

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

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C A N A D A

PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

DOSSIER R-4066-2018

EN RÉVISION DU  
DOSSIER R-4045-2018

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RÉGIE DE L'ÉNERGIE

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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

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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

Demanderesses en révision  
Intervenantes en première instance

-et-

HYDRO-QUÉBEC

En sa qualité de Distributeur

Mise-en-cause  
Demanderesse en première instance

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**PIÈCE B-0006**  
**SARAH ISABEL WALLACE,**  
**PEACE AND FRIENDSHIP TREATIES**  
**MAY 30, 2018**

[HTTPS://WWW.THECANADIANENCYCLOPEDIA.CA/EN/ARTICLE/PEACE-AND-FRIENDSHIP-TREATIES](https://www.thecanadianencyclopedia.ca/en/article/peace-and-friendship-treaties)

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

**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**

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## Peace and Friendship Treaties

Article by Sarah Isabel Wallace

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Between 1725 and 1779, Britain signed a series of treaties with various Mi'kmaq, Wolastoqiyik (Maliseet), Abenaki, Penobscot and Passamaquoddy peoples living in parts of what are now the Maritimes and Gaspé region in Canada and the northeastern United States. Commonly known as the Peace and Friendship Treaties, these agreements were chiefly designed to prevent war between enemies and to facilitate trade. While these treaties contained no monetary or land transfer provisions, they guaranteed hunting, fishing and land-use rights for the descendants of the Indigenous signatories. The Peace and Friendship Treaties remain in effect today.

Peace and Friendship Treaties.  
(courtesy Victor Temprano/Native-Land.ca)

### Historical Context

The Indigenous nations that have inhabited most of North America's northern Atlantic region include the Mi'kmaq, Wolastoqiyik, Passamaquoddy, Abenaki and Penobscot. These Eastern-Algonquian speakers were loosely united in the 18th-century political alliance known as the Wabanaki Confederacy. When Europeans arrived, the inhabitants of the region — an area that includes the current-day provinces of Nova Scotia, Prince Edward Island and New Brunswick, as well as Quebec's Gaspé region and some of the state of Maine — became involved in colonial wars between the French and British.

The French readily established alliances with Indigenous peoples in the area. After France claimed Acadia in 1604 and established a settlement at Port-Royal in 1605, French-Indigenous relations emphasized peace and collaboration in trade. Indigenous nations in Acadia allied politically with France in the 17th century, and the Wabanaki Confederacy fought with France against English colonial forces in the First Abenaki War (1675–77), King William's War (1688–97) and Queen Anne's War (which was the North American part of the War of the Spanish Succession, 1701–13).

While the 1713 Treaty of Utrecht that ended Queen Anne's War ceded most of Acadia to Britain, the Maine and New Brunswick borderlands were never clearly defined and armed conflict erupted again in 1722. A pattern of peace and conflict between Wabanaki nations and Britain continued until the Conquest in 1760 ended France's military influence in the region. (See *also* Treaties with Indigenous Peoples in Canada.)

### Treaties of 1725 and 1726

The 1725 treaty officially ended Dummer's War (1722–25) — a series of conflicts between the British and Wabanaki Confederacy over the borderlines between Acadia and New England. By the summer of 1725, both sides wanted to end the escalating violence. Acting with British approval, a Penobscot man named Sauguaaram (or Saccamakten) initiated armistice talks among his people, and in December 1725, the Penobscot and some other allied Indigenous bands in the northeastern United States signed what became known as the Treaty of Boston (or Dummer's Treaty).

One year later, the Mi'kmaq and Wolastoqiyik in Nova Scotia and New Brunswick (as well as the Abenaki and Passamaquoddy living in Massachusetts and New Hampshire) signed essentially the same agreement, sometimes referred to as Mascarene's Treaty (named for military officer Paul Mascarene, who became the acting governor of Nova Scotia in 1740). By signing the treaty, Indigenous peoples agreed to cease hostilities against Britain; in exchange, the British promised not to interfere with Indigenous hunting, fishing and farming.

While the Treaties of 1725 and 1726 were not the first peace agreements signed by the Crown and eastern Indigenous nations (for example, the Abenaki had signed a peace treaty with Massachusetts in 1678 that was renewed in 1686, 1693, 1689, 1713 and 1714), the 1725–6 Treaties now included the Mi'kmaq, who had not previously signed a peace agreement with Britain.

### **Treaty of 1749**

Peace was short-lived, as the Mi'kmaq and Wolastoqiyik allied with France against Britain during King George's War (the North American part of the War of the Austrian Succession, 1744–48). After that conflict ended, Nova Scotia's Governor Edward Cornwallis, hoping to secure control over lands west of the Missaguash River, and to reconfirm loyalty to the Crown, invited the two Indigenous nations to sign a new treaty. However, most Mi'kmaq leaders refused to attend the 1749 peace talks in protest of the governor's founding of Halifax that year. Moreover, increasing British military presence and settlement in the region threatened traditional Mi'kmaq villages, territories and fishing and hunting grounds. Only the Chignecto Mi'kmaq joined the Wolastoqiyik in signing the treaty at Halifax on 15 August. This agreement renewed the Boston Treaty of 1725 without adding new terms.

### **Treaty of 1752**

Governor Edward Cornwallis punished the rest of the Mi'kmaq for refusing to engage in treaty making by posting a reward of ten guineas for any Mi'kmaw captured or scalped in the region (this reward increased to 50 guineas in June 1750). Other historical accounts suggest that Cornwallis called for the capture and death of the Mi'kmaq after they had sent him a letter in late September 1749 that read, "the place where you are...where you are building a fortification...the place of which you want to make yourself absolute master, this place belongs to me. Me, the Indian..." A third theory maintains that Cornwallis sought revenge on the Mi'kmaq after some warriors seized a ship at Canso in September 1749.

Regardless of his reason, Cornwallis offered a bounty on Mi'kmaq heads. Anglo-Mi'kmaq hostilities during this time initiated the first phase of the Anglo-Micmac War (1749–60), in which Mi'kmaq fighters, supported by Acadian militiamen, unsuccessfully attempted to expel British colonists from traditional Wabanaki homelands. **Fighting ceased temporarily in 1752 with the signing of a treaty at Halifax on 22 November by Jean-Baptiste Cope, chief of the Shubenacadie**

(Sipekne'katik) Mi'kmaq in Nova Scotia, and Peregrine Hopson, the province's governor. It is sometimes referred to as the Halifax Treaty. In 2002, the Sipekne'katik First Nation erected a monument in honour of Cope and the signing of the 1752 treaty.

Contemporary scholars debate whether Cope signed on behalf of all Mi'kmaq, or just for his own band, but in either case, financial considerations likely motivated Cope's signing of the treaty. The ensuing peace agreement included the British pledge to establish "truck houses" (trading posts) for the use of the Indigenous peoples involved in the treaty. This would have allowed Britain to challenge French trading in the region and given the Mi'kmaq greater access to finished European goods. However, no truck houses were built in accordance with this treaty.

### Treaties of 1760 and 1761

The Anglo-Micmac War resumed when members of the Wabanaki Confederacy sided with France against Britain in the Seven Years War (1756–63). France had lost Quebec and other key holdings to the British by 1760, leading the Wabanaki to make peace treaties with the British.

The Wolastoqiyik and Passamaquoddy signed a treaty on 22 February 1760, agreeing to uphold the provisions of the Boston Treaty of 1725 and to stop trading with enemies of the Crown. In exchange, Britain promised to establish a truck house at Fort Frederick, New Brunswick. On 10 March, the La Have, Sipekne'katik and Richibuctou Mi'kmaq also signed the 1760 treaty.

The Treaty of 1761 was signed on 25 June by the Miramichi, Shediac, Pokemouche and Cape Breton Mi'kmaq in a "Burying the Hatchet" ceremony in Halifax. The Chignecto and Pictou Mi'kmaq signed onto the 1761 treaty on 12 October.

Much like the previous agreements, the 1760–61 treaties guaranteed Mi'kmaq, Wolastoqiyik and Passamaquoddy peoples the right to hunt, fish, farm land and earn a reasonable living without British interference. In 1762, Belcher's Proclamation (named for Jonathan Belcher, Nova Scotia's governor) confirmed Britain's intention to protect the land rights of the Mi'kmaq. (*See also* Rights of Indigenous Peoples in Canada.)

Celebrated annually on 1 October, Nova Scotia's Treaty Day commemorates the signing of the 1760–61 Peace and Friendship Treaties. The first of October is a significant date to the Mi'kmaq especially, because this was when they were to receive a gift from the Government of Nova Scotia and to renew their relationship with the Crown.

### Treaties of 1778 and 1779

With the start of the American Revolution in 1775, the British sought to confirm bonds of peace and friendship with Indigenous allies in Eastern Canada. (*See also* American Revolution — Invasion of Canada.) On 24 September 1778, Wolastoqiyik delegates from the St. John River area and Mi'kmaq representatives from Richibuctou, Miramichi and Chignecto signed an agreement promising not to assist the Americans in the revolution and to follow their "hunting and fishing in a peaceable and quiet manner."

The following year, Mi'kmaq people from Cape Tormentine to Chaleur Bay signed a similar peace agreement with the British. As confirmed by The Court of Appeal of New Brunswick in *R. v. Paul*,

1980, the 1779 Treaty guaranteed fishing and hunting rights: “The said Indians and their Constituents, shall remain in the Districts before mentioned, quiet and free from any molestation of any of His Majesty's Troops, or other his good Subjects in their Hunting and Fishing.”

### Post-1780 Period

With the coming of the Loyalists in the 1780s, the nation-to-nation relationship that once existed between the Crown and First Nations was altered. Settler governments were less inclined to honour the terms of the Peace and Friendship Treaties. Loyalist migrations and the provincial government's creation of reserves in the 19th century pushed Indigenous peoples onto lots of land that were much smaller than their traditional territories. Despite their perceived reduced power in the eyes of the settler-colonists, the Mi'kmaq and Wolastoqiyik peoples never forgot about the Peace and Friendship Treaties and have used them to defend their rights to hunting, fishing and land use.

### The Treaties in Select Case Law

Beginning in the 20th century, various descendants of the Indigenous signatories of the Peace and Friendship Treaties have taken the federal government to court in an attempt to recognize and protect their treaty rights. The following section provides examples of key cases in Canadian law that involve disputes over the terms of the Peace and Friendship Treaties.

#### The Sylliboy Case, 1927

In 1927, Gabriel Sylliboy, grand chief of the Mi'kmaq Grand Council (1918–64) was charged with out-of-season hunting. In his case, *R. v. Sylliboy*, he argued that the Treaty of 1752 protected his right to hunt on the territory in question. According to Mi'kmaq law professor Naiomi Metallic, this was the first time treaty rights were used as a defence in a court of law. Sylliboy was unable to convince the court of his treaty rights and was consequently convicted of his charges. In 2017, nearly 90 years after the ruling (and well after Sylliboy died in 1964) the Government of Nova Scotia pardoned Sylliboy of his convictions in 2017.

#### The Simon Case, 1985

In 1980, James Matthew Simon, a member of the Sipekne'katik (Shubenacadie) First Nation (Mi'kmaq) in Nova Scotia, was charged with violating provincial hunting regulations. Much like Sylliboy, Simon argued that the Treaty of 1752 gave him the right to hunt and fish freely in the area. The Province of Nova Scotia disagreed, arguing among other reasons that subsequent conflicts between the British and the Mi'kmaq terminated these treaty rights.

The case of *Simon v. The Queen* went to the Supreme Court of Canada in 1985. The judges recognized Mi'kmaq rights to hunt for food and ruled that treaty rights had not been extinguished. Simon was subsequently acquitted of the charges against him. This was the first time the courts had affirmed the rights of the Mi'kmaq people as set out in the Treaty of 1752.

Treaty Day in Nova Scotia was held for the first time in 1986 — the year after the *Simon* case — on 1 October, the day the Treaty of 1752 designated for renewing friendship between the Mi'kmaq and the Crown.

#### The Marshall Case, 1993

In August 1993, Donald Marshall Jr., a member of the Membertou First Nation (Mi'kmaq), was arrested and charged for fishing violations in Nova Scotia. Marshall argued that the treaties of 1760 and 1761 enshrined his right to catch and sell fish. He took his case — *R. v. Marshall* — to the Supreme Court of Canada. In September 1999, the court ruled that the hunting and fishing rights guaranteed to the Indigenous signatories in the treaty had never been extinguished, and therefore, the modern-day descendants of these peoples in the Maritimes and in Quebec are not subject to government regulations governing hunting, fishing or land use.

This ruling angered members of the West Nova Fishermen's Coalition and other non-Indigenous people subject to strict commercial fishing limits in these areas. Two months later, the court incited some Indigenous opposition by clarifying that these rights could be curtailed by future government regulations, if they were deemed environmentally or socially necessary, did not pertain to mining, logging or the exploitation of offshore gas deposits, and were intended to allow for community or individual subsistence, not large-scale profit. Despite these restrictions, the Supreme Court's ruling in *R. v. Marshall* generally resulted in the constitutional protection of Mi'kmaq, Wolastoqiyik and Passamaquoddy hunting, fishing and gathering rights in Nova Scotia, Prince Edward Island, New Brunswick and Quebec.

### Further Reading

- Leslie F. S. Upton, *Micmacs and Colonists: Indian-White Relations in the Maritime Provinces, 1713–1867* (1979).
- William C. Wicken, *Mi'kmaq Treaties on Trial: History, Land and Donald Marshall Junior* (2002).
- Andrew Nurse, "History, Law and the Mi'kmaq of Atlantic Canada," *Acadiensis* vol. 33, no. 2 (2004).
- James Rodger Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (2009).
- William C. Wicken, *The Colonization of Mi'kmaw Memory and History, 1794–1928: The King v. Gabriel Sylliboy* (2012).
- Marie Battiste, ed., *Living Treaties: Narrating Mi'kmaw Treaty Relations* (2016).

### External Links

- **GOVERNMENT OF CANADA** Learn more about the Peace and Friendship Treaties and how they compare to other treaties in Canadian history.
- **NOVA SCOTIA ARCHIVES** This site provides a brief history of the Peace and Friendship Treaties as well as transcripts and original scans of many of the historic agreements.
- **CTV NEWS** Aly Thomson reports, "Mi'kmaq leader gets pardon, apology from NS: 'He was the first to stand up for us.'"

- **ST MARY'S FIRST NATION** Learn more about the Peace and Friendship Treaties from St. Mary's First Nation in New Brunswick.
  - **GOVERNMENT OF CANADA** Learn more about treaties between the Crown and Indigenous peoples in Eastern Canada and the northeastern United States.
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