

Revitalizing Cree Legal Traditions:  
Cumberland House and Pelican Narrows

by

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## **ABSTRACT**

This thesis examines original evidence of Cree legal traditions by carefully reconstructing the Cumberland House and Pelican Narrows Saskatchewan evidence from 1774 to present day.

Cree peoples in the area had a long history prior to contact with Europeans. At time of contact Indigenous people were in a position of power. They knew how to flourish in the prairies and taught the newcomers how to survive. This thesis explores questions including when does the loss of traditional law begin in the culture by examining the original Hudson's Bay Company Post Journals that reveal evidence of pre-contact Cree laws and culture. There is also evidence in the HBC records of Cree legal traditions that survived and continued to be practiced.

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## **CHAPTER 1 INTRODUCTION**

It is a bitterly cold Winter day as I contemplate the experiences of my Cree ancestors. I huddle in my down coat as I rush toward my cold car. My thoughts are on our Cree legal traditions and the experiences our people have had, the sweeping changes that have been both welcomed by and forced upon us. It is minus forty degrees Celsius today. The wind howls across the prairie landscape. Our people have lived here since time immemorial.

Imagine what it was like on a day like today. A small family group would be on their Winter route, hunting and trapping in the woods. It would be necessary to obtain drinking water from the snow. Looking after basic bodily functions would be a challenge. Imagine looking after the needs of an infant or small child without the modern conveniences of central heating, running water and indoor plumbing. The harsh conditions would increase infant and maternal mortality rates. A young Cree woman could be pregnant through most of her reproductive lifespan by necessity, in order to ensure continuation of our people. And yet, we thrived. For millennia we lived in this often harsh physical environment.

The Hudson's Bay Company Charter was granted on 2 May 1670 by King Charles II (1630-1685) to his cousin Prince Rupert (1619-1682) and associates - "The Governor and Company of Adventurers of England trading into Hudson's Bay". This created a body corporate granted the sole right and control of trade

and commerce in “Rupert’s Land”.<sup>1</sup> Rupert’s Land was comprised of the vast drainage basin of Hudson’s Bay: an area of almost 3.9 million square kilometers of northern and western Canada. King Charles believed that the land was his to give because no other Christian monarch had claimed it.<sup>2</sup> There was no notice of Indigenous inhabitants or competing rights of occupiers, only an asserted claim with no royal agent even on the ground to plant a flag.

Almost two centuries later, the *Rupert’s Land Act 1868*<sup>3</sup> authorized the British Crown to accept surrender of the lands controlled by the HBC under its letters patent back to the Crown; and in 1869 the *Deed of Surrender* executed this HBC transfer. By Order-in-Council dated 23 June 1870, the British government admitted the territory to Canada, under s. 146 of the *Constitution Act 1867*, effective 15 July 1870.

The Government of Canada then paid the Hudson's Bay Company for return of the lands, on terms set out in its Order-in-Council. HBC received \$1.5 million and retained 5% (approximately 7 million acres) of the best farmland in the region, as well as its most successful trading posts.

Note how a Corporation was granted control over a land by a King simply because that King asserted his entitlement to do so, because no one else of his European tribal and religious background had claimed the land. Then that

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<sup>1</sup> Government of Manitoba, *Hudson’s Bay Company History*, online: [http://www.gov.mb.ca/chc/archives/hbca/about/hbc\\_history.html](http://www.gov.mb.ca/chc/archives/hbca/about/hbc_history.html).

<sup>2</sup> *Ibid.*

<sup>3</sup> *Rupert's Land Act*, 1868, 31-32 Vict., c. 105 (U.K.).



Corporation sold the land back to Canada, keeping choice bits for itself while ignoring the visible fact that the land was inhabited.

Prime Minister John A. Macdonald:

“No explanation it appears has been made of the arrangement by which the country is to be handed over.” Macdonald told political ally George-Etienne Cartier. "All these poor people know is that Canada has bought the country from the Hudson's Bay Company and that they are handed over like a flock of sheep to us.”<sup>4</sup>

You only need to pick up a newspaper or browse through any internet news site today to see what a mess the Canadian government has made of Aboriginal and Euro-Canadian relations. The federal government has failed in its attempts at reconciliation because it refuses understand the whole open-ended, consultative culture that existed long before the Euro-Canadians came to this land.

The Hudson's Bay Company documents will show that this was a legal culture that had rules and principles, a legal culture rooted in practiced possession, bargain, contract, negotiating and promise, long before Euro-Canadians arrived.

The purpose of this thesis is to evaluate evidence of Cree legal traditions through HBC archives, the only written documents we have from the period beginning in 1774 at Cumberland House, SK and later at Pelican Narrows, SK.

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<sup>4</sup> Quebec Provincial Archives, Langevin Papers, Box 18, Macdonald to Cartier, Nov. 27. 1869, (private) Part of this letter is also Quoted by Donald Creighton, John A. Macdonald, the old chieftain, (Toronto, 1955), pp. 46-7.

This thesis will tease out threads of truth in order to begin to reconstruct Cree laws as practiced in my home communities. I see the importance of this in light of the protracted and intentional efforts to strip us of our cultural and lawful heritage.

## **CHAPTER 2**

### **HISTORY OF CUMBERLAND HOUSE AND PELICAN NARROWS**

#### **CUMBERLAND HOUSE**

Cumberland House is located in northeastern Saskatchewan on the Saskatchewan River, approximately 90 kilometers from The Pas, MB. It is widely regarded as the oldest permanent settlement in Saskatchewan, home to mostly Cree and Métis peoples. It is known in Cree as *Waskahikanihk*, or “at the house”. Named for the first governor of the Hudson’s Bay Company: Prince Rupert, who was Duke of Cumberland (and cousin to the King who gave “Rupert’s Land” to the Hudson’s Bay Company), also Count Palatine of Rhine and Duke of Bavaria. Our Cree people have lived in the area from time immemorial. In 1774, Samuel Hearne established the first inland Hudson’s Bay Company Post at Cumberland House. The journals of Hearne offer valuable insights. They allow evaluation of the Aboriginal peoples without the influence of European culture and religion. Thus began a period of immense change for the local Indigenous inhabitants.

Samuel Hearne and Philip Turnor were among the first Europeans to arrive in the Cumberland House area. In 1773 there were a few traders from Montreal, Quebec, doing business in furs in Saskatchewan. The Hudson’s Bay Company sent Hearne inland from York Factory to build a trading post at Pasquia (The Pas) or another favourable location on the Saskatchewan River.

Matthew Cocking was sent to help Hearne,<sup>5</sup> who founded Cumberland House because he thought that the site was in the centre of Indian hunting grounds. Hearne later found that Cumberland House was central to the routes of other traders, mainly from Montreal. Like many newcomers to Rupert's Land, Hearne was poorly prepared to survive and flourish in the wilderness. He experienced significant difficulty in building and learning how to use canoes. Once that issue was resolved, "[t]hen the struggle was to make the Indians friendly to the Company and its employees at any cost;

- a. to persuade them that they needed the goods that could be procured only from the Company;
- b. to induce them to trap fur-bearing animals the skins of which they could trade for these goods;
- c. and afterwards, as a mixture of gratitude and self-interest, to bring these skins to the trading post of the Company, rather than to the Montreal traders".<sup>6</sup>

At this early point in time, the Cree were in a position of power relative to officers of the Hudson's Bay Company:

On the [Saskatchewan] river the employees of the Hudson's Bay Company and the independent traders from Montreal met in keen, but usually friendly, competition. The Canadian competition, however, cut seriously into the profits of the Hudson's Bay Company, and the officers of the Company in the country wrote to the Governor and Committee of the

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<sup>5</sup> Journals of Samuel Hearne and Philip Turnor" Edited with introduction and notes by J. B. Tyrrell, M.A., LL.D. (Toronto, The Champlain Society, 1934), Intro at 25; original manuscript at the Hudson's Bay Company Archives, Manitoba, Manitoba Archives, (Document Reference Number FC/15/C44/v.21).

<sup>6</sup> *Ibid.*, Intro at 26-27.

Company in London telling them of the efforts that they were making to retain the trade, and of how they were sending their men throughout that vast unknown country to follow the Indians to their hunting and tenting grounds, and to secure their furs before they took them to the Canadian traders.<sup>7</sup>

Cumberland House became one of the most important fur trading posts in Rupert's Land, in the heart of canoe routes that linked east to west. From 1778 to 1804 it was the administrative centre for western posts of the Company. It served as a key transportation hub during the fur trade era, as well as a major supply depot.

In 1821 the Northwest Company Post and the Hudson's Bay Company Post merged. There were approximately 60 people living at Cumberland House at the time. In 1849 an Anglican mission was established at Cumberland House. Henry Budd was Cree and he was the minister. He was the first Aboriginal ordained minister.

The introduction of steamboats on the river in 1874 was meaningful for the community. For the next forty-nine years, Cumberland House would become an important centre for steamboat traffic on the Saskatchewan River. On 24 September 1875 the Cumberland House First Nation signed an adhesion to Treaty 5 at Norway House, Manitoba.<sup>8</sup> As time progressed, fewer people were

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<sup>7</sup> *Ibid.*, at 60.

<sup>8</sup> Prince Albert Grand Council, *Cumberland House Cree Nation*, online: <http://www.pagc.sk.ca/pagc.asp?ID=2>.

living off the land. In the 1900s Cumberland House grew as people became more settled into the community.

The construction of the E. B. Campbell Dam in 1962 caused devastating changes to the environment and impacted the ability of the Cree and Métis to exercise meaningfully their Aboriginal and treaty rights. The first all-weather road to the village was built in 1966. Because the community was located on Pine Island, residents took a ferry during the summer months and drove over the ice in winter until a bridge to the mainland was built in 1996. Today the community suffers from significant unemployment and reliance on government social assistance programs. Some residents continue to exercise traditional Cree ways of practice and a movement has begun to revive our Cree culture, which had been almost decimated by more than 100 years of planned, deliberate government action designed to destroy it. Approximately 2000 people live in Cumberland House as of 2013.

## **PELICAN NARROWS**

Pelican Narrows is a village located in north eastern Saskatchewan. It is approximately 120 kilometers north of Creighton, Saskatchewan and Flin Flon, Manitoba. It has been home to my ancestors, the Rocky Cree, since at least 1730. In Cree we are called *Assin'skowitiniwak* which means "people of the

rocky area".<sup>9</sup> Pottery shards particular to the Rocky Cree have been found in the area that are over 1000 years old.<sup>10</sup>

The Cree name for Pelican Narrows is *Opawikoscikcan*. It means the "Narrows of Fear". The community is located at the narrows which join Pelican Lake and Miron Lake. These lakes lie between the Churchill and Sturgeon Weir River systems. Its location near these waterways made Pelican Narrows an attractive location to facilitate fur trading. These traditional lands of the First Nation span over 20,000 square miles.<sup>11</sup>

Trade with the Hudson's Bay Company began after 1680. Between the late 1700s and 1821, when the North West Company and the Hudson's Bay Company merged, both companies operated small trading posts in the area of Pelican Narrows. The Hudson's Bay Company established a permanent post there in 1874. It was a fifteen day canoe trip one way from Pelican Narrows to York Factory.

Prior to establishment of the fur trade, the Rocky Cree were not trappers. They lived a subsistence lifestyle, taking only what they needed and no more.<sup>12</sup>

In the mid-1800s, Roman Catholic missionaries arrived and established a permanent mission at Pelican Narrows (1878). Anglicans built a church in the community in 1911.

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<sup>9</sup> Peter Ballantyne Cree Nation, *History of Peter Ballantyne Cree Nation*, online: <http://www.peterballantyne.ca/history.html>.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

Peter Ballantyne Cree Nation was a signatory to Treaty 6. In an unusual fashion, in 1894 Peter Ballantyne signed onto an adhesion to Treaty 6, along with forty-one other members of his extended family at a lake near La Ronge, Saskatchewan. Ballantyne would later become the first chief of that First Nation. Slowly some members here and there would canoe to La Ronge to sign onto the Treaty. Eventually, in 1898, the Indian Agent from La Ronge travelled to Pelican Narrows where more than 100 people became treaty Indians.

The full text of Treaty Six can be found in Appendix One, but its crucial points are:

1. It was made 23 August 1898 and 28 August 1876 near Carlton and near Fort Pitt on 9 September 1876 and Battle River;
2. The parties were the federal government and Plain and Wood Cree tribes;
3. The Cree promised to “cede, release, surrender and yield up to... Canada... all their rights, titles and privileges, whatsoever, to the lands....”;
4. “To have and to hold....” by the government of Canada the land mass specified in treaty six, which equaled 121,000 square miles;
5. In return the Indians would receive:
  - a. Reserves to be determined by the Chief Superintendent (1 square mile of land per each family of 5);
  - b. \$12 to each Indian followed by \$5 annually to each Indian and \$1500 per annum for hunting and fishing supplies;
6. Schools;



7. No liquor;
8. Hunting and fishing rights;
9. Compensation for expropriation for public works;
10. Agricultural equipment;
11. Each Chief to receive \$25 per annum and two carts; and
12. Medicine chest.

This was a really bad time to be an Indian. Children were ripped from their families and sent to residential schools where the goal was to “kill the Indian in the child”.<sup>13</sup> The community was devastated.

The events of the relationship between First Nations and the newcomers were recorded and represented differently in the two cultures. They used different methods, different forms, and different contexts. As part of western methodology, there was an emphasis on written records, with detailed citation of original source material. “Nevertheless, the documentary records connected to treaty-making events strongly indicate that the written version of any treaty text is an incomplete and inadequate representation of the understandings and agreements made at treaty talks.”<sup>14</sup>

First Nations’ spiritual traditions contain the First Nations’ world-views, customs, and laws that are reflected in and are a fundamental component of the

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<sup>13</sup> Canadian Bar Association, *The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors*, online: <http://www.cba.org/CBA/Sections/pdf/residential.pdf>.

<sup>14</sup> Tough, Frank, J.R. Miller, and Arthur J. Ray, “Bounty and Benevolence: A Documentary History of Saskatchewan Treaties”, unpublished report for the Office of the Treaty Commissioner, Saskatoon, Saskatchewan, March 15, 1998, p. 400.

treaties and the treaty relationship.<sup>15</sup> Indigenous people have occupied their homelands since time immemorial. Indigenous nations are organized into different legal, political, economic and social units and live according to perceived natural laws given by the Creator.

Indigenous legal systems protect and honour the land.<sup>16</sup> It is fundamental to Indigenous legal systems. These systems were in place at the time the Crown representatives came to Indigenous Peoples' territories to make treaties. How could a land that was already occupied by peoples be “discovered”? The Crown assumed that it was sovereign over the Indigenous peoples even before the treaties were signed. The Crown claimed that it had the power to extend its laws to First Nations.<sup>17</sup>

According to the Elders, Indigenous rights were not granted by the British crown or Canadian Constitution; instead they were bestowed by the Creator and recognized by the making of treaties, mainly among Indigenous groups, before and after first European contact. Indigenous rights remain inherent. The inherent authority to govern could not be granted by any foreign government. The treaties were peace and friendship agreements, not land surrender agreements. These peace and friendship agreements provided for two parallel legal systems intended to co-exist, each party respecting the authority of the other. The Elders

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<sup>15</sup> Elder Alma Kytwayhat, Makwa Sahgaiehcan First Nation, interviewed by Federation of Saskatchewan Indian Nations on December 21, 1997, Saskatoon, Saskatchewan. Translated from Cree to English.

<sup>16</sup> Sharon H. Venne, "Treaties Made in Good Faith" in *Native and Settlers—Now and Then* (Edmonton: University of Alberta Press, 2007) at 2.

<sup>17</sup> Office of the Treaty Commissioner, *Treaty Implementation: Fulfilling the Covenant*, (OTC: Saskatoon, 2007) at 22.

understanding remains that Indigenous peoples continue their way of life with control over their way of life and the land.

The treaties were presented in written texts as a method of documenting the exchange of promises. This text, prepared by Canada, expressed Canada's understanding at the time of treaty-making. For First Nations, the oral history of the "spirit and intent" of treaties was a significant method of recording the treaty-making process. Treaty elders repeatedly submitted that the treaty text did not conform to what they knew by way of their oral histories. As Senator Allan Bird put it:

... when treaty first happened ... the Indian did not use any written word. But Alexander Morris brought papers, written documents to us. ... but for those of us that are Aboriginal, we don't depend on the written word much. We still depend on oral tradition.<sup>18</sup>

Elder Danny Musqua, a descendent of one of the Saulteaux leaders, spoke to the Exploratory Treaty Table on this issue:

Through the whole process there was never an understanding that they were going to surrender totally and give up totally the resources that were on those lands....Never at anytime did we understand...that we were giving up anything more that the depth of a plow.<sup>19</sup>

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<sup>18</sup> Senator Allen Bird, Montreal Lake First Nation, Treaty Elders' Forum, La Ronge, Saskatchewan, November 27, 1998.

<sup>19</sup> Elder Danny Musqua, Keeseekoose First Nation, Treaty Elders' Forum, Nekaneet Recreation Centre, Saskatchewan, May 22-24, 1997.

From the perspective of Indigenous parties to Treaty 6, they were agreeing to share the land and its resources with the newcomers, whereas the government signatories believed that they were now “owners” of the land, upon which they would allow the Indigenous peoples to exercise certain rights.

An all-weather road to the community was built in 1967. It was (and still is) a dangerous winding gravel road with many blind turns. Nonetheless, it opened the door for additional services to be provided to residents.

More than a hundred years after it was established, the old Hudson’s Bay Company post became the Northern Store in 1987, which is still there today. For many years there was a band store located on the reserve. It was owned by the Anglican church until it burned down in 2007. Today Pelican Narrows is home to approximately 2500 people. Like me, they are members of the Peter Ballantyne Cree Nation. Peter Ballantyne Cree Nation is the second largest First Nation in Saskatchewan, with some 6700 members. Most of the land in Pelican Narrows has been designated as reserve land.

## CHAPTER 3

### EVIDENCE OF CREE LAW OF OBLIGATIONS AS FOUND IN HBC DOCUMENTS

To many contemporary Canadian citizens, the existence of traditional Indigenous laws and legal principles may seem surprising. How can we confirm any literal existence of Cree legal traditions, if oral history is considered to be second or third person hearsay evidence? And how can we know if Cree legal principles have any continuity into the twenty-first century?

The Hudson's Bay Company Post Journals from Cumberland House and Pelican Narrows, Saskatchewan, offer first-hand written evidence of the eighteenth and nineteenth centuries' existence and operation of Cree lawful governance.<sup>20</sup> These were fundamental rules for order by which communities functioned and thrived. Cree legal doctrines were informed by nature, based on relationships with faith in the Creator. Respect, community, honor and sharing were values deeply interwoven to form the fabric of Cree culture. Cree law also provided for consequences for those who went against natural law. Written documentation confirms the continued existence and operation of Cree legal principles into the twenty-first century.

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<sup>20</sup> Hudson's Bay Company Post Journals from Cumberland House Saskatchewan (1818 to 1819), Manitoba, Manitoba Archives, (Document Reference Number B.49/a/34, Microfilm reel number 1M40); Hudson's Bay Company Post Journals from Pelican Narrows Saskatchewan (1818 to 1819), Manitoba, Manitoba Archives, (Document Reference Number B.158/a/1, Microfilm reel number 1M116).

Onisinweuk:

*Onisinweuk* refers to the people who keep the law.<sup>21</sup> In contrast with the current Canadian judicial system, where it can be argued that only Canadian government judges are “keepers of the law”, Cree legal traditions have recognized the role of all community members as keepers of the law. The rights and responsibilities were viewed as collective rather than individual. Every member of the community was responsible to ensure that the legal traditions of the community continued to rule, much like every citizen of Canada is expected to lie by *Charter* rights and Freedoms.

Wahkohtowin:

*Wahkohtowin* was the over-arching principle fundamental to understanding Cree values and legal principles. It governed all relations. This stemmed from the view that the Creator has placed all beings on Mother Earth. Humans are related to each other. We are also related to our “brothers and sisters” who include all sentient beings which inhabit the earth. Included are all animals, reptiles, and birds. Humans are related to our “cousins”, the trees and grass, rocks and water because each has an essential soul by which the Creator gives life. All nature is related.<sup>22</sup> Government is also considered to be

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<sup>21</sup> John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press Incorporated, 2010) at 84, focusing on Cree law; for similar characteristics in Mikmag law, see James (Sakej) Youngblood Henderson, “First Nations Legal Inheritances in Canada: The Mikmag Model”, in DeLloyd J. Guth and W. Wesley Pue (eds.), *Canada's Legal Inheritances* (Winnipeg: Canadian Legal History Project, 2001), 1-31.

<sup>22</sup> Couture, J. E. (1996). The role of Native Elders: Emergent Issues. In D. A. Long & O. P. Dickason (Eds.) *Visions of the heart: Canadian Aboriginal Issues*. (Toronto: Harcourt Brace, 1996), pp. 45 - 56.

related to humans and therefore is subject to *wahkohtowin*. The natural world is used to demonstrate and validate the natural order decreed by this law of nature. The telling of stories and observations of nature inform people in the practice of *wahkohtowin*.

In the context of family law, *wahkohtowin* requires respectful non-interference within all relationships.<sup>23</sup> In Cree society children are not considered to be property of their parents. Rather, they are gifts on loan from the Creator. Accordingly, everyone in the community has an obligation to look after their well-being.<sup>24</sup> Parents are required to care for their children with loyalty and fidelity in order to nurture their growth. Cree children were rarely physically disciplined but were allowed plenty of freedom balanced with guidance from their parents.<sup>25</sup> Brothers and sisters (of the human variety) should live nearby each other and the atmosphere should be one of non-interference. All other human relatives including aunts, uncles, cousins and grandparents must be treated with respect and in a gentle manner.

#### *Miyo-wicehtowin*:

*Miyo-wicehtowin* is a legal principle based on the relationship of the Cree with the Creator.<sup>26</sup> It was a particularly important principle as it spoke directly to

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<sup>23</sup> Hart, M. A. "Critical reflections on an Aboriginal approach to helping," in M. Grey, J. Coates, & M. Yellow Bird (Eds.) *Indigenous Social Work around the World: Towards Culturally Relevant Education and Practice* (Burlington, VT: Ashgate Publishing Company, 2008), pp. 131-9.

<sup>24</sup> Anderson, K. "Our Human Relations," in *A recognition of being: Restructuring Native Womanhood* (Toronto: Second Story Press, 2000), pp.158-179.

<sup>25</sup> *Ibid.*

<sup>26</sup> Shalene Jobin, *Guiding Philosophy and Governance Model of Bent Arrow Traditional Healing Society* (M.A.I.G. thesis, University of Victoria, 2005) [unpublished] online:

“maintaining peace between people of different places and perspectives.”<sup>27</sup> In Cree *wiceht* means “to come alongside or to support.”<sup>28</sup> This principle operated in harmony with *wakhohtowin* to require Cree people and Cree nations to act in such a way as to facilitate positive relationships and good harmony in all relationships, including relationships with both organizations and individuals.

Cree legal principles did not operate in a vacuum, independent of each other. Rather, they flowed together much as streams may join to form a mighty river. The circle was an important symbol and expression of Cree legal principles.<sup>29</sup> First, the circle represented the life cycle. Humans, plants, and animals came from Mother Earth, became infants and then juveniles, progressed through maturity and declined to return ultimately to Mother Earth. Circles were used to bring together people in a manner that was respectful of individual autonomy and that facilitated collaboration and consensus. Some examples of how circles might be utilized included: (a) sharing circles to foster a sense of community and respectful acknowledgment, (b) sentencing circles to deal with individuals or groups who had failed to abide by Cree law, (c) healing circles for anyone who might be hurting, and (d) reconciliation circles to help people to process events and move on<sup>30</sup>.

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<<http://web.uvic.ca/igov/research/pdfs/Bent%20Arrow%20Governance-Final.pdf>> at 15.

<sup>27</sup> *Supra* note 22 at 85.

<sup>28</sup> *Ibid.*

<sup>29</sup> Chief Wayne Roan and Earle Waugh, *Nature's Laws* (Heritage Community Foundation, 2004), online: <[http://www.abheritage.ca/natureslaws/traditions/traditions\\_restitutional.html](http://www.abheritage.ca/natureslaws/traditions/traditions_restitutional.html)>.

<sup>30</sup> *Ibid.*



## CONSEQUENCES FOR FAILING TO ABIDE BY CREE LAW:

### Pastahowin:

In an exploration of evidence of Cree legal principles it is prudent to investigate consequences for failing to abide by Cree Law. *Pastahowin* is a Cree term used to describe a transgression of spiritual or natural law. It could be applied to individuals or groups. When *pastahowin* occurred Cree law sanctioned that negative consequences ensued.

### Ohcinewin:

*Ohcinewin* was a part of the negative consequences that flowed from a failure to abide by Cree law. An act against natural law was viewed as an act against the Creator and creation itself, thereby *pastahowin* warranted retribution.<sup>31</sup> Depending upon the severity of the offence, and in consultation with all those affected (remember the importance of community, respect, and collaboration in Cree legal principles), the community might administer justice with differing degrees of severity.<sup>32</sup> For example, *meskotehowin* was a punishment of redress. *Kakweskasowehk* was reproof. *Apehowin* was revenge. *Naskwawin* was reprisal. *Pasastehkakewin* was retributive justice. *Naskwastamasowin apo apehowin* was when vengeance was taken. *Pasihewin* was vindication. *Atameyimew* was blame. *Siskiskakewin* was

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<sup>31</sup> Robert Brighton, *Grateful Prey: Rock Cree Human-Animal Relations* (Berkeley: University of California Press, 1993) at 104.

<sup>32</sup> *Supra* note 30.

obligation. *Masinahikepayowin* was indebtedness, and *tipahikewin* was recompense.

An example of the process that might occur when natural law was acted against might include:

1. wait, observe and collect information about the incident;
2. consult with friends and neighbours when it is apparent that something is wrong, for example if a person has been physically aggressive with others;
3. help the person who is threatening or causing imminent harm;
4. if the person does not respond to help and becomes an imminent threat to individuals or the community, he or she can be removed so that he or she does not harm others;
5. help those who rely on that person by restoring what might be taken from them by the treatment of the offender; and,
6. invite both the community and the individual to participate in restoration.<sup>33</sup>

These concepts in *ohcinewin* came together with the Cree legal principles to form an Indigenous justice system that functioned to protect and strengthen the community while upholding the natural laws of respect, gentleness, consideration, and community.

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<sup>33</sup> *Supra* note 21 at 83.

*Kwayaskitotamowin:*

*Kwayaskitotamowin* is an essential concept that lends itself to the provision of guidance in living within Cree legal traditions. It simply means to do things in the right way. When individuals follow *kwayaskitotamowin* they treat all of creation in a noble way. People, animals and all of the natural world are to be treated with kindness and respect. Differing opinions are not regarded as something to be squashed, but rather differences are to be viewed with respectful non-interference. This is in direct opposition to western legal systems that emphasize an adversarial approach whereby differences become a competition with a “winner” and a “loser”. In Cree legal traditions, when *kwayskitotamowin* is not exercised, *ohcinewin* will be invoked to deal with the transgression and to restore the natural balance for all involved.

Colonization occurred in cycles over time. In the beginning, the newcomers highly depended upon their Indigenous hosts for direction and the survival skills they needed to live on the land. This dependence and learning often regressed into using alcohol to foster dependence, taking advantage by attempting to kill “the Indian”. Residential schools played a role that is only now moving toward reconciliation.<sup>34</sup>

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<sup>34</sup> *Truth and Reconciliation Commission*, online:  
<http://www.trc.ca/websites/trcinstitution/index.php?p=10>.

## THE EARLY YEARS 1774 - 1775 CUMBERLAND HOUSE, SK

In 1774 Samuel Hearne travelled inland from York Factory to establish the fort of Cumberland House on the Saskatchewan River.<sup>35</sup> Samuel Hearne's journals offer valuable insights into his experiences and encounters through his European lens of a newcomer to this land.

The Cree were at a significant advantage over such newcomers, who wanted furs but did not know how to survive on the land. The Cree were well established in their homeland and completely independent of colonial influence.

During much of the year, these Indians were not obliged to spend all their time in hunting for food and clothing, and consequently they had plenty of leisure in which to kill or trap more fur-bearing animals, if sufficient inducement were offered to pay for their extra exertion. The Europeans wanted furs, and in order to get them, were determined to gain access to this favoured country, where the climate was pleasant and invigorating, furs were plentiful, and food and friendship could be easily obtained.<sup>36</sup>

...

On the [Saskatchewan] river the employees of the Hudson's Bay Company and the independent traders from Montreal met in keen, but usually friendly, competition. The Canadian competition, however, cut seriously into the profits of the Hudson's Bay Company, and the officers of the Company in the country wrote to the Governor and Committee of the Company in London telling them of the efforts that they were making to retain the trade, and of how they were sending their men throughout that vast unknown country to follow the Indians to their hunting and

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<sup>35</sup> *Supra* note 5 at x.

<sup>36</sup> *Ibid*, preface, at xii.

tenting grounds, and to secure their furs before they took them to the Canadian traders.<sup>37</sup>

Hearne actively sought the approval and cooperation of the Cree for establishment of the fort at Cumberland House. On 27 June 1774 he wrote:

...set out early in the Morning, but by the time we had Paddl's about one Mile we met 4 Cannoes of Trading Indians, as on their way to the Fort with Furrs, &c.

I presented them with a little Tobacco which they seem'd thankfull for, and say'd they aprov'd of the intended inland settlement, as did those also whome we met on the 24<sup>th</sup> Instant.

Hearne demonstrated respect for Cree cultural traditions by giving a gift of tobacco. During his tenure at Cumberland House his relationships would be consistently marked by mutual respect and support.

There are numerous examples, in the early days of the spread of the fur trade west-ward, of Indians practicing the Cree legal traditions of *wakhotowin* and *miyo-wicehtowin* in their interactions with the newcomers.

Sunday 10 July 1774

This Branch of the Theiscatchiwan, by the Indians account Emptys itself into Port Nelson, but the Currant being so strong, and a scarce part for Provisions, the Indians seldom make it their Track to or from the Fort.<sup>38</sup>

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<sup>37</sup> *Ibid*, at 60.

<sup>38</sup> *Ibid*, at 102.

Wednesday 13 July 1774

It is the general opinion of all the Native in Company that that will be the best way to get goods up inland in large Lannoos, there being no obstructions except Carreying Places – but the Reason of their not Returning that way ware on account of the Ice being somewhat dangerous to Pass, it being not fallen from the Banks...sometimes large flakes Broke off and fell into the River not far from their Cannoes the danger of which deter'd them from Returning that way.<sup>39</sup>

These passages from Samuel Hearne's journals demonstrated respect for the knowledge and opinions of the Indians at this point in time.

Saturday 24 July 1774

Paddl'd about 30 Miles to the So and SBW through gray goose Lake and River, then came to 9 Tents of Indians amongst whome ware the wives and Families of those who accompanyd me from the Fort....<sup>40</sup>

This part is Call's Ne-me-o kip-a-hagon. As soon as our Tents war Pitchd and all things put to rights, I sent for all the Prinsaple Indians and presented each of them with a bit of Tobaco and acquainted them with the desine of my coming Inland. Part of which seem'd to approve thereof, and others seem'd to doubt of our Success, saying that the Pedlors by this time has to much influance, and that I ware to late in comeing. The Pedlars genorosity is much talk'd of, and are say'd to give away great quanies of goods for nothing, and as for Knives, Steels, Worms, Flints, awls, Needles & Paint, these Indians would Persuage me that they Never Trade but are given gratices to those who ask for them. Guns, Kettles, Powder, Shott, Cloth, Gartering &c they also tel me are much

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<sup>39</sup> *Ibid*, at 102.

<sup>40</sup> *Ibid*, at 104.

cheaper then at the Company's Standard.- I cannot pretend to say anything to the Contrary at Present, but shal hereafter Endeavour to make myself better acquainted with the trooth of this very Extraordinary account.<sup>41</sup>

The term "pedlors" referred to traders from Montreal, competitors with the Hudson's Bay Company. At various points these "pedlors" were also referred to as "Canadiens". This passage showed that there was competition between Montreal traders and HBC immediately upon Samuel Hearne's arriving to set up a trading post at Cumberland House. This competition to win the business of the Indians reinforced their positions of bargaining power early in the fur trade. The Hudson's Bay Company was obligated to meet the standards set by the Montreal traders if they wanted to secure the business and furs of the Indians. The Cree legal principle of *Wahkohtowin* was demonstrated by the approach of the Indians in not demanding that the HBC do so; rather they gently suggested it by the telling of stories of how generous the Montreal traders were and that their prices on goods were lower. The Indians were shrewd in their business dealings.

I must needs say that it gave me no little uneasiness to see so many fine fellows of Indians and their Families not only Cloath'd with the Canadiens goods finely ornamented, but ware also furnish'd with every other Necessary artical, and seem'd not to be in want of any thing. Not the least appearance of the Companys Trading goods among them, Except a few guns and Hatchetts, the latter of which the Canadiens brings but Few and sell them Dear....<sup>42</sup>

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<sup>41</sup> *Ibid*, at 105.

<sup>42</sup> *Ibid*. In general, see Arthur J. Ray, *Indians in the Fur Trade* (Toronto: University of Toronto Press, 1998, 2<sup>nd</sup> ed.).

The Indians were doing well in terms of material goods prior to the establishment of the HBC in the interior. There were few guns and “fine fellows of Indians” – showed respect, so the Indians were doing well.

Friday 5 August 1774

This Day we Pass'd by one of the Pedlors houses, and tho nobody is in it at Present it is where Lewis Primo and 17 others winter'd last Year and by the Indians account, as soon as the Ice Permitted them this Spring, they Embark'd with all their goods &c and Proceeded to the Northward to intercept the Arathapescow, or Atahpus-cow Indians in their way to Prince of Wales Fort – which by account they did with great success, so that few of that Valuable Tribe of Indians are gone Down to Churchill this Year. Primo is not master of the Gang, but being well acquainted with those Parts ware their chief Pilot and Trader. One Forbersher I am informed ware Master.<sup>43</sup>

The other traders were far ahead of the HBC in this area, to get the business of the Indians. According to the editor of the book, “We have here the definite statement that one at least of the Frobisher brothers, undoubtedly Joseph (see note on p. 120), wintered on Pine Island Lake during the winter of 1773-4, and that in the spring of 1774, led by Louis Primeau, they went northward doubtless to Frog Portage, to intercept the Athapuscow Indians going to Churchill”.<sup>44</sup>

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<sup>43</sup> *Ibid*, at 106.

<sup>44</sup> *Ibid*, at 107.



Monday 8 August, Tuesday 9 August, & Wednesday  
10 August 1774

did not move, being bad Rainey Weather and tho the men went ahunting each Day they did no kill any thing. Dureing the whole time we had nothing to Eat Except Berries, which when eaten in so large a quantity as to stop hunger are of such an astringent quality (Espessually to Strangers) that me and my 2 men ware much disorder'd by them, at the same time hunger oblig'd us to have recourse to a still greater quantity let the Consiquence Prove as it may<sup>45</sup>

Thursday 11 August 1774

Fine Pleasant Weather. being still in the same Destress for want of Provisions and No appearance of anything to be got here we Embark'd and dropt down the River, after Paddle-ing about 25ms we met with 10 Cannoes of Basquia Indians so Put up for the Night, they having Plenty of Dry Meat &c I Traded some for Present use.<sup>46</sup>

Friday 12 August and Saturday 13 August 1774

did not move. Traded some Dry'd Meat and Moose skins to Make a Tent for Me and My men to live in till we can build a house<sup>47</sup>

Taken together, these three entries demonstrated how poorly prepared the newcomers were for life in the interior and the crucial role of the Indians for their survival. The *wakhohtowin* and *miyo-wicehtowin*, which required Cree people and Cree nations to act in a generous way, facilitated positive relationships and good harmony.

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<sup>45</sup> *Ibid.*, at 108.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

Friday 19 August 1774

I Expended the whole day in Examining the Parts near the Pine Hommock but did not Determine to build there till I had Consulted the Indian Chiefs, whether it would be as Comodious for Drawing the Natives to Trad as it seem'd to be for some other Conveniences.<sup>48</sup>

Referring to “Indian Chiefs” – had some implications for European power structures vs. Indian power structures. Was a hierarchical system already in place among the Cree, or was it a product post-contact of interactions with the monarchic-minded Europeans?

Note that Hearne was in The Pas at this time.

Sunday 21 August 1774 (near The Pas)

in our way we met 22 Cannoes of Basquiau Indians who seem'd very Courtious, ask'd me how I lik'd their Country and said they approv'd of my settleing in their Quarter, and offer'd their assistance in Procureing Provisions &c-being as yet not determin'd, I gave them no Possative answer, but told them they undoubtedly would hear for sertin long before the Seting in of the Fall, and assur'd them of kind treatment and good Payment for any thing they should bring to Trade, at the same time I Presented them with a little Tovaco, and some other Trifling articals which I took with me for that Purpose....<sup>49</sup>

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<sup>48</sup> *Ibid*, at 110.

<sup>49</sup> *Ibid*, at 111.

The Cree were extremely polite and made efforts to accommodate the newcomers as required, according to the Cree legal principle of *miyo-wicehtowin*. Likewise, Hearne demonstrated respect with his gifts of tobacco, acknowledging Cree ways of practice. This passage indicated positive, equal partnership. It is reminiscent of any modern business deal whereby the parties are working to establish a good relationship, in terms of contractual consideration.

Monday 29 August 1774

after a long Consultation with the Indian Chiefs and others in Company, I determin'd to build the house, at least for the in sewing winter, at a Part Call'd Pine Island Lake – it is the general opinion of those Indians that that Part will be more comodious both for Drawing the Indians to Trade as well as for Provisions then Basquiau, it laying in the Middle between three Tribes.<sup>50</sup>

Hearne consulted extensively with the Indians and valued their advice on where to build the HBC Post at Cumberland House.

Friday 9 September 1774

Early in the Morning and Indian Man came to the Tent and inform'd me of his having kill'd a Moose not far off for which I pay'd him, and sent the People with 2 Cannoes to fetch home the Meat.<sup>51</sup>

Taking people's word:

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<sup>50</sup> *Ibid*, at 113.

<sup>51</sup> *Ibid*, at 115.

Saturday 17 September 1774

This Day 8 Cannoes of Grass River Indians came and Pitch'd by us who offer their assistance in hunting gees for us this Fall...<sup>52</sup>

A mutually beneficial relationship:

Thursday 22 September 1774

8 Cannoes of Grass River Indians came, and brought a good deal of Dry'd meat, some Blathers of fatt and a few Furr. With the Indians that came this Day ware one Frenchman who belongs to one of the houses up the Theiscatchiwan, he could talk no English and but very little Indian.<sup>53</sup>

Sunday 25 September 1774

This Day 3 Cannoes of Grass Indians from the Buffalow Country came with a few wolf Skins, some Dry'd meat and a little Buffalow fatt, one of them ware a Trader or Captain who endeavour'd to Preswade me to go higher up this Fall urging many difficulties that would attend us in wintering here. as each Different Tribe are desirous of having goods brought as near their own doors as Possable, it is a Piece of Polisy in them to Praise their Part for the Plentiffulness of Furrs and Provisions and at the same time condemn every other Part. I gave him to understand that the intent of my Comeing inland ware not to settle in any Part to serve a few individuals only, but with an entent to be Equally servisable to the whole Community at the same time told him that my resolutions Ware to firmly fixed to mak any more moving this Fall, for ware I still to listen to the different voices and opinions I might be kept in a State of uncertainty till the close of the winter without any Provision being made for it.<sup>54</sup>

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<sup>52</sup> *Ibid*, at 116.

<sup>53</sup> *Ibid*, at 117.

<sup>54</sup> *Ibid*.

The notion was that Indians competed to get the HBC post closer to their home territory.

Monday 26 September 1774

This Day I smoakd the Calimet of Peace with the above Captain and tho he could no Preswade me to move nearer his Quarter this fall, had Promous'd to Build me 3 Large Cannoes, and Says he and his Crew will accompany me to the Fort in 1775. he is the man Mr Cocking went inland with in 1772 As to my Procuring Birch Rind in the Fall and Winter as mention'd in the Company Letter to me of May 1773 is at Present noways Possable, for my number of men are not only small but are entirely unacquainted with the nature of getting it as wel as evry other duty that is not Emediatly Preform'd at the Factory, none of them ever having ben farther from the Forts than a Wooding or hunting Tent.<sup>55</sup>

Hearne and the Cree people of the Cumberland House area repeatedly demonstrated Cree legal principles of *miyo-wicehtowin* as they acted together to facilitate harmony and positive relationships while respecting their differing backgrounds and perspectives. Hearne and the “Captain” entered into a verbal contract a full year in advance, whereby the Captain and his men would take Hearne to the fort in 1775. Bargaining between the parties occurred with the “Captain” also agreeing to build Hearne three large canoes.

The Cree and Hearne endeavoured to build good will and strong relationships. In October 1774 Hearne wrote, “This Day I Trusted the Indians in

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<sup>55</sup> *Ibid*, at 118.

all about 200 Beaver in Amanition and other Necessaries, to help support them Dureing the Winter".<sup>56</sup> This was the first mention of supplies being given on account. The following day further evidence of *miyo-wicehtowin* was demonstrated:

Friday 21 October 1774

this Morning upwards of 20 Cannoes of Indians went their Respectave ways, several of which have Promous'd to come in with Provisioins &c as soon as the Rivers and Lakes are froze over, in the Evening the Remainder of the Indians all went away Except 2 or 3 Women who Stays to Make, Mend, Knitt Snowshoes &c for us dureing the Winter.<sup>57</sup>

Two or three women had stayed at the fort for the winter. Were there any European women there? Again, mutually beneficial relationships, Indians demonstrating goodwill.

In November and December 1774 Samuel Hearne and a Cree family had a number of experiences indicating the types of interactions that occurred between these peoples of different cultures in the early years when Hearne was at Cumberland House, Saskatchewan. It was a Friday evening, 4 November 1774, and Hearne wrote:

...in the Evening an Indians man came to the house, whose family are all starving, on the other side of the

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<sup>56</sup> *Ibid*, at 125.

<sup>57</sup> *Ibid*.

Lake I gave him a little dryd meat &c to carry home and they are to Pitch this was as soon as Possable.<sup>58</sup>

*Wahkohtowin* has been a foundational principle in Cree law that speaks to how relationships are to be governed based upon the concept that we are all related. People are to treat each other in a respectful, non-coercive and gentle way. Hearne demonstrated this when he gave the starving man food and urged him to bring his family back with him as soon as possible. Three days later, Hearne wrote:

...in the afternoon the Indian Man who ware mentioned as starving came with all his family and Pitch'd by us. The are in all 16 in number.<sup>59</sup>

This and the previous entry demonstrated good will and care on the part of Hearne. One week later the Cree family was still tenting there, but were preparing to depart the next day. Hearne outfitted them with ammunition and supplies so that the family would be able to provide for themselves for the remainder of the winter. On Monday 14 November 1774 Hearne wrote that:

This Morning the above Indians went away to Provide for themselves, and one of the home Indians with them, who is to come back as soon as they kill any Moose or Deer.<sup>60</sup>

This passage demonstrated an approach of helping people to help themselves when they were in need, versus the later approach of making Indians dependent on the HBC. On Friday 2 December 1774 just shy of one month after he

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<sup>58</sup> *Ibid*, at 127.

<sup>59</sup> *Ibid*.

<sup>60</sup> *Ibid*, at 128.

appeared to get help for this starving family, “the Indian Man who are sometime since mentiond as starving, came in with some of his family and brought 4 slead load of Moose Flesh”.<sup>61</sup> *Miyo-wicehtowin* was a principle that required Cree nations and Cree people to act in a manner that would facilitate positive relationships and harmony with people of different places and perspectives, *quid pro quo*.

Two months later it would be Samuel Hearne and his men who were in danger of starvation. On Wednesday 8 February 1775 Hearne wrote:

The very scanty allowance of Provisions that we have ben put to for some time past, has acationd many grumblings amongs some of the men, but as from the first of the scarce times (which ware in the middle of December) I stipolated myself to the very same allowance in every artical. I told them they had no right to complain, knowing it ware not in my Power to Redress them Finding Provisions grow short we stinted our selves to 2 scanty meals Pr Day in December and by the middle of January we ware so short that we could not afford more than a small handfull of Dry'd beat meat call'd Thew-hagon and about 4 ounces of other Meat Pr Man Each day but for some time Past have ben redus'd to still shorter allowance. This scanty way of living, at times, being so different from the sertin good allowance at the Factory is so alarming to my men in general, that it is with the greatest difficulty I can Preswade them from thinking that Entire famine must Ensew Partridges, Rabits, Fishs &c have entirely faild since the scarce times which makes them much worse, however I'm not without hopes of some Reliefe before long as I daily expect some Indians in.<sup>62</sup>

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<sup>61</sup> *Ibid*, at 130.

<sup>62</sup> *Ibid*, at 137.



Friday 10 February 1775

about Noon, one Indian man came to the house and inform'd me of 5 Tents of Indians being within 5 hour's walk of us. some of them killd 5 Moose Yesterday and are comeing here with most of the meat. The Indian Return'd Immediately and I sent the home Indian and one of our men with him.<sup>63</sup>

Saturday 11 February 1775

in the afternoon our man who went away with the Indian Yesterday, Return'd with a slead load of Meat.<sup>64</sup>

These early encounters at Cumberland House offer an abundance of recorded insights into how Cree legal traditions worked to facilitate development and maintenance of a productive, caring society, even among people of different backgrounds and perspectives.

Sunday 9 April 1775

this Day Shaw-gob-a-nis-com and 2 other leaders came to the house with their Crews, in all about 90 Persons. my man and the home Indian who went to assist in halling of Birch Rind &c also come home Those Indian are also going to build there Cannoes here.<sup>65</sup>

Shaw-gob-a-nis-com was one of the few Indians addressed by name at this time.

Ninety people seemed like a lot.

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<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid*, at 145.

Sunday 30 April 1775

This Day one Indian man Ariv'd here by himself who says he's come from Mr. Forbersher's house but not being able to give any Reason for his undertaking so long a Journey alone, and being so badly provided, the Indians suspects him of being guilty of Murder and by some perticular simtoms and appearance of the face they also pretend to know that hees not only ben guilty of Murder but has also eat those whome he has killd. Uppon such mear Suspision they have Promous'd to kill him.<sup>66</sup>

How were murderers dealt with according to Cree law? Usually reciprocally killed or, depending on how they could explain, by ordering recompense. This was Windigo, human possession by this evil spirit. You had to kill Windigos. There is a footnote on this page that "There is no farther mention in this journal of whether the Indians carried out their threat on this suspicious countryman of theirs or not." There is no mention of any formal European law about murder.

Wednesday 24 May 1775

This day most of the Indians went away with their famalies Several of which Promoused to build me large Cannoes, & tho I have been dayly giving them every thing they askd for to Encourage them there to, yet, as soon as their own Cannoes ware finished, they all sot off to have a drink of the Pedlors Rum, some went to Basquiau, and some for the two Forbershers, who Settlement lays at the back of Churchill, so that our of 6 large Cannoes which I Expected to have made under my own Inspection, I have but one.<sup>67</sup>

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<sup>66</sup> *Ibid*, at 148.

<sup>67</sup> *Ibid*, at 152.

Though the verbal contracts for construction of the canoes were made the previous fall, it appeared that the Indians would work on them in their own time. Mr. Hearne had no way of compelling the work to be done on his timeframe.

“Pedlors” (traders from Montreal) had rum. There had been no mention at this time of Hearne having rum at the HBC post to give to the Indians.

Monday 29 May 1775

what Furs I've already traded being Pack'd, I this day about Noon embark'd for the Fort in Company with 32 Canoes of Indians, 17 of which are to accompany me to the Fort.<sup>68</sup>

Hearne departed Cumberland House for York Factory. He was taking the furs he traded over the winter and a large contingent of Indians on the trip. Hearne did not travel over the winter months. That time was spent trying to survive with enough food to eat. On the journey to York Factory the Indians killed seven moose and other game. The trip took twenty-six days.

#### **CUMBERLAND HOUSE – 9 SEPTEMBER 1778 TO 15 SEPTEMBER 1779**

The Hudson's Bay Company hired Philip Turnor in 1778 as an Inland Surveyor. His contract was for a period of three years. Mr. Turnor was to be paid 50 pounds per year, plus bonuses. His journals offer insight of a somewhat

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<sup>68</sup> *Ibid*, at 153.

different flavor than those of Samuel Hearne. Turnor's journey begins with a trip from York Fort (York Factory) to Cumberland House where he would spend the winter of 1778/1779, and then back from Cumberland House to York Fort.<sup>69</sup>

Wednesday 9 September 1778

Wednesday at 8 AM Imbarked at York Fort for Cumberland House in Company with Geo. Hudson, Rob Davey, Will Lutit and two Indians to steer our two Canoes....<sup>70</sup>

Six people set off in two canoes. Turnor and Hudson were both surveyors, Davey and Lutit employed by the Hudson's Bay Company as labourers, and two unnamed Indians there to provide labour, and also to act as guides.

Thursday 18 March 1779

Thursday I intended to have proceeded this morning but Mr Blondeaux's men had taken our dogs to fetch meat therefore was obliged to stay this day, Mr Blondeaux talks no English Mr Robert Grant being of North Britain acted as our linguist, they seemed very desirous to know my Business as they had been informed by some Indians which was at Cumberland House in the fall that there was such a person coming, I informed them I was going to help Rob Longmore, with respect to the Instruments, I had them some years since with intent to goe to the South Seas but being disappointed had always chose to carry my Instruments with me for my own amusement do not think they believe it, they seemed to wish to turn the Conversation upon the Honble Hudson's Bay Company Charter, I informed them I knew nothing of

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<sup>69</sup> *Ibid*, at ix.

<sup>70</sup> *Ibid*, at 198.

it or did it concern me, they seemed consious they were infringing upon it as they said it gave the Honourable Company a right to all waters falling into the Bay of which they them selves are convinced the Saskatchewan River does, upon the whole their treatment was exceeding Genteel, as I have been informed Mr Blondeaux's ever was to the Honourable Companys Servants.<sup>71</sup>

That someone one hundred years prior to the signing of treaties with the Indians expressed concern over the governing documents of the corporation as unilaterally granting rights to the company demonstrated concern that the HBC could seize control of land and resources. They expressed concern while maintaining peace among themselves.

Sunday 4 April 1779

Sunday a gang of stone Indians came in which had been with Robert Longmore for Tobacco on March 31<sup>st</sup> but finding he had no Liquor they went to Wm Holmes a Canadian trader who took them within his stockadoes and Locked them up and would not let them out until they had traded every skin with him, which I find he has made a practice of doing all the winter, and upon Magnus Twatt one of the Honourable Companys Servants finding fault with his taking a gang of them, the said William Holmes beat and ill used him without any farther provocation, if such thing is allowed the Honourable Company need not expect much trade from any other than the Southern Indians, which Indians they dare not treat in that manner...<sup>72</sup>

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<sup>71</sup> *Ibid*, at 219.

<sup>72</sup> *Ibid*, at 222.

William Holmes was an Irish trader with the Northwest Company. Holmes showed an early and consistent predilection for mistreating the Indians. It was absolutely shocking that he would actually lock the Indians up until they traded all of their furs to him. The fact that Magnus Twatt, an employee of the Hudson's Bay Company, stood up to Holmes on behalf of the Indians (only to be beaten by Holmes) indicated that good relationships could be established between the Company and the Cree in the area up to this point in time.

Tuesday 20 April 1779

Tuesday at 7 AM 4 Southern Indians came for tobacco but finding the Honourable Company's Servants had no Liquor went to Willm Holmes and got tobacco, and where made drunk before they went away, and had a man sent on Horse back with them and carried a quantity of Liquor with him to give the Indians before they came to the House which has been his practice all the Winter,

at 2 PM the Indians arrived being a Large gang and had with them upwards of Thirty Horses well Loaded and a great number of Dogs, the Indians when they arrived where most of them drunk, it was with great difficulty they perswaded the Indians to Tent by them, they said they did not come to trade with them but with Robert Longmore, and said the Englishmen where their Country men,

they seemed very much dissatisfied and very hard to convince that the Honourable Company's Servants could want goods, they traded every thing which Longmore had which they where in want of, the men traded every thing they had and every man seemed much concerned at seeing so many good Furrs going to the Canadienonly for the want of Goods, the Loss upon this gang of Indians would amount to 1500 Made Beaver at least, mostly in Beaver with a few Wolves, Foxes & Martins, so that the Loss upon the

two Gangs may be supposed to amount to Two Thousand made Beaver, exclusive of others that would have come had not the news spread amongst the Indians, this same gang hard that the Liquor was gone but would not believe it, a thing of this kind is soon known all over this part of the Country as they have constantly young men going from one party to the other.<sup>73</sup>

The Northwest Company traders used alcohol to manipulate the Indians to try to get their furs and perhaps their horses. Despite this, the Indians still preferred to trade with the Hudson's Bay Company whenever possible and only reluctantly traded with Mr. Holmes when the Hudson's Bay Company trader did not have the goods they needed.

Cree law provided for negative consequences to flow from a failure to abide by the law. *Ohcinewin* was part of these negative consequences. A vivid example of *Ohcinewin* in action occurred at Cole House on 22 April 1779.<sup>74</sup> As journalled by Philip Turnor:

Sunday 25 April 1779

Sunday at 9 AM two Canoes belonging to Geboch came down the River and informed us that they had been obliged to fly and leave above half their Furs and all their goods and provisions (to the amount of 25 Tents, of Indians supposed to amount to 120 Men or upwards) had fallen upon them and *killed John Cole formerly a servant to the Honourable Hudsons Bay Company* and one man belonging to Peter Pangman, that in return they had killed 2 Indians and wounded 2 More, this ingagement hapned on Thursday the 22<sup>nd</sup> April, that they then got a sessation of arms by giving them 5 kegs of Rum containing

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<sup>73</sup> *Ibid*, at 223.

<sup>74</sup> *Ibid*, at 224.

about 40 gallons, and great quantity of other goods, on Friday morning they gave them an other keg of Rum containing about 8 Gallons and offered them all their goods if they would lett them goe with their Furrs which they refused, and said they would have all their goods and kill them afterwards....<sup>75</sup>

Peter Fidler shed further light on the events of the day,<sup>76</sup> explaining that an Indian shot Mr. Cole “on acct. of some very bad usage the Indian had previously received from him - this Cole had a very irriscrable Temper, & frequently ill using the Natives without any just cause.” Aboriginal law allowed reciprocal revenge killing, just as the HBC’s law did.

Phillip Turnor wrote of the motives for the attack on Monday 26 April 1779:

...one great reason for the Indians falling upon the Canadians at that settlement was, between McCormac and Geboch they are said to have Poisoned an Indian called Ke-pouche...at another time McCormack was said to have cut their Tents in pieces.<sup>77</sup>

According to Cree law, when the Canadians violated *wahkohtowin*<sup>78</sup> and *miyo-wicehtowin*<sup>79</sup>, they committed *pastahowin* or a transgression of spiritual or natural law. When *pastahowin* occurred, Cree law sanctioned that negative consequences would ensue.<sup>80</sup> In consultation with all of those affected, bearing in mind the importance of community, respect and collaboration in Cree legal principles, the community might administer justice with varying degrees of

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<sup>75</sup> *Ibid*, at 224.

<sup>76</sup> *Ibid*, at 224 (Footnote 1).

<sup>77</sup> *Ibid*, at 226.

<sup>78</sup> *Supra* note 22 at 84.

<sup>79</sup> *Supra* note 27 at 15.

<sup>80</sup> *Supra* note 33 at 104.



severity. There was further evidence that the Cree community supported the actions against the Canadians:

the Indians to the numbers of near 200 entered the Houses (as there was 2 or 3 different companies within the same stockades) & pillaged everything to the amount of 2 or 3 Large canoe Cargoes of Goods - which they distributed amongst them - they never offered any violence to any of the rest of the People, but only insisted on their immediately leaving the place with only the necessaries they had on.<sup>81</sup>

Nearly 200 people participated in the administration of *pasastehkakewin* (retributive justice) and *naskwastamasowin apo apehowin* (vengeance) against Mr. Cole for his violations of Cree law.<sup>82 83</sup> In accordance with the Cree legal principles of *onisinweuk* all community members were keepers of the law.<sup>84</sup> While the administration of justice was accomplished according to Cree law, note also that the Indians did not extend the violence to any innocent people at Cole House. To harm innocent people would have been a grave violation of Cree law and contrary to the principles of *ohcinewin*.<sup>85</sup>

## **CUMBERLAND POST JOURNAL 1818-1819 (ALEXANDER KENNEDY)**

Fast forward twenty-nine years. Alexander Kennedy was a Scot who first signed with the company as a writer in 1798. He worked at many outposts and

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<sup>81</sup> *Supra* note 5 at 224 (Footnote 1).

<sup>82</sup> *Supra* note 30.

<sup>83</sup> *Supra* note 83.

<sup>84</sup> *Supra* note 22 at 84.

<sup>85</sup> *Supra* note 32 at 104.

eventually became one of the HBC's chief factors. He was the Master at Cumberland House in a period that saw significant change in the attitudes and actions of the newcomers. Gone were the days of *wahkohtowin* and *miyo-wicehtowin* or non-related people working together with an attitude of respectful non-interference and acceptance of differences.

June 1818 was a troublesome period for all those who lived in and around Cumberland House. The fierce competition between the Hudson's Bay Company and the Northwest Company to obtain furs from the Indians was at a recurrently violent point. Kidnappings occurred.

5 June 1818

Sent John Budge & Daniel Fraser down to Whitey Narrows for Fish and to bring home our nets & Fishermen from that place as our compliment (sic) of men are too few to admit of keeping nets down so far from the House. They returned in the Evening with Magnus Corrigan & Robert Miller all the nets & 13 Sturgeon Several Indians who had been harbouring about the house for some time past went off and others arrived with eggs very troublesome for Rum an article of which we have none to give them... Mr Kennedy preparing to start for York Factory as soon as the Canoes from the Northward arrives.

Frobisher (one of the NW Partners) arrived here in a light Canoe from Lac La ronge, he brought with him, James Peck a youth who was in charge for us at Pelican Lake & whom he forcibly took away from his station and carried down here as a prisoner. As soon as Mr Kennedy knew that Peck had arrived he went over to the NW house to demand him, when he was immediately given up, Frobisher denied that he (Peck) was a prisoner and alledged that he only took him down here, to give his reason for debauching one of

Frobishers men, which he accused Peck of having done in the course of last winter<sup>86</sup>

Young James Peck was the first person kidnapped that summer by the Northwest Company. Three days later...

8 June 1818

Mr. Holmes's men preparing their canoes embarking tomorrow. Our own people weeding and repairing the hedges about the gardens. Chee Ka Peg one of the Indians that came in with Mr. Holmes and who is considered ably indebted to us went over to the N.W. House where he was invited by some of his relations, who had been sent to decoy him, to partake of a pot of rum.

As soon as he entered the N.W. House, he was laid hold of and put in irons and threatened to be murdered for having Traded with Mr. Holmes last winter. The North West Partners who were present at this transaction were John Duncan Campbell, Ben Frobisher - William Connolly and H. Farris clerks.<sup>87</sup>

Note that this Mr. Holmes was John Pocock Holmes, who was the HBC trader at Pelican Lake (Pelican Narrows) at this time. The other Mr. Holmes was William Holmes who had been a trader for the Northwest Company beginning in 1774 for a period of approximately ten years. A few days later John Duncan Campbell (Partner in the Northwest Company) and William Connolly (clerk for the Northwest Company) departed, taking their captive with them.

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<sup>86</sup> Hudson's Bay Company Post Journals from Cumberland House Saskatchewan (1818 to 1819), Manitoba, Manitoba Archives, (Document Reference Number B.49/a/34, Microfilm reel number 1M40).

<sup>87</sup> *Ibid.*

12 June 1818

Campbell & Connolly embarked from the N.W. House in a light Canoe taking Chee Ka Peg along with them in Irons They have given out to the Indians here that he is going to be hung for having traded with Mr. Holmes last winter....<sup>88</sup>

I was unable to find any documentation as to what happened to Chee Ka Peg. There is no indication that anyone attempted to stop any murderous intentions of the Northwest Company. This was a clear violation of Cree as well as English laws. *Onisinweuk* was a Cree legal principle that viewed all community members as keepers of the law. It appeared that the Hudson's Bay Company, who supposedly had been granted the power to rule "Rupert's Land", would only do so at their discretion.

Life at the Cumberland House Hudson's Bay Company Post carried on. Cree people had traditionally practiced *kwayaskitotamowin*, which means to do things in the right way, to treat all of the natural world with kindness and respect. European paternalism exploitation of resources for profit had no place in Cree society. In 1818 the Cree way of relating still prevailed with regard to gender. On 26 June 1818 the following journal entry was recorded, "'Amimis & Chee Ka Pegs' wives arrived and brought 15 rats and some eggs."<sup>89</sup> Such a simple statement tells us so much. Cree principles mandated respect and equality. A somewhat humorous Post Journal entry on 8 April 1819 confirms that Cree

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<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

women had their own accounts at the Hudson's Bay Company Post: "Old Greedy guts wife arrived with 34 martin on her debt."<sup>90</sup> The equal treatment of women in 1818 would be shocking to Euro-centric society. Sadly the paternalistic approach would come to dominate even the Cree and become so ingrained that many people forgot the Cree principles and practice of *wahkohtowin*.

During the summer of 1818 there was a continued increase in the number of references to rum and the use of rum, even the anticipation of rum, being used to change the actions of the Indians:

4 July 1818

Most of the Cumberland House Indians are remaining about the House enjoying themselves \_\_\_ a pot of rum, for which they have given their old ironworks, such as hatchets, chisels, spears and files which as I had no rum to give them I could not prevent.<sup>91</sup>

6 July 1818

Hunger at last has compelled most of the Indians to embark after hanging about the House a long time in hopes of seeing rum arrive here which in order to keep them in spirits I told them was expected soon.<sup>92</sup>

It would appear that the strategy of using alcohol against the Indians was taking hold in the Hudson's Bay Company.

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<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

Despite increasingly intense competition between the Hudson's Bay Company and the Northwest Company, combined with an increased use of alcohol as a way to manipulate the Indians in the Cumberland House area, the Indians remained active trading participants. On 28 November 1818 the following entry was made in the Cumberland House Post Journal:

28 November 1818

The Indians who arrived yesterday, returned again to their tents, trusted the strangers with about 10 skins each in prime goods, and made them little presents.<sup>93</sup>

This entry showed contract law in the context of the fur trade. Gifts were given in anticipation of a reciprocal relationship. Trust was established and mutual obligations undertaken.

While there had been a demonstrable shift in attitudes of the newcomers towards the Indians, the Europeans still depended on them for their survival.

6 December 1818

The three men that went off yesterday returned with light sleds. The Indian whom they were to follow having gone ahead, the men lost his track on the Lake and were obliged to curse luck, having no food with them.

Beardy's old wife arrived from across the lake, with the meat of 100 rabbits and 1 martin skin. Wetiskabbappan with a boy arrived from \_\_\_\_\_ with

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<sup>93</sup> *Ibid.*

85 martins and 62 rats, being the produce of their hunts for a month past.<sup>94</sup>

The European traders had to turn back to the fort when they lost sight of the Indian that they were following. They had no food and were unable to provide for themselves away from the comfortable shelter of the fort. That same day there was mention of another Cree woman bringing in meat and fur to trade. There were numerous mentions of Cree women having their own accounts at the forts and being respected, at least to the same extent that Indian men were respected.

Alex Kennedy was the Master at Cumberland House. He demonstrated a shift in approaches to relationships. On 30 December 1818, Kennedy and H. Gibson “returned from Beardy’s tent without being successful, the Indians in that quarter being sick & lazy, consequently starving.”<sup>95</sup> This represented a marked departure from the Cree legal principles of *miyo-wicehtowin* and *wakhohtowin* that had been practiced since time immemorial, a mere twenty-nine years earlier when Samuel Hearne documented their continued practice. Suddenly in the context of history, the newcomers attributed people starving to death to a lack of good character in those same people and them made no mention of trying to help them.

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<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

**TABLE No. 1: CUMBERLAND HOUSE PEOPLE (in alphabetical order)**

<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
Banks	James	August 1774		Cumberland House	Employee of HBC who travelled with 4 canoes of home Indians to bring goods to Cumberland House.
Basquia Indians		August 1774	The Pas		
Blondeaux (Blondeau)	Barthelemi	1769-1778	Sturgeon Lake at Sturgeon Landing		French Canadian trader who built a house at Sturgeon Lake. He had 6 men working for him, as well as one tent of Indians.



<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
Chestellain	Louis	April 1779	Cole House		Montreal clerk who was present at the attack by the Indians on April 22, 1779. He was greatly liked by the Indians and was the sole person to remain at the fort after the attack. The Indians returned with 2 canoe loads of furs that they gifted to him.
Cole	John	April 1779	Cole House		Montreal "Master" and former HBC employee who was killed in an attack by Indians on Thursday, April 22, 1779. He had a bad temper and frequently ill-used the Indians without any cause.

<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
Davey	Rob (Robert)	September 1778	York Fort	Cumberland House	Travelled with Philip Turnor. Worked for HBC as a labourer.
Fidler	Peter	April 1779	Cole House		Witness to the attack by the Indians on April 22, 1779. (See also Pangman, Peter).
Flatt	William	August 1774	York Fort	Barrier River	Employee of HBC who travelled with Mag Slater to bring goods including cloth, kettles, guns to Samuel Hearne.
Forbers her (Frobisher)	Joseph	1773-1776	Frog Portage		One of two Frobisher brothers who are fur traders whose house is located at Frog Portage. Has a crew of 5 Frenchmen. With his brother, has 6 canoes.

<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
Forbersher (Frobisher)	Thomas	1774 -1777	Frog Portage		One of two Frobisher brothers who are fur traders whose house is located at Frog Portage. Has a crew of 5 Frenchmen. With his brother, has 6 canoes.
Francois (Franceway)	Shash, Saswee, Sas'wow, Sarchshrew, Sirdaw	1774 & 1775	Near the Buffalo country, 150 miles up the Saskatchewan River from Cumberland House.		Described by Matthew Cocking as "an ignorant old Frenchman, about sixty years of age". In Autumn of 1777 he killed an Indian near Sturgeon River fort and then left the area.
Garrett	Andrew	June 1774	York Fort	Cumberland House	Carpenter who travelled with Samuel Hearne for the purpose of erecting the new fort at Cumberland House.

<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
Geboch		April 1779	Cole House		Trader who was attacked by Indians on Thursday, April 22, 1779 after he poisoned an Indian name Ke-pouche.
Grant	Robert	March 1779	Sturgeon Lake at Sturgeon Landing		Scottish man at Blondeaux's camp. Acted as a translator for Blondeaux.
Grass River Indians		September 1774	Grass River		
Hearne	Samuel	June 1774	York Fort	Cumberland House	This is the expedition on which Hearne founded Cumberland House on the Saskatchewan River, 60 miles north of Pasquia (The Pas).

<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
Holmes	William	1774-1785?	Near the Buffalo country, 150 miles up the Saskatchewan River from Cumberland House.		Irish trader from Montreal. Note that this is a different Mr. Holmes than the one who was at Pelican Narrows and Cumberland House in 1818 (that was John Holmes).
Holmes	John Pocock	June 1818	Pelican Narrows		Note that this is a different Mr. Holmes than William. John Holmes was the HBC trader at Pelican Narrows in 1818. In 1819 he became the HBC trader at Cumberland House.

<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
Home Indians		June 1774	York Fort	Cumberland House	Home Indians were Cree who lived near the York Fort, who could be called on to assist the HBC workers when needed; two of whom travelled with Samuel Hearne on his trip to establish the fort at Cumberland House.
Hudson	Geo (George)	September 1778	York Fort	Cumberland House	Travelled with Philip Turnor. Inland trader or inland surveyor. Worked for HBC and was almost continuously in charge of Cumberland House from 1781 to his death on April 19, 1790.

<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
Indian Captain		September 1774	Grass River	The Fort	This Indian agreed to accompany S. Hearne to "the Fort" in 1775. He is the Indian that took Matthew Cocking inland in 1772.
Ke-pouche		April 1779			Indian who was poisoned by Geboch and McCormac. This event led to the retaliation of the Indians at Cole House.
Longoar (Longmoor or Longmore)	Rob (Robert)	June 1774	York Fort	Cumberland House	Employee of HBC who travelled with Samuel Hearne on his trip to establish the fort at Cumberland House.
Lutit (Loutit, Lewtit)	Will (William)	September 1778	York Fort	Cumberland House	Travelled with Philip Turnor. Worked for HBC as a labourer.

<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
McCor mac		April 1779	Cole House		Trader who was attacked by Indians on Thursday, April 22, 1779 after he poisoned an Indian name Ke-pouche.
Me-sin- e-kish- ac		June 1774	York Fort	Cumberland House	Upland leading Indian with 3 other Indians in his crew who travelled with Samuel Hearne on his trip to establish the fort at Cumberland house. Note that 2 Indians who were not part of the crew of Me-sin-e-kish-ac also took part in this trip.



<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
Pangman	Peter	1774 - 1790	Near the Buffalo country, 150 miles up the Saskatchewan River from Cumberland House.		Canadian Fur Trader in the same vicinity of Francois, Paterson, and Holmes. He has 12 canoes. On April 22, 1779 one of his men was killed in an attack by Indians. He or his men killed 2 Indians and wounded 2 more in this attack. The attack stopped when the Indians were given 2 kegs of rum and other goods. Pangman offered the Indians all of their goods if they would let them go with the furs.
Paterson	Charles	1774 & 1775	Near the Buffalo country, 150 miles up the Saskatchewan River from Cumberland House.		

<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
Primo [sic] (Primeau)	Lewis [sic] (Louis)	August 1774	Near Sturgeon Landing		Pedlor whose house Hearne passed on his way to establish Cumberland House. Trader from Montreal? NorthWest Company?
Shaw-gob-a-nis-com		April 1775			One of the few Indians addressed by name at this time. Helped in harvesting Birch Rind. Is a leader.
Slater	Mag	August 1774	York Fort	Barrier River	Employee of HBC who travelled with William Flatt to bring goods including cloth, kettles, guns to Samuel Hearne.
Turnor	Philip	1778 - 1770	York Fort (York Factory)	Cumberland House	Travelled from York Fort to Cumberland House and back again in 1778-1779. Was a Surveyor for HBC.

Last Name	First Name	Date	Departing From	Destination	Additional Information
Twatt	Magnus	April 1779			HBC servant that was beaten by William Holmes for finding fault with Mr. Holmes locking up Indians and forcing them to trade with him.

## PELICAN NARROWS JOURNAL 1818-1819 (JOHN HOLMES)

During this this same time period, John Holmes was the Hudson's Bay Company trader at Pelican Lake, which would later become Pelican Narrows. We have the benefit of Mr. Holmes' own words to enlighten us, as he was the author of the Pelican Lake Journal in 1818-1819.

18 January 1818

Got the furs from a moose \_\_\_\_\_ to take care of the Indians by making them drunk.<sup>96</sup>

The use of alcohol to take advantage of the Indians was now being practiced in Pelican Narrows as well as nearby Cumberland House at this time.

The competition between the Northwest Company and the Hudson's Bay Company was going strong. John Holmes took it upon himself to monitor the Indians to ensure that the HBC was successful in obtaining their furs:

17 October 1818

...bought a little fresh meat, gave them a supply and sent them away likewise one of my men to live with them to secure their furs from the grasp of the N West merchants.<sup>97</sup>

Hostilities between the rival companies were running high. The evidence showed that by this stage of the fur trade both companies were engaging in

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<sup>96</sup> *Ibid.*

<sup>97</sup> Hudson's Bay Company Post Journals from Pelican Narrows Saskatchewan (1818 to 1819), Manitoba, Manitoba Archives, (Document Reference Number B.158/a/1, Microfilm reel number 1M116).

underhanded and often illegal means of securing furs from the Indians. He railed against the Northwest Company:

1 March 1819

N.B. The N West are \_\_\_ of the damndest rascals that God every created. They (slayer?) at nothing House breaking, robbery, murder, it is all the same to them their morals are deformed to a \_\_\_\_\_ that shocks us every feature exp\_\_\_\_\_s cunning, employing itself in the maintaining of tyranny; and difrimculation, pretending itself and advocate for truth.<sup>98</sup>

In 1821 the Northwest Company and the Hudson's Bay Company would merge, signaling the beginning of a new era in the fur trade in "Rupert's Land".

### **PELICAN NARROWS POST JOURNAL 1913-1915**

The December 1913 through May 1915 Hudson's Bay Company (HBC) Post Reports penned by Andrew Miles McDermot offer a fascinating look into daily life at the Pelican Narrows, Saskatchewan Post, including how Cree legal principles struggled to be exercised into the twentieth century. Mr. McDermot documented over ten families during this time period who had regular undertakings at the Pelican Narrows HBC post.<sup>99</sup> These families, as well as other people who interacted with each other, provided ample evidence that Cree law for contractual obligations continued to be practiced regularly.

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<sup>98</sup> *Ibid.*

<sup>99</sup> See Table A.

The Ballandine family consisted of a group of fourteen individuals noted in the journal who functioned together and with others to practice *wahkohtowin*. For example: Peter, John and Noah Ballandine (known around the post as “young Noah”) travelled together between the communities of South Deer Lake and Pelican Narrows. On 13 December 1913 McDermot wrote “Quite a few of the Cursitors arrived today, also several of the Ballandines.”<sup>100</sup> On Tuesday 16 December 1913 it was noted that “the Ballandine families left.”<sup>101</sup>

These Aboriginal people in the vicinity of Pelican Narrows functioned together in compliance with *wahkotowin*. Andrew McDermot wrote:

Saturday 14 March 1914

Fine day, warm, Joe returned from Grand Rapids.  
Tom Bear and John Charles Thomas arrived from D3.  
Tom brought the mail.

Thursday 9 April 1914

Fine day at first warm, Joe [McCallum] went to Steep Rock for hay (Charlie played out) Cornelius Bear came in snowing blowing later in the day.

Friday 10 April 1914

Good Friday, Fine. Eli and Antoine Morin and about 9 other sleds arrived about 11AM, nobody working (unreadable) as no fur.<sup>102</sup>

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<sup>100</sup> Hudson’s Bay Company Post Journals from Pelican Narrows Saskatchewan (1888 to 1940), Manitoba, Manitoba Archives, (Document Reference Number B.158/a/1, Microfilm reel number 1M116).

<sup>101</sup> *Ibid.*

<sup>102</sup> Hudson’s Bay Company Post Journals from Pelican Narrows Saskatchewan (December 4, 1913 to May 21, 1915), Manitoba, Manitoba Archives, (Document Reference

Tom Bear was a trapper who travelled frequently between Pelican Narrows and South Deer Lake. The round trip took nine days. As often seen in the Pelican Narrows Post logs, Tom Bear was quick to help out anyone that he could. Although it was not his job, he would carry the mail on his journeys between posts. He would also bring logs to Pelican Narrows when needed. John Charles Thomas was another fur trader who contributed in a positive way in keeping with the Cree legal principle of *wahkohtowin*. He travelled by boat from Lac du Brochet to Pelican Narrows and he brought the returns from Lac du Brochet with him for Andrew McDermot.

*Wahkohtowin* also applied to governmental relationships. Non-related people were expected to treat each other in a respectful, gentle, and non-coercive fashion. This law promoted an atmosphere of non-interference and allowed for people with different ideas to co-exist in a predominantly peaceful way.

An example of non-related people with different ideas co-existing in a peaceful way was in the relationships between the Roman Catholic priests and representatives of the HBC who travelled in Northern Saskatchewan, to be with the Indigenous peoples of the area. It was a common occurrence for Cree and non-Indigenous peoples to travel together with no mention of difficulty in their relationships. For example, Andrew McDermot wrote that Andrew Cursitor

travelled with Mr. MacDougall and Mr. Farnsworth from Cumberland to Pelican Narrows. Andrew Cursitor was a local Cree man. Mr. MacDougall was James MacDougall, the Inspecting Chief Factor for the 1883 Pelican Narrows Post Inspection Report and Chief Factor for the Cumberland District. He was born in St. Andrews, Fife, Scotland. It is reasonable to assume that significant cultural and social differences existed, but there was no evidence of discord.

Andrew McDermot (postmaster) wrote:

Wednesday 22 April, 1914 Warm day. Busy stowing away freight. In the evening Louis Natawayuse and Jonah Bear arrived with the Brochet mail, - also two white men accompanied them.<sup>103</sup>

Louis Natawayuse and Jonah Bear demonstrated the traditional Cree legal principle of *wahkotowin*. They conducted themselves in a manner that demonstrated respect for relationships between all people by bringing the Brochet mail and later taking the Brochet packet back for the postmaster. The evidence clearly showed that *wahkohtowin* was exercised in daily life at Pelican Narrows.

The above example featuring Louis Natawayuse and Jonah Bear also provided evidence of the continued use of *miyo-wicehtowin* in the twentieth century. From the writings of Andrew McDermot, Cree people travelled and co-existed with non-Indigenous peoples in Northern Saskatchewan in largely harmonious and positive relationships. They supported non-Indigenous visitors

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<sup>103</sup> *Ibid.*



and inhabitants in ways that allowed newcomers to survive in the harsh northern environment. On 14 February 1914 Cornelius Bear arrived along with Father Renaud from Pukatawagan. On 12 March 1914 Constable Wood of the North West Mounted Police travelled with Robbie Ballandine to one of the outlying communities. On 3 August 1914 it was noted that Mr. Christie and Cornelius Ballandine travelled together to The Pas.<sup>104</sup> Cornelius was a trapper who travelled frequently throughout the region and also worked as a York Boat guide. He demonstrated how harmonious and positive relationships were developed and maintained throughout the isolated northern area of Pelican Narrows, Cumberland, and South Deer Lake Saskatchewan. He did not merely escort non-Indigenous people, he actively facilitated their ability to live and flourish in the wilds of northern Saskatchewan. A person who did not practice *miyo-wicehtowin* would have let these “outsiders”, with their different ways and viewpoints, flounder. There were many examples of how *Miyo-wicehtowin* was practiced in daily life in 1914 in the region.

Table A compiles the numerous people who appeared in the Hudson’s Bay Company Post Journals from Pelican Narrows Saskatchewan between 4 December 1913 and 21 May 1915. Andrew Miles McDermot, who was the Postmaster for the area, authored the Post Journals from this time period. Table A illustrates the significant number of families (and large families at that) who interacted regularly at the post at Pelican Narrows. It also offers insight into the

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<sup>104</sup> *Ibid.*

collaboration between Indigenous and non-Indigenous people who both lived in the area and merely passed through.

The Hudson's Bay Company Post Journals from Pelican Narrows Saskatchewan provide valuable first-degree evidence and insight into the existence and continued application of Cree legal traditions and principles in the early years of the twenty-first century. Through the words of Andrew Miles McDermot we are able to get a sense of the interwoven and seamless manner in which *onisinweuk*, *wahkotowin* and other Cree legal principles were incorporated into daily life. He has provided evidence of how people of differing backgrounds, ethnicities, and ideas worked together for the good of all. While there certainly were conflicts and disagreements, as a whole the evidence showed that Cree law was respected and upheld by Cree and non-Cree, as demonstrated by the day-to-day actions of many of the people who lived and worked in the area of the Hudson's Bay Company Posts at Cumberland House and Pelican Narrows Saskatchewan.

**TABLE No. 2: PELICAN NARROWS PEOPLE (in alphabetical order)**

<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
Ballandine	Adam	June 1 1914	Pelican Narrows	The Pas	
Ballandine	Alex	December 1 1913	South Deer Lake	Pelican Narrows	
Ballandine	Chaluchurch/Chalucheech	May 1 1914	South Deer Lake	Pelican Narrows	fur trader, travelled with John Ballandine
Ballandine	Cornelius	December 1 1913	Pelican Narrows	Cumberland House	left Pelican for John Ballandines camp, travelled to Cumberland in Jan/1914, returned to Pelican Feb. 6, 1914, worked as York Boat guide travelling to South Deer Lake in June 1914, travelled to The Pas with Mr. Christie
Ballandine	David	December 1 1913	South Deer Lake	Pelican Narrows	brought no mail

<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destinati on</b>	<b>Additional Information</b>
Ballandine	John	January 1914	South Deer Lake	Pelican Narrows	travelled with Peter & Noah Ballandine and Louis Bear, travelled with Chalucheech Ballandine, travelled with David Cusitor, also travelled to Pukatawagon
Ballandine	Lazerus	December 1913			works around pelican, often with Joe
Ballandine	Noah	January 1914	South Deer Lake	Pelican Narrows	travelled with Peter & John Ballandine and Louis Bear, referred to as "young Noah", travelled with George Okema to South Deer Lake
Ballandine	Patrick	June 1914	South Deer Lake	Pelican Narrows	fur trader
Ballandine	Peter	January 1914	South Deer Lake	Pelican Narrows	travelled with John, & Noah Ballandine and Louis Bear
Ballandine	Peter Jr.	April 1914		Pelican Narrows	
Ballandine	Philip	January 1914	South Deer Lake	Pelican Narrows	
Ballandine	Robbie	January 1914		Pelican Narrows	travelled with Const. Wood
Ballandine	Solomon	May 1915	South Deer Lake	Pelican Narrows	

<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
Bear	Adam	March 1914		Pelican Narrows	
Bear	Cornelius	January 1914			
Bear	Jonah	April 1914	Brochet	Pelican Narrows	brought the mail from Brochet with Louis Natawayuse, took the Brocket packet back
Bear	Louis	January 1914		Pelican Narrows	travelled with Peter, John, & Noah Ballandine
Bear	Paul	January 1914		Pelican Narrows	
Bear	Tom	March 1914		Pelican Narrows	brought the mail, travelled with John Charles Thomas to South Deer Lake, brought logs to Pelican Narrows. 9 days to travelled round trip from Pelican to South Deer Lake and back.
Belcher	Corporal	December 1913	Cumberland	Pelican Narrows	travelled between Cumberland, Pelican Narrows, and Lac La Ronge
Bird	Pierre	June 1914		Pelican Narrows	

Last Name	First Name	Date	Departing From	Destination	Additional Information
Cariboo	Joe	January 1914	Pukatawagon	Pelican Narrows	
Chaboyer	Norbert	December 1913	Cumberland	Pelican Narrows	
Christie	Mr. James Grant	January 1914	Pelican Narrows	D3	also travelled to The Pas, once with Cornelius Ballandine
Cook	Solomon	January 1914	South Deer Lake	Pelican Narrows	
Cursor	Alex	March 1914	Pelican Narrows	"home"	
Cursor	Andrew	May 1914	Cumberland	Pelican Narrows	travelled with Mrs. MacDougall & Farnsworth
Cursor	George	Feb-14			Cornelius went to get fish from his place
Cursor	George	May 1914		Pelican Narrows	fur trader, some of his family arrived in Pelican in May 1914
Cursor	John	December 1909	Beaver Lake		Postmaster for Beaver Lake
Cursor	Solomon	January 1914	Pelican Narrows	Birch Portage	travelled to Cornelius Bear's place, returned to Pelican Feb. 5, 1914
Cusitor	David	Aug-14		Pelican Narrows	travelled with Noah Ballandine
Custer	George	January 1914		Pelican Narrows	
Daylight	Alex	April 1914		Pelican Narrows	fur trader, travelled to Cumberland with Mr. Hall

<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
Daylight	Families	May 1915		Pelican Narrows	came into Pelican Narrows
Daylight	Paul	April 1914		Pelican Narrows	fur trader
Deschambault	J	January 1914	Cumberland	Pelican Narrows	arrived with the Brochet dog teams
Dorian	Carlo	December 1913	Pelican Narrows	Cumberland House	worked around Pelican, travelled from Churchill with Joe McCallum
Edwards	Reverend	March 1914	Lac La Ronge	Pelican Narrows	
Ewan	Mr.	May 1914	Birch Portage	Pelican Narrows	brought letters with Mr. McDonald
Farnsworth	Mr.	May 1914	Pelican Narrows	Cumberland	travelled with Mr. MacDougall & Andrew Cursitor
Gothall	Mr.	April 1914	South Deer Lake	Pelican Narrows	
Hall	Mr.	May 1914	Pelican Narrows	Steep Rock Creek	went to fish, later cleaned out canoe, travelled to Cumberland with Alex Daylight
Hartley	Fred	April 1914		Pelican Narrows	worked around Pelican, cut and piled wood, worked with Joe, travelled to Beaver Lake

Last Name	First Name	Date	Departing From	Destination	Additional Information
Holmes	John Pocock	June 1818	Pelican Narrows		Trader for HBC at Pelican Narrows and later Cumberland House.
Jan	Mr.	December 1913	Pelican Narrows	South Deer Lake	
Job	Louis	January 1914	Lac Du Brochet	Pelican Narrows	
Job	Pierre	December 1901		Pelican Narrows	
Job	Philip	January 1914	Lac Du Brochet	Pelican Narrows	
Jourdain	Louis	April 1914	Cumberland	Pelican Narrows	brought a few letters and "The Packet"
Keddie	Mr.	January 1914	Pelican Narrows	Cumberland	
Lapensee	Mr.	January 1914	Lac Du Brochet	Pelican Narrows	
Linklater	Magloire	December 1913			Carlo & Joe get fish from Magloire's
Linklater	Peter	March 1914	Churchill	Pelican Narrows	fur trader, travelled back and forth
Linklater	Peter's boys	January 1914		Pelican Narrows	brought a little fur
MacDougal	Mr.	May 1914	Pelican Narrows	Cumberland	travelled with Mr. Farnsworth & Andrew Cursitor
Marie	Jean	December 1913	Duck Lake	Pelican Narrows	
McCallum	Arthur	January 1914	Pelican Narrows		killed a good Silver Fox, traded fur in March 1914



<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
McCallum	Joe	January 1914	Churchill	Pelican Narrows	worked in the store and warehouse with Lazerus, travelled from Churchill with Carlo Dorian, September 1914 reported to be very ill in Churchill
McDermot	Andrew Miles				Postmaster for Cumberland
McDonald	Eli	December 1913	Duck Lake	Pelican Narrows	had men, travelled to Duck Lake with Carlo
McDonald	Eli	January 1914	Pelican Narrows	Basil Michelle's	
McDonald	Mr.	May 1914	Birch Portage	Pelican Narrows	Brought letters with Mr. Ewan
McDougall	James				Inspecting Chief Factor (1983 Pelican Narrows Post Inspection Report) and Chief Factor
McKay	Colin	January 1914	Beaver Lake	Pelican Narrows	
McLeod	Angus	June 1914	Pelican Narrows	The Pas	
McLeod	Harry	January 1914	Pelican Narrows	Cumberland	

Last Name	First Name	Date	Departing From	Destination	Additional Information
McLeod	Mr. H.	December 1913	Pukatawagon	Pelican Narrows	also travelled to and from Cumberland, part of last year's treaty party, brought letters
Michelle	Baptiste	December 1913	Pukatawagon	Pelican Narrows	took a load for Louis Morin, travelled from Louis Morin's
Michelle	Basil	January 1914			destination for Eli McDonald, Carlo & Joe
Michelle	Robbie	August 1914		Pelican Narrows	cut grass with his boy
Michelle	Robbie's boy	August 1914		Pelican Narrows	cut grass with Robbie Michelle
Michelle		December 1913		Pelican Narrows	
Morin	Alex	April 1914	Pukatawagon	Pelican Narrows	
Morin	Antoine	March 1914	Pelican Narrows	Pukatawagon	travelled to Pukatawagon with Lazerus with a load for Louis Morin
Morin	Eli	April 1914		Pelican Narrows	
Morin	Henry	February 1914	Pukatawagon	Pelican Narrows	
Morin	Herman gill	May 1914		Pelican Narrows	fur trader

Last Name	First Name	Date	Departing From	Destination	Additional Information
Morin	Louis	December 1913	Pukatawagon	Pelican Narrows	1st Indian employed by HBC "a very fine man, whose uncle was a veteran of the Riel Rebellion" 5 sleds of his arrive in pelican Jan 1914. Reference to Morin "outfit". Has lots of people who travel and move goods on his behalf. His family travelled to Pelican, although he himself did not usually. He did travel to Pelican on Aug. 10, 1914
Morin	Louis' oldest daughter	Aug-14		Pelican Narrows	got married at Pelican Narrows, went dancing all day
Natawayuse	Joe	December 1913	South Deer Lake	Pelican Narrows	brought no mail, went to Grand Rapids to fish, fished at Sand Narrows, cut grass with Robbie

<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
Natawayuse	Louis	April 1914	Brochet	Pelican Narrows	brought the mail from Brochet with Jonah Bear, took the Brochet packet back
Neness?	John	January 1914	South Deer Lake	Pelican Narrows	married the Widow Rachon
Numm	Mr.	December 1913	Cumberland	Pelican Narrows	
Okema	George	August 1914	Pelican Narrows	South Deer Lake	travelled with young Noah
Pickering	Mr.	August 1914	Lac La Ronge	Pelican Narrows	"Revellons man for Lac du Brochet"
Renaud	Pere/ Rev.	December 1913	Pukatawagon	Pelican Narrows	travelled back and forth between Pelican and Pukatawagon
Rice	Miss	August 1914	Brochet	Pelican Narrows	"returned from Brochet", travelled with Mr. Rowland to D3
Rowland	Mr.	August 1914	Pelican Narrows	D3	travelled with Miss Rice to D3
Seguin/ Segan	Mr. Frank	July 1914	Lac Du Brochet	Pelican Narrows	travelled to Cumberland with all the returns
Settee	Rev.	December 1913	Pelican Narrows	Cumberland	
Sewap	Edward	May 1915		Pelican Narrows	

<b>Last Name</b>	<b>First Name</b>	<b>Date</b>	<b>Departing From</b>	<b>Destination</b>	<b>Additional Information</b>
Stayback	Charles	May 1915	Pelican Narrows	Cumberland	
Thomas	George	May 1914	South Deer Lake	Pelican Narrows	
Thomas	George's son	May 1914	South Deer Lake	Pelican Narrows	
Thomas	John Charles	March 1914	Pelican Narrows	South Deer Lake	also travelled by boat to take the returns of Lac du Brochet to Pelican
Thomas	Leo	January 1914		Pelican Narrows	
Thomas	Leo's son	January 1914		Pelican Narrows	
Wood	Constable	March 1914			NW Mounted Police

## CHAPTER 4 THE LAW OF OBLIGATION

### DEFINING

Obligations bind individuals and groups in the human world. Societies depend on a mutuality of obligations to ensure their physical existence and cultural continuity. The shepherd in Switzerland is obligated to care for his or her flock so that they grow and the herder earns a living. A person agrees to buy your car. A grandmother looks after her grandchildren out of a sense of obligation so that her daughter can go to work. Two people marry. A stressed out teacher in Manitoba stays up late, marking papers out of a sense of obligation to her students. There are endless examples of moral, legal, social, and cultural obligations that people experience the world over.

The *Oxford English Dictionary* online defines “obligation” as:

- (a) an act or course of action to which a person is morally or legally bound;
- (b) a duty or commitment: [*with infinitive*] : *I have an obligation to look after her,*
- (c) the condition of being morally or legally bound to do something: *they are under no obligation to stick to the scheme;*
- (d) a debt of gratitude for a service or favour: *she didn't want to be under an obligation to him;*

*Law* - a binding agreement committing a person to a payment or other action.<sup>105</sup>

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<sup>105</sup> Oxford Dictionaries Online, online: < <http://oxforddictionaries.com/definition/obligation>>.

The context and foundation of obligation will be explored through the interactions we have documented of Cree and Euro-colonial systems in the fur trade at Cumberland House and Pelican Narrows.

Obligations arise in everyday life and usually do not require formalised law to enforce them. You have an obligation to yourself and your teacher to show up at school, which may be based on your need to acquire money to meet other obligations, such as paying your utility bills and purchasing groceries. In turn, the seemingly mundane obligation to attend school may be linked with larger social and legal dimensions, including meeting legal obligations such as paying your tuition and mortgage every month. It may be a moral obligation, personal to your family to care for and nurture them. Your obligation may arise from a sense of responsibility, such as checking on an elderly neighbour. Contractual obligations take many forms, as formal and informal contracts, whereby one agrees to babysit a child on Tuesday and another agrees to babysit on Thursday. The underlying purpose of these obligations is often shared across different cultures. Obligations bind individuals and societies for the collective good, as peacefully non-violent actions.

Some obligations practised in one culture have no obvious counterpart in another culture. When a Cree person harvests a tree for any purpose, there is an obligation to thank the tree for giving its life and spirit and to make an offering to the Creator, with no obvious counterpart to this practise in Euro-colonial culture. Another example is the cultural obligation during menstruation, or “moon time” as it is referred to in Cree society. When a Cree girl or woman is

experiencing her moon time, she is considered to be most powerful. The men in the household have the obligation to look after all household duties and to serve her food, as this is time for her to rest and gather her power. Moon time is customarily respected. There is no similar obligation, certainly on the part of males, surrounding menstruation in Euro-colonial culture.

Cree society is traditionally matriarchal. In my personal experience, family groups operate by consensus; but in the event that consensus is not reached, women have the final decision-making power. This sense of obligation is counter to Euro-colonial patriarchal approaches whereby women were viewed as subordinate to men. This thesis explores when and why Indigenous and European peoples might be obliged to respect differences which have no particular value to them – or might feel obliged to change them.

## **ANALYSIS:**

### **CREE LAWS OF OBLIGATION:**

Indigenous groups have a long cultural history of obligations pre-dating European contact.<sup>106</sup> There is evidence of specific patterns of behaviour for managing relations among Aboriginal groups, including family relations and disputes between individuals. There was a demonstrated obligation to the community above any obligation to the individual. If an individual did something considered wrong, the community at large would gather to reach consensus on how to manage the perpetrator. Elders were obligated to teach children the

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<sup>106</sup> Aboriginal Justice Inquiry report. Chapter 3, online: Aboriginal Justice Implementation Commission <<http://www.ajic.mb.ca/volumel/chapter3.html>>.



cultural and legal norms of the community. Can we in 2013 reconstruct what remains of Aboriginal law after four centuries of European, Christian cultural occupation, or even retrieve any parts of the law historically from a time and place before or at first contact? We can.

In the 1840s, Alexander Ross of the Red River Settlement recorded obligatory Metis rules of a buffalo hunt which clearly had origins in earlier, pre-contact Indigenous culture:

1. No buffalo to be run on the Sabbath-day.<sup>107</sup>
2. No party to fork off, lag behind, or go before, without permission.
3. No person or party to run buffalo before the general order.
4. Every captain with his men, in turn, to patrol the camp, and keep guard.
5. For the first trespass against these laws, the offender to have his saddle and bridle cut up.
6. For the second offence, the coat to be taken off the offender's back, and be cut up.
7. For the third offence, the offender to be flogged.
8. Any person convicted of theft, even to the value of a sinew, to be brought to the middle of the camp, and the crier to call out his or her name three times, adding the word 'Thief,' at each

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<sup>107</sup> This indicated the Christian influence of the Euro-Canadians.

time.<sup>108</sup>

Again, each individual was obliged to act in a manner consistent with the best interests of the group. The Ross record of rules for a buffalo hunt reflected a Christianized, western influence, which began in Lower Canada (Quebec) with the Jesuits in the 1600s. There was an early Christian mission at Red River, pre-Selkirk, promoted by the Hudson's Bay Company. The Metis dual cultural inheritance demonstrated both European and Cree influences. Thus in the rules of the hunt there was flogging, observation of the Sabbath, and shaming by shouting "thief" rather than the more subtle teasing practiced by the Cree. This has resonated throughout the research of John Borrows, regarding Indigenous legal traditions of other Aboriginal groups in Canada.<sup>109</sup>

Requisite ingredients for obligation in Cree law, particularly contract law, were similar to Euro-Canadian concepts of offer, acceptance and consideration, with one significant difference. When a Cree person made an offer to assist, respect was where the obligation arose. It was that person's word and honour. Cree people would be doing contract law all of the time in their dealings with one another, and so they transferred that to dealings with the HBC at the point of first contact. The other party would accept or decline your offer. The consideration in these cases was the anticipated result, the exchange. Further, your word was

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<sup>108</sup> Ross, Alexander. *The Red River Settlement: Its Rise, Progress, and Present State* (Minneapolis: Ross and Haines, 1957) at 249–50 in the Aboriginal Justice Inquiry report, chapter 3, online: Aboriginal Justice Implementation Commission <<http://www.ajic.mb.ca/volumel/chapter3.html>>. See also the abundant first contact evidence in the *Jesuit Relations* for the seventeenth century St. Lawrence River valley.

<sup>109</sup> *Supra* note 22.

your consideration. This was where the Cree laws came in. If a person failed to honour Cree law, they would suffer the consequences. The obligation was such that a person could get kicked out of the community if they did not honour their word. This was how the society worked. The English common law and French civil law ways of doing things focused on written contracts. As a result, a Euro-Canadian could say anything they wanted and not regard it as binding until it was reduced to writing. This difference of approach has led to dramatically different understandings of the Treaties.

### **EURO-CANADIAN LAWS OF OBLIGATION:**

Contract law demonstrates several aspects of the approach of Euro-Canadian society toward obligations, as a legally binding agreement between two or more “persons” which a court will enforce. In the Canadian justice system, the term “person” does not apply only to human beings. A corporation is regarded as a separate, albeit fictive, legal “person”. According to the common law, there are three main elements of a contract offer, acceptance, and consideration. All three elements must be present in order for a legally enforceable contract to be formed.<sup>110</sup>

The offer refers to an expression of intention to enter into a binding contract. The common law utilizes the reasonable person test to determine whether there is an offer: did the parties intend to enter into a binding contract? If the reasonable person would conclude that there was an intention to be bound,

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<sup>110</sup> S. M. Waddams, *The Law of Contracts*, 5<sup>th</sup> ed. (Aurora: Canada Law Book, 2005 at 17).

the legal test for an offer is met.<sup>111</sup>

Without acceptance of the offer, there is no meeting of the minds between the parties and no contract will be formed or recognized in law.

Consideration refers to something of value that is bargained for in return for a promise between the parties.<sup>112</sup> Consideration need not be of adequate or equal value to the promise that it is being exchanged. The English common law has established that even a peppercorn can be legal consideration.<sup>113</sup> Valuable consideration may consist either of some right, interest, profit or benefit accruing to one party or of some forbearance, detriment, loss or responsibility to the other party.

This Euro-centric approach to obligation was introduced to Canada several hundred years ago. Historically the beaver drove development of the fur trade in Canada. Harold Innes stated:

[T]he beaver became a desirable animal for food and clothing, and the fur a valuable article of trade.... For the furs which the Natives traded, they procured from the French, Axes, Chisels, Knives, Spears and other articles of iron, with which they made good hunts of furr-bearing [*sic*] animals and procured woolen clothing.<sup>114</sup>

In this way Aboriginal people entered into contracts with European fur traders.

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<sup>111</sup> *Canadian Dyers Association Ltd. v. Burton*, [1920] 47 OLR 259 (HC).

<sup>112</sup> *Thomas v. Thomas* [1842] 2 Q.B. 851, 114 E.R. 330.

<sup>113</sup> *Westlake v. Adams* (1858), 5 CB (NS) 248, 141 ER 99 at 106.

<sup>114</sup> Innes, Harold A. *The Fur Trade in Canada: An Introduction to Canadian Economic History* (Toronto: University of Toronto Press, 1962 republished 1999) at 3.

The fur traders would offer goods in return for furs. The Euro-Canadian law of obligation was born of the fur trade and developed in the period from 1660 onward.<sup>115</sup> Sarah Carter has stated:

The boreal forest was the first focus of European interest because it was rich in fur-bearing animals, and because the vast network of rivers and lakes allowed the transportation of this resource from the interior to the coast. In order for the Europeans to acquire this resource, Aboriginal people could not be enslaved, captured, or forced into labour, as they were in parts of Meso- and South America; rather, their assistance was essential as both trapping and transporting required the expert knowledge of those best acquainted with the environment.<sup>116</sup>

Thus mutually beneficial obligations were undertaken. Carter asserts that, in return for their assistance, Aboriginal peoples of what is now Western Canada had access to new and different materials, including ironworks such as tools and guns.<sup>117</sup> Legally binding contracts, whether oral or literal, in this Euro-Canadian context must include offer, acceptance, and consideration flowing between the parties.

There were significant additional Euro-colonial legal and fiduciary obligations in addition to contract law, including provision at HBC posts of blankets, food, and medicine, as well as the imposition of criminal law and family law. Fiduciary obligations arose primarily from the *Royal Proclamation of 1763*

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<sup>115</sup> Ray, Arthur J. *Indians in the Fur Trade* *Supra* note 44, at 27.

<sup>116</sup> Carter, Sarah. *Aboriginal People and Colonizers of Western Canada to 1900* (Toronto: University of Toronto Press, 1999) at 36.

<sup>117</sup> *Ibid.*

and included a duty to not exploit the Indigenous peoples. The Supreme Court of Canada explained in *Guerin*:<sup>118</sup>

The fiduciary relationship between the Crown and the Indians has its roots in the concept of aboriginal, native or Indian title. The fact that Indian Bands have a certain interest in lands does not, however, in itself give rise to a fiduciary relationship between the Indians and the Crown. The conclusion that the Crown is a fiduciary depends upon the further proposition that the Indian interest in the land is inalienable except upon surrender to the Crown.

An Indian Band is prohibited from directly transferring its interest to a third party. Any sale or lease of land can only be carried out after a surrender has taken place, with the Crown then acting on the Band's behalf. The Crown first took this responsibility upon itself in the Royal Proclamation of 1763. It is still recognized in the surrender provisions of the Indian Act. The surrender requirement, and the responsibility it entails, are the source of a distinct fiduciary obligation owed by the Crown to the Indians.

Fiduciary duties have always been the domain of governments and not corporations. The Honour of the Crown is the basis of the fiduciary duty and that is the reason why it is owed by the Crown and not corporations. However, the idea of the Honour of the Crown was never developed in past cases other than to be used to interpret treaties in favour of Indians. Following *Haida*<sup>119</sup> the general concept is the Honour of the Crown and the more specific and limited concept has become the fiduciary duty.

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<sup>118</sup> *Guerin v. The Queen*, [1984] 2 S.C.R. 335 at paras. 84 & 85.

<sup>119</sup> *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para. 18.

## OBLIGATION TO CONSULT IN CREE LAW

The duty to consult in Cree law is so interwoven as to be inseparable from the fabric of Cree culture. Decision-making is based on consensus. The family representatives would speak for their group.

### Crown Obligations:

The historic and current obligations of the Crown set out larger questions about Euro-Canadian and Aboriginal obligations with respect not only to legal policy and land use but also to current obligations with respect to the past.

According to the *Constitution Act* 1867, the federal government of Canada has the “exclusive legislative authority” for all matters regarding “Indians and Lands reserved for the Indians”.<sup>120</sup> This created significant obligations on the federal government in law to undertake administration and to conduct operations that concern Aboriginal groups and individuals within Canada.

In 1982 the *Constitution Act* recognized and affirmed Aboriginal rights of Indian, Inuit, and Métis people.<sup>121</sup> The Supreme Court of Canada’s “fiduciary duty” cases<sup>122</sup> established that Section 35 places an obligation in the Crown to consult with and accommodate (where possible) Aboriginal groups whose Aboriginal or treaty rights may be infringed by the government.

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<sup>120</sup> *Constitution Act, 1867* (UK) 30 & 31 Victoria c3 s 91(24).

<sup>121</sup> *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 s 35.

<sup>122</sup> *Supra* note 120.

Over the centuries much has been said about the nature of obligation. Treacy provides a valuable overview of the common law regarding the Crown's obligation to consult Aboriginal groups before 2007.<sup>123</sup> All obligations of the Crown arise from Aboriginal occupation of the land prior to colonization.

Many positive obligations were firmly entrenched in treaties between the federal government and Indigenous peoples of Canada. The earliest peace and friendship treaties were designed to ensure that Aboriginal populations would support one colonial adversary, British or French, against the other, to claim what is now known as Canada as their own.<sup>124</sup> These original treaties in the 1700s may not have spoken of extinguishment of Aboriginal rights. While individual treaties varied in language and specific details, the Supreme Court of Canada has stated that: "Common to all treaties is an intention to create legal obligations, the presence of mutually binding obligations, and a measure of solemnity".<sup>125</sup> This remains historically true for Cree legal principles of *wahkohtowin* and *miyo-wicehtowin*, which operated together to obligate Cree people and nations to work with the Euro-Canadians to establish respectful, harmonious relationships.<sup>126</sup>

In exchange for surrender of land, mineral and other rights, the Crown agreed that Aboriginal people would retain certain rights. These often included

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<sup>123</sup> Treacy, Heather L., "The Current State of the Law in Canada on Crown Obligations to Consult and Accommodate Aboriginal Interests in Resource Development" (2007) 44 *Alta. L. Rev.* 571.

<sup>124</sup> *Peace and Friendship Treaty Between His Majesty the King and the Jean Baptiste Cope*, (1752), online: <http://www.aadnc-aandc.gc.ca/eng/1100100029040/1100100029041>, see also: <http://www.aadnc-aandc.gc.ca/eng/1100100028589/1100100028591>.

<sup>125</sup> *R. v. Sioui*, [1990] 1 SCR 1025; also generally, Douglas N. Sprague, "Canada's Treaties with Aboriginal Peoples," in DeLloyd J. Guth and W. Wesley Pue (eds.), *Canada's Legal Inheritances* (Winnipeg: Canadian Legal History Project, 2001), 344-351.

<sup>126</sup> *Supra* note 28.



hunting, trapping and fishing for food, education and healthcare. The nature of these obligations fell under these categories, creating mutual Euro-Canadian and Cree contractual obligations.

Over time, the Canadian Crown has enacted legislation to modify obligations under the treaties. For example, the *Natural Resources Transfer Agreements* in the prairies were added to the *Constitution Act 1930*.<sup>127</sup> No discussion of Indigenous rights in the Prairies would be complete without reference to the *Natural Resources Transfer Agreement (NRTA)*.<sup>128</sup>

The *NRTA* had a substantial impact on the extent of treaty rights in the Prairie Provinces. It was arguable that, before the *NRTA*, First Nations could contend that their treaties included a right to commercially hunt, trap and fish. The *NRTA* removed that argument. The *NRTA* extinguished the commercial right to hunt, trap, or fish. However, it expanded the right to hunt, trap, or fish for food. It did so by allowing “domestic resource harvesting” by Indians all across the three Prairie Provinces and not just in the land surrendered by treaty. As such, Indians could engage in domestic resource harvesting on unoccupied Crown lands or lands to which they had a right of access. Finally, it should be noted that the *NRTA* applied only to First Nations and not the Métis. In 1996 the Supreme Court of Canada held that amendments made by the *Natural*

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<sup>127</sup> *Natural Resources Transfer Agreements, being Schedules to the Constitution Act, 1930* (UK), 20 & 21 Geo. V, c 26, s. 13, reprinted in RSC 1985, App II, No 26.

<sup>128</sup> The *NRTA* is a constitutional document which transferred control of Crown lands from the Federal government to the three prairie provinces.

*Resources Transfer Agreements* modified existing treaty rights to hunt in Alberta, but these rights were not extinguished.<sup>129</sup>

Treacy asserts that the principles of treaty interpretation developed by the Supreme Court of Canada over the last twenty-five years vary significantly from the “usual rules of contract interpretation”.<sup>130</sup> Historical treaty rights are to be given a large and liberal interpretation, taking into account the historical context at the time each treaty was made, and the fact that such treaty rights remain unique by their nature.<sup>131</sup>

Treacy’s position makes obligations of the Crown, when it comes to treaty rights, different from obligations that arise by what Euro-Canadian law considers a “typical” Euro-centric type contract.

## **I. ORIGINS OF THE CROWN’S OBLIGATION TO CONSULT:**

93 Section 35 of the Constitution Act, 1982, being schedule B to the Canada Act 1982 (UK), 1982, c. 11 [Constitution Act], provides: “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”

94 Section 35 not only guarantees existing aboriginal and treaty rights but it also imposes on government the duty to engage in various processes even before an aboriginal or treaty right is established. Section 35 gives constitutional protection to a special relationship between the Crown and

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<sup>129</sup> *R. v. Badger*, [1996] 1 SCR 771 (*Badger*).

<sup>130</sup> *Supra* note 125 at 574.

<sup>131</sup> *R. v. Sparrow*, [1990] 1 S.C.R. 1075 at para. 56.

aboriginal peoples under which the "honour of the Crown" must govern all dealings.

95 The honour of the Crown entails a duty to negotiate aboriginal claims with First Nations. While aboriginal claims are unresolved, the honour of the Crown entails a duty to consult, and if necessary accommodate, the interests of the aboriginal people, before authorizing action that could diminish the value of the land and resources that they claim.

96 The framework of the duty to consult was developed by the Supreme Court of Canada in two decisions in 2004, *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511 [*Haida*] and *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74, [2004] 3 S.C.R. 550, and the *Mikisew Cree First Nation v. Canada (Minister of Heritage)*, 2005 SCC 69, [2005] 3 S.C.R. 388 [*Mikisew*] decision in 2005.<sup>132</sup>

#### **A) OBLIGATION TO CONSULT AS A *PRE-RIGHT* DUTY:**

The Crown has a duty to consult and, where appropriate, accommodate Aboriginal interests even if an Aboriginal right, including Aboriginal title, has not been proven in a court of law or accepted by the Crown. The duty to consult is triggered by contemplated governmental action and consistent with the traditional Cree law of obligation and general legal principles of *wahkohtowin* and *miyo-wicehtowin*.<sup>133</sup> *Wahkohtowin* required Cree people and nations to view all of nature as related. This extended to people of different beliefs and even Euro-

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<sup>132</sup> *Upper Nicola Indian Band v. British Columbia (Minister of Environment)*, 2011 BCSC 388 [*Upper Nicola Indian Band*] at paras. 93-96.

<sup>133</sup> *Ibid*, at para. 115.

Canadian governments. *Miyo-wicehtowin* required supporting and maintaining peace in these relationships. Consultation was part of Cree law.

The threshold for triggering the duty to consult is low; if the Crown "should have" knowledge of "potential" Aboriginal rights or title, and "contemplates" conduct that "might" affect the claimed right or title, the Crown must consult with the potentially affected Aboriginal people: Aboriginal Law Since *Delgamuukw* at 210.<sup>134</sup>

*Haida* established a three-part test:

- (1) the Crown's real or constructive knowledge of a potential Aboriginal claim or right;
- (2) contemplated Crown conduct; and
- (3) the potential that the contemplated conduct may adversely affect an Aboriginal claim or right.

## **II. SCOPE: IS THERE AN OBLIGATION TO CONSULT HISTORICALLY (RETROACTIVELY)?**

For reasons that follow, there is no duty to consult historically or retroactively. The duty to consult is meant to allow Aboriginal peoples to participate, in some manner, in the decision-making process when resource allocation decisions are at issue. The extent of the Aboriginal group's participation varies depending on the severity of the possible adverse impact and

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<sup>134</sup> *Ibid*, at para. 99.

the strength of the Indigenous right in question. The duty can vary from mere notice to something more involved like separate consultation processes for Aboriginal groups distinct from existing regulatory processes.

The Canadian government has failed to recognize that consultation has always been a part of Cree law. It follows that Aboriginal peoples should have been, and indeed would have expected to be, consulted since the time of contact because Cree law dictated that consultation occur.

**A) *RIO TINTO ALCAN INC. V. CARRIER SEKANI TRIBAL COUNCIL*,  
[2010] S.C.J. NO. 43.**

For the second element of the test, Chief Justice McLachlin wrote that the impugned governmental action did not need to have an immediate impact on lands and resources. “A potential for adverse impact suffices,” wrote McLachlin. “Thus the duty to consult extends to ‘strategic, higher level decisions’ that may have an impact on aboriginal claims and rights.”<sup>135</sup>

However, for the third element relating to an adverse effect, the Court emphasized that there must be a causal relationship between the proposed governmental conduct or decision and a potential for adverse impacts. “Past wrongs,” wrote McLachlin, “do not suffice.” Likewise, she added, or “mere speculative impacts.” The Court emphasised that the duty to consult was limited to adverse impacts flowing from the specific Crown proposal at issue, and not to larger adverse impacts of the project of which it was a part.

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<sup>135</sup> *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, [2010] S.C.J. No. 43, at para. 44.

The Court ruled that matters must be looked at prospectively instead of consulting regarding historical grievances. The issue was “does this new Crown decision affect the future?” **The duty applies to current and future activities and not historical infringements.** [Emphasis added].

The Court stated that the claimant:

[M]ust show a causal relationship between the proposed government conduct or decision and a potential for adverse impacts on pending claims or rights. Past wrongs, including breaches of the duty to consult, do not suffice.<sup>136</sup>

The Court went on to say that speculative impacts and impacts on future negotiating positions would not trigger the duty.<sup>137</sup> A past or continuing breach of a claim or right, including prior failures to consult, would only trigger a duty to consult if the present decision at issue caused a new adverse effect.<sup>138</sup> “Prior and continuing breaches, including prior failures to consult, will only trigger a duty to consult if the present decision has the potential of causing a novel adverse impact on a present claim or existing right.”<sup>139</sup>

Where the resource had long since been altered and the present Crown conduct or decision did not have any further impact on the resource, the issue was not consultation but compensation.

In *Upper Nicola Indian Band*, Savage J. opined:

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<sup>136</sup> *Ibid.*, at para. 45.

<sup>137</sup> *Ibid.*, at paras. 46 and 50.

<sup>138</sup> *Ibid.*, at para. 49.

<sup>139</sup> *Ibid.*, at para. 49.

In my opinion *Carrier Sekani* explains *Haida Nation* SCC. It does not support the position that consultation must go beyond contemplated conduct and address the ongoing impacts of past decisions. *Carrier Sekani* confirms that **consultation is to be directed at the potential effects of contemplated conduct, not the past, existing, ongoing or future impacts of past decisions or actions**<sup>140</sup> [Emphasis added].

With regard to whether the scope of the duty to consult extended to adverse impacts of a larger project, McLachlin CJ said in *Rio Tinto*:

53. I cannot accept this view of the duty to consult. *Haida Nation* negates such a broad approach. It grounded the duty to consult in the need to preserve Aboriginal rights and claims pending resolution. **It confines the duty to consult to adverse impacts flowing from the specific Crown proposal at issue -- not to larger adverse impacts of the project of which it is a part. The subject of the consultation is the impact on the claimed rights of the current decision under consideration** [Emphasis added].

In the case of *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, the Court rejected the argument that the Crown must understand the Aboriginal perspectives on possible adverse effects and then work to minimize those effects. This was seen as too burdensome. Instead, the Crown must give full and fair consideration to the concerns raised, but does not need to do everything to try and minimize the effects. This moved the consultation discussion away from the small, trivial details by addressing consultation more holistically (e.g., have the concerns raised been considered by the Crown and

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<sup>140</sup> *Supra* note 134 at para. 119.

addressed reasonably?). In addition, this case held that consultation is to be done with Aboriginal groups. This means that Aboriginal people individually are not owed a duty of consultation. That duty is owed to the Aboriginal group as a whole.

### **III. THE OBLIGATION BREACHED?**

Decisions on the scope of the duty to consult have no bearing on questions of past or ongoing infringements, or proof of the existence of Aboriginal title or Aboriginal rights: *Haida Nation* SCC at para. 66.

Over the years, this is how a common law duty in the Crown to consult and accommodate Aboriginal groups with respect to their Aboriginal and treaty rights has developed. Section 35 of the *Constitution Act* is key to Indigenous/Crown relations of obligation. Section 35 recognizes and affirms existing Aboriginal and treaty rights. Aboriginal peoples of Canada include Indian, Inuit, and Metis. Treaty rights include present and future land claims rights. Section 35 rights are guaranteed to Aboriginal people regardless of gender identity.

35.1 The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the "*Constitution Act, 1867*", to section 25 of this Act or to this Part,

(a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and



(b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item.<sup>141</sup>

In *Sparrow* the Supreme Court of Canada set out the test by which the Crown could justify infringing upon Aboriginal rights by direct governmental regulation.<sup>142</sup> In *Haida Nation v. British Columbia (Minister of Forests)*<sup>143</sup>, *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*<sup>144</sup>, and *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*<sup>145</sup>, the Court set out the test to justify infringement upon Aboriginal rights through other governmental actions. Treacy concludes that both tests include a requirement for consultation with Aboriginal groups *prior to* any infringement taking place [emphasis added].<sup>146</sup>

Where the Crown wished to infringe upon established Aboriginal or treaty rights, it has an obligation to consult and reasonably to accommodate Aboriginal interests. This obligation arises from the *Constitution Act*, 1982. Where the Crown wishes to infringe upon an Aboriginal or treaty right asserted but not yet proven, the Crown still has an obligation to consult and accommodate; but this obligation arises from “the honour of the Crown”.<sup>147</sup>

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<sup>141</sup> *Supra* note 123, at s 35.

<sup>142</sup> *Supra* note 133.

<sup>143</sup> *Haida Nation v. British Columbia (Minister of Forests)* [2004] 3 SCR 511 (*Haida*).

<sup>144</sup> *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74, [2004] 3 SCR 550 (*Taku River*).

<sup>145</sup> *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69, [2005] 3 SCR 388 (*Mikisew*).

<sup>146</sup> *Supra* note 125, at 581.

<sup>147</sup> *Supra* note 145, at para 16.

The historical roots of the principle of the honour of the Crown suggest that it must be understood generously in order to reflect the underlying realities from which it stems. In all its dealings with Aboriginal peoples, from the assertions of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably. Nothing less is required if we are to achieve “the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown”: *Delgamuukw*<sup>148</sup>, *supra* at para 186, quoting *Van der Peet*<sup>149</sup>, *supra* at para 31.<sup>150</sup>

The Crown has an obligation to consult meaningfully and honourably in good faith with an Aboriginal group before taking action that might compromise the interests of that Aboriginal group. This consultation should take place as early as possible and may reveal a duty to accommodate. In all cases, the driving force behind the extent of the obligation of the Crown is the question: “What is required to maintain the honour of the Crown and to effect reconciliation between the Crown and the Aboriginal interest at stake?”<sup>151</sup> When it comes to Aboriginal and treaty rights, the obligations of the Crown are rooted in this concept of “the honour of the Crown”. These obligations have been clarified and entrenched in the common law in Canada.

The Supreme Court of Canada has developed a number of tests to determine when and how the Crown obligation to consult and accommodate Aboriginal groups is now triggered. They have also articulated legal tests to

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<sup>148</sup> *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010, at para 186 (*Delgamuukw*).

<sup>149</sup> *R. v. Van der Peet*, [1996] 2 SCR 507 (*Van der Peet*).

<sup>150</sup> *Supra* note 145, at para 17.

<sup>151</sup> *Supra* note 145, at 45.

determine the nature and depth of the obligation that must be met. Treacy further asserts that “the law in relation to Crown duties of consultation and accommodation is particularly dynamic.”<sup>152</sup> The obligation of the Crown has changed over time, certainly as far as exercising Crown obligations are concerned. Treacy provides a good overview of the development and current state of Crown obligations regarding Aboriginal and treaty rights in Canada.

As we have seen, Cree law has always included a duty to consult among equal parties.

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<sup>152</sup> *Supra* note 125 at 613.

## **CHAPTER 5 CONCLUSION**

### **MEANINGS OF “OBLIGATION”**

There are many definitions of obligation. Cree language and legal systems demonstrate how obligation can be approached holistically. By incorporating obligation into all aspects of community, the entire group is strengthened. Treacy has focused on the common law understanding of obligation as it has developed over time.

The Supreme Court of Canada has clarified the duties and obligations of the Crown when it comes to Aboriginal and treaty rights. Some obligations remain murky and need further scholarship and judicial attention. Carter, Innis and Ray have all explored Euro-Canadian concepts of obligation through their examinations of contract law, both during the fur trade era and more recently. Legally binding contracts in this context must include offer, acceptance, and consideration flowing between the parties.

It is important to explore the records of transactions between Cree peoples and European newcomers in order to find out how these systems of obligation shaped the conduct of the fur trade and the subsequent relationships of Indigenous peoples with the government of Canada.

## WHERE DO WE GO FROM HERE?

In 1894-1898 the members of what is now Peter Ballantyne Cree Nation became signatories to Treaty 6.

We must ask ourselves how we honour and respect the Treaty. The sacredness of this Treaty has to come from our people. We look at the housing crisis and say that we have a Treaty right to shelter. But, along with the right, we also have responsibility for that Treaty right to shelter. Some people wreck or torch their homes right away. For Treaty implementation to work in housing, we must ask people how they honour and uphold Treaty. Maybe Johnny needs to put in half the time building that house in order to value that house.

As for our Treaty right and responsibility for education, we find that attendance is an issue. I cannot blame Ottawa why those kids are not at school. Perhaps I can blame some on residential school but only some. It is up to us to respect this Treaty right to education and take full advantage of opportunities.

If we're colonized, we need to decolonize. If we're assimilated, we have to reclaim our culture. Teaching ourselves to be responsible is in itself a huge responsibility. To ensure responsibility we need policies and we need to enforce accountability. Somehow, somehow, we need to teach responsibility back to the people.<sup>153</sup>

Through revitalization of Cree legal traditions we may achieve the vision of Chief McCallum. We need to assess boldly where we as Cree people are today.

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<sup>153</sup> Chief Darrel McCallum, Peter Ballantyne Cree Nation, excerpt from Chiefs' Forum on Treaty Implementation Dakota Dunes Casino and Conference Center 29 & 30 March, 2012, page 93-94.

By embracing *onisinweuk* we all become keepers of the law, as we have been for centuries. Focusing on collective rights and responsibilities rather than individual ones can start healing the tears in the fabric of our communities. We need to embrace our storytellers. The wisdom and observations they share inform people in the practice of *wahkohtowin*, governing all of our relations and obligations, as it is the Creator who placed all beings here on Mother Earth. Our relationships with all beings require respectful non-interference. Gentle, respectful interactions are the way of our ancestors. Imagine how our world could change if we as a community embraced these two Cree laws!

The grass roots movement known as “Idle No More”<sup>154</sup> is only the latest movement to galvanize people across Canada, and indeed North America, to affirm and honour the treaties. This implicitly includes the revitalization and incorporation of Indigenous law. Some people are understandably angry and even more are understandably hurt. If we can bear in mind the Cree law of *miyo-wicehtowin* we can facilitate open discussion and change. This is not all rose-coloured glasses. Our people have suffered through and continue to experience trauma and oppression at the hands of the Euro-Canadian government. Systemic discrimination in the justice system, children murdered in the child welfare system and Canada’s dismal record of murdered and missing Aboriginal women

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<sup>154</sup> “Idle No More” calls on all people to join in a revolution which honours and fulfills Indigenous sovereignty which protects the land and water. Colonization continues through attacks to Indigenous rights and damage to the land and water. We must repair these violations, live the spirit and intent of the treaty relationship, work towards justice in action, and protect Mother Earth, online: [www.idlenomore.com](http://www.idlenomore.com).

and girls are just some of the issues widely reported on news services.<sup>155</sup> Society as a whole would benefit from embracing Cree law. Even in these trying times *miyo-wicehtowin* requires maintaining peace between people of different perspectives. It directs us to facilitate positive relationships and harmony, including our relationships with organizations. We need to be strong, we need to insist on change where the system is clearly broken. We need to develop working relationships with Canada because this land is a shared land. Please consider for a moment the brave and peaceful protest of Chief Theresa Spence of Attawapiskat. She undertook a liquid fast for 44 days, demanding to meet with the Prime Minister and Governor General to discuss issues facing Aboriginal people in Canada.<sup>156</sup> While she may not have achieved that goal, she did succeed in bring the world's attention to the plight of our peoples<sup>157</sup>. She also brought forward a thirteen-point declaration of issues for discussion between First Nations and the Canadian government.<sup>158</sup> Consider Nelson Mandela. This anti-apartheid leader was jointly awarded the Nobel Peace Prize in 1993 for his

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<sup>155</sup> See, for example: *Justice system 'in crisis' for Ontario's First Nations, Iacobucci finds*, The Canadian Press, online: <http://www.680news.com/2013/02/26/report-on-aboriginal-representation-on-ontario-juries-to-be-released-today/>; Commission of Inquiry into the Circumstances Surrounding the Death of Phoenix Sinclair, *Terms of Reference*, online: <http://www.phoenixsinclairinquiry.ca/terms.html>; Canadian Human Rights Commission, *Statement on Missing Aboriginal Women*, online: <http://www.newswire.ca/en/story/1121109/chrc-statement-on-missing-aboriginal-women>.

<sup>156</sup> CBC News. *Chief Theresa Spence to end hunger strike today: Spence to wrap it up after NDPs, Liberals and chiefs sign her declaration*, online: <http://www.cbc.ca/news/politics/story/2013/01/23/attawapiskat-spence-hunger-strike.html>.

<sup>157</sup> Brazil News Cloud, online: <http://brazilnewscloud.com/tag/theresa-spence/>; BBC News. *Canada native hunger strike sparks Quebec blockade*, online: <http://www.bbc.co.uk/news/world-us-canada-20879175>.

<sup>158</sup> Harper, Tim. *Theresa Spence's unfulfilling end to 44-day fast*, The Star, online: [http://www.thestar.com/news/canada/2013/01/25/tim\\_harper\\_theresa\\_spences\\_unfulfilling\\_end\\_to\\_44day\\_fast.html](http://www.thestar.com/news/canada/2013/01/25/tim_harper_theresa_spences_unfulfilling_end_to_44day_fast.html).

work for the peaceful termination of South Africa's apartheid regime.<sup>159</sup> He was instrumental in the establishment of South Africa's Truth and Reconciliation Commission<sup>160</sup>, upon which Canada's Truth and Reconciliation Commission was partly based.<sup>161</sup> These remarkable leaders have changed the world *peacefully*.

*Kwayaskitotamowin* simply means to do things the right way. Be noble in your thoughts and deeds. Contrary to western legal systems that are highly adversarial and emphasize a "winner" and a "loser", Cree law recognizes and accepts that people will have differing opinions and perspectives, before, during and after any conflict. This is okay. There is no need to squash your "opponent" because you have different points of view. Respectful non-interference with a focus on kindness is our way.

Chief McCallum speaks of the need to teach ourselves responsibility and to enforce accountability.<sup>162</sup> Our traditional ways provide the means to do so. *Pastahowin* is the Cree term for a failure to abide by Cree law. Should Cree laws be broken, *ohcinewin* may be evoked as a part of the negative consequence that would follow. To act against Cree law is to act against the Creator and naturally retribution is warranted.<sup>163</sup> Depending on the severity of the matter, the

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<sup>159</sup> Nobel Prize Organization, online:

[http://www.nobelprize.org/nobel\\_prizes/peace/laureates/1993/](http://www.nobelprize.org/nobel_prizes/peace/laureates/1993/).

<sup>160</sup> Truth and Reconciliation Commission of South Africa, online:

<http://www.justice.gov.za/trc/index.html>; *South African Truth Commission*, Legal Information Institute, online: [http://www.law.cornell.edu/wex/south\\_african\\_truth\\_commission](http://www.law.cornell.edu/wex/south_african_truth_commission).

<sup>161</sup> Radio Canada International. *Canada And South Africa Share A Dark Past*. online:

<http://www.rcinet.ca/english/archives/column/the-link-africa/TruthandReconciliationCanadaSouthAfricaResidentialSchoolsAbuses//>.

<sup>162</sup> *Supra* note 154.

<sup>163</sup> *Supra* note 30, at 104.



community as a whole will consult and decide on the appropriate steps to be taken. Possible consequences include:

Blame - *Atameyimew*

Indebtedness - *Masinahikepayowin*

Obligation - *Siskiskakewin*

Recompense - *tipahikewin*

Redress - *meskotehowin*

Reproval - *Kakweskasowehk*

Revenge - *Apehowin*

Reprisal - *Naskwawin*

Retributive justice - *Pasastehkakewin*

Vengeance - *Naskwastamasowin apo apehowin*, and

Vindication - *Pasihewin*.<sup>164</sup>

The answers we need to move forward are there for our taking.

Revitalizing the wisdom of our ancestors by incorporating Cree legal traditions into our modern society is vital. The legal and cultural aspects cannot be separated, which is as it should be. Progress is being made in incorporating our legal system into the western legal system via sentencing circles, *Gladue* courts and other initiatives. Aboriginal lawyers and scholars are working to improve society as a whole and the lives of Indigenous peoples in particular.

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<sup>164</sup> *Supra* note 32.

## Appendix No. 1

Full text of Treaty Six:

ARTICLES OF A TREATY made and concluded near Carlton on the 23rd day of August and on the 28th day of said month, respectively, and near Fort Pitt on the 9th day of September, in the year of Our Lord one thousand eight hundred and seventy-six, between Her Most Gracious Majesty the Queen of Great Britain and Ireland, by Her Commissioners, the Honourable Alexander Morris, Lieutenant-Governor of the Province of Manitoba and the North-west Territories, and the Honourable James McKay, and the Honourable William Joseph Christie, of the one part, and the Plain and Wood Cree and the other Tribes of Indians, inhabitants of the country within the limits hereinafter defined and described by their Chiefs, chosen and named as hereinafter mentioned, of the other part.

Whereas the Indians inhabiting the said country have, pursuant to an appointment made by the said Commissioners, been convened at meetings at Fort Carlton, Fort Pitt and Battle River, to deliberate upon certain matters of interest to Her Most Gracious Majesty, of the one part, and the said Indians of the other.

And whereas the said Indians have been notified and informed by Her Majesty's said Commissioners that it is the desire of Her Majesty to open up for settlement, immigration and such other purposes as to Her Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned, and to obtain the consent thereto of Her Indian subjects inhabiting the said tract, and to make a treaty and arrange with them, so that there may be peace and good will between them and Her Majesty, and that they may know and be assured of what allowance they are to count upon and receive from Her Majesty's bounty and benevolence.

And whereas the Indians of the said tract, duly convened in council, as aforesaid, and being requested by Her Majesty's said Commissioners to name certain Chiefs and Headmen, who should be authorized on their behalf to conduct such negotiations and sign any treaty to be founded thereon, and to become responsible to Her Majesty for their faithful performance by their respective Bands of such obligations as shall be assumed by them, the said Indians have thereupon named for that purpose,

that is to say, representing the Indians who make the treaty at Carlton, the several Chiefs and Councillors who have subscribed hereto, and representing the Indians who make the treaty at Fort Pitt, the several Chiefs and Councillors who have subscribed hereto.

And thereupon, in open council, the different Bands having presented their Chiefs to the said Commissioners as the Chiefs and Headmen, for the purposes aforesaid, of the respective Bands of Indians inhabiting the said district hereinafter described.

And whereas, the said Commissioners then and there received and acknowledged the persons so presented as Chiefs and Headmen, for the purposes aforesaid, of the respective Bands of Indians inhabiting the said district hereinafter described.

And whereas, the said Commissioners have proceeded to negotiate a treaty with the said Indians, and the same has been finally agreed upon and concluded, as follows, that is to say:

The Plain and Wood Cree Tribes of Indians, and all other the Indians inhabiting the district hereinafter described and defined, do hereby cede, release, surrender and yield up to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors forever, all their rights, titles and privileges, whatsoever, to the lands included within the following limits, that is to say:

Commencing at the mouth of the river emptying into the north-west angle of Cumberland Lake; thence westerly up the said river to its source; thence on a straight line in a westerly direction to the head of Green Lake; thence northerly to the elbow in the Beaver River; thence down the said river northerly to a point twenty miles from the said elbow; thence in a westerly direction, keeping on a line generally parallel with the said Beaver River (above the elbow), and about twenty miles distant therefrom, to the source of the said river; thence northerly to the north-easterly point of the south shore of Red Deer Lake, continuing westerly along the said shore to the western limit thereof; and thence due west to the Athabasca River; thence up the said river, against the stream, to the Jasper House, in the Rocky Mountains; thence on a course south-easterly, following the easterly range of the mountains, to the source of the main branch of the Red Deer River; thence down the said river, with the stream, to the junction

therewith of the outlet of the river, being the outlet of the Buffalo Lake; thence due east twenty miles; thence on a straight line south-eastwardly to the mouth of the said Red Deer River on the south branch of the Saskatchewan River; thence eastwardly and northwardly, following on the boundaries of the tracts conceded by the several treaties numbered four and five to the place of beginning.

And also, all their rights, titles and privileges whatsoever to all other lands wherever situated in the North-west Territories, or in any other Province or portion of Her Majesty's Dominions, situated and being within the Dominion of Canada.

The tract comprised within the lines above described embracing an area of 121,000 square miles, be the same more or less.

To have and to hold the same to Her Majesty the Queen and Her successors forever.

And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for farming lands, due respect being had to lands at present cultivated by the said Indians, and other reserves for the benefit of the said Indians, to be administered and dealt with for them by Her Majesty's Government of the Dominion of Canada; provided, all such reserves shall not exceed in all one square mile for each family of five, or in that proportion for larger or smaller families, in manner following, that is to say: that the Chief Superintendent of Indian Affairs shall depute and send a suitable person to determine and set apart the reserves for each band, after consulting with the Indians thereof as to the locality which may be found to be most suitable for them.

Provided, however, that Her Majesty reserves the right to deal with any settlers within the bounds of any lands reserved for any Band as She shall deem fit, and also that the aforesaid reserves of land, or any interest therein, may be sold or otherwise disposed of by Her Majesty's Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained; and with a view to show the satisfaction of Her Majesty with the behaviour and good conduct of Her Indians, She hereby, through Her Commissioners, makes them a present of twelve dollars for each man, woman and child belonging to the Bands here represented, in extinguishment of all claims heretofore preferred.

And further, Her Majesty agrees to maintain schools for instruction in such reserves hereby made as to Her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserve shall desire it.

Her Majesty further agrees with Her said Indians that within the boundary of Indian reserves, until otherwise determined by Her Government of the Dominion of Canada, no intoxicating liquor shall be allowed to be introduced or sold, and all laws now in force, or hereafter to be enacted, to preserve Her Indian subjects inhabiting the reserves or living elsewhere within Her North-west Territories from the evil influence of the use of intoxicating liquors, shall be strictly enforced.

Her Majesty further agrees with Her said Indians that they, the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered as hereinbefore described, subject to such regulations as may from time to time be made by Her Government of Her Dominion of Canada, and saving and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes by Her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized therefor by the said Government.

It is further agreed between Her Majesty and Her said Indians, that such sections of the reserves above indicated as may at any time be required for public works or buildings, of what nature soever, may be appropriated for that purpose by Her Majesty's Government of the Dominion of Canada, due compensation being made for the value of any improvements thereon.

And further, that Her Majesty's Commissioners shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the tract above described, distributing them in families, and shall, in every year ensuing the date hereof, at some period in each year, to be duly notified to the Indians, and at a place or places to be appointed for that purpose within the territory ceded, pay to each Indian person the sum of \$5 per head yearly.

It is further agreed between Her Majesty and the said Indians, that the sum of \$1,500.00 per annum shall be yearly and every year expended by Her Majesty in the

purchase of ammunition, and twine for nets, for the use of the said Indians, in manner following, that is to say: In the reasonable discretion, as regards the distribution thereof among the Indians inhabiting the several reserves, or otherwise, included herein, of Her Majesty's Indian Agent having the supervision of this treaty.

It is further agreed between Her Majesty and the said Indians, that the following articles shall be supplied to any Band of the said Indians who are now cultivating the soil, or who shall hereafter commence to cultivate the land, that is to say: Four hoes for every family actually cultivating; also, two spades per family as aforesaid: one plough for every three families, as aforesaid; one harrow for every three families, as aforesaid; two scythes and one whetstone, and two hay forks and two reaping hooks, for every family as aforesaid, and also two axes; and also one cross-cut saw, one hand-saw, one pit-saw, the necessary files, one grindstone and one auger for each Band; and also for each Chief for the use of his Band, one chest of ordinary carpenter's tools; also, for each Band, enough of wheat, barley, potatoes and oats to plant the land actually broken up for cultivation by such Band; also for each Band four oxen, one bull and six cows; also, one boar and two sows, and one hand-mill when any Band shall raise sufficient grain therefor. All the aforesaid articles to be given once and for all for the encouragement of the practice of agriculture among the Indians.

It is further agreed between Her Majesty and the said Indians, that each Chief, duly recognized as such, shall receive an annual salary of twenty-five dollars per annum; and each subordinate officer, not exceeding four for each Band, shall receive fifteen dollars per annum; and each such Chief and subordinate officer, as aforesaid, shall also receive once every year, a suitable suit of clothing, and each Chief shall receive, in recognition of the closing of the treaty, a suitable flag and medal, and also as soon as convenient, one horse, harness and waggon.

That in the event hereafter of the Indians comprised within this treaty being overtaken by any pestilence, or by a general famine, the Queen, on being satisfied and certified thereof by Her Indian Agent or Agents, will grant to the Indians assistance of such character and to such extent as Her Chief Superintendent of Indian Affairs shall deem necessary and sufficient to relieve the Indians from the calamity that shall have befallen them.

That during the next three years, after two or more of the reserves hereby agreed to be set apart to the Indians shall have been agreed upon and surveyed, there shall be granted to the Indians included under the Chiefs adhering to the treaty at Carlton, each spring, the sum of one thousand dollars, to be expended for them by Her Majesty's Indian Agents, in the purchase of provisions for the use of such of the Band as are actually settled on the reserves and are engaged in cultivating the soil, to assist them in such cultivation.

That a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such agent.

That with regard to the Indians included under the Chiefs adhering to the treaty at Fort Pitt, and to those under Chiefs within the treaty limits who may hereafter give their adhesion thereto (exclusively, however, of the Indians of the Carlton region), there shall, during three years, after two or more reserves shall have been agreed upon and surveyed be distributed each spring among the Bands cultivating the soil on such reserves, by Her Majesty's Chief Indian Agent for this treaty, in his discretion, a sum not exceeding one thousand dollars, in the purchase of provisions for the use of such members of the Band as are actually settled on the reserves and engaged in the cultivation of the soil, to assist and encourage them in such cultivation.

That in lieu of waggons, if they desire it and declare their option to that effect, there shall be given to each of the Chiefs adhering hereto at Fort Pitt or elsewhere hereafter (exclusively of those in the Carlton district), in recognition of this treaty, as soon as the same can be conveniently transported, two carts with iron bushings and tires.

And the undersigned Chiefs on their own behalf and on behalf of all other Indians inhabiting the tract within ceded, do hereby solemnly promise and engage to strictly observe this treaty, and also to conduct and behave themselves as good and loyal subjects of Her Majesty the Queen.

They promise and engage that they will in all respects obey and abide by the law, and they will maintain peace and good order between each other, and also between themselves and other tribes of Indians, and between themselves and others of Her Majesty's subjects, whether

Indians or whites, now inhabiting or hereafter to inhabit any part of the said ceded tracts, and that they will not molest the person or property of any inhabitant of such ceded tracts, or the property of Her Majesty the Queen, or interfere with or trouble any person passing or travelling through the said tracts, or any part thereof, and that they will aid and assist the officers of Her Majesty in bringing to justice and punishment any Indian offending against the stipulations of this treaty, or infringing the laws in force in the country so ceded.

IN WITNESS WHEREOF, Her Majesty's said Commissioners and the said Indian Chiefs have hereunto subscribed and set their hands at or near Fort Carlton, on the days and year aforesaid, and near Fort Pitt on the day above aforesaid.

Signed by the Chiefs within named in presence of the following witnesses, the same having been first read and explained by Peter Erasmus, Peter Ballendine and the Rev. John McKay.

ALF. JACKES, M.D.,  
 JAS. WALKER, N.W.M.P.,  
 J. H. McLLUREE, N.W.M.P.,  
 his  
 PIERRE LEVAILLER, X  
 mark.  
 his  
 ISADORE DUMOND, X  
 mark.  
 his  
 JEAN DUMOND, X  
 mark.  
 PETER HOURIE,  
 F. GINGRAS,  
 J. B. MITCHELL, Staff Constable  
 N.W.M.P.,  
 E. H. PRICE, Hospital Steward  
 N.W.M.P.,  
 his  
 XAVIER LETANGER, X  
 mark.  
 WILLIAM SINCLAIR,

ALEXANDER MORRIS,  
 L. G. N.W.T.  
 JAMES MCKAY, Indian Commissioner.  
 W. J. CHRISTIE do  
 his  
 MIS-TO-WA-SIS, X  
 mark. } Head Chiefs of the  
 his } Carlton Indians.  
 AH-TUK-UK-KOOP, X  
 mark.  
 his  
 PEE-YAHN-KAH-NICHK-OO-SIT X  
 mark. }  
 his  
 AN-YAH-TUS-KUM-IR-IM-AM, X  
 mark. } Chiefs.  
 his  
 KEE-TOO-WA-HAW, X  
 mark. }  
 his  
 CHA-KAS-TA-PAY-SIN, X  
 mark. }  
 his  
 JOHN SMITH, X  
 mark. }  
 his  
 JAMES SMITH X  
 mark. }  
 his  
 CHIP-KE-WAYAN, X  
 mark. } Councillors.  
 his  
 MASS-AN, X  
 mark. }  
 his  
 PIERRE CADIEN, X  
 mark. }  
 his  
 KOO-YAH-TIR-WAH-PAHA, X  
 mark. }  
 his  
 MAHS-KEE-TO-TIM-AN, X  
 mark. } Councillors of  
 Mis-to-wa-sis.



A. R. KENNEDY,  
 R. I. PRITCHARD,  
 L. CLARK,  
 W. MCKAY,  
 W. D. JARVIS, *Inspector, N.W.*  
 M.P.

SAN-SAN-KOO-MOOS, X	his mark.	} <i>Councillors of</i> <i>AA-tak-ut-koop.</i>
BENJAMIN, X	his mark.	
MEE-NOW-AH-CHAHE-WAY, X	his mark.	
KEE-SIK-OW-AS-IS, X	his mark.	
PEE-TOOK-AH-HAN AP-EE-GIW-EW, X	his mark.	} <i>Councillors of</i> <i>Pee-yah-ka-ut-thi-co-si.</i>
PEE-AY-CHEW, X	his mark.	
TAH-WAH-JUSE EE-KAPP-NOW, X	his mark.	
AHS-KOOS, X	his mark.	
PET-E-QUA-CAY, X	his mark.	} <i>Councillors of</i> <i>Kee-co-ut-ka-w.</i>
JEAN BAPTISTE, X	his mark.	
ISAORE WOLFE, X	his mark.	
KEE-KOO-MOOS, X	his mark.	
OO-SAHN-US-KOO-NRE-KIK, X	his mark.	} <i>Councillors of</i> <i>Ah-yah-tus-kum-ik-um-um.</i>
YAY-YAH-TOO-WAY, X	his mark.	
LOO-SOU-AM-EE-KWAKK, X	his mark.	
NEES-WAH-YAK-EE-NAH-KOOS, X	his mark.	
KAH-TUP-IS-KOW-AHT, X	his mark.	} <i>Councillors of</i> <i>Cha-ka-ay-pay-sin.</i>
KAH-KUN-EE-KNAHN-AHS-UM, X	his mark.	
NAH-PACH, X	his mark.	
MUS-ON-AH-WE-KIM-AHER, X	his mark.	

Signed by the Chiefs and Headmen of the Willow Indians near Fort Carlton, this 28th day of August, A.D. 1876, the same having been first read and explained by the Hon. Jas. McKay and by Peter Erasmus, in the presence of the undersigned witnesses:

A. G. JACKES, M.D.,  
 JOSEPH GENTON,  
 JOHN A. KERR,  
 PIERRE X LAVILLER,  
 W. D. JARVIS, Ins. N.W.M.P.

WILLIAM BADGER,	his	} Councillors of John Smith.
BENJAMIN JOYFUL,	x mark.	
JOHN BADGER,		
JAMES BEAR,		} Councillors of James Smith.
BERNARD CONSTANT,	his	
HENRY SMITH,	x mark.	
MA-TWA-AHS-TIN-CO-WO-GIN,	his x mark.	} Councillors of Chipee-wayun.
JACOB McLEAN,	his x mark.	
NAA-POO-CHEE-CHEES,	his x mark.	
WAH-WIS,	x mark.	} Councillors of Chipee-wayun.
KAH-PAH-PAH-MAH-CHATIK-WAY,	his x mark.	
KEE-YEU-AH-TLAH-PIM-WAHT,	his x mark.	
WAH-WEE-KAH-CO-TAH-MAH-HOTE,	his x mark.	} Councillors.
(TOTEM,) (or MEH-CHA-AW-ASIS),	his	
SEE-SEE-QUAN-ISH,	x mark.	
WEE-TEE-KOO-WEE-KAH-MAW-CO,	his x mark.	} Councillors.
KAH-MEE-GIS-TOO-WAY-SET,	his x mark.	
KAH-PAY-YAK-WAHSK-CO-NUM,	his x mark.	
SEE-SEE-KWAHN-IS,	his x mark.	} Joint Chiefs of the Willow Indians.
KAH-NAH-LAH-SKOW-WAHT,	his x mark.	
KAH-AH-TEE-KOO-WEN,	his x mark.	
KAH-NAH-MAH-CHEW,	his x mark.	} Councillors of Willow Indians.
MOON-ED-YAHS,	his x mark.	
Oo-MIN-AH-KAW,	his x mark.	
Oo-TUK-KOO-PAH-KAH-MAY-TOW-WAY-YIT,	his x mark.	

Signed by Her Majesty's Commissioners and by the Chiefs and Headmen hereafter subscribing hereto, the same having been first read and explained to the Indians by the Honourable James McKay and Peter Erasmus, near Fort Pitt, this 9th day of September, A.D. 1876, in the presence of the undersigned witnesses.

A. G. JACKES, M.D.  
 JAS. McLEOD, *Commr. N.W.M.P.*  
 JAS. F. WALKER, *Inspector N.W.M.P.*  
 †VITAL J., *Bishop St. Albert, O.M.I.*  
 E. DALRYMPLE CLARK; *Adj. N.W.M.P.*  
 CONSTANTINE SCOLLEN, *Prst., O.M.I.*  
 JOHN McDUGALL, *Meth. Missionary.*  
 JOHN McELVEY,  
 W. E. JONES,  
 PETER C. PAMBRON,  
 A. R. KENNEDY,  
 PETER ERASMUS,  
 THOMAS MCKAY,  
 JAMES SIMPSON,  
 ELIZA HARDISTY,  
 MARY MCKAY.

ALEXANDER MORRIS, *L.G., N.W.T.*  
 JAMES MCKAY, *Indian Commr.*  
 W. J. CHRISTIE, *Indian Commr.*

his  
 WEE-KAS-KOO-KEE-SAY-YIN, x  
 mark.

his  
 PEE-YAS-EE-WAH-KAH-WE-CHA-KOOT, x  
 mark.

his  
 JAMES SEENUM, x  
 mark.

his  
 OO-NAH-TAH-MEE-NAH-HOOS, x  
 mark.

his  
 SEE-KAHS-KOOTCH, x  
 mark.

his  
 TUS-TUK-EE-SKWANS, x  
 mark.

his  
 PEE-NAY-SIS, x  
 mark.

his  
 KEE-YE-WIN, x  
 mark.

*Cree Chiefs.*

his  
 KIN-OO-SAY-OO, x  
 mark.

*Chipewyan Chief.*

his  
 SEE-WAS-KWAN, x  
 mark.

his  
 WAY-WAY-SEE-POO-WE-YIN, x  
 mark.

*Councillors to Wee-kas-koo-ke-say-yin.*

his  
 TIP-EE-SLOW-AH-CHAK, x  
 mark.

his  
 PAY-PAY-SEE-SEE-MOO, x  
 mark.

his  
 OO-NOW-AK-EE-PAH-CHAS, x  
 mark.

his  
 MY-OK-WAY-SEES, x  
 mark.

*Councillors to  
 Pee-yas-ee-wa-ka-ka-koot.  
 See-kahs-kootch*

OOS-PERAH-KHAN-IS, his  
X  
mark.

NEE-YE-PES-TAY-AN-EE-KAYSE, his  
X  
mark.

MAH-CHAH-ME-WIS, his  
X  
mark.

ISAAC CARDINAL, his  
X  
mark.

ANTOINE XAVIER, his  
X  
mark.

WILLIAM BULL, his  
X  
mark.

WAH-KEG-SEE-KOOT, his  
X  
mark.

CHARLES CARDINAL, his  
X  
mark.

PIERRE WAHBSKAW, his  
X  
mark.

KI-YAS-EE-KUN, his  
X  
mark.

MAH-KEE-OO-PAH-TOW, his  
X  
mark.

Councillors to Councillors to Councillors to Councillors to Councillors to  
Wee-has-hoo-hee-say-pin. Kee-ye-win. See-kah-kootch. James Seenum. Kim-co-ang-oo. Poo-gay-ric. Tas-tuk-ee-ke-wans.

CAKE-CAKE, his  
x  
mark.

KAM-OO-WIN, his  
x  
mark.

AH-SISS, his  
x  
mark.

Councillor to  
Councillor to  
Councillor to  
See-kaik-kooteh, James Seeum, O-ma-lak-mee-ma-hoon.

Recorded 24th February, 1877. □ Lib. 27, Fol. 352. □ L. A.

CATELLIER, □ Deputy Registrar-General of Canada.<sup>165</sup>

<sup>165</sup> Aboriginal Affairs and Northern Development Canada, *Copy of Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions*, online: <http://www.aadnc-aandc.gc.ca/eng/1100100028710/1100100028783>.

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