

Régie de l'énergie - Dossier R-4066-2018

Révision de certains aspects de la Décision D-2018-166 rendue au Dossier R-4045-2018 relatif aux Tarifs et conditions de service d'Hydro-Québec Distribution (HQD) pour l'usage cryptographique appliqué aux chaînes de blocs

C A N A D A

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

DOSSIER R-4066-2018

EN RÉVISION DU
DOSSIER R-4045-2018

RÉGIE DE L'ÉNERGIE

RÉVISION DE CERTAINS ASPECTS DE LA
DÉCISION D-2018-116 RENDUE AU DOSSIER
R-4045-2018 RELATIF AUX TARIFS ET
CONDITIONS DE SERVICE D'HYDRO-
QUÉBEC DISTRIBUTION (HQD)
POUR L'USAGE CRYPTOGRAPHIQUE
APPLIQUÉ AUX CHAÎNES DE BLOCS

SEN'TI, une entreprise Mi'gmaq située sur le
territoire de la Première Nation et de la réserve
de Listuguj, faisant partie du territoire Mi'gma'gi

-

et-

LE REGROUPEMENT CONSTITUÉ DE LA
PREMIÈRE NATION CRIE DE WASWANIPI,
une Première Nation Crie et de la
CORPORATION DE DÉVELOPPEMENT
TAWICH, une entité entièrement propriété de la
Première Nation Crie de Wemindji par une
société de gestion

Demandereses en révision

Intervenantes en première instance

-et-

HYDRO-QUÉBEC

En sa qualité de Distributeur

Mise-en-cause

Demanderesse en première instance

PIÈCE B-0005

**MIGMAWEI MAWIOMI ASSEMBLY OF GESPE'GEWA'GI,
THE TREATY RELATIONSHIP BETWEEN MI'GMAQ OF GESPE'GEWA'GI AND THE BRITISH CROWN AND ITS
IMPLICATION FOR THE PROVINCE OF QUEBEC, APRIL 2009**

SEN'TI

Première Nation Crie de Waswanipi
Corporation de développement Tawich (Wemindji)
Le lundi 24 septembre 2018

*Pièce B-0005 - MIGMAWEI MAWIOMI ASSEMBLY OF GESPE'GEWA'GI,
The Treaty Relationship Between Mi'gmaq of Gespe'gewa'gi and the British Crown and its implication for
the Province of Quebec, April 2009*
SEN'TI -et- Première Nation Crie de Waswanipi -et- Corporation de développement Tawich (Wemindji)

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TA'N ANGUGAMGEWEI GISA'TU'TIP
MI'GMEWAQ GESPE'GEWA'GIG AQ ELEGE'UTI AQALASIE'WEI
AQ TA'N TELNAPITOQA'TEGEG
UGJIT GEPEGEWEI GPNNO'LEWUTI



THE TREATY RELATIONSHIP BETWEEN
MI'GMAQ OF GESPE'GEWA'GI
AND THE BRITISH CROWN
AND
ITS IMPLICATION
FOR THE PROVINCE OF QUEBEC

Respectfully Submitted to
the Governments of Canada and Québec
By the Migmawei Mawiomi Assembly
of Gespe'gewa'gi

April 2009

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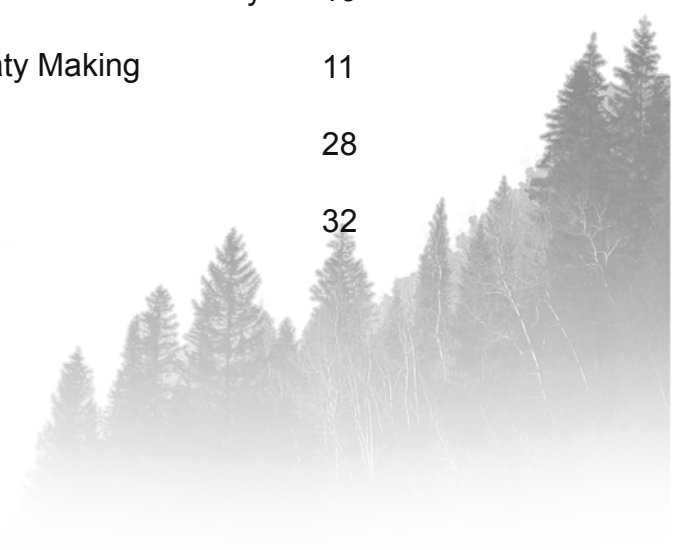
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Dear Honourable Ministers,

In October 2007, the Saqamaw of the Migmawei Mawio'ni submitted the *Nm'tginen: Me'mnaq ejiglighmu'etueg gis na naqtmueg*, a Statement of Claim to Gespe'gawa'gi, the Seventh District of the Mi'gma'gi national territory of Mi'gma'gi.

The *Nm'tginen* affirmed the covenant chain of Peace and Friendship Treaties entered into by our Nation with the Crown in the 18th century as a continued aspect of our self-governance. This covenant chain was reaffirmed by the *Sagamaq aq Unagapemua* of the Seventh District and the *Sante Mawio'mi* (Grand Council) of the Mi'gma'gi Nation on June 22, 2005 in the *Gespe'gawa'gigewei Saqamawuti Proclamation*.

Effective September 5 2008, Canada, Quebec and the Mi'gma'gi entered into the *Niganita'suatas'gi IIsutaqann* to renew and strengthen our relationship, in peace and friendship, through negotiations intended to result in a Framework Agreement.

During meetings with your representatives in *Niganita'suatas'gi IIsutaqann*, we have become concerned that your governments may not have a full appreciation for and understanding of the covenant chain of Peace and Friendship Treaties as most applicable to our District of Gespe'gawa'gi.

We have therefore developed a Preliminary Report on the covenant chain of Peace and Friendship Treaties, a copy of which is attached.

Please consider this as a continued assertion of Mi'gma'gi Treaty Rights in and over Gespe'gawa'gi, including the portions of the Seventh District that are within the boundaries of the Province of Quebec.

We trust that this will also help inform the ongoing development of our relationship, as full and equal partners, at the *Gigto'qi Niqan'pugultijig*, at the *Mgnigng*, and through the future Framework Agreement.

We welcome an opportunity to discuss on a Nation-to-Nation basis our Treaty relationship so that a proper balance can be restored.

Signed In Peace and Friendship,

Saqamaw Guy Condo
Micmacs of Gesgapegiag

Saqamaw Claude Jeannotte
La Nation Micmac de Gespeg

Saqamaw Alison Metallic
Listuguj Mi'gma'gi Government
Chairman of Mi'gma'gi Mawio'ni



Messieurs les Ministres, Madame la Ministre,

En Octobre 2007, Les Saqamaw du Mi'gmawei Mawiommi ont déposé le Nm'tginen : *Me'mnaq ejjiglmuetueg gis na naqtmueg, une Déclaration de Revendication* au Gespe'gewa'gi, le septième district du territoire National des Mi'gmaq, le Mi'gmagi.

Le Nm'tginen confirme l'existence de la chaîne des traités de paix et d'amitié qui ont été signés par notre Nation avec la Couronne au 18^e siècle, geste représentant la continuité et l'exercice de notre autonomie gouvernementale sur le territoire. Cette chaîne de traités fut réaffirmée par le *Sagamaq aq Unagapemua*, du septième district et le *Sante Mawio'mi* (Grand Conseil), de la Nation Mi'gmaq, le 22 juin 2005 dans la Proclamation du *Gespe'gewa'gigewei Saqamawuti*.

En date du 5 septembre 2008, le Canada, le Québec et les Mi'gmaq ont signé le *Niganita'suatas'gl IIsutaqann* afin de renouveler et renforcer notre relation dans la paix et l'amitié, par l'entremise d'un processus de négociation devant mener à une entente cadre.

Dans le cadre des réunions avec vos représentants dans le processus du *Niganita'suatas'gl IIsutaqann*, nous avons constaté que vos gouvernements n'avaient pas l'information requise pouvant leur permettre d'avoir une pleine appréciation ainsi qu'une compréhension adéquate de la chaîne de traités de paix et d'amitié que nous avons signés et qui trouvent application dans notre district du Gespe'gewa'gi.

Conséquemment, nous avons développé un rapport préliminaire portant sur la chaîne des traités de paix et d'amitié, rapport que vous trouverez ci-joint.

Nous vous demandons de bien vouloir considérer ce rapport comme une suite logique à notre revendication qui repose entre autres, sur nos droits issus de traités et trouvant application sur et au dessus du Gespe'gewa'gi, incluant les portions du septième district qui se retrouvent à l'intérieur des frontières de la Province de Québec.

Nous espérons que ce document appuiera le développement continu de notre relation comme partenaires à part entière au *Gigto'qi Niqan'pugultijig*, au *Mgnigng*, ainsi que dans le cadre de la future Entente Cadre.

Nous demeurons bien sûr disponibles pour discuter de Nation à Nation de la teneur de notre relation issus de traités, et ce, afin d'en arriver à un balancement des intérêts respectifs.

Dans la paix et l'amitié,

Saqamaw Guy Condo
Micmacs of Gesgapegiag

Saqamaw Claude Jeannotte
La Nation Micmac de Gespeg

Saqamaw Alison Metallic
Listuguj Mi'gmaq Government
President de Mi'gmaq
Mi'gmawei Mawiommi

INTRODUCTION

1 INTRODUCTION

This backgrounder is intended to provide an overview of some of the research materials currently available in the research files of the Mi'gmawei Mawiomi. It is a preliminary report and will be enhanced as further materials become available.

Although only preliminary, the materials demonstrate clearly that both the government *and* the territory of Mi'gma'gi within the modern day province of Quebec are bound by the sacred Treaty relationship established between the Mi'gmaq and the British Crown in 18th century.

2 TERRITORY OF THE GESPE'GEWA'GI MI'GMAQ

The national territory of the Mi'gmaq is called Mi'gma'gi and encompasses at least what is today known as Nova Scotia, Prince Edward Island, the Gaspé Peninsula and parts of Québec, New Brunswick (north of the St. John watershed), parts of Newfoundland and Labrador, part of Maine and the Islands in the Baie des Chaleurs, as well as their surrounding coastal and marine areas.

The Mi'gmaq Creation story speaks about the formation of Mi'gma'gi, and the creation of the seven traditional districts, which are: Unama'gi, Esge'gewa'gi, Gespugwi'tg, Sugapune'gati, Epegwitg aq Pigtu, Signigtewa'gi, and Gespe'gewa'gi.

The seventh and last district, Gespe'gewa'gi, literally meaning “the last land”, is the traditional territory of the Mi'gmaq living within it. The district overlaps what is today known as north-eastern New Brunswick, the Gaspé Peninsula, parts of the mainland of Québec, as well as the islands and surrounding waters.

3 TRADITIONAL POLITICAL STRUCTURE OF THE MI'GMAQ

Over time, the Mi'gmaq organized themselves politically around their national territory, the seven traditional districts of Mi'gma'gi. The Sante Mawiomi (the Mi'gmaq Grand Council) is the traditional governing body of the Mi'gmaq.¹

i. Leadership

There were distinct political and spiritual responsibilities for the leaders of the Sante Mawiomi. The Sante Mawiomi was composed of the following: The Gji-Saqamaw (Grand Chief), Gji-Ge'ptin (Grand Captain-spiritual leader), and Putus (treaty knowledge holder).²

The Sante Mawiomi facilitated consensus decision-making regarding international trade, war, Treaty-making, and relations among the seven districts of Mi'gma'gi.

As well, at the District level, peace and friendship was maintained by alliances and negotiations amongst the various extended families within the district. The Saqamawoti (District Councils)³ was composed of the following: The Ge'ptin (District Captain), Saqamaw (Chief), Saya (Heads of families) and Gisi'gumimajuinu'g (Elders). Together, the Saqamawoti managed resource allocation and also any disputes that arose between extended families.

ii. Kinship based political system

Traditionally, Mi'gmaq society was organized around an extensive kinship based system. The kinship system united everyone in a web of complementary rights and responsibilities.⁴ From this perspective, the extended family relations ensured the survival and well-being of the Nation. In their writing about the Mi'gmaq kinship based systems, Marie Battiste and James Henderson note that it is "unconceivable to a Mi'kmaw that a human being could exist without a family or a kinship regulation."⁵

Mi'gmaq oral teachings describe the creation of the 'First Family' in Mi'gma'gi. Not only do these oral teachings emphasize the relationships among the Mi'gmaq family members (as well as the extended family systems throughout the territory), but the teachings also highlight the Mi'gmaq relationship with all parts of and beings within the territory (animals, plants, birds, trees).⁶

Family relations were (and remain) central to the Mi'gmaq worldview. Because it was understood that everyone was connected, for the Mi'gmaq the kinship alliances helped to maintain peace and harmony both within Mi'gma'gi, and also with other nations.

iii. Mawiomi (Gatherings): Laws and Regulations in the District

Traditionally, the Mi'gmaq would gather in a mawiomi. The mawiomi was a time when the Mi'gmaq would assemble to reaffirm and deliberate laws and regulations for the proper management and maintenance of the land and its resources.⁷ In the writing of Father Christian LeClercq, a missionary to the Mi'gmaq in the 1670s, the mawiomi (or 'assemblies of the elders'), as well as the laws and customs of the Mi'gmaq, are described:

It is the right of the head of the nation, according to the customs of the Country, which serve as laws and regulations to the Gaspesians, to distribute the places of hunting to each individual. It is not permitted to any [Mi'gmaq] to overstep the bounds and limits of the region, which shall have been assigned him in the assemblies of the elders.⁸

The hunting territories were discussed in council in the spring and fall of each year. Through the practice of the mawiomi, knowledge of the land was shared ~ who had hunted where and when ~ and there was a clear understanding as to the "bounds and limits" for the places of hunting.

In their observations of the Mi'gmaq, the missionaries also noted the skill and diplomacy necessary to "preside over the assembly" and bring everyone together in consensus regarding land allocation and use. In the words of LeClercq:

Nous avons a la Riviere St-Joseph [Ristigouche] ... un de ces anciens capitaines que nos Gaspesiens consideraient comme leur chef et leur souverain ... Le fonction des ce capitaine etait de regler les lieux de chasses, de prendre les pelleteries des sauvages, en leur donnant ce don't ils avaient besoin. Celui-ci se faisait un point d'honneur d'etre le plus mal habille, et d'avoir soin que tous ses gens fusent mieux couvert que lui.⁹

As LeClercq observed, the Geptin regulated the hunting grounds, and ensured that resources were distributed and allocated according to the needs of the individual family groups. This passage highlights the fact that the well-being of the entire whole was of greater value than the individual wealth of the Geptin.

Similarly, the hunting grounds for which families were responsible is described in the work of anthropologist Frank Speck. In his writing about family hunting districts in the early twentieth-century, Speck writes that a family's tract of land within a particular district could range in size from 800 square kilometers (in Nova Scotia) to 3, 500 square kilometers (Newfoundland).¹⁰ Boundaries between hunting areas were formed by "natural geographical features" such as "ridges of high grounds"; other times, limits were marked by "blazes on trees or other designating devices". Moreover, peaceful relations were maintained by asking permission to cross over another's territory; and by offering "peltry and skins to the owner" which were taken en route.¹¹

iv. Delegation Processes

Within the traditional political structure of the Mi'gmaq, delegates were selected by the leadership to speak on behalf of the leadership, as well as to carry messages, both to and from other mawiomil (council gatherings).

The process of choosing a suitable delegate is described by LeClercq, "The chief would name, and would cause to enter the circle, that one of the young men whom he considered the most suitable for the execution of the project."¹² When a young man was chosen by the elders in council to act as a delegate he was informed publicly of his task by the chief. The chief would recite the proposed agreement, along with a speech to confer the terms of the agreement made by the elders in council. The delegate would then depart from the council. Upon completion of negotiations, the delegate returned and the council reunited. In a similar ceremony to the one conducted at his departure, he recited the report of his voyage.¹³

At ceremonies and formal agreements between parties there had to be a witness present. Traditionally, the role of this person 'nujo'teket' (meaning witnessing) was to "formally record the event through the oral traditions and to recount this event in stories for future generations."¹⁴

Within the oral traditions of the Mi'gmaq there were protocols and procedures for the delegation processes. Through these traditions, the delegates, as well as the nujo'teket (witnesses) effectively conveyed and reported upon the decisions of the extended families at the broader political level. Over the years of living in Mi'gma'gi, the Mi'gmaq established a code of behavior and a system of principles and laws, which allowed for the effective management of their traditional territory.¹⁵

The Mi'gmaq organized themselves around the traditional territory of Mi'gma'gi, which was comprised of seven traditional districts. The Sante Mawiomil was the traditional governing body within Mi'gma'gi. The differing responsibilities of the leadership, mawiomil, extensive kinship relations, and delegation processes were integral to the well-being of the Nation, and to maintaining peace and friendship within and beyond Mi'gma'gi.

MI'GMAQ OCCUPATION OF THE TERRITORY

4 HISTORICAL ACCOUNT OF MI'GMAQ OCCUPATION OF THE TERRITORY

That the Mi'gmaq used and occupied lands and waters within what is now known as Québec cannot be seriously debated. Early accounts of missionaries and soldiers clearly place the Mi'gmaq within that territory now known as Gaspé Peninsula:

- One of the earliest accounts of encounters with Mi'gmaq by Jacques Cartier describes his encounter with a summer village of Mi'gmaq on the Gaspé encompassing more than 300 people.¹⁶
- As one Jesuit wrote in 1662: “we call [them] the Savages of Gaspé, because they come and camp with considerable frequency near the Bay or Port bearing that name.”¹⁷
- Abbé Louis-Pierre Thury, a French secular priest who travelled the length of the Maritime region, described the Mi'gmaq as occupying “tout ce qu'il y a de tous et toutes les rivières qui restent depuis la rivière St. Jean ces tirant au Nord est jusque au golphe du grand fleuve St. Laurent et toute cette peninsulle, aussi bien que l'Isle du cap Breton et autres que j'ay dit qui fassoient la [] au sud d l'accadie.”¹⁸
- The Jesuit Father Jean Enjalran recounts meeting some Mi'gmaq families near Gaspé sometime during the late summer of 1676: “We went to see a captain of a vessel from bayonne who was fishing at bonnaventure island, which almost joins the isle percée; he was catching every day six thousand cod. We also saw at this place for the first time some savages, who were from Gaspé, a land that adjoins Acadie, which also belongs to new France.”¹⁹
- French maps dating from the 17th century suggest Mi'gmaq occupancy over all the Gaspé region.

The Mi'gmaq of Gespe'gewa'gi occupying the Gaspé Peninsula, in early accounts, were actually identified as a distinct group of Mi'gmaq, known as *the Gaspesians*.

- Marc Lescarbot, a Parisian lawyer who lived at Port Royal, between 1606 and 1607, called the people living in the Gaspé the “Gaspeiguois.”²⁰
- Jesuit missionaries of the mid-1600s made a similar distinction. A letter written by the Jesuit, Pierre Le Jeune in 1646 from Quebec noted the arrival there of a “savage of Gaspé” and that there was a “great war between the Etechemins and the savages of Gaspé.”²¹

- In 1669, a missionary described an elaborate ceremony at Tadoussac at which the ‘Gaspesians’ were present along with various other aboriginal communities, including the “Algonquins, the Montagnais, the Abnaquiois, the Etechemins, the Poissons blancs, the Nipissiriniens, and the Hurons.”²²

By the latter part of the 1600s, French writers acknowledged that the Gaspesians were of the same Nation as those people living to the south and east of them. However, writers often continued to identify the Gespe’gewa’gi Mi’gmaq as ‘Gaspesiens,’ suggesting that this was how people living there identified themselves to each other and to other Mi’gmaq.²³

There is far more written and oral evidence establishing Mi’gmaq use and occupation of the Gaspé and other parts of Québec, however, this need not all be reviewed in this preliminary report. For a consideration of the treaty relationship between the Mi’gmaq of Gespe’gewa’gi, it is sufficient to establish that the Mi’gmaq considered, used and occupied the whole of the Gaspé Peninsula and its surrounding waters and islands as part of their traditional territory.

5 HISTORICAL ACCOUNT AND CONTEXT OF TREATY MAKING

The Mi’gmaq of Atlantic Canada signed a series of Treaties with British officials between 1725 and 1779. The best-known of these Treaties were signed in 1726, 1752, 1760/61 and 1779. These treaties are part of the Covenant Chain of Treaties.

i. Restoring Peace in Mi’gma’gi after defeat of the French in 1759

Shortly after the fall of New France to British forces in September 1759, the British Crown sought to make peace with the Aboriginal Nations who had fought with the French. This was motivated by two factors.

First, while the capture of Montreal signaled defeat of France to Britain in North America, conflicts between Britain and France continued to play out on several continents. In Europe, the Seven Years’ War, pitting Prussia and Britain against an alliance consisting of France, Austria, Russia and Sweden, dragged on. France and Great Britain also continued to wage war in the colonies of the Caribbean and India. Given these continuing conflicts elsewhere, the British Crown could not be certain that hostilities with the French over North American would not re-ignite.²⁴ For this reason, making peace with those Aboriginal Nations who had allied the French was partly a defensive strategy on Britain’s part to gain the military allegiance (or at least neutrality) of nations like the Mi’gmaq in case war with the French were to break out again.

TREATY MAKING

Second, and more significantly, Britain's peace making was driven by its desire for non-violent access to its North American colonies. Achieving this objective would be impossible without healing the rift between Britain and the Aboriginal nations. With only a few small British settlements dotting the territory of Mi'gma'gi, the Crown had to be cognizant that it had to re-establish good relations with the Mi'gmaq or risk further confrontation with the original inhabitants of the land.

In the colony of Nova Scotia, Governor Charles Lawrence began negotiating treaties of peace and friendship with the Maliseet, Passamaquoddy, and Mi'gmaq on behalf of the British Crown. The original plan of the colony was to have a large and formal ratification of the Treaty by all Mi'gmaq at the same time; however, this did not take place. The Nova Scotia Council lacked understanding of Mi'gmaq society, both in terms of how the Mi'gmaq organized themselves on territory as well as in terms of their political relationships (internal and external). Traditionally, in terms of Mi'gmaq territorial and political organization, the Mi'gmaq organized themselves around seven districts within Mi'gma'gi. The plan of having a single meeting with everyone was simply impractical in light of geography and the district system, and the British gave up on the idea.

Eventually, a series of separate but interlocking treaties were signed between the Mi'gmaq and Governor Lawrence, on behalf of the British Crown, between March of 1760 and November of 1761. These treaties were signed with Mi'gmaq from the seven traditional districts of Mi'gma'gi; specifically, the areas included: Le Heve, Richibucto, Shubenacadie & Mouscadaboet, Cape Breton, Miramichi, Pokemouche, Shediac, Chignecto & Missiquash, and Pictou & Mallogomish.

In the colony of Canada (what would become the Province of Quebec pursuant to the terms of the Royal Proclamation 1763), no Governor would be appointed until 1764²⁵. This meant that Quebec was governed by military as opposed to civil authorities. Therefore, after Montreal was seized, military troops were given instructions to meet with various First Nation chiefs, to explain that Great Britain had taken control of the area, and that they were to maintain peace at all cost.

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With their traditional territory overlapping both the colonies of Nova Scotia and Quebec, the Mi'gmaq of Gespe'gewa'gi were therefore in the unique position of participating in both peace processes (civil and military). The objective of both colonies was the same: to secure peace within the territory. Clearly, the British knew that the Mi'gmaq had a territory that straddled the artificial boundary that Britain had set between Nova Scotia and Canada. Mi'gmaq were known by the British to move freely from one British colony to another.

The British Crown, and its colonial officials, wished to have the same relationship of peace with all of the Mi'gmaq, regardless where they encountered them. The Mi'gmaq remained a powerful military force with a strong relationship with France. Although France had signed the Treaty of Paris (as it had the Treaty of Utrecht in 1713 and the Treaty of Aix la Chapelle in 1748), that did not mean that France might not still have further interests in the colonies.

The Mi'gmaq, who themselves had a long-standing treaty-making tradition, were involved and actively participated in the Treaty relations. Central to the kinship system is the belief that treaties are entered into in order to extend, strengthen and incorporate new members into the existing family system. Today, the Mi'gmaq refer to Treaties as: Ungugamgewel as well as Gisiagnutmatimgewe'l. Respectively, these terms translated mean: "Adding to an existing group or collective... Treaties are a method of adding members to the kin group"²⁷ and "what we have agreed upon in the treaty making process."²⁸

Through the protocols of oral traditions, roles and responsibilities emerged, which drew together those in the agreement. The Covenant Chain of Treaties are foundational agreements, which enabled the British and the Mi'gmaq to co-exist on the territory.

ii. Peace arrangement with Quebec military authorities

On September 23, 1760, Captain Robert Elliott of the 77th Regiment of Foot, set sail from Quebec, heading to the Baie des Chaleurs, with a company of 113 men. Elliot had been instructed by General Amherst to deliver a letter from the Governor of New France, Philippe de Vaudreuil, to the commander of the French troops at Ristigouche, Monsieur D'Angeac. D'Angeac and his men numbered about 300.²⁹

Vaudreuil ordered D'Angeac to 'comply with the terms of Capitulations signed in June 1760'.³⁰ The British Captain, Robert Elliot, was also under instructions to make peace with the Mi'gmaq in the region.

Adding to the complexity of this peace process was the fact that a significant number of Acadians had recently sought refuge in the area. The Acadians faced many difficulties attempting to establish themselves in the Listuguj area (northern Gespe'gewa'gi). In the French records, the Acadians living in the area are described as "1500 personnes dans l'etat le plus touchant".³¹ As well, what is known today as the last naval battle between France and Britain had just taken place in July of 1760 on the waters of the Listuguj River.

Captain Elliot arrived on the 20th October; D'Anjeac surrendered ten days later. Sometime between then and November 5th, Elliot met with Joseph Claude, the Saqamaw from Listuguj. Claude had long been a leader in this part of the territory³² (records indicate that he was a leader from the early 1730s until the time of his death in 1796).³³

In a letter to his superior (General Jeffrey Amherst, Commander in Chief of British military forces in North America), Elliott gave a short and succinct account of what happened. He wrote, "I made peace [with the heads of a village of about one hundred Mic Mack Indians near to the Ristigouch] by burying the Hatchet, giving them a few blankets & a little provisions."³⁴

PEACE ARRANGEMENT

Elliott's account does not provide further details of discussions and promises that were made leading to this agreement for peace. Elliott also likely wrote to General Murray in Quebec, though no extant copy of his report has been located.

Even so, the peace process described briefly in Elliott's letter is indicative of the distinct political traditions of the Mi'gmaq. Namely, the letter indicates that there was a *mawiom*, during which time the 'heads of the village' (which would have included Saqamaw Claude, as well as other Mi'gmaq leaders) engaged in a peace process with the British officials. The peace process involved the Aboriginal traditions of 'burying the hatchet' as well as their acceptance of gifts from the British (blankets and provisions).

This peace arrangement did not result in the writing of a formal treaty document. Although we do not know the full details of what was said, both sides would have been familiar with the prior Treaties between the Mi'gmaq and the British Crown (1725, 1749 and 1752, for example). As well, both sides would have been aware of the Treaty-making that commenced in March 1760 (9 months before) in Nova Scotia. For instance, by the time that Captain Elliott traveled to Listuguj in Gespe'gewa'gi, Governor Lawrence of Nova Scotia had entered into treaties of Peace and Friendship with Mi'gmaq delegates from communities representing four of the districts: La Heve (Gespe'gewa'gi), Richibucto (Signitewa'gi), Shubenacadie (Espe'gewa'gi) and Mouscadaboet (Sugapune'gati). British renewal of the peace and friendship relationship through treaty-making would have been a major subject of discussion between district captains at the Grand Council. From the exchanges between district representatives, the Mi'gmaq of Gespe'gewa'gi knew that Mi'gmaq in the neighbouring district of Signitewa'gi, and others districts, had renewed the treaty relationship with the British.

As a result, in November 1760, along the banks of the Listuguj River, the Mi'gmaq and British formally agreed to end hostilities and to close their eyes and ears to what had transpired between them. The overall Treaty relationship between the British Crown and the Mi'gmaq that began in 1725 and was continued in other parts of Mi'gma'gi would have been intended to be integrated into the peace reached between Captain Elliott and Saqamaw Claude of Listuguj.

iii. Peace arrangements with Nova Scotia military authorities

Having reached a peace arrangement with Elliott in November 1760, Saqamaw Claude of Listuguj desired to reconfirm that treaty relationship with the British Crown as represented in Nova Scotia (which at that time included all of what we now call New Brunswick).

In January 1761, two Mi'gmaq ambassadors from Listuguj arrived at Fort Cumberland, the British fort located on the western side of the Missiquash River. (Today, the town of Sackville, New Brunswick is located just to the west of the fort.) Roderick MacKenzie, the commander of the fort, wrote that both men were related to Saqamaw Claude: one was a son, the other a nephew.

They brought with them a letter written by Claude in French and addressed to the commander at the Fort.³⁵ The letter spoke of difficulties the Mi'gmaq were experiencing in their interactions with the Acadians at Listuguj and their impact on the Mi'gmaq fishery.³⁶

Within the political traditions of the Mi'gmaq, there were particular protocols and traditions to determining the delegates who had the responsibility to speak on behalf of the leaders, as well as to 'witness' (nujo'teket) what had been agreed upon in the transactions between the parties. In keeping with Mi'gmaq protocols, Claude's son and his nephew would have been instructed by Saqamaw Claude to carry the letters, and to speak on his behalf with the British authorities. Further, within the oral traditions of the Mi'gmaq, the delegates upon their return to Listuguj would be expected to meet in council (mawiom) with the saqamawg (chiefs) and gisigumimajunu'g (elders) to share what had been discussed and deliberated.

During this time period (after the fall of Quebec to the British in 1759), British civil authorities in Nova Scotia had begun to implement treaty-making processes and protocols for negotiating treaties.³⁷ According to the Nova Scotia Council's protocol for negotiating treaties, the negotiations were to take place in Halifax with the Governor, under the auspices of civil, as opposed to military, authorities.

Instructions had been given to officers at both Fort Frederick and Fort Cumberland to direct Mi'gmaq and Maliseet who came to their forts to treat "to [proceed to] Halifax where they may be sure of having a favorable Reception and an Opportunity to extending their trade, by the Establishment of Truckhouses amongst them, under such Regulations as shall be agreed upon".³⁸ Therefore, when Saqamaw Claude's son and his nephew arrived at Fort Cumberland, as delegates on behalf of Claude, they would have been asked to also proceed to Halifax.

However, officials realized that their theory and the actual practice would not always mesh. For instance, not all chiefs or community delegates were able or willing to go to Halifax. In a letter to Colonel William Forster (commander-in-chief of British forces in Nova Scotia) in late March of 1761, Roderick MacKenzie (commander of the 77th Regiment of Foot at Fort Cumberland) wrote, regarding Joseph Claude and the community at Listuguj that "it may very probably so happen, that some of them [the chiefs] who are Most Distant, may be unwilling to Undertake that Journey after Coming, here, In which Case I must beg Your Instructions".³⁹

This letter reveals what transpired between the two Mi'gmaq delegates speaking on behalf of Saqamaw Claude and the British authorities. The Mi'gmaq "who are most distant" having arrived at Fort Cumberland, did not wish to proceed further to treat in Halifax.

PEACE TREATY

In mid-April, Forster replied to the concerns that some Mi'gmaq did not wish to proceed further than Fort Cumberland to treat and “make their peace”; Forster wrote:

The answer you made to Joseph Claude's Letter was very proper as well as that you gave to the other Indians which came to the Fort. The Chiefs should all of them, if possible, be prevailed with to come to Halifax to make their peace with His Majesty's Governor and Council, but if you should find any of them unable or unwilling to undertake the journey hither, you & the other Magistrates may receive their Submissions, and settle such preliminary Conditions with them as hath already been made with other Tribes, which will serve for the Rule of their Conduct until such time as a Generall Convention can take place for establishing a treaty of peace & Friendship with all the Tribes together.'⁴⁰

As a result, in cases where chiefs or community delegates were unable or unwilling to go to Halifax to negotiate directly with the Governor, military officers stationed at the posts were empowered to treat with them and to “settle such preliminary conditions as hath already been made with other tribes.”

While the meaning of “preliminary conditions” is ambiguous, Forster is clearly referring to something more than the chief swearing an oath of allegiance to the Crown. The authority conferred on the military officials included the treaty terms “*as hath already been made with other Tribes, which will serve for the Rule*”. Other issues, such as trade, would be settled by the post's commander. The goal for the British remained: to have the same basic treaty relationship with all the Mi'gmaq on the territory.

Even without a formal document, the Mi'gmaq of Gespe'gewa'gi, who lived within an oral tradition, and had traveled to Fort Cumberland, would have considered the extension of their kinship relations affirmed with Commander MacKenzie at Fort Cumberland. Further, by traveling to Fort Cumberland, the Mi'gmaq were respecting the Covenant Chain of their Treaty relationship with the British Crown.

iv. Peace Treaty with Nova Scotia civil authorities

On June 25, 1761, the terms of the 1760 Treaty were formally ratified at Halifax by a number of Mi'gmaq who came from different districts within Mi'gma'gi. Specifically, those that appear in the formal documentation of the Treaty include Mi'gmaq from Cape Breton, Miramichi, Pokemouche, and Shediac.

Within Mi'gmaq political traditions, there were protocols and processes (mawiomi, kinship ties, delegates, for example), which allowed delegates to speak on behalf of Mi'gmaq who used and occupied different parts of the territory. Therefore, because both Miramichi and Pokemouche are within the traditional district of Gespe'gewa'gi, the Mi'gmaq of Listuguj, as well as other

Gespe'gewa'gi communities, would have been parties to and represented at this Treaty Conference.

In terms of its location, Pokemouche was an accessible area for the Gespe'gewa'gi Mi'gmaq, in particular for those living on and around the Baie des Chaleurs.⁴¹ Pokemouche is the name of a river that lies just south of Miscou Island and Ile Lamêque, on the very north-eastern tip of New Brunswick, and to the east of Nipisquit (today, Bathurst). It was through the use of the major river systems (such as Pokemouche) that the Mi'gmaq from the various parts of Gespe'gewa'gi traveled to different locations throughout the year, for political, social, culture, and economic purposes.

At this time period, the Mi'gmaq operated under a kinship based political system. Within a district, the saqamawuti (district council) was responsible for the internal management and regulation of the territory. Within each district there were district gepting (a limited number) as well as numerous saqamawg (chiefs). Generally speaking, the gepting (district captains) were responsible for matters that affected the district as a whole, while the saqamawg were responsible for managing internal affairs at a local level.

Pokemouche would have been the logical location for mawiomis attended by the Mi'gmaq living around the Baie des Chaleurs. It was easily accessible to those living in the area, and from Pokemouche, travels could be made along the river system to the other common mawiomis site in the southern part of Gespe'gewa'gi, Miramichi.

The delegation from Listuguj sent to Fort Cumberland in January 1761 clearly shows that the Mi'gmaq living around the Baie des Chaleurs were aware of the treaty process taking place in Nova Scotia. Receiving word that delegates from a number of districts were travelling to Halifax to treat with Governor Lawrence in the spring of 1761, a mawiomis between the Mi'gmaq of the Baie des Chaleurs, concerning their involvement in the treaty, would have taken place, most logically at Pokemouche. From there, a delegate would have been sent to Miramichi to join with other delegates travelling to Halifax. According to Mi'gmaq protocol, that delegate, upon return from the treaty conference, would have reported on all that occurred at the conference at a mawiomis convened after his return.

The conclusion that, in ratifying the 1761 Treaty, Pokemouche was acting on behalf of all Mi'gmaq living around the Baie des Chaleurs is given even more weight when we consider the fact that at the signing of the 1779 treaty, Miramichi is designated as acting on behalf of Pokemouche and Restigouche.⁴² Therefore, that delegates from Pokemouche and Miramichi are the two signatories from the Gespe'gewa'gi District on the 1761 Treaty confirms Mi'gmaq political customs, practices, and traditions (namely, delegated forms of representation, as well as the different roles and responsibilities of the leadership (Geptin and Saqamaw) within the district of the territory).

RENEWING PEACE

Finally, that the Mi'gmaq of Listuguj (and other Gespe'gewa'gi communities), would have considered themselves parties to this Treaty Conference is confirmed when viewed in consideration of other related 'peace processes' taking place on the territory:

First, the Mi'gmaq had accepted terms of peace with the British in November of 1760 in the agreement that took place between Mi'gmaq (represented by Saqamaw Claude of Listuguj) and the British (represented by Captain Robert Elliott).

Second, Saqamaw Claude of Listuguj, by sending delegates to Fort Cumberland to treat with Commander MacKenzie, was obviously aware of the Treaty signing process undertaken by British authorities in Nova Scotia, and desired such a formal arrangement.

Third, within the political traditions of the Mi'gmaq, there were established internal processes and alliances, which would have allowed the Mi'gmaq of Pokemouche to participate in the ratification of the treaties in Halifax in 1761 on behalf of the Mi'gmaq who lived on and around the Baie des Chaleurs.

v. Renewing peace between the Mi'gmaq and the British Crown during the American Revolution (1775-1779)

Starting around 1775, with the resistance to British rule in the southern colonies of North America, a number of events occurred that led the British to renew their agreements and Treaties of Peace and Friendship with the Mi'gmaq, including the Mi'gmaq of Gespe'gewa'gi.

The American rebels saw gaining the allegiance of the Eastern Aboriginal nations as an important strategy, both because of the military strength the nations could offer, as well as the destabilizing effect severing the relationship Britain had with these nations would have on Britain. On May 15, 1775, the Provincial Congress of Massachusetts addressed an open letter to the "Eastern Indians" alleging that the British were planning to take away the liberty of colonials and Indian alike; they would not even allow the Indians to shoot game. The letter asked the "good Brothers" what they needed—guns, powder, cloth, stores—and promised that they would be supplied.⁴³

In January 1776, some Maliseet joined Iroquois and Abenakis at General George Washington's camp near Boston. The Mi'gmaq were less certain of their involvement regarding the conflict "between Old and New England." Mi'gmaq delegates were sent to Boston; the Mi'gmaq asked:

We do not comprehend what all this Quarreling is about, How comes it
That Old England & new should Quarrel & come to blows? The Father &
Son to fight is terrible- Old France & Canada did not so, we cannot think
Of fighting ourselves till we know who is right & who is wrong.⁴⁴

In addition to highlighting Mi'gmaq questions about the conflict, this passage also reveals the underlying kinship relations shaping Mi'gmaq perspectives. Here, similar to other treaty negotiations, kinship terms are used (father, son). From an Aboriginal perspective, there would be particular “understandings of rights and duties in a relationship connection.”⁴⁵

Eventually, formal discussions unfolded among the Mi'gmaq, Maliseet and American Colonialists. In July of 1776, a delegation of three Maliseet and seven Mi'gmaq men (including Sebbattis Netobcobwit, from the Gespeg region) went before the Massachusetts Council, offering the service of their tribes in the rebel forces.

Speaking on behalf of all the delegates, and in response to a question from the Council, about those Mi'gmaq who were *not* represented at the conference, Maliseet leader Ambrose Bear said, ‘We are all brothers and cousins. We are of the same flesh and blood, and can’t make war or be attacked separately.’

In the negotiations, the Council instructed the delegates that each man should arm himself; in reply Bear told the Council, ‘we have got guns but reserve them for our children to hunt with in our absence from home.’ The council insisted, and offered each man “wages plus a dollar” for the use of each gun.

Bear’s words, recorded in the official records, lend understanding to the Aboriginal perspective of treaty relations; namely, the importance of maintaining and strengthening kinship ties, the alliances among the Mi'gmaq and Maliseet, as well as the continued importance on their ability to continue their way of life (e.g. hunting and ensuring the well-being of their families).

Eventually, the parties signed a memorializing agreement, now known as the Treaty of Watertown. Following the signing, five of the delegates (including Netobcobwit of Gespeg) offered to join the rebel forces immediately, while the remaining delegates returned to their communities to bring news of the Treaty.⁴⁶ Again, Aboriginal political protocols are evident; from the Mi'gmaq perspective it would have been expected that some of the delegates (and witnesses) return home in order to share what had been deliberated and discussed in the negotiations.

Debate and controversy grew within Mi'gma'gi following the signing of the Watertown Treaty, however. The leadership (Gepting and Saqamawq) from Gespeg, Miramichi, Richibucto, Shediac and Chignecto collectively stated to the Massachusetts Council that the delegates were authorized to sign a treaty of peace and friendship, not a treaty of war. Therefore, the Treaty lacked their consent.⁴⁷ In September 1776, the Mi'gmaq wrote to the Massachusetts Council expressing their decision to maintain their neutrality:

... Our natural inclination being Peace, only accustomed to hunt for the subsistence of our family, We could not Comply with the Terms. ... And as it was not done by our authority & Consent of the Different Tribes we are necessitated to return [the Treaty].⁴⁸

TREATY OF 1778

The Mi'gmaq were concerned with the consequences of entering into an alliance with the rebels and decided to return the treaty to the Massachusetts Council. One leader was recorded fearing that the British “will send their big Vessels in our Rivers & prevent us from fowling & Fishing.”⁴⁹ These words reveal the Aboriginal perspective in the importance placed on their ability to continue to practice an unencumbered way of life “fowling & fishing”.

However, despite the position of the Mi'gmaq leadership to remain neutral, local rebels had convinced a handful of Mi'gmaq and Maliseet men, in November of 1776, to attack the British Fort Cumberland.⁵⁰ British forces received word of the planned attack and were able to defend the Fort.

vi. Fort Howe Treaty of 1778

The participation of the Maliseet and Mi'gmaq in the siege of Fort Cumberland did not go unnoticed by the British. The mere fact that “the Indians” were once again on the warpath was sufficient to arouse old colonial fears.⁵¹

To appreciate the British Crown's reaction to this event, it is important to underscore the extent to which the colony of Nova Scotia was vulnerable to being overtaken by the rebels. The colony had long lost its military presence and was reduced to calling on the members of the Royal Army posted at Quebec City in times of emergency. The onset of colonial resistance to British rule left the colony acutely isolated on its stretch of the Atlantic coast. In the prior three years, the colonial government had experienced bitter in-fighting, verging on political chaos, and, of the small numbers of settlers residing within the colony, many found themselves sympathetic to the rebels.⁵² Facing the possibility that the strong and numerous Aboriginal population in the colony could be allying themselves with the rebels, the British realized the very real possibility that it could lose the colony of Nova Scotia to the rebels.

Therefore, one of the first measures taken by the British Crown after the siege was the appointment by Lord Germain, Secretary of State of America and a Lord of the British Parliament, of Michael Francklin as the Superintendent of Indian Affairs in 1777.⁵³ Francklin was the first Superintendent of Indian Affairs to be appointed in the region directly by the British Crown.

The British practice of directly appointing Superintendents of Indian Affairs began in 1755 in response to the French-Indian war, when Sir William Johnson was appointed “Indian Superintendent of the Northern Department” and Edmund Atkins “Superintendent of the Southern Department”. Johnson and Atkins reported to the British “commander of forces” in North America, and both were clearly military appointments. Johnson, based initially in the Mohawk Valley of New York, was responsible for securing the alliance of Six Nations of the Iroquois. Following the signing of the Treaty of Paris, Johnson's jurisdiction was extended by the addition of the Quebec. Atkins was responsible for gaining as allies the tribes of southern North America.⁵⁴

Johnson was too geographically remote from Nova Scotia and the Gaspé Peninsula to be effective in exercising his duties within these regions.⁵⁵ Until British fears were aroused by Mi'gmaq and Maliseet involvement in the siege for Fort Cumberland, this reality was largely ignored by the Crown. In the intervening period, the Governor and Council had irregularly appointed individuals to assume responsibility for the government's relationship with the Mi'gmaq and Maliseet, although such appointments were ineffectual and were allowed to lapse.

The key distinction between Indian agents appointed by the Governor and Council of Nova Scotia, and an appointment as Superintendent of Indian Affairs by a lord of the British Parliament, is that the Superintendent could deal directly with the Mi'gmaq and Maliseet and his actions would bind the British Crown. A local Indian agent appointed by the Council in Nova Scotia would have to report to the Governor, and only the Governor could directly bind the Crown. The policy of the Nova Scotia Governor and Council from 1759 was that all treaties would be finalized by the Governor and his Council. With the appointment of Francklin in 1777, this protocol was no longer required.

At the outset, Francklin's duties included providing the Mi'gmaq and Maliseet with provisions and other necessities, caring for distressed individuals and families and receiving chiefs and elders when in Halifax. However, his focus became particularly one of ensuring peace and treating with the Mi'gmaq and Maliseet upon learning in 1778 that France had declared support for the rebels. Particularly with this development, Britain feared the Mi'gmaq would end their neutrality and side with the French again.⁵⁶ Britain's ability to hold onto sovereignty in the Atlantic region was once again at risk.

Matters further escalated when it was discovered that Admiral d'Estaing, commanding a French squadron cruising the western Atlantic, issued a proclamation calling for a general uprising against the English throughout the old realms of France, and that the French consul at Boston was sending individual copies to various Indian leaders, including Joseph Claude, Saqamaw of the Listuguj Mi'gmaq.⁵⁷

At this time, in June of 1778, Francklin learned that "at least two hundred canoes of Mickmacks" were assembled at Miramichi "and others are dayly passing to join them." Francklin feared that the meeting would result in a consensus to join the French and rebel cause.⁵⁸ After its considerable efforts to make peace and friendship with the Mi'gmaq and Maliseet since the fall of France to Britain in 1759 ~ partly with the objective of ensuring that these nations would side with the British should conflict ever arise again between France and Britain in North America ~ the prospect that the Mi'gmaq be might allying themselves once again with the French presented a significant cause of alarm for the British.

To make matters worse for the British, on August 11, 1778, Maliseet sent a letter to Major Studholme, commander of Fort Howe, declaring their support for the rebels.

TREATY OF 1778

The correspondence from British authorities reveals Mi'gmaq practices and traditions. The June gathering along the Miramichi, which included "at least 200 canoes," would have involved between two hundred and eight hundred people. The number of those gathered suggests that Mi'gmaq from various parts of the territory were assembling in mawiomí ~ to deliberate the affairs within the territory, as well as affairs in the broader territory of Mi'gma'gi.

In response to all of these occurrences, in mid-September 1778, Francklin embarked from Annapolis for Fort Howe, Britain's small garrison located at the mouth of the St. John River, to meet with the Maliseet and Mi'gmaq. With him, he brought Abbe Bourg, a French-Canadian priest whose services the government had requested from the Bishop of Quebec.⁵⁹

On September 24th, Francklin, Bourg, and Major Studholme met in conference with Maliseet from the St. John River and several Mi'gmaq chiefs representing the communities of Minas, Chignecto, Richibucto, Miramichi and Pokemouche. In all, at least 12 Mi'gmaq and 14 Maliseet attended.⁶⁰

At the conference, the Maliseet rejected the contents of the letter sent to Fort Howe in August of that year. Both the Crown and the Mi'gmaq and Maliseet renewed the Treaty Relationship of Peace and Friendship, with the Aboriginal nations swearing an oath of allegiance to His Majesty King George, binding them to make known any designs of his enemies, to protect Francklin and Bourg, to not take any part in the continuing conflict but to 'follow my hunting and Fishing in a peaceable and quiet manner,' not to go to Machias or to have any communication with any 'rebellious subjects of His Majesty' and to otherwise continue to follow the Mi'gmaq way of life and to uphold the Covenant Chain of the Treaty relationship.

At a ceremony concluding the conference the next day, a Mi'gmaq chief presented Francklin with a "String of Wampum on behalf of the whole Mickmack Nation as their Seal of Approbation and agreement to everything that had been transacted."⁶¹ Afterwards, a Maliseet and Mi'gmaq chief performed a series of dances and songs "in honour and praise of the Conference and those concerned therein."⁶²

The ceremonial context (exchange of wampum, songs, and dances) shaped the treaty relations and provides insight as to Mi'gmaq perspectives. The wampum tradition, for instance, has a "long history of continuous practice" by many Aboriginal Nations.⁶³ Specifically, during the Treaty Era, the wampum (both belts and strings) were used in diplomatic relations between the Mi'gmaq and the British.

The wampum belts, through design and colour, mnemonically recorded significant events and ceremonies.⁶⁴ The Chiefs would also instruct delegates, who would use the wampum to deliver messages about significant events to different areas in the territory. On other occasions, wampum were used by Chiefs, who ~on behalf of the nation ~ would present a wampum belt or string to the parties with whom negotiations were taking place. In these instances, the wampum symbolized what was being agreed upon by the parties (friendship, peace, trade, war, as examples).⁶⁵

That the Mi'gmaq Chief presented Francklin with a "String of Wampum," which was followed by a ceremony ~ songs and dances ~ indicates the significance of this event to the Mi'gmaq and Maliseet nations. The ceremonies and discussions of the 1778 Renewal of the Peace and Friendship Treaty among the Mi'gmaq, Maliseet, and British Crown demonstrates the spirit and intent of the treaty relationship as being agreements of peaceful co-existence. The use of Aboriginal traditions (mawiomi, delegation of leaders, alliances between Maliseet and Mi'gmaq, the use of the wampum, the ceremonies, songs and dances, and even the length of the treaty deliberations (*which lasted a minimum of two days*) all together provide evidence of the political, social, and spiritual nature and intent of the treaty negotiations.

On his return to Halifax, Michael Francklin informed the Nova Scotia Council that he had met with Maliseet chiefs `and all the chiefs of the several Tribes of Indians of this Province and had renewed former Treaties of Peace and Amity with them...'⁶⁶ Francklin's description shows that an integral component of the conference was both parties' re-affirmation of their Treaty relationship, in case of the Mi'gmaq, being the Covenant Chain Treaties signed in 1725/26 and 1760/61. This tells us that more was said at the conference than is set out in the treaty conference minutes. Among the missing details was an explicit renewal of treaties previously signed by the British Crown with the Mi'gmaq.

No person from Listuguj or from any other northern Gespe'gewa'gi community was specifically noted as having been present at the September conference. They must have known that the conference was to take place, however, as Francklin had sent three Mi'gmaq northward to Listuguj to bring Abbe Bourg to Fort Howe.⁶⁷ As with the Treaty of 1761, delegates from Pokemouche would have attended and signed on behalf of all the Baie des Chaleurs Mi'gmaq.

vii. Hervey Treaty of July 20, 1779

Though the 1778 treaty re-affirmed the neutrality of the Mi'gmaq in Britain's ongoing conflict with the United Colonies, it did not stop disputes from developing between Mi'gmaq and local British farmers and traders. Such disputes were unlikely to have suddenly stopped since British settlers often encroached upon hunting and fishing grounds, or otherwise disturbed the customary practices of the Mi'gmaq.

In the late spring and early summer of 1779, a series of events began along the Miramichi River, which eventually resulted in a renewal of the Treaty relations. At the centre of the dispute was John Cort, a trader and Indian agent who, along with his partner William Davidson, received a grant of 100,000 'upon the Elm Tree tract, on the south west branch of the Miramichi River' in 1765. Cort and Davidson, however, were more interested in the salmon fishery than they were in land. Their plan was to sell the salmon they harvested to a European market.

While Davidson and Cort's accounts from this period are silent on how the Mi'gmaq interpreted their presence, it is probable that the partners' ran afoul of the Mi'gmaq and that this was the

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cause of the dispute that escalated into something more during the late spring and early summer of 1779.⁶⁸

Only one year earlier, the Mi'gmaq (along with the Maliseet) had renewed the articles of the Peace and Friendship Covenant Chain of Treaties. In the deliberations of the 1778 treaty, the Mi'gmaq had agreed not to take part in any conflict, but instead would 'follow my hunting & Fishing in a peaceable and quiet manner'.

However, by the summer of 1779, Davidson and many other families had fled the Miramichi as the region (according to Davidson's later account) had been raided several times by rebel privateers.⁶⁹ The Mi'gmaq, too, were involved in the conflict along the Miramichi River. In 1832, Robert Cooney recounted that the Mi'gmaq:

committed the most daring outrages; burned two or more houses; appropriated the people's cattle to their own use, and plundered what few stores there were; particularly Mr. Cort's, from which they took upwards of 700 Moose skins; and whatever else they considered valuable.⁷⁰

Cort painted a similar picture in his letter to Frederick Haldimand, the Governor-General of the Province of Quebec. "We have been all plundered by the Savages of this river," Cort wrote in early July 1779, "of almost everything we had in our houses, and are every day insulted by them & unless we meet with speedy redress are apprehensive of our lives, being in great Danger." Cort appealed to Haldimand to send a few soldiers to protect them or one of His Majesty's frigates "anywhere cruising upon this Coast to put in here."⁷¹ Both Cort and Haldimand stressed that the attacks were committed by Mi'gmaq who had allied themselves with the American rebels.⁷²

In their appeal for help from the British authorities, Cort and Davidson stressed the escalating violence along the river. In particular they were concerned for their safety, as well as the loss to their personal holdings. However, from the perspective of the Mi'gmaq, the actions of the Indian Agent, Mr. Cort, along with his trading partner, Davidson, were equally threatening. For instance, in Cort's inventory there were "700 Moose skins." Likewise, the British were involved in large scale fishing operations (e.g. setting nets across the rivers). The harvesting of moose and salmon at such a large scale would have been a concern to the Mi'gmaq in their ability to access the resources for their families, and to effectively regulate the territory. And, in any event, 'hunting & fishing' was not taking place in a peaceful and quiet manner, as had been agreed to by both parties in the 1778 Treaty.

Eventually, Cort's appeal for help reached British ears; Augustus Hervey, commander of His Majesty's Ship *Viper*, was then cruising in the Gulf of St. Lawrence. Upon receiving a message from Cort, Hervey turned his ship toward the Miramichi and entered the river on the 19th of July.

To make his voyage up the Miramichi River easier, Hervey wore French colours and then sent a smaller vessel (commanded by Lieutenant Alden) in rebel colours.⁷³ His strategy had the desired

affect and Alden soon made contact with a group of Mi'gmaq, headed by a Mi'gmaq Chief by the name of Joseph Caif. Caif seems to have been the head of the group threatening the English settlements. Caif, and other Mi'gmaq, informed Alden that they had stripped the inhabitants of all their belongings and had decided to kill them all, if Alden so desired. Alden equivocated and told the men to wait until the next day when he would meet with them. The next morning Alden sprung his trap, captured sixteen men and placed them in irons on board his vessel.

Soon after, a delegation of Mi'gmaq, from further up the Miramichi River, arrived to meet with Commander Hervey. Significantly, Hervey called the Mi'gmaq from this area, the "loyal Indians," suggesting that the recent troubles on the river stemmed from a split within the Mi'gmaq between those, led by John Julien, who opted to remain out of the conflict and another group, led by Joseph Caif, who had not.

In the following days, Hervey met in conference with Julien as well as with the chiefs of Richibuctou and Pokemouche. The Richibuctou chief, Michael Augustine, arrived as a result of a letter of invitation sent to him by Hervey. Augustine brought with him a copy of the 1760 Treaty he had signed some years before with Governor Lawrence and it was this agreement that Hervey used now to re-establish the peace with the Miramichi Mi'gmaq and to recognize John Julien as their chief.

In keeping with Mi'gmaq traditions, Saqamaw Augustine arrived after having been invited ~ that is, the result of the letter sent by Hervey. The fact that Augustine brought with him a copy of the 1760 Treaty indicates both the significance of the conference that ensued, his right to speak in these peace talks, as well as his understanding that this talk was part of a chain to establish peaceful relations among the parties.

Commander Hervey was a military officer acting under the direct authority of the Admiralty and the British Crown. This "Treaty of Peace", as it was entitled and dated July 28, 1779, and its ratification by Hervey, was subsequently provided to Governor Haldimand.⁷⁴ Pokemouche, as usual, signed this Treaty on behalf of all the Mi'gmaq of the Baie des Chaleurs.

The Mi'gmaq response, including the participation of the leadership from three areas (Miramichi, Richibutou, and Pokemouche) attests to the fact that this local issue (among Cort, Caif and Julien) was affecting the broader territory. Therefore, the dispute among families now required the re-establishment of peace, a process that would be facilitated by the district council (saqamawuti), which included chiefs and captains (geptin and saqamawg, respectively).

Further, this issue of "becoming involved in the conflict or remaining neutral" would have warranted internal discussion among the Mi'gmaq. The Mi'gmaq had a strong relationship to this area: the Miramichi River was a major river, both in terms of the salmon that it provided, and as a travel route to other parts of Mi'gma'gi. Further, the Miramichi area was long used by the Mi'gmaq as a gathering place (mawiomi).

COVENANT CHAIN OF TREATIES

viii. Haldimand's Wampum exchange

Of the fourteen prisoners captured by Commander Hervey in the Miramichi, two of them, being related to Saqamaw John Julien, were released as a sign of good will to the Saqamaw. The remaining twelve were transported into the custody of Governor Haldimand in Quebec in August, where they were kept until mid-October.

On August 23, 1779, Haldimand decided that two of the prisoners would be sent home as a gesture of peace-making. The released prisoners were entrusted with a letter and a string of black wampum to share with other Mi'gmaq in the region.

Haldimand's release of the prisoners along with "a string of black wampum" is indicative of the ongoing nature of the formal relationship between the Mi'gmaq and the British, that continued and was renewed despite occasions of instability. This act was not part of usual British custom but was a recognition by the Governor of Quebec (as it is now known) of the Mi'gmaq treaty tradition, including in its single black color.

The reciprocal offering of wampum by Haldimand was a formal recognition of the treaty relationship between Quebec and the Mi'gmaq, building on the covenants and ceremonies that had taken place the previous year with Francklin at Fort Howe. At that treaty convention, the Mi'gmaq had presented Francklin with a string of wampum on behalf of the whole Mi'gmaq Nation, as a commemoration of their agreement of peace and friendship. The wampum string therefore represented a key symbol of peace with the British. The reciprocal use of the wampum by Governor Haldimand signified a recognition and acceptance by Quebec (as it is now known) of its status as a treaty participant in peace and friendship.

In October, Haldimand transferred the remaining prisoners to the custody of Lieutenant Governor of Nova Scotia, Richard Hughes, by sending them to Halifax with one of his agents, Mr. Launiere. He left up to Lieutenant Governor Hughes how to proceed, though counseled him to let some of them go, and others keep as hostages ` the number of them increased or diminished, according to the Accounts you receive how they behave.'⁷⁵

ix. Francklin's Treaty of September 22, 1779

The capture of Mi'gmaq prisoners was a cause of major concern among the Gespe'gewa'gi Mi'gmaq. In mid to late September, a delegation of ten chiefs arrived in Windsor on mainland Nova Scotia seeking an audience with Superintendent of Indian Affairs, Michael Francklin.

According to Franklin, much of the meeting involved the prisoners, their fate, and providing assistance to the wives and children. "After much conversation on those points," Franklin wrote his superior, Secretary of State, Lord Germain on September 26, 1779, "they agreed to several articles by way of treaty; which they signed the twenty-second instant a copy of it I have now the honour to enclose."⁷⁶

COVENANT CHAIN OF TREATIES

In a similar letter to Governor Haldimand in mid-October, Francklin reported that “ten Principal Indians representing the several Tribes of Mickmack Indians from Bay Verte to Restigouche entered into a Treaty with me to behave well and to take arms against any of the King’s Enemys who shall come to Disturb the Inhabitants.”⁷⁷

The delegation of Mi’gmaq came from: Miramichi, Richibucto and Shediac. Richibucto had the largest contingent of five men, Miramichi with four, and the final Mi’gmaq delegate was from Shediac and was the son of the community’s chief.

Representatives from Pokemouche and Listuguj were not personally present at the meetings. However, as the text of the treaty shows, the Miramichi representatives acted expressly for them. Moreover, the second article of the treaty refers to the delegates acting on behalf of themselves “and in behalf of the Several Tribes of Mickmack Indians before mentioned⁷⁸ and all others residing between Cape Tormentine and the Bay De Chaleurs in the Gulph of St. Lawrence.”

The main purpose of the Treaty was to accomplish two things: to reaffirm Mi’gmaq neutrality in the war under the relationship of Peace and Friendship and to ensure their continued peaceful relationship with British settlers and traders. The British also agreed that so long as the Mi’gmaq lived by the articles of the Treaty, that they would not be molested by British settlers or troops “or other of his good subjects in their Hunting and Fishing.”

The Treaty relationship that was honoured by the signing with Superintendent Francklin was not begun from scratch at Windsor in 1779 but rather was part of a continuing relationship that had begun years before. This is clearly recognized by the eighth article in which the Mi’gmaq agreed to “renew, ratify and confirm all former Treaties entered into by us or by any of us or them heretofore, with the late Governor Lawrence and other His Majesty King George’s Governors who have succeeded him in the command of this Province.”

Francklin looked back to the Treaties made between Governor Lawrence and the Mi’gmaq in 1760 and 1761 as the basis of the agreement he then made. Governor Francklin then, as Commander Hervey did in the same year, reported the treaty relationship to Governor Haldimand in Quebec. The Mi’gmaq, too, remembered what had been agreed to in the Covent Chain of Treaties. Through their protocols, practices, and traditions the Mi’gmaq actively participated in the various Treaty deliberations and talks that took place on the territory.

CONCLUSION

6 CONCLUSION

During the colonization of North America, the British Crown dealt with the First Nations formally as sovereign nations through the treaty-making process. Only the Crown, and its appointed delegates, possessed the authority to treat with foreign nations.

The above historical overview reveals an interlocking chain of agreements that cement their treaty relationship with the British Crown and the Mi'gmaq of Gespe'gewa'gi:

- 1) The November 1760 agreement between Captain Robert Elliott and Saqamaw Joseph Claude;
- 2) The February 1761 agreement between Commander of Fort Cumberland, Roderick MacKenzie, and delegates of Saqamaw Joseph Claude;
- 3) June 25, 1761 Treaty at Halifax;
- 4) Fort Howe Treaty of 1778;
- 5) Hervey Treaty of July 20, 1779;
- 6) Haldimand's release of prisoners in exchange for peace and his delivery of wampum; and
- 7) Francklin's Treaty of September 22, 1779.

These agreements implicated and involved a number of officials: the Governors of both Nova Scotia and Quebec, the Indian Superintendent appointed by a Lord of the British Parliament, and a Commander in the British Admiralty. Each of these officials had the authority to bind the British Crown.

In relation to Francklin and his Treaties of 1778 and 1779, he was part of the Imperial Indian Department as an extension of the British military establishment directly under the authority of the King.

The test for determining whether an official had the capacity to treat with First Nations adopted by the Supreme Court of Canada in *Sioui v. Quebec (Attorney General)* embraces a contextual approach, the key inquiry being whether it was reasonable for the First Nations to believe that the official had the authority to treat with them, not whether the official had *actual* authority to treat:

To arrive at a conclusion that a person had the capacity to enter into a treaty with the Indians, he or she must thus have represented the British Crown in very important, authoritative functions. It is necessary to take the Indians' point of view and to ask whether it was reasonable for them to believe, in light of the circumstances and the position occupied by the party they were dealing with directly, that they had before them a person capable of binding the British Crown by treaty.⁷⁹

On this basis, the Court in *Sioui* concluded that it was reasonable for the Huron, whose traditional territory was found within the colony of Quebec, to believe that the treaty they concluded with General Murray, a brigadier general in the British Army, was binding on the British Crown. Similarly, it would have been reasonable for the Mi'gmaq of Gespe'gewa'gi at Miramichi to believe that Commander Hervey had the authority to treat with them on the British Crown's behalf.

With each of the agreements discussed above, the Mi'gmaq would have considered themselves to be dealing directly with the Crown. Similarly, the officials would have seen themselves as agents of the British Crown in treating with the Mi'gmaq; not agents of the Province of Quebec, Nova Scotia or the Royal Army.

The case law is clear that what constitutes a "treaty" with First Nations is not restricted to formal bilaterally-signed treaty document. Rather, the courts have adopted a flexible and nuanced interpretation of what can constitute a treaty. The leading authority on this principle is the British Columbia Court of Appeal in *R. v. White and Bob*,⁸⁰ cited with approval by the Supreme Court in *R. v. Simon*⁸¹:

...“Treaty” is not a word of art and in my respectful opinion, it embraces all such engagements made by persons in authority as may be brought within the term “the word of the white man” the sanctity of which was, at the time of British exploration and settlement, the most important means of obtaining the goodwill and co-operation of the native tribes and ensuring that the colonists would be protected from death and destruction. On such assurance the Indians relied.

This principle was applied by the Supreme Court in *Sioui, supra*, to find that a memorial signed by General Murray, evidencing the basic topics covered in a lengthy treaty conference, sent to his superiors, was sufficient to constitute a treaty.

CONCLUSION

This principle was also applied by the New Brunswick Court of Appeal in *R. v. Polchies*, to find that the agreement reached between Francklin and the Mi'gmaq of Gespe'gewa'gi at Miramichi on September 24, 1778, constituted a treaty:

This court finds that the agreement of September 24th, 1778, was and is a treaty ...

The treaty in question ended a war with the British and gave notice to the American rebels that war with them was imminent. As one of the considerations for joining the British, the Indians were provided with their own priest. In addition, they were each presented with a gift of one pound of gunpowder. The Indians in turn returned certain other articles seized during the war (including three swivel guns) and entered into an oath of allegiance to the King. It is of vital import that this oath was drafted by the British and that they included the phrase “but that I will follow my hunting and fishing in a peaceable and quite manner”.

The whole transaction can hardly be viewed other than as a treaty entered into to end a war, with both sides giving assurance one to the other, and both sides represented at the transaction by the top echelons of their respective commands. Surely the Indians in making their solemn oath of allegiance also had the subjective believe that they hunting and fishing rights (which had previously been interfered with by the American rebels) would be continued in the same peaceable and quiet manner as was the case before the way.⁸²

All of the treaty ceremonials took place in circumstances where officials, on behalf of British Crown, were seeking to secure peace with the Mi'gmaq, be it to assure Mi'gmaq neutrality in the face of invitations from the French or American rebels to take up their cause, or pacify unrest in the Mi'gmaq engendered by incursions on their rights by settlers. These were very serious circumstances and the solemnity with which the parties approached these agreements cannot be doubted. As well, the assurances, ceremonies, and gifts, including wampum, that were exchanged at these encounters would have impressed upon the parties the consequence of the agreements reached. The British use of wampum demonstrated its acknowledgment of the Mi'gmaq political and treat-making processes. Each of the treaty ceremonials discussed above constituted treaties from the perspective of the Mi'gmaq, as well from perspective of the British officials.

From an international point of view, the British colonies were not independent political units, but were part of the British Empire. British colonies are bound by any treaties made by the British Crown. Every treaty which affected a colony binds the local government of the colony, whether it assented to it or not.⁸³ These principles apply equally to treaties entered between the British Crown with sovereign countries and treaties with sovereign nations within a British colony. The colony of Quebec was therefore bound to and by the British treaties. In fact, Quebec was an active participant, both directly and indirectly, in the treaty-making process, as can be seen from the events of 1760 and 1779.

Upon Confederation, jurisdiction over relations with First Nations passed from the British Crown to Canada. As a result, Canada, and its provinces, inherited the Treaty relationship with the Mi'gmaq from the British. The Peace and Friendship treaties are binding on the Dominion of Canada and on the Province of Quebec.⁸⁴

The governments of Canada and Quebec are bound by its treaty relationship with the Mi'gmaq. Canada and Quebec and the Mi'gmaq of Gespe'gewa'gi are treaty partners. Moreover, the rights guaranteed by the treaties, exercisable within the traditional territory of the Mi'gmaq of Gespe'gewa'gi, bind Quebec to the extent that the traditional territory of the Mi'gmaq of Gespe'gewa'gi overlaps the territory of Quebec.

End Notes

- 1 Richardson, Boyce. People of Terra Nullius. (Toronto: Douglas & McIntyre, 2004) pp.31-49
- 2 Today, members of the Sante Mawiomi speak about the importance of understanding treaties as “spiritual as well as political compacts that confer solemn and binding obligations on the signatories,” Grand Chief Donald Marshall Sr., Grand Captain Alexander Denny, Putus Simon Marshall. “The Covenant Chain,” Drumbeat: Anger and Renewal in Indian Country. Boyce Richardson, ed., (Toronto: Summerhill Press Ltd., 1989) p.75
- 3 Henderson, James Sakej. The Mikmaq Concordat. (Halifax: Fernwood Publishing, 1997) p.17
- 4 Henderson, James Sakej and Russell Barsh. “International Context of Crown-Aboriginal Treaties in Canada,” The Royal Commission on Aboriginal Peoples. (1995)
- 5 Battiste, Marie and James Sakej Henderson. Protecting Indigenous Knowledge and Heritage: a Global Challenge. (Saskatoon: Purich Publishing, 2000) p. 55
- 6 Battiste, Marie. The Mikmaq Concordat. Tuma Young writes about the importance of kin relationships, which are emphasized in the oral stories of the Mi’gmaq. Young argues: “The kinship types of interactions ... all underlie a key part of the L’nu worldview and that is the importance of immediate and extended family.” (“Piskwekimk: An Indigenous Worldview” [unpublished document, n.p.d.] p. 29. Similarly, Mi’gmaq leader Puoinaq Arguimaut (speaking to Abbé Maillard in the mid-1700s) describes the relationship between the Mi’gmaq and all of Creation: “I only know that our ancestors used to tell us that we must throw all the bones of the beaver we ate into rivers where we could see beaver lodges, so that the lodges would always be there. All the bones of game we got from the sea had to be thrown in the sea, so that the species would always exist. They also told us that our domestic animals must never gnaw the bones because this would not fail to diminish the species of the animal, which had fed us.” (Ruth Holmes Whitehead. The Old Man Told Us: Excerpts from Micmac History 1500-1950. (Halifax, NS: Nimbus Publishing, 1991) p.17
- 7 Young, Tumas. “Piskwekimk: An Indigenous Worldview” [unpublished document, n.p.d.] p.40
- 8 LeClercq, Christian quoted in Hoffman’s “Mi’kmaq of the East Coast Micmac Tribal Identity and Affiliation,” The Historical Ethnography of the Micmac of the Sixteenth and Seventeenth Centuries. Vol. II Doctoral Thesis. (California. University of California, 1955) p.185
- 9 LeClercq, Christian. in Father Pacifique’s “Ristigouche Metropole des Micmacs, Theatre du “Dernier Effort de la France au Canada,” Mission de Restigouche, 1869. pp.122-123. Translation: “We have at the St-Joseph [Ristigouche] ... one of the ancient captains who our Gaspesiens consider their chief and sovereign ... the role of the capitaine was to regulate the hunting grounds, to take the furs, and redistribute the game. The capitaine made it a point of honour to be the worst dressed, ensuring that all were better covered than him.”
- 10 Chute, Janet E. “Frank G. Speck’s Contributions to the Understanding of Mi’kmaq Land Use, Leadership, and Land Management,” Ethnohistory. 46:3 (1999) p.482
- 11 Ibid. p. 483
- 12 LeClercq, Chrestien. New Relations of Gaspesia with the Customs and Religion of the Gaspesian Indians. William F. Ganong, ed., (Toronto: The Champlain Society, 1910) p.148
- 13 Ibid. p.148
- 14 Young, Tumas. “Piskwekimk: An Indigenous Worldview” [unpublished document, n.p.d.] p.40
- 15 Kiera L. Ladner. “Up the Creek: Fishing for a New Constitutional Order,” Canadian Journal of Political Science. 38:4 (2005) pp. 923-953
- 16 Cartier, Jacques. ‘The first relation of Jacques Cartier.’ Edmund Goldsmid, ed. The Principal Navigations Voyages, Traffiques. p.92
- 17 ‘Concerning certain murders committed by the Savages of Gaspé among the Savages known as the Papinachiouetkhi,’ in ‘Relation of 1661-62,’ Jesuit Relations 47:221
- 18 Quebec, AAQ, Serie 312 CN, Nouvelle Ecosse, Vol. 1, Abbe Thury, ‘Indiens de l’acadie,’ [1698], p. 10. At the end of this passage, Thury is referring to what is now mainland Nova Scotia and the lands [on the New Brunswick side] bordering the Bay of Fundy.
- 19 ‘Letter from Father Jean Enjalran 13 Oct. 1676,’ Jesuit Relations 60:119
- 20 Marc Lescarbot. ‘The Defeat of the Armouchiquois Savages,’ Thomas H. Goetz, trans. in William Cowan, ed. Papers of the Sixth Algonquin Conference. (Ottawa: National Museum of Canada 1975) p.162; Marc Lescarbot History of New France. Vol II, transl. by W.L. Grant. (Toronto: The Champlain Society, 1911) p.357

- 21 'Journal des PP Jésuites 1646,' Jesuit Relations 28:201-5
- 22 'Of the mission of Sainte-Croix in the Montagnais Country at Tadoussac,' Jesuit Relations 52:227. Also see 'Of the Mission of Sainte Croix in the Country of the Lower Algonquins, or Montagnais, Toward Tadoussac,' Jesuit Relations 53:61
- 23 To take just one example, a 1710 account notes that 'les Mikemacs et Gaspésiens ne sont qu'une même nation.' Rochemonteix, Relation par lettres. p. 204. For an earlier account, Chrestien LeClercq. New Relation of Gaspesia. (Toronto: The Champlain Society, 1916) p.192
- 24 Marston, Daniel. The French-Indian War 1754-1760. (England: Osprey Publishing, 2002) p. 84
- 25 Quebec Gazette. 9 August, 1764, p. 3
- 26 Marston, Daniel. The French-Indian War 1754-1760. (England: Osprey Publishing, 2002) pp. 84-85
- 27 Joe B. Marshall. "Looking Forward: Treaty Implementation Conference," St. John's, Newfoundland, February 2000.
- 28 Augustine, Stephen and Elizabeth Augustine. "History of Big Cove" [unpublished document, n.p.d.]
- 29 PRO, WO 34/11:57v-58r, Duncan Campbell to [], 22 July, 1760
- 30 Amherst to Lord Colville, 15 Sept. 1760 in The Journal of Captain John Knox: Volume III – Appendix. (Toronto: The Champlain Society, 1916) pp. 410-11. The letter was actually delivered by a French officer, named Louis François Gédéon De Catalogne.
- 31 Letter from Vaudreuil to the Minister, June 24 1760. NA MG1, Serie C11A Vol.105, Reel no. C-2402, p. 180
- 32 In 1765, Claude described the boundaries of the traditional territory: "The boundaries of the [Mi'gmaq] of the Ristigouche River which has always existed consists of half of the Nepigiguit River on the south shore of the Chaleur Bay; all the rivers which are on the north shore of this river belong to the said [Mi'gmaq] of Ristigouche as well as those on the south shore of Chaleur Bay from the Ristigouche to Cascapediaque which they have customarily inhabited, and in the depths to the end of the Ristigouche river and all the north shore of Chaleur bay for hunting purposes, and all the rivers which flow to the St. Lawrence river from the end of the Ristigouche river. (' 1765 Census of Quebec,' in Rapport de l'archiviste de la province de Québec pour 1936-1937. (Quebec 1937) p.116) The original French version reads: "Les bornes des sauvages de la riviere de Risticouche qui a ete de tout ems, est la moitié des la rivierre de Nepigiguit du bord du sud de la Baye des chaleurs Toutes les rivierres qui sont du bord du Nord de cette rivierre appartient aux dits Sauvages de risticouche et ceux de Bord du Sud a Miramichy et ud Bord du Nord; de la Baye des Chaleurs depuis la rivierre de restcouche jusqu'a Cascepediaque: dont ils ont coutume de demeurer, et dan La profondeur jusqu'au Bout de la rivierre de Resticouche; et tout le coste du Nord de la Baye des chaleurs pour leur chasse, et Toutes les Rivierres qui vont jusqu'au fleuve Saint Laurent depuis le Bout de la Rivierre de ristouche. J'ay signe Joseph Claude avec mes gens, comme par lequel Nous delcarons etre Vertiable." As parties of the peace processes and the Covenant Chain of Treaties, the Mi'gmaq "of the Ristigouche River" were not giving up their autonomy, nor their relationship with and within the territory. Claude's words also provide evidence of his knowledge of the land, as well as his responsibilities as a saqamaw in Gespe'gewa'gi.
- 33 Refer to: L.F.S. Upton. "Claude (Glaude), Joseph," Dictionary of Canadian Biography. Vol. 4 Frances Halpenny ed., (Toronto: University of Toronto Press, 1966) pp.153-154. After Claude's passing in 1796, Jacques [Joseph] Gagnon was appointed as his successor.
- 34 Elliot to Amherst, 24 Jan. 1761. The Journal of Captain John Knox: Volume III – Appendix. Arthur G. Doughty, ed. (Toronto: The Champlain Society, 1916) pg. 418
- 35 PRO, WO 34/99v, Roderick MacKenzie to William Forster, 28 March 1761.
- 36 Upton, L.F.S. Dictionary of Canadian Biography, 1771-1800. Vol. IV. (Toronto: University of Toronto/ Université Laval, 2000)
- 37 This protocol, outlined by the Nova Scotia Council, comprised four main points: All treaties would be finalized by the Governor and his Council; military officers could settle some preliminary matters with Mi'gmaq who came to the military posts; the Council would endeavor to conclude treaties with individual communities through their appointed representatives; that the Council would invite all Mi'gmaq chiefs to ratify the treaty at a general convention sometime in the future.
- 38 PANS, RG 1/188:111, Nova Scotia Council Minutes, 30 Nov. 1759.
- 39 PRO, WO 34/12: 100v, MacKenzie to Frye, 28 March 1761.
- 40 PRO, WO 34/12: 103r, Forster to MacKenzie, 14 April 1761. [Emphasis added]

41 Jesuit records from the 1600s indicate that the Mi'gmaq living in the area of Nipisquit (today Bathurst, NB) were part of a larger community ('Of What Occurred at Miskou,' Jesuit Relations 30:127; French censuses from the 1700s suggest that Listuguj/Baie des Chaleur formed a cohesive political unit, in the same way that many individual family groups who lived along the Miramichi Watershed constituted a single political body. (PRO, CO 217/54:222r.)

42 1688: 'Census of Richard Denys of the residents of Percée, Restigouche, Nepisiguit, and Miramichi,' in Collections of the New Brunswick Historical Society no. 7 (1907) p.34; 1735: AN , AC C11D/9:76r, 'Recensement fait des sauvages portant les armes en 1735.' This data is reproduced in AN, AC G1466, doc; 1760: 'Quantité des personnes dependants du poste,' dec. 1760, in Arthur G. Doughty, ed. The Journal of Captain John Knox Volume III - Appendix. (Toronto: The Champlain Society 1916) p.394; 1764: PRO, CO 42/1:365r, 'État des sauvages de la Rivière St. Jean,' enclosed in James Murray to Board of Trade, 27 June, 1764; 1765: Rapport de l'archiviste de la province de Québec pour 1936-1937. (Quebec 1937) p.116

43 Upton, L.F.S. Micmacs and Colonist: Indian-White Relations in the Maritimes, 1713-1867. (Vancouver: University of British Columbia Press, 1917) p. 71

44 Jonathan Allan's Report to Council, 21 November 1776 in Frederic Kidder. Military Operations in Eastern Maine and Nova Scotia during the Revolution. (Albany: 1867) p. 170

45 Williams, Robert A, Jr. Linking Arms Together. (New York: Oxford University Press, 1997) p.71. Williams argues that "Kinship terms were used in treaty making for a variety of purposes. Besides determining many of the minor protocols for council diplomacy, kinship terms were used to define the expected forms of behavior among treaty partners. In this sense, these terms could assume legal significance."

46 The following account is based on 'A Conference held at Watertown, in the Colony of Massachusetts Bay, 10 July 1776 in Peter Force, ed., American Archives. Fifth Series, Vol. 1 (Washington: 1848) pp.838-41; Stephen Smith to Massachusetts Council, 22 June 1776 in Frederic Kidder, ed., Military Operations in Eastern Maine during the Revolution. (Albany: 1867) p. 60

47 Mi'gmaq chiefs to Massachusetts Council, 19 September 1776. Ibid. pp. 57-8

48 Mi'gmaq chiefs to Massachusetts Council, 19 September 1776. Ibid. pp.57-8

49 Jonathan Allan's Report to the Massachusetts Council, 21 November 1776. Ibid. p.175

50 Clarke, Ernest. The Siege of Fort Cumberland, 1776. (Montreal and Kingston: 1995) pp. 82-3

51 Upton, L.F.S. Micmacs and Colonist: Indian-White Relations in the Maritimes, 1713-1867. (Vancouver: University of British Columbia Press, 1917)

52 Ibid.pp. 71-72.

53 CO 217/53:25r, Lord Germain to Lt.-Gen. Arbuthnott, 5 March 1777.

54 Hubner, Brian. An Administered People: A Contextual Approach to the Study of Bureaucracy, Record-Keeping and Records in the Canada Department of Indian Affairs, 1755-1950. Masters Thesis. Department of History, University of Manitoba, 2000.

55 Upton, L.F.S. Micmacs and Colonist: Indian-White Relations in the Maritimes, 1713-1867. (Vancouver: University of British Columbia Press, 1917) pp. 62-63

56 PRO, CO 217/22:222r, Michael Francklin to Major General Gage, 18 May 1768; CO 217/44:90r-91v, Francklin to the Board of Trade, 13 September 1766.

57 Upton, L.F.S. Micmacs and Colonist: Indian-White Relations in the Maritimes, 1713-1867. (Vancouver: University of British Columbia Press, 1917) pp. 76-77

58 PRO, CO 217/54:71r, Francklin to Germain, 6 June 1778; CO 217/54: 114r, Hughes to Germain, 29 August 1778.

59 PRO, CO 217/54:46r, Carleton to Arbuthnott, 23 February 1778; NSARM, RG 1/45: document # 51, Arbuthnott to Germain, 8 April 1778.

60 NSARM, OS # 514, 'At a Grand Meeting of the Indians at Menaguashe, 24 September 1778' and in Collections of the New Brunswick Historical Society no. 1 (1894) p. 315

61 Headquarter Papers of the British Army in America, vol. 14, 'Copy of the Oath Taken by about one hundred Principal Indians. Another copy is in NSRM, RG 1/368: document # 48, Sir Guy Carleton/Dorchester Papers.

62 NSARM, OS # 514, 'At a Grand Meeting of the Indians at Menaguashe in the Harbour of the River St. John near Fort Howe on Thursday, the 24th of September 1778.' This is reproduced with commentary in Collections of the New Brunswick Historical Society. nos. 1-3 (1894) pp.314-19

- 63 Williams, Robert A, Jr. Linking Arms Together. (New York: Oxford University Press, 1997) p. 52
- 64 Williams, Robert A, Jr. Linking Arms Together. (New York: Oxford University Press, 1997) p.52. Williams writes, "The wampum belts and strings that were exchanged at treaty conferences were made of beads of one color, typically "black" (actually dark purple) or white or a combination of both colors strung together in graphic patterns."
- 65 Leavitt, Robert and David A. Francis. Wapapi Akonutomakonol: The Wampum Records. (Fredericton: University of New Brunswick, 1990) p.26
- 66 PRO, CO 217/54: 145r, Minutes of the Nova Scotia Council, 6 November 1778.
- 67 See the amount paid to Charles Nocout, Michael and Paul Neptan in 'Expenses Connected with the Treaty with the Indians,' Collections of the New Brunswick Historical Society. (1894) p. 319
- 68 Some suggestion of how the Davidson/Cort fishery interfered with Mi'gmaq access to salmon is suggested by Benjamin Martson's 1785's letter: see Martson to Odell, 4 August 1785 in Ganong, 'Foundations of Early Settlement,' pp. 335-6.
- 69 'The Memorial of William Davidson 1785,' in William F. Ganong, ed., 'The Foundations of Modern Settlement in Miramichi,' Collections of the New Brunswick Historical Society. no. 9 (1914), 309-10, 316-18.
- 70 Cooney, Robert. A Compendious History of the Northern Part of the Province of New Brunswick and of the District of Gaspé in Lower Canada. (Halifax: J.Howe, 1832) p.43
- 71 BM, Haldimand Papers, 21,779: 37r, Cort to Haldimand, 4 July 1779
- 72 BM, Haldimand Papers, 21779:39r, 'Proceedings with the Indians of Miramichi.' [Why Cort, located in the Miramichi, appealed to the Governor-General of Quebec as opposed to Governor Hughes of Nova Scotia, or even Superintendent of Indian Affairs Francklin (particularly considering that Cort was the local Indian agent) is a matter of some interest. One can speculate that this related to the fact that Haldimand, appointed as Governor General of Quebec by Lord Germain in 1778 and having the formidable task of defending a border that ran from the Atlantic Ocean into the Great Lakes, would have been able to deploy military re-enforcements far more easily than the Governor of the colony Nova Scotia, which by that time, had largely lost its military presence. The fact that an individual in the colony of Nova Scotia was appealing to the Governor of Quebec for assistance did not appear out of the ordinary. After all, Haldimand was an agent of the British Crown just as much as Governor Hughes.]
- 73 The following account comes from BM, Haldimand Papers, 21779, 'Proceedings with the Indians of Miramichi.' Also consult Robert Cooney. A Compendious History of the Northern Part of New Brunswick and of the District of Gaspé in Lower Canada. (Halifax: J.Howe, 1832) pp.43-5
- 74 See: B.M.Haldimand Papers 21,779, Report of Indian Meetings, Treaties, etc. 1778 - 1784.
- 75 BM, Haldimand Papers, BM 21800:23rv, Haldimand to Hughes, 30 August 1779.
- 76 NSARM, RG 1/45:document # 78, Francklin to Germain, 26 September 1779; also in PRO, CO 217/54:219r-220r.
- 77 BM, Haldimand Papers, 21809: 88r, Francklin to Haldimand, 19 October 1779.
- 78 Here the reference is to Pokemouche, Miramichi, Richibucto, and Shediac who were mentioned previously.
- 79 [1990] 1 S.C.R. 1025.
- 80 (1964), 50 D.L.R. (2d) 613.
- 81 (1985), 23 C.C.C. (3d) 238.
- 82 [1982] 4 C.N.L.R. 132 (N.B. Prov. Ct.) at para. 129.
- 83 See H. Jenkyns, British Rule and Jurisdiction Beyond the Sea, BilioBazaar, LLC, 2008, at p. 22-24.
- 84 See R. v. Padjena and Quesawa, (1930) (unreported Ontario Division Court, McKay J., 10 April 1930).