada, from Batchewanaung Bay to Pigeon River, at the western extremity of said lake, and inland throughout that extent to the height of land which separates the territory covered by the charter of the Honorable the Hudson's Bay Company from the said tract. And also the islands in the said lake within the boundaries of the British possessions therein, of the other part, Witnesseth: that for and in consideration of the sum of two thousand pounds of good and lawful money of Upper Canada to them in hand paid; and for the further perpetual annuity of five hundred pounds, the same to be paid and delivered to the said Chiefs and their Tribes at a convenient season of each summer, not later than the first day of August at the Honorable the Hudson's Bay Company's Posts of Michipicoton and Fort William; they, the said Chiefs and Principal Men do freely; fully and voluntarily surrender, cede, grant and convey unto Her Majesty, Her heirs and successors forever, all their right, title and interest in the whole of the territory above described, save and except the reservations set forth in the schedule hereunto annexed, which reservations shall be held and occupied by the said Chiefs and their tribes in common for the purposes of residence and cultivation. And should the said Chiefs and their respective, tribes at any time desire to dispose of any

mineral or other valuable productions upon the said reservations the same will be at their request sold by order of the Superintendent General of the Indian Department for the time being, for their sole use and benefit and to the best advantage. And the said William Benjamin Robinson, of the first part, on behalf of Her Majesty and the Government of this Province, hereby promises and agrees to make the payments as before mentioned; and further, to allow the said Chiefs and their tribes the full and free privilege to hunt over the territory now ceded by them and to fish in the waters thereof as they have heretofore been in the habit of doing, saving and excepting only such portions of the said territory as may from time to time be sold or leased to individuals or companies of individuals, and occupied by them with the consent of the Provincial Government. The parties of the second part further promise and agree that they will not sell, lease or otherwise dispose of any portion of their reservations, without the consent of the Superintendent General of Indian Affairs being first had and obtained; nor will they at any time hinder or prevent persons from exploring or searching for minerals or other valuable productions in any part of the territory hereby ceded to Her Majesty as before mentioned. The parties of the second part also agree that in case the Government of this Province, should before the date of this agreement, have sold or bargained to sell any mining locations or other property on the portions of the territory hereby reserved for their use and benefit, then and in that case such sale or promise of sale shall be perfected if the parties interested desire it, by the Government, and the amount accruing therefrom shall be, paid to the tribe to whom the reservation belongs. The said William Benjamin Robinson, on behalf of Her Majesty, who desires to deal liberally and justly with all Her subjects, further promises and agrees that in case the territory hereby ceded by the parties of the second part shall at any future period produce an amount which will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound Provincial currency in any one year, or such further sum as Her Majesty may be graciously pleased to order; and provided, further, that the number of Indians entitled to the benefit of this Treaty shall amount to two-thirds of their present number (which is twelve hundred and forty), to entitle

them to claim the full benefit thereof, and should their numbers at any future period not amount to two-thirds of twelve hundred and forty, the annuity shall be diminished in proportion to their actual numbers.

SCHEDULE of reservations made by the above named and subscribing Chiefs and Principal Men:—

First.— Joseph Peau de Chat and his tribe, the reserve to commence about two miles from Fort William (inland) on the right bank of the river Kiminitiquia; thence westerly six miles parallel to the shores of the lake; thence northerly five miles; thence easterly to the right bank of the said river, so as not to interfere with any acquired rights of the Honorable the Hudson's Bay Company.

Second.— Four miles square at Gros Cap, being a valley near the Honorable Hudson's Bay Company's post of Michipicoton for Totomenai and tribe.

Third.— Four miles square on Gull River, near Lake Nipigon, on both sides of said river, for the Chief Mishe-muckqua.

Signed, sealed and delivered at	W. B. ROBINSON,	
Sault Ste. Marie the day and year	JOSEPH PEAU DE CHAT,	x [L.S.]
first above written in presence of:	JOHN ININWAYU,	x [L.S.]
GEORGE IRONSIDE,	MISHE-MUCKQUA,	x [L.S.]
<i>S.I. Affairs,</i>	TOTOMENAI,	x [L.S.]
ARTHUR P. COOPER,	JACOB WASSEBA,	x [L.S.]
<i>Capt. Comg. Rifle Bde.,</i>	AHMUTCHIWAGABOW,	x [L.S.]
H. N. BALFOUR	MICHEL SHEBAGESHICK,	x [L.S.]
<i>2nd Lieut. Rifle Brigade,</i>	MANITONSHANISE,	x [L.S.]
JOHN SWANSTON,	CHIGNEAUS,	x [L.S.]
<i>C. T. Hon. Hud. Bay Co.,</i>		
GEORGE J OHNSTON,		
<i>Interpreter.</i>		
T. W. KEATING.		

Recorded in the office of the Provincial Registrar this 23rd day of November in Lib. "C. M. Miscellaneous," Fol. 7, &c.

R. A. TUCKER,
Registrar.

APPENDIX 4

No. 61.
[Robinson-Huron Treaty, 1850]

THIS AGREEMENT, made and entered into this ninth day of September, in the year of Our Lord one thousand eight hundred and fifty, at Sault St. Marie, in the Province of Canada, between the Honorable William Benjamin Robinson, of the one part, on behalf of Her Majesty the Queen, and Shinguacouse, Nebenaigoching, Keokouse, Mishequonga, Tagawinini, Shabokeshick, Dokis, Ponekeosh. Windawtegowinini, Shawenakeshick, Namassin, Naoquagabo, Wabakekek, Kitchipossegun by Papasainse, Wagemake, Pamequonaishung, Chiefs, and John Bell, Paqwutchinini, Mashe, kyash, Idowekesis, Waquacomiek, Ocheek, Metigomin, Watachewana, Minwawapenasse, Shenaoquom, Ouingegun, Panaissy, Papasainse, Ashewasega, Kageshewawetung, Shawonebin and also Chief Maisquaso (also Chiefs Muckata, Mishoquet and Mekis), and Mishoquetto, and Asa Waswanay and Pawiss, Principal Men of the Ojibway Indians inhabiting and claiming the eastern and northern shores of Lake Huron from Penetanguishene to Sault Ste. Marie, and thence to Batchewanaung Bay on the northern shore of Lake Superior, together with the islands in the said lakes opposite to the shores thereof, and inland to the height of land which separates the territory covered by the charter of the Honorable Hudson's Bay Company from Canada, as well as all unconceded lands within the limits of Canada West to which they have any just claim, of the other part, Witnesseth: that for and in consideration of the sum of two thousand pounds of good and lawful money of Upper Canada to them in hand paid, and for the further perpetual annuity of six hundred pounds of like money, the same to be paid and delivered to the said Chiefs and their tribes at a convenient season of each year, of which due notice will be given, at such places as may be appointed for that purpose; they the said Chiefs and Principal Men, on behalf of their

respective tribes or bands, do hereby fully, freely and voluntarily surrender, cede, grant and convey unto Her Majesty, Her heirs and successors for ever, all their right, title and interest to and in the whole of the territory above described, save and except the reservations set forth in the schedule hereunto annexed, which reservations shall be held and occupied by the said Chiefs and their tribes in common for their own use and benefit; and should the said Chief and their respective tribes at any time desire to dispose of any part of such reservations, or of any mineral or other valuable productions thereon, the same will be sold or leased at their request by the Superintendent General of Indian Affairs for the time being, or other officer having authority so to do, for their sole benefit and to the best advantage. And the said William Benjamin Robinson, of the first part, on behalf of Her Majesty and the Government of this Province hereby promises and agrees to make or cause to be made the payments as before mentioned; and further, to allow the said Chiefs and their tribes the full and free privilege to hunt over the territory now ceded by them, and to fish in the waters thereof, as they have heretofore been in the habit of doing, saving and excepting such portions of the said territory as may from time to time be sold or leased to individuals or companies of individuals and occupied by them with the consent of the Provincial Government. The parties of the second part further promise and agree that they will not sell, lease or otherwise dispose of any portion of their reservations without the consent of the Superintendent General of Indian Affairs, or other officer of like authority, being first had and obtained; nor will they at any time hinder or prevent persons from exploring or searching for minerals or other valuable productions in any part of the territory hereby ceded to Her Majesty as before mentioned. The parties of the second part also agree that in case the Government Of this Province should, before the date of this agreement, have sold, or bargained to sell, any mining locations or other property on the portions of the territory hereby reserved for their use, then and in that case such sale or promise of sale shall be perfected by the Government, if the parties claiming it shall have fulfilled all the conditions upon which such locations were made, and the amount accruing therefrom shall be paid to the tribe to whom the reservation belongs. The said William Benjamin Robinson, on behalf of Her Majesty, Who desires to deal liberally and justly with all Her subjects, further promises

and agrees that should the territory hereby ceded by the parties of the second part at any future period produce such an amount as will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound provincial currency in any one year, or such further sum as Her Majesty may be graciously pleased to order; and provided further that the number of Indians entitled to the benefit of this treaty shall amount to two-thirds of their present number, which is fourteen hundred and twenty-two, to entitle them to claim the full benefit thereof; and should they not at any future period amount to two-thirds of fourteen hundred and twenty-two, then the said annuity shall be diminished in proportion to their actual numbers.

The said William Benjamin Robinson, of the first part, further agrees on the part of Her Majesty and the Government of this Province that in consequence of the Indians inhabiting French River and Lake Nipissing having become parties to this treaty the further sum of one hundred and sixty pounds Provincial currency shall be paid in addition to the two thousand pounds above mentioned.

SCHEDULE of reservations made by the above named subscribing Chiefs and Principal Men:—

- 1st. Pamequonaishcung and his band, a tract of land to commence seven miles from the mouth of the River Maganetawang and extending six miles east and west, by three miles north.
- 2nd. Wagemake. and his band, a tract of land to commence, at a place called Nehickshegeshing, six miles from east to west by three miles in depth.
- 3rd. Kitcheposkissegun (by Papasainse), from Point Grondine, westward, six miles inland by two miles in front, so as to include the small Lake Nessinassung (a tract for themselves and their bands).
- 4th. Wabakekik, three miles front, near Shebawenaning, by five miles inland, for himself and band.
- 5th. Namassin and Naoquagabo and their bands, a tract of land commencing near La Cloche, at the Hudson Bay Company's

boundary; thence westerly to the mouth of Spanish River; then four miles up the south bank of said river and across to the place of beginning.

- 6th. Shawinakeshick and his band, a tract of land now occupied by them and contained between two rivers Called White Fish River and Wanabitasebe, seven miles inland.
- 7th. Windawtegowinini and his band, the peninsula east of Serpent River and formed by it, now occupied by them.
- 8th. Ponekeosh and his band, the land contained between the River Mississaga and the River Penebewabecong, up to the first rapids.
- 9th. Dokis and his band, three miles square at Wanabeyakoknun, near Lake Nipissing, and the island near the fall of Okickendawt.
- 10th. Shabokishick and his band, from their present planting grounds on Lake Nipissing to the Hudson's Bay Company's Post, six miles in depth.
- 11th. Tagawinini and his band, two miles square at Wanabitibing— a place about forty miles inland, near Lake Nipissing.
- 12th. Keokonse and his band, four miles, from Thessalon River eastward by four miles inland.
- 13th. Mishequanga and his band, two miles on the lake shore, east and west of Ogawaminang, by one mile inland.
- 14th. For Shinguacouse and his band, a tract of land extending from Maski-nongé Bay, inclusive, to Partridge Point, above Garden River, on the front, and inland, ten miles throughout the whole distance, and also Squirrel Island.
- 15th. For Nebenaigoching and his band, a tract of land (extending from Wana- bekinegunning west of Gros Cap to the boundary of the lands ceded, by the Chiefs of Lake Superior and inland ten miles throughout the whole distance, including Batchewanaung Bay), and also the small island at Sault Ste. Marie used by them as a fishing station.

Signed, sealed, and delivered at
 Sault Ste. Marie, the day and year
 first above written, in presence of,
 ASTLEY P. COOPER,
Capt. R. Bde.,
 GEORGE IRONSIDE,
S. I. Affairs.,
 T. M. BALFOUR,
2nd Lt. Rifle Bde.,
 ALLAN MACDONELL,
 GEO. JOHNSTON,
 Interpreter,
 LOUIS CADOT,
 J. B. ASSIKINOCK,
 T. W. KEATING,
 JOS. WILSON,

SHINGUAKOUCÉ, x [L.S.]
 NEBENAIGOCHING, x [L.S.]
 KEOKONSE, x [L.S.]
 MISHEQUONGA, x [L.S.]
 TAGAWININI, x [L.S.]
 SHABOKESHUK, x [L.S.]
 DOKIS, x [L.S.]
 PONEKEOSH, x [L.S.]
 WINDAWTEGOWININI, x [L.S.]
 SHAWENAKESHICK, x [L.S.]
 NAMASSIN, x [L.S.]
 MUCKATA MISHAQUET, x [L.S.]
 MEKIS, x [L.S.]
 MAISQUASO, x [L.S.]
 NAOQUAGABO, x [L.S.]
 WABOKEKIK, x [L.S.]

PENETANGUISHENE, 16th Sept., 1850.

KITCHIPOSSEGUN

Witness to the signatures of
 MUCKATA MISHAQUET,
 MEKIS MISHOQUETTE,
 ASA WASWANAY and PAWISS,
 T. G. ANDERSON, *S. I.A.,*
 W. B. HAMILTON,
 W. SIMPSON, IDOWE-KESIS,
 ALFRED A. THOMPSON.

by PAPASAINSE, x [L.S.]
 WAGEMAKE, x [L.S.]
 PAMEQUONAISHCUNG, x [L.S.]
 JOHN BELL, x [L.S.]
 PAQWATCHININI, x [L.S.]
 MASHEKYASH, x [L.S.]
 x [L.S.]
 WAQUACOMIEK, x [L.S.]
 MISHOQUETTO, x [L.S.]
 ASA WASWANAY, x [L.S.]
 PAWISS, x [L.S.]
 W. B. ROBINSON, x
 OCHEEK, x [L.S.]
 METIGOMIN, x [L.S.]
 WATACHEWANA, x [L.S.]
 MIMEWAWAPENASSE, x [L.S.]
 SHENAOQUM, [L.S.]
 ONINGEGUN, x [L.S.]
 PANAISSY, x [L.S.]
 PAPASAINSE, x [L.S.]
 ASHEWASEGA, x [L.S.]
 KAGISHEWAWETUNG,
 by BABONEUNG, x [L.S.]
 SHAWONEBIN, x [L.S.]

Reservations continued:—

For Chief MekiS and his band, residing at Wasaquisig (Sandy Island), a tract of land at a place on the main shore opposite the island, being the place now occupied by them for residence and cultivation, four miles square.

For Chief Muckata Mishaquet and his band, a tract of land on the east side of the River Naishcouteong, near Pointe aux Barils, three miles square and also a small tract in Washanwenega Bay, now occupied by a part of the band, three miles square.

Recorded in the office, of the Provincial Registrar, this 22nd day of November, in Lib. "C. M. Miscellaneous," Folio 1, &c.

R. A. Tucker,
Registrar.

APPENDIX 5

The Robinson Treaties

In consequence of the discovery of minerals, on the shores of Lakes Huron and Superior, the Government of the late Province of Canada, deemed it desirable, to extinguish the Indian title, and in order to that end, in the year 1850, entrusted the duty to the late Honorable William B. Robinson, who discharged his duties with great tact and judgment, succeeding in making two treaties, which were the forerunners of the future treaties, and shaped their course. The main features of the Robinson Treaties – viz., annuities, reserves for the Indians, and liberty to fish and hunt on the unconceded domain of the Crown – having been followed in these treaties. A special feature of the Robinson Treaties, was the adjustment of a claim made by the Indians to be paid, the amount received, by the Government, for the sale of mining locations. This was arranged, by Mr. Robinson, agreeing to pay them, the sum of £4,000 and an annuity of about £1,000, thus avoiding any dispute that might arise as to the amounts actually received by the Government. The number of Indians included in the treaties were stated by Mr. Robinson to be; on Lake Superior, 1240, including 84 half-breeds; and on Lake Huron 1422, including 200 half-breeds.¹

The relations of the Indians and half-breeds, have long been cordial; and in the negotiations as to these initial treaties, as in the subsequent ones, the claims of the half-breeds, to recognition, was urged by the Indians.

I cannot do better, in giving information with regard to these treaties, than simply to reproduce the Report of Mr. Robinson to the Honorable Colonel Bruce, Superintendent-General of Indian Affairs, in which he describes the course of his negotiations and communicates their results. A copy of the treaties will be found in the Appendix. The Report is as follows:

TORONTO, *24th September 1850.*

SIR: – I have the honor herewith to transmit the Treaty which on the part of the Government I was commissioned to negotiate with the tribes of Indians inhabiting the northern shore of Lakes Huron and Superior; and I trust that the terms on which I succeeded in obtaining the surrender of all the lands in question, with the exception of some small reservations made by the Indians, may be considered satisfactory. They were such as I thought it advisable to offer in order that the matter might be finally settled, without having any just grounds of complaint on the part of the Indians.

The Indians had been advised by certain interested parties to insist on such extravagant terms as I felt it quite impossible to grant; and from the fact that the American Government had paid very liberally for the land surrendered by their Indians on the south side of Lake Superior, and that our own in other parts of the country were in receipt of annuities much larger than I offered, I had some difficulty in obtaining the assent of a few of the chiefs to my proposition.

I explained to the chiefs in council the difference between the lands ceded heretofore in this Province, and those then under consideration, they were of good quality and sold readily at prices which enabled the Government to be more liberal, they were also occupied by the whites in such a manner as to preclude the possibility of the Indian hunting over or having access to them: whereas the lands now ceded are notoriously barren and sterile, and will in all probability never be settled except in a few localities by mining companies, whose establishments among the Indians, instead of being prejudicial, would prove of great benefit as they would afford a market for any things they may have to sell, and bring provisions and stores of all kinds among them at reasonable prices.

Neither did the British Government contemplate the removal of the Indians from their present haunts to some (to them) unknown region in the far West as had been the case with their brethren on the American side.

I told them that the two chiefs who were in Toronto last winter (Shinguacouse and Nebennigoebing) only asked the amount which the Government had received for mining locations, after

deducting the expenses attending their sale. That amount was about eight thousand pounds which the Government would pay them without any annuity or certainty of further benefit; or one-half of it down, and an annuity of about one thousand pounds.

There were twenty one chiefs present, about the game number of principal men, and a large number of other Indians belonging to the different bands, and they all preferred the latter proposition, though two of them (Shinguacouse and Nebennigoebing) insisted on receiving an annuity equal to ten dollars per head.

The chiefs from Lake Superior desired to treat separately for their territory and said at once in council that they accepted my offer. I told them that I would have the treaty ready on the following morning, and I immediately proceeded to prepare it; and, as agreed upon, they signed it cheerfully at the time appointed.

I then told the chiefs from Lake Huron (who were all present when the others signed) that I should have a similar treaty ready for their signature, the next morning, when those who signed it would receive their money; and that as a large majority of them had agreed to my terms I should abide by them.

I accordingly prepared the treaty and proceeded on the morning of the ninth instant to the council room to have it formally executed in the presence of proper witnesses – all the chiefs and others were present. I told them I was then ready to receive their signatures; the two chiefs, Shinguacouse and Nebennigoebing, repeated their demand of ten dollars a head by way of annuity, and also insisted that I should insert in the treaty a condition securing to some sixty half-breeds a free grant of one hundred acres of land each. I told them they already had my answer as to a larger annuity, and that I had no power to give them free grant of land. The other chiefs came forward to sign the treaty and seeing this the two who had resisted up to this time also came to the table and signed first, the rest immediately following.

I trust his Excellency will approve of my having concluded the treaty on the basis of a small annuity and the immediate and final settlement of the matter, rather than paying the Indians the full amount of all moneys on hand, and a promise of accounting to them for future sales. The latter course would have entailed much trouble on the Government, besides giving an opportunity to evil disposed persons to make the Indians suspicious of any accounts that might be furnished.

Believing that His Excellency and the Government were desirous of leaving the Indians no just cause of complaint on their surrendering the extensive territory embraced in the treaty; and knowing there were individuals who most assiduously endeavored to create dissatisfaction among them, I inserted a clause securing to them certain prospective advantages should the lands in question prove sufficiently productive at any future period to enable the Government without loss to increase the annuity.² This was so reasonable and just that I had no difficulty in making them comprehend it, and it in a great measure silenced the clamor raised by their evil advisers.

In allowing the Indians to retain reservations of land for their own use I was governed by the fact that they in most cases asked for such tracts as they had heretofore been in the habit of using for purposes of residence and cultivation, and by securing these to them and the right of hunting and fishing over the ceded territory, they cannot say that the Government takes from their usual means of subsistence and therefore have no claims for support, which they no doubt would have preferred, had this not been done. The reservation at Garden River is the largest and perhaps of most value, but as it is occupied by the most numerous band of Indians, and from its locality (nine miles from the Sault) is likely to attract others to it, I think it was right to grant what they expressed a desire to retain. There are two mining locations at this place, which should not be finally disposed of unless by the full consent of Shinguacouse and his band; they are in the heart of the village and shew no indications of mineral wealth, they are numbered 14 and 15 on the small map appended to Messrs. Anderson and Vidal's report. I pledged my word on the part of the Government that the sale of these locations should not be completed, and as the locatees have not, I believe, complied with the conditions of the Crown Lands Department there can be no difficulty in cancelling the transaction.

The chiefs are desirous that their several reservations should be marked by proper posts or monuments, and I have told them the Government would probably send some one next spring for that purpose. As I know many of the localities I shall be able to give the necessary information when required.

When at Sault Ste. Marie last May, I took measures for ascertaining as nearly as possible the number of Indians inhabiting the

north shore of the two lakes; and was fortunate enough to get a very correct census, particularly of Lake Superior. I found this information very useful at the council, as it enabled me successfully to contradict the assertion (made by those who were inciting the chiefs to resist my offers) that there were on Lake Superior alone, eight thousand Indians. The number on that lake, including eighty-four half-breeds, is only twelve hundred and forty – and on Lake Huron, about fourteen hundred and twenty-two, including probably two-hundred half-breeds; and when I paid the Indians they acknowledged they knew of no other families than those on my list.

The number paid, as appears on the pay list, does not show the whole strength of the different bands, as I was obliged at their own request to omit some members of the very large families. I have annexed to this Report the names of the chiefs, their localities and number of souls in each band as recognized by me in apportioning the money, thinking it will be useful when paying the annuity hereafter.

This information may I believe be fully relied on for Lake Superior, but the census for Lake Huron is not so perfect; and I would suggest that Captain Ironside should be furnished with copies of that document and also of the pay-lists, in order that he may correct, in time, any errors that are found to exist.

As the half-breeds at Sault Ste. Marie and other places may seek to be recognized by the Government in future payments, it may be well that I should state here the answer that I gave to their demands on the present occasion. I told them I came to treat with the chiefs who were present, that the money would be paid to them – and their receipt was sufficient for me – that when in their possession they might give as much or as little to that class of claimants as they pleased. To this no one, not even their advisers, could object, and I heard no more on the subject. At the earnest request of the chiefs themselves I undertook the distribution of the money among their respective bands, and all parties expressed themselves perfectly satisfied with my division of their funds.

On my arrival at Penetanguishene I found the chiefs Yellowhead and Snake, from Lake Simcoe, and Aissance from Beausoleil's Island, waiting to see me, to prefer their claim to a small tract of land between Penetanguishene and the vicinity of the River Severn. I was aware of their intending to make such a claim and

took the precaution of asking the chiefs assembled in council at the Sault whether it was well founded, they emphatically declared that those chiefs had no claim on Lake Huron, that they had long since ceded their lands and were in the receipt of a large annuity, this I believe to be the case, and Captain Anderson, whom I met there, is of the same opinion; but I promised to inquire into it and give them an answer, and I will therefore thank you to cause the necessary information from your office to be furnished to me on the subject. Should it appear that these chiefs have any claim I think I could get their surrender of it for a small amount, and there remain sufficient funds at my disposal for the purpose.

The Canadians resident on the lands just surrendered at Sault Ste. Marie are very anxious to obtain titles to the land on which they have long resided and made improvements; they applied to me after the treaty and I advised them to memorialize the Government the usual way, setting forth the manner in which they were put in possession by the military authorities of the time, and that I had little doubt that the Government would do them justice. I think the survey of the tract should be made so as to interfere as little as possible with their respective clearings and that those who can show a fair claim to the favorable consideration of the Government should be liberally dealt with.

It will be seen on referring to the treaty that I have kept within the amount at my disposal. Of the £4,160 agreed by me to be paid to the Indians of both lakes, there remains £75 unexpended. I could not from the information I possessed tell exactly the number of families I should have to pay, and thought it prudent to reserve a small sum to make good any omissions, there may still be a few who will prefer claims, though I know of none at present. If not, the amount can be paid next year with the annuity to such families as are most deserving; or it may be properly applied in extinguishing the claim made by the Lake Simcoe Indians, should it appear on inquiry to be just.

The whole amount given to me in August was £5,033 6s. 8d., of this sum there remains £800, which I have placed in the Bank of Upper Canada to the credit of the Receiver-General, and I have prepared a detailed account of the whole, which, with the proper vouchers, I shall deliver to the Accountant of the Crown Lands Department.

I have much pleasure in acknowledging the valuable assistance afforded me by all the officers of the Honorable the Hudson's Bay Company resident on the lakes; and the prompt manner in which their Governor, Sir George Simpson, kindly placed their services at my disposal.

The report made last year by Messrs. Anderson and Vidal I found of much use to me, and the long services and experience of the former gentleman in Indian affairs enabled him to give me many valuable suggestions.

Captain Cooper and his officers by attending at the council and otherwise, gave me most cheerfully all the aid in their power; and Captain Ironside, of your Department, with his assistant, Assickinach, were of essential service to me.

I found it absolutely necessary to have the aid of some one in taking the census of the Lake Huron Indians at the time they were receiving their presents at Manitoulin; and as Captain Ironside was fully occupied in attending to his own duty, I requested Mr. Keating, who had long known the Indians on that lake, to give me his assistance. This he cheerfully and very efficiently did, and afterwards was with me in distributing and paying out the money.

I have, in course of my negotiations with the Indians on the present occasion, collected some information which may be useful to your Department and will at an early day send it to you.

I will thank you to lay the two treaties accompanying this Report before His Excellency, and trust they may meet with his approval.

I have, &c.,
 (Signed) W. B. ROBINSON
 THE HON. COL. BRUCE,
Superintendent-General, Indian, Affairs.

Notes

- 1 The census return of the Department of the Interior for the year 1878 gives the numbers of these Indians as follows: Chippawas of Lake Superior 1,947 Chippawas of Lake Huron 1,458
- 2 The annuities under these treaties have recently been increased, the following item having been inserted in the Supplies Act of Canada, viz., "Annual grant to bring up annuities payable under the Robinson Treaty to the Chippawas of Lakes Huron and Superior, from 96 cents to \$4 per head, \$14,000."

APPENDIX 6

The Anishinabeg Petition of August 17th, 1851
 Transcribed by David T. McNab

On August 17th, 1851, the Anishinabeg Chiefs Way-ge-ma-kai and Pa-pa-sanner (Wagemake at Henvey Inlet #2 Reserve and Papisinse at Grumbling Point or Point Grondine #3 on the list above) “who sends for other bands)” sent a Petition from “Assin ne be a” also known as “(Beaver Stone River)” [which is located at Point Grondine on Beaverstone Bay and which is a tributary of the Severn River], to Lord Elgin, then the Governor General of the colonies of the Canadas (Upper and Lower Canada by the Union of 1840) . Both the Chiefs at Henvey Inlet and Point Grondine Reserves are neighbours to the Shawanaga Reserves and these First Nations are next to the Shawanaga First Nation. It is in conceivable that this Petition would have excluded the Shawanaga First Nation in the context as being sent to Lord Elgin “for other bands”. The Petition was also “witnessed” and “signed” by James William Keating.

This Petition applied (still applies) to the Shawanaga First Nation and their Reserves. The Petition was sent before the two reserves were surveyed in the summer of 1852 at Shawanaga. This Petition is provided in full below, as follows:

Assin ne be a (Beaver Stone River)
 August 17th 1851-

Great Father

We salute you-our warriors our women our children salute you
 and offer you the hand of friendship.

Great Father

We are of the tribes who signed the Treaty last summer and we
 are perfectly satisfied with its provisions were wise and good.

Great Father

We thank you for the promise it contains that our annuity shall increase as our lands are sold or leased, and that the contents of each Bands Reserve shall of valuable be for its Sole and individual benefit.

Great Father

The lumber if no value to us on our Reserve we shall be glad to sell to them who come to live among us, and we feel assured that we shall desire benefit from it.

Great Father

There is one thing however that we think not right and we come to you to tell you of it sure of redress.

Great Father

When the Treaty was made, no inquiry as to the actual extent owned by each Chief and Band was made.

Great Father

We think that in proportion to the quantity of land owned and possessed by each Band should be the proportion of the annuity it receives.

Great Father

If the white man owns little and sells he receives little, if he holds much and sells he receives much –it is right, it is just- shall there be one rule for the white man and another for the Red man- Numbers are no test of right [.]

Great Father

We do not wish our words only to be believed – We wish that you should employ one of your own Chiefs to ascertain in the next council at Manatowaning [Manitowaning] where it can be done openly and in the face of all the extent of each Band's right and then distribute the annuity accordingly.

Great Father

Halfbreeds and other Indians coming to reside on a tract either

with or without leave cannot increase the right of a Chief to receive a larger sum than that which the size of the territory his people own entitle him and them to [too] [.]

Great Father

In describing our reserves we did not understand the distance of miles; but we gave certain points and we hope that in the survey those boundaries will be adhered to and not the imagined space which a term conveys to us tho [though] well known to you.

Great Father

We will point out to the surveyor the Lake we mentioned and which from enquiry of the Whites, we find would be further them we said.

Great Father

We also wish to know if we have not the exclusive right to the fisheries immediately adjoining and opposite to our reserves.

Great Father

This is all we have to say again we salute you, and beg you to listen to our words.

Great Father

Please take from my hands in the name of my people the pouch which is to contain the pipe of peace and plenty.

Signed Way-ge-ma-kai

Signed Pa-pa-sanner

(Who sends for other bands)

Witness

Signed

J.M. Keating¹

Comments: David T. McNab

This Petition was received at Manitowaning by George Ironside (Jr.) and then forwarded by his letter of September 6th, 1851 to the Honourable Robert Bruce, then Superintendent General of Indian Affairs, in Toronto. This Ironside letter to Bruce stated, as follows: “Agreeable to the wish of the Chiefs whose names are attached to the accompanying speech I have the honour to transmit to same through you to His Excellency the Governor General. The parcels [pouch of tobacco (?) and a pipe of peace] mentioned by these Indians I will forward to you by the first favourable opportunity.”²

This petition explains why the Shawanaga First Nation explained the “points” to Dennis and Keating as to where they wanted their Reserves adjacent to the Lake where they wanted to fish and engage in their other commercial, and other, activities since they did not understand the term and the “imagined space” of “miles” and only leagues.

Notes

- 1 Petition of Anishinabeg Chiefs, by themselves and others, to Lord Elgin, dated August 17th, 1851, NAL, RG 10, Volume 572, Reel C-13,373, Indian Affairs, Deputy Superintendent’s Office Letterbook, 1846-1852 (microfilm copy in the Ontario Archives, Toronto).
- 2 Ironside to Bruce, September 6th, 1853, NAL, RG 10, Volume 572, Reel C-13,373, Indian Affairs, Deputy Superintendent’s Office Letterbook, 1846-1852 (microfilm copy in the Ontario Archives, Toronto).

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