

Kinamaadiwin Inaakonigewin:
A Path to Reconciliation and Anishinaabe Cultural Resurgence

by

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Abstract:

The processes of colonization, which are maintained and enforced in a settler-colonial state through ideological apparatuses such as the justice system, health care, social services, and education have been exceedingly detrimental to Indigenous knowledges and ways of life. These apparatuses are primarily constructed to establish or maintain an ideological order such as capitalism, but also to identify and punish deviant or *different* ideologies, for instance Indigenous relationality. In the context of education and law, my dissertation will show how Indigenous oral traditions and spirituality have historically been attacked as being primitive and uncivilized, which laid a foundation to implement policies such as the Residential School System, as well as to write laws that are designed to erase Indigenous identity and rights, ie. the *Indian Act*. Despite the attack on Indigenous oral traditions and spirituality, however, traditional forms of Indigenous law and principles of education have survived. This is partly due to the advancement of 'Aboriginal' and treaty rights' in Canada over the past forty years. The evolution of 'Aboriginal and treaty rights' is best observed in the context of Canadian case law and 'Indian' policy and resistance. In the latest development of this evolutionary process, the Canadian state has committed itself to a policy of reconciliation with Indigenous nations and peoples. In order to fulfill its commitment to reconciliation, the Canadian state must recognize and affirm Indigenous self-determination and cultural resurgence. I argue that the way that this can be accomplished is by recognizing and affirming traditional Indigenous laws, particularly those laws that relate to education. The recognition and affirmation of Indigenous education laws such as *kinamaadiwin inaakonigewin* is important to the extent that these laws can serve as the legal mechanism with which to fulfill the treaty right to education that was promised in the Numbered Treaties. Once Indigenous education laws are recognized and affirmed by the Canadian state, the corresponding Indigenous education systems will be administered and governed in accordance with their own laws, resulting in a localized education system that is relevant, respectful, and responsible to local Indigenous nations.

Dedication:

For the People of the Anishinaabe Nation in Treaty #3

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Grand Council Treaty #3. I am deeply humbled by the honor and privilege that was given to me to participate in such an important nation-building exercise as the revitalization of our traditional education law. I stand willing and able to complete this work we started together. *Miigwech.*

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Introduction:

boozhoo

ozhaawashkozi binesi izhinikaazo

lac des mille lacs onji

*adik gi-doodem*¹

Like many *others* of my generation, I am not fluent in my native language, *anishinaabemowin*.² This can largely be attributed to systemic barriers imposed by a settler-colonial state (Canada) that have been designed to erase Indigenous identity, as well as absolve itself from treaty obligations, and as Dene scholar Glen Coulthard says, “facilitate the *dispossession* of Indigenous peoples of their lands and self-determining authority”.³ As I will attempt to show in this dissertation, these systemic barriers are machinations of colonization that are maintained and enforced in a settler-colonial state through ideological apparatuses such as the justice system, health care, social services, and education.⁴ Historically, these institutions have been exceedingly detrimental to Indigenous identities, knowledges, and ways of life. That is because they are primarily

¹ It is traditional practice of the Anishinaabe to introduce oneself in such terms when speaking to others. It is the way by which we let others know who we are, where we come from, and which clan we belong to. Having said that, the words spoken here may be interpreted in English as follows:

Greetings

My name is Blue Thunderbird

I am from Lac Des Mille Lacs First Nation

The caribou is my clan animal

For further reference on translation of *anishinaabemowin*, see: Ningewance, 2004.

² The concepts of ‘others’ and ‘othering’ are terms prevalent in post-colonial discourse - that are *subversively* employed to great extent throughout this narrative - which are most commonly understood as means “of establishing the binary separation of the colonizer and colonized and asserting the naturalness and primacy of the colonizing culture and world view”. See: Ashcroft, Griffiths, and Tiffin, 2013, p.186

³ Coulthard, 2014, p.7 (emphasis in text)

⁴ On ideological apparatuses, see: Althusser, 1970.

constructed to establish or maintain an ideological order such as capitalism, at the expense of deviant or *different* ideologies, such as Indigenous relationality. Yet as the world suffers crisis after crisis – whether it is environmental sustainability, global warming, or the rise of pandemics – it is becoming increasingly apparent that capitalist ideologies are not only inequitable, but also unsustainable for humankind, and our Mother, the Earth, *aki*. Moreover, it is becoming equally apparent that Indigenous knowledges – which are best understood in their own Indigenous languages – offer principles of responsibility, respect, and reciprocity in terms of how to live peacefully, harmoniously, and in relation with each *other*, as well as the land that we share. Therefore, it is with this in mind, that I – also, like many *others* – have taken steps to learn *anishinaabemowin*; in part, to disavow its erasure, but also to align my broader interests of reconciliation and Anishinaabe cultural resurgence. As John Borrows and James Tully recently pointed out, reconciliation and resurgence have been important concepts with regard to “community building, relating to the environment, Indigenous and settler governance and legal institutions, business, media, entertainment, commissions, alliances, negotiations, prison reform, and protests.”⁵ That said, I believe that *my choice* to introduce myself in my native language as I have done, represents an act, in and of itself, of cultural resurgence. In the chapters that follow, I will demonstrate how my people, the Anishinaabe Nation in Treaty #3, are exercising our

⁵ Borrows and Tully, 2018, p.3

inherent right to self-determination – particularly, as it relates to education – and thereby effectively resisting the processes of colonization.

Generally speaking, the purpose of this dissertation is to: a) demonstrate that the Anishinaabe Nation in Treaty #3 has its own sacred, traditional, and customary laws that are bound by an unwritten constitution; (b) analyze how the imposition of settler-colonial laws has given need to revitalize some oral laws into a written form, so that they may be recognized and affirmed by settler-colonial society; and c) discuss how affirmation of the written Treaty #3 education law, *kinamaadiwin inaakonigewin*, by the federal government of Canada, can go a long way towards honoring its treaty obligations, as well as fulfilling its commitment to reconciliation. In this regard, I write primarily within the contexts of education and law, as I attempt to demonstrate how Indigenous oral traditions and spirituality have historically been attacked by the settler-colonial state because they represent a threat to the dominant ideological order, which gave reason to implement policies such as the Residential School System, as well as to write laws that are designed to erase Indigenous identity and rights, ie. the *Indian Act*. Despite the attack on Indigenous oral traditions and spirituality, however, traditional forms of Indigenous law and principles of education have survived. This is partly due to the advancement of ‘Aboriginal’ and treaty rights’ in Canada over the past forty years, but is more so a reflection of the resiliency of Indigenous peoples. In my opinion, the evolution of ‘Aboriginal and treaty rights’ is best observed in the context of Canadian case law and ‘Indian’ policy and Indigenous resistance to such laws and

policies. In the latest development of this evolutionary process, the Canadian state has publicly committed to a policy of reconciliation with Indigenous nations and peoples.⁶ In order to fulfill its commitment to reconciliation, I argue that the Canadian state must respect Indigenous self-determination and cultural resurgence by recognizing *and* affirming traditional Indigenous laws, particularly those laws that relate to education. In this era of reconciliation, the recognition and affirmation of Indigenous education laws such as *kinamaadiwin inaakonigewin* is important to the extent that these laws can support Indigenous self-governance, as provided for in the *United Nations Declaration of Rights of Indigenous Peoples*, as well as serve as the legal mechanism with which to fulfill the treaty right to education that was promised in the Numbered Treaties. Once Indigenous education laws are recognized and affirmed by the Canadian state, the corresponding Indigenous education systems can be developed, administered, and governed in accordance with our own local laws, resulting in a localized education system that is relevant, respectful, and responsible to local Indigenous nations. I submit here, that this study may have relevance to *other* Indigenous nations, but for reasons that will soon become clear, I have tried to focus this study in the specific context of the Anishinaabe Nation in Treaty #3. Thus, in short, this dissertation is about the recognition and affirmation of the Treaty #3 written law on education, *kinamaadiwin inaakonigewin*.

⁶ In 2015, Justin Trudeau was elected as Prime Minister of Canada on a campaign platform that promised to answer the Truth and Reconciliation Commission's '94 Calls to Action', as well as implement the *United Nations Declaration of Rights of Indigenous Peoples*.

About the Author

I will now take a moment to state my *positionality*; that is, explain who I am and how I came to be interested in the Treaty #3 Education Law. My name is Leo Baskatawang, and I am from Lac Des Mille Lacs First Nation, which is located within Treaty #3 territory in Northwest Ontario.⁷ The word, '*baskatawang*', I am told, means "flying sand" in *anishinaabemowin*, as in a desert sandstorm. I am married to Maria Nunfio, and we have two sons, Levi and Oscar. I am the eldest son of Diane Baskatawang, who is a strong willed *anishinaabekwe*. She raised me as a young, single parent, under the most difficult of circumstances. My 'father' abandoned my mother before I was born, and has never been a part of my life. My grandparents, Annie and William Baskatawang, primarily lived in the tiny rural community called Valora, Ontario which is near their traditional trapline. William, who was immensely popular among his peers, labored for Canadian National Railways, and was an excellent hunter, fisherman, and trapper. Annie, in her own right, was a remarkable person. She was a three-time widow, who gave birth to twelve children. She was in the best sense possible, a *bush master*; she did not speak English, and was the undisputed matriarch of the family.⁸ Sadly, they were also, both, raging alcoholics. That said, my mother made a decision in my infancy, to flee the alcoholism that overwhelmed her parents' home. As such, we moved to Toronto, where my mother knew nobody, and at times held

⁷ I have never lived 'on reserve', but the territory around where my community is situated, that is to say the 'Crown Land', is the traditional homeland of my family; I recognize that territory as 'home'.

⁸ I invite the reader to check out Peter Kulchyski's "bush writing" for a refereed account of 'bush' skills and knowledge. See: Kulchyski, 2012.

down three jobs just to be able to put food on the table and a roof over our head. I was eventually enrolled in a Catholic school, where I do not recall experiencing any overt racism (I attribute this to the fact that Toronto is a highly diverse, multicultural, metropolitan city where my Indigeneity went unnoticed), but I certainly did not learn anything about my Indigenous heritage either. By the time I was eight years old, however, my mother decided it was time to move closer to back home. Over the next several years, we moved several times. We moved from Toronto to Thunder Bay, and then from Thunder Bay to Ignace, and again from Ignace to Dryden, and finally, from Dryden to Fort Frances, Ontario.

Unfortunately, despite my mother's best efforts to make a good life for us, she struggled financially, mentally, and emotionally, and eventually developed alcoholism, which made life at home very difficult.⁹ It was also during these years that I first experienced prejudice, stereotyping, and racism as an Indigenous person. These experiences include instances of being refused entry into friends' homes on their parents' orders; being benched on sports teams, despite being a gifted and willing athlete; and being judged on the basis of a 'treaty card'.¹⁰ In the last instance, I recall a time being asked as a 12 year old:

"Are you an Indian?"

⁹ I think it is important to note here, that my mother eventually quit drinking, and has now been sober for over twenty years. Our relationship is on the mend.

¹⁰ I note here, that 'treaty cards' as a recognized form of identification do not actually exist. The actual ID that is produced and recognized by the federal government, is called a "Certificate of Indian Status", or 'status card'. Most important to my point, however, is that this material piece of identification, as opposed to inherent knowledge of such identification, is governed in accordance with the *Indian Act*, not the treaties as is commonly speculated.

I'm like, "Yes."

"Do you have a treaty card?" I was asked.

"No. What's that?"

"It's a piece of ID that says you're an Indian."

"Well, I have a status card," I reply.

"No," I was told. "You need a treaty card."

I'm like, "Oh, I don't have one of those."

That is to say, there are times in my life when my indigeneity has been invalidated on the basis of a false assumption of what an 'Indian' is. At other times, my indigeneity, as perceived through my appearance or behavior, has been the subject of much racist stereotyping.

Nevertheless, whatever challenges I faced as a young person, whether it was physical violence, extreme poverty, or shame, as a result of the alcoholism I witnessed, I was somehow able to focus and have success at school. I can say with absolute honesty that I have no idea where the drive came from, but I knew that when the time came, I would attend university to continue my education beyond high school. Of my entire extended family (whom I consider to be the twelve children of my grandparents, and their children, and their children's children), I only have one cousin who attended university before I did. I do not point that out to brag, but to sort of illustrate the types of hardships many Indigenous peoples have to contend with, in addition to just trying to survive. As I soon discovered though, I did not have the skills to manage my time or money to succeed at the post-secondary level, and consequently dropped out after a

very disappointing year and a half. This was one of the major turning points in my life. I experienced a tremendous amount of shame and guilt that I put on myself, in letting down my family, and my community – Lac Des Mille Lacs First Nation – who had sponsored my enrollment. For the next couple of years, I struggled to find my way, as I worked at a series of minimum wage jobs, and eventually moved back in with my mother, who had just given birth to my brother, twenty years after me.

Following 9/11, I saw an opportunity to get my life back on track, and made a decision to enlist in the United States Army. This option was available to me through my possession of Permanent Resident status, as a result of my ‘Indian status’, which my mother had wisely applied for a couple years previous. I knew that by joining the army, I would develop new skills, meet new people, and see other parts of the world – all of which held immense appeal for me. So it is, that after completing four months of basic training in a combat unit at Fort Sill, Oklahoma, I was subsequently stationed at the prestigious 101st Airborne Division (Air Assault), in Fort Campbell, Kentucky. During my time in this unit, I completed two consecutive one-year combat tours – with the distinction of earning two Army Commendation medals – in support of the ‘Global War on Terrorism’ and ‘Operation Iraqi Freedom’. As one last note on this aspect of my life, I would say that my military experience instilled in me, a set of core values which I still apply towards my education and research today. These values, may be summed up as loyalty, duty, respect, selfless service, honor, integrity, and personal courage. Following my second combat tour, and again witnessing the travesty of war, I made a

decision to end my military career, in order to resume my post-secondary education – if only, my community would sponsor me again.

As it turns out, my community did agree to sponsor me again, if I paid for the first year on my own – to re-establish me as a continuing student – which I did through the Canada Student Loan program, in 2008.¹¹ It was this gesture of support from my community that inspired me to dedicate my educational pursuits for the benefit of my people. As such, I endeavored to learn all I could about the history of my people, the processes of colonization, and affirmative actions to reconciliation and cultural resurgence. During this time, I met and became acquainted with the late literary scholar, Dr. Renate Eigenbrod, who became my thesis advisor for my Master’s program in 2011. Under her tutelage, I became much more aware of Indigenous literature and the oral tradition, which inspired my Master’s thesis: “*Bawating Maywinzha: a long time ago, at the place of fast-rushing waters*”. The thesis is a work of historical fiction, which depicts the point of colonial contact between the Anishinaabe and the French in the early seventeenth century. In the thesis, I applied the Indigenous research methodology

¹¹ According to the Lac Des Mille Lacs Post-Secondary Program Policy, students are categorized in the following order:

Priority 1: Continuing students who are enrolled at one institution.

Priority 2: New high school graduates.

Priority 3: Students with a GPA of 3.0 or better who have had to discontinue their studies because of “extraordinary circumstances”.

Priority 4: Students with a GPA of 2.0 or better who have received funding from another source.

Priority 5: Mature students who have enrolled at a post-secondary institution for the first time.

Priority 6: Students who were not enrolled in school in the previous year.

Priority 7: Students with a GPA of less than 2.0

Priority 8: Students who dropped out of school, or had a GPA of 0.

See: Lac Des Mille Lacs. “Post Secondary Program Policy, Procedures, Administrative Guidelines, and Student Responsibilities/Obligations Document”, 2003.

of storytelling as a lens with which to understand how the processes of colonization have affected our people, but also to reclaim our history, and demonstrate how we can each actively participate in our cultural resurgence, by telling our stories and using our language.

Sadly, just a few weeks after my graduation in 2014, Dr. Eigenbrod passed away suddenly and unexpectedly. Her death, created a void in my support system, and left me unsure of how to proceed with my academic future. Incidentally, I initially thought that I would apply for Law School, and had begun studying for the Law School Admissions Test. During one study session, however, as I was thinking about my future, I came back to an idea I had during my undergrad which involved the treaty right to education. I recalled from a course I had taken with Dr. Peter Kulchyski, that the treaty right to education has still not been implemented in almost 150 years since it had been first written. As I continued to think about this idea, I realized that a PhD program would offer better flexibility to research this topic, so I took my idea to Dr. Kulchyski in 2015, who then agreed to supervise my doctoral program. While this research project was initially intended to focus on the treaty right to education, and how this right could be implemented in today's society, the idea evolved after a conversation I had with Gary Allen in 2018, who was serving as the Executive Director of the Grand Council Treaty #3 at the time. During this conversation, Gary had mentioned that the Grand Council was intending to revitalize Treaty #3's traditional, unwritten, education law, and invited me to lead the initiative. And that is how I became interested in the

Treaty #3 education law, *kinamaadiwin inaakonigewin*. In spite of the research I have done, which includes my role as a member of the Technical Working Group who drafted a written form of the education law, I do not claim any ownership of the law, except to the extent that I accept the law as a mark of my nation's self-determination to govern our own education system. Moreover, I do not proclaim to be an expert of the law, but more so a messenger for those whose knowledge far outweighs my own, and whom I try earnestly to translate and interpret for, to the best my abilities will allow. In the course of my research, which consists of conversations and gatherings with Treaty #3 Elders, educators, Grand Council staff, and other knowledge holders, as well as Treaty #3 archival and literature review, and analysis of historical political and legal precedents, I have come to understand the Treaty #3 Education Law, *kinamaadiwin inaakonigewin*, a certain way, if the conception of which I describe in the following pages is not consistent with the principles, knowledge, and logic of those whom it concerns, I readily accept any mistakes to be my own.

About the Dissertation

I would now like to take a moment to inform the reader how this dissertation is organized. There are four chapters, that collectively build an argument that in order to address the crisis in Indigenous education, Indigenous nations must have control of our own education systems. I argue that this can best be done through state recognition *and* affirmation of our respective education laws. This Indigenous led, bilateral process would constitute an act of reconciliation in which the state could be said to finally be

honoring its treaty promises, fulfilling the Truth and Reconciliation Commission's '94 Calls to Action', as well as subscribing to the relevant articles of the *United Nations Declaration of Rights of Indigenous Peoples*, while also following principles that have been established by its own justice system.

In the first chapter, I provide a broad historical context of colonization that has shaped the different experiences and worldviews of Indigenous communities with regard to education. One way in which I do this is by illustrating how the processes of colonization are strikingly similar to that of the *windigo* – through the work of such scholars as Deborah Root, Leanne Simpson, and John Borrows – to the extent that the state and its social apparatuses are seen as a voracious predator with an insatiable appetite for land and resources, “to the point where it will eventually destroy itself through over-exploitation.”¹² Drawing on the analysis of Albert Memmi in *The Colonizer and the Colonized*, I further explain how ‘colonial racism’ is constructed on the basis of ideological differences, particularly as this relates to attitudes about the land, and how this *difference*, is exploited to the benefit of the colonizer. This argument maintains that the ideological processes of colonization are still being employed today in the form of capitalist enterprises, which is bad for the environment, Indigenous peoples, and the rest of humanity. I end this part of my analysis with a critique on the ‘banking’ form of education in the settler-colonial system, as it is described by the

¹² Simpson, 2011, p.70; see also: Root, 1996; and Borrows, 2019.

critical social theorist, Paulo Freire, who argues that it is designed to produce capitalist consumers, in order to leverage their consumption habits to maintain the status quo.

The second half of “Chapter 1: Colonization and *Other* Discontents” examines the concept of ‘reconciliation’, and argues that it is a process that has been over fifty years in the making, beginning with the “Indian Control of Indian Education” report penned by Harold Cardinal in 1970. In this regard, I demonstrate how a flood of land claims and class-action law suits that began in the 1970’s, ultimately forced the federal government to launch the Royal Commission on Aboriginal Peoples in 1991. I argue that these events helped expose the horrors of the residential school system, which resulted in the *Indian Residential Schools Settlement Agreement* in 2006. From this settlement, the Truth and Reconciliation Commission emerged, which came up with ‘94 Calls to Action’ that the government has since committed to fulfill in its pursuit of reconciliation. In order for reconciliation to occur, however, Indigenous nations must be provided with adequate and appropriate resources to administer our own education systems, as provided for in the Numbered Treaties. Designing and administering our own education systems, however, is a task that requires a transformative approach to the existing form and content of settler-colonial education using *local* Indigenous pedagogical practices.

In “Chapter 2: Indigenous Laws and the State”, I make the case that the Anishinaabe Nation in Treaty #3 have an inherent right to governance, that was bestowed upon us by the Creator at the beginning of time, and has since been passed

along by our ancestors from generation to generation through the oral tradition. This argument is based off the teachings and literature I received from Treaty #3 Elder and Grand Chief Emeritus Fred Kelly. In this regard, it is the belief of the Anishinaabe Nation in Treaty #3 that our right to self-governance was recognized in the 'nation to nation' agreement known commonly as Treaty #3, the Northwest Angle Treaty of October 3, 1873.¹³ Although this written document remains the officially recognized version of the agreement by the settler-colonial state, I demonstrate that Indigenous Elders, scholars, and other knowledge holders have long maintained that oral promises that were made during the negotiations have been excluded from the written text, and that the 'spirit and intent' of the agreement is not reflected in the state's written document. In making this argument, I draw upon critical theory from Jacques Derrida to analyse what it means to 'write': first, through the power or authority given to the written word, by which I mean linear, phonetic notation; secondly, the limitation of such form of writing; and third, *other* forms of writing, which includes among other practices, the use of language itself.

Following a brief outline, of what I believe to be, four distinct eras of treaty-making in Canada, I explain how these practices were guided by Indigenous legal processes such as the smoking of a 'peace pipe', the use of wampum, and the invocation of kinship relations. In this regard, I draw upon on the work of such scholars as J.R. Miller, John Borrows, and Aimée Craft. This discussion leads to an analysis of treaty

¹³ See: 'Appendix A: Treaty #3'.

interpretation, and how other sources of knowledge and information including the Treaty Commissioner's own transcribed notes of the negotiations, as well as oral accounts from Treaty Elders, and the Paypom Treaty, all serve to provide a better understanding of the spirit and intent of the agreement. In making this argument, I point out how these understandings have been interrupted through the force of Canadian law, specifically the *Indian Act*, and the residential school system. Then, building off my argument in Chapter 1 that the politic of reconciliation essentially began in the 1970s – a politic, by the way, which only gathered momentum as a result of continuous Indigenous resistance to the *Indian Act*, the residential school system, and the government's general neglect of treaties – I examine how Canadian case law has since compiled a compendium of principles that are to be used in treaty interpretation. In this regard, I take the position that if the government were to adopt the principles established by its own justice system, such that the treaties should be interpreted as the Indians would have naturally understood them, and that they are not frozen in time, that it would not only facilitate a greater understanding of the 'spirit and intent' of treaties, but also provide balance to treaty interpretation through the consideration and inclusion of an Indigenous understanding of these 'nation to nation' agreements. That being said, if the government were to honor these principles, it would demonstrate that it is actually committed to abandoning its antiquated, literal approach to treaty interpretation that has governed treaty politics for the last 150 years, in favor of a more robust, relational approach to this process.

I conclude Chapter 2 with an analysis of what it would mean for the state to honor the treaty right to education, which states: “And further, Her Majesty agrees to maintain schools for instruction in such reserves hereby made as to Her Government of Her Dominion of Canada may seem advisable whenever the Indians of the reserve shall desire it.”¹⁴ In consideration of the principles established by the Supreme Court of Canada, as well as the government’s public commitment to fulfill the Truth and Reconciliation Commission’s ‘94 Calls to Action’, and implementation of the *United Nations Declaration of Rights of Indigenous Peoples*, a reasonable and very justifiable interpretation of the education clause could be taken to mean that it would be *advisable* of the state to fund an Anishinaabe education system whenever their treaty partners *desire* it. In this regard, I argue that Indigenous laws, specifically *kinamaadiwin inaakonigewin*, have the capacity to govern and administer an education system in a manner that is consistent with our own principles of teaching and learning.¹⁵

“Chapter 3: *Kinamaadiwin Inaakonigewin*” is about the Treaty #3 Anishinaabe education law, and the circumstances which gave rise to its revitalization as a written form. The impetus for this revitalization, I contend, is a desire to have Anishinaabe laws recognized and affirmed by the settler-colonial state, so that we may establish and administer our own local and distinct education system, as a response to the failure of the Residential School system and the public school system in Canada to adequately provide an education that is relevant to the needs of Anishinaabe peoples. Drawing

¹⁴ See: Appendix ‘A’.

¹⁵ See: ‘Appendix B: *Kinamaadiwin Inaakonigewin*’.

upon meeting notes and literature over the past thirty years from Treaty #3 archives, I outline the purpose of *kinamaadiwin inaakonigewin*, and discuss seven guiding principles that are to be observed in the development of a written education law. This research includes analysis of Diane Longboat's "First Nations Education Law for First Nation Governments Template", as well as the state's most recent education program, the "First Nations Lifelong Learning Table" from 2016.¹⁶ One of the key findings that this research has uncovered is that if any indigenized education program is going to have any chance at success, a significantly larger investment must be made; it has to be an investment that accounts for the expensive isolation costs associated with remote, rural bush living. In attending to this concern, I highlight the need for a representative, institutional entity – such as a Treaty #3 Education Commission – that is directly responsible for negotiating financial agreements on behalf of the Anishinaabe Nation in Treaty #3, as well as developing and administering policies, procedures, and regulations related to the implementation of the written education law. Finally, I discuss the utility of a 'Community Education Council', insofar as having parents, Elders, and other community members involved in the administrative and practical process of education program service and delivery in Treaty #3 territory. The chapter concludes with an analysis of the level of progress made in the development of the written education law, with specific reference to Treaty #3's 'Law-Making Process'.

¹⁶ See: Longboat, 2013.

In the fourth and final chapter, “Reconciliation as Recognition *and* Affirmation”, I discuss and distinguish the politics of ‘recognition’ and ‘affirmation’ as they relate to Indigenous laws in Canada. I make the point that within the past several years, the Canadian government has taken important first steps to reconcile its relationships with Indigenous nations, which includes a promise to fulfill the Truth and Reconciliation Commission’s ‘94 Calls to Action’, and a commitment to implement the *United Nations Declaration of Rights of Indigenous Peoples*, but has yet to deliver on these promises. These promises constitute a gesture of ‘recognition’, but without concrete, observable action in the form of adequate financial resources to administer our education systems, state recognition is practically useless. Moreover, as time goes on without any meaningful resolution, I argue that frustration will only continue to build, which increases the potential for escalating levels of violence. Although Indigenous forms of protest and civil disobedience have historically been non-violent in nature – with the reoccupation of traditional territories, rail and road blockades, protest marches, and hunger strikes being just a few examples – I believe Canada is at great risk of elevating the scale and frequency of such protests, and instances of collateral violence. Thus, in order to avert potentially disastrous confrontations, it is imperative that moral principles of kinship, and “peace and good will” are re-established, as it was stated in the treaties. In this regard, my argument involves an analysis of treaty negotiations, which suggests that the treaty was meant to be renewed periodically, over time. In my analysis of the treaty, I make the case that the government’s failure to honor its treaty obligations is the primary reason why there is so much dispute and discord with the Indigenous-settler

relationship. With this in mind, I make the case that if the Canadian government were to adopt a relational approach to treaty interpretation and implementation in its pursuit of reconciliation with Indigenous peoples and nations, that is, just by being considerate and respectful of the land and *other* worldviews, all Canadians would benefit from a healthier social, ecological, and political environment. As Gina Starblanket and Heidi Stark put it, “if we understand relationality as an analytical lens through which we recognize difference as socially and culturally produced rather than allowing the discourse of relationship to essentialize these differences in ways that confine our movements, we stand to cultivate a greater range of grounds for Indigenous identity and a broader spectrum of modes for engaging in acts of resurgence.”¹⁷

Building off my analysis of *kinamaadiwin inaakonigewin* in the previous chapter, I outline a two-year process by which the Treaty #3 Education Commission will develop an Education Plan, along with Education Standards, and a Curriculum. Upon describing the breadth and scope of these tasks, I argue that the success of this work – that is, the administration of an Anishinaabe education system, in accordance with Anishinaabe law – will largely depend on the level of cooperation from the Crown, as represented by the federal government of Canada. I contend that this can only be accomplished with the requisite resources needed to administer local education programs and services. In this regard, by the time *kinamaadiwin inaakonigewin* is ratified and approved by a Treaty #3 National Assembly vote, the federal government must be

¹⁷ Starblanket and Stark, 2018, p.188

trusted – the lynch pin of this entire process – that it will do its part in this reconciliation process. This process includes fulfilling its promises to answer the TRC’s ‘Calls to Action’, as well as implementing UNDRIP, which, if done in addition to observing its own court’s principles of treaty interpretation, would signal a new era of Indigenous and Crown relations in Canada. The birth of this new era will be recognized and affirmed by the *presence* of “a jointly appointed Crown-First Nation dispute resolution body,” “to oversee the renewal of historic treaties.”¹⁸ The establishment of this institutional form or social apparatus, I argue, provides a forum in which to negotiate potential funding solutions through respectful and constructive dialogue in order to properly finance Indigenous education initiatives. I conclude my analysis by suggesting that one potential solution for new revenue creation could be to create a new tax for the sole purpose of fulfilling treaty obligations, or perhaps, settling on a share of revenue from taxes already gathered from land-based industries. These measures have as much symbolic import as they do material.

A Note on Terminology

The terms ‘Indigenous’, ‘Indian’, and to a lesser extent, ‘Aboriginal’ appear frequently throughout this dissertation. In reference to the *other*, I most often use the terms settler-colonial and Western. Although I will acknowledge here that each term, in its own way, is “ideological and shot through with powerful emotions,” I also recognize that “the labels have survived many experiences and have been capable of adapting to

¹⁸ Jai, 2017, p.148

new events, information, and realities.”¹⁹ In this regard, I agree with Edward Said, who has written: “instead of trying to propose ways of going around the labels, I think it is more immediately useful to admit at the outset that they exist and have long been in use as an integral part of cultural history rather than as objective classifications.”²⁰ That said, in a generalized context, I often use the term ‘Indigenous’ because of its wider application, but as much as possible, I try to use the specific name of the Indigenous nation that is being referred to, whether that nation is Anishinaabe, Métis, Maori, or the like.

In other regions and by *other* peoples – but sometimes also by themselves – the Anishinaabe are referred to as ‘Ojibway’, ‘Ojibwe’, or ‘Chippewa’, which are dialects of the same word that is said to mean “Puckered Moccasin People”, but in the language of *anishinaabemowin*, we refer to ourselves as Anishinaabe, the “descended people”.²¹ For that reason, I identify with and use the term: Anishinaabe. Being that I was born and raised in Treaty #3 territory, and I am a member of a constituent ‘Indian band’ – that is, Lac Des Mille Lacs First Nation – I also frequently use the term ‘Treaty #3’, which most often refers to the nation-to-nation agreement by the Anishinaabe and the Crown, but it could also refer to the *land* within the territorial boundary of Treaty #3, as well as to the nation of people to whom that treaty relates, which it often does. Although my research is specific to Treaty #3, and should be regarded as such, I venture to add that it may

¹⁹ *The Edward Said Reader*, 2000, p.175

²⁰ *Ibid.*

²¹ Kelly, “Pimaatiziwin ~ Kizhewaatiwin In Treaties”, 2019.

have relevance for other Indigenous nations who are undertaking similar nation-building exercises.

Two other terms I employ throughout this dissertation are 'recognized' and 'affirmed', as they pertain to 'Treaty and Aboriginal Rights' in the *Constitution Act* of 1982. In this dissertation, I take 'recognition' to mean an acknowledgement of such rights, and 'affirmation' to be the action or process by which such rights are applied. My contention is that 'recognition' of treaty rights and Indigenous law is of little value, if it is not followed up with affirmative action to support such rights and laws.

Last First Thoughts

At the end of the day, this dissertation was written to be of benefit for the people of the Anishinaabe Nation in Treaty #3, and if that means it only represents a mere footnote in the continuing story of our national epic, I would still be pleased. That said, it is my sincere hope that this research will also be of interest to non-Indigenous Canadians, as well as government officials, policy makers, educators, administrators, and students of various disciplines including: law, education, history, political science, and Indigenous studies, as well as those conducting research in the processes of reconciliation and cultural resurgence. If this dissertation can help advance the case of any of these matters in the glorious pursuit of social justice, all the better.

Chapter 1

Colonization and *Other* Political Discontents

Greed!

Causing innocent blood to flow

Entire cultures, lost in the overflow

They came to seize, and take whatever they please

Then all they gave back was death and disease

My people were left with no choice but to decide

To conform to a system, responsible for genocide

Responsible for genocide

Responsible for genocide

- Rage Against the Machine, "Darkness"

The greatest trick colonization ever pulled was convincing the colonized to not speak their own Indigenous languages.²² We can try to deconstruct this fact by arguing that Indigenous peoples were less convinced - and more coerced - to speak another tongue, but coercing someone to do something would not really be considered a trick. Putting semantics aside, cognitive imperialism, or "the white-washing of Indigenous people's minds", has created irreparable language loss among Indigenous nations across the world, which has diminished their consciousness of Indigenous identity and connection to Indigenous knowledge.²³ According to Andrea Bear Nicholas, "the assault has been quite successful for it is estimated that over 90% of the world's

²² The statement is a paraphrase of a line from the film *The Usual Suspects* (1995), in which Verbal Kint/Keyser Söze says, "The greatest trick the devil ever pulled was convincing the world he didn't exist."

²³ Battiste, 2013, p.123

languages, mostly Indigenous ones, will have been eradicated by the end of the century.”²⁴ In Canada alone, “Indigenous peoples have lost ten of their fifty languages in the last 100 years”, and only three of those fifty languages are predicted to survive into the next century, those being Anishinaabemowin, Cree, and Inuktitut.²⁵ This unsettling forecast has led some scholars to label this phenomenon as ‘linguistic genocide’ in order to draw attention to the fact that there are colonizing forces, both passive and active, that are complicit in the disappearance, or death, of Indigenous languages.²⁶ One key force in this process of cultural annihilation has been education, with the Residential School system being the most obvious example; but ironically, it is also education that happens to hold the greatest potential to save Indigenous languages – *if it can be transformed to represent and celebrate Indigenous worldviews, ways of knowing, and pedagogical practices.*²⁷ Without a structural transformation to education, the loss of Indigenous languages might also signal the loss of Indigenous laws and legal traditions, as well as knowledge about the land, which could have drastic consequences in our collective ability to come up with solutions regarding the global ecological crisis. In essence, we are talking about a struggle for ‘Indian Control of Indian Education’, that goes at least as far back as 1969-70 from Harold Cardinal’s rebuttal to the state’s proposed ‘White Paper’.²⁸ Some might argue, myself included, that this struggle about

²⁴ Bear Nicholas, 2008, p.18

²⁵ Borrows, 2016, p.173

²⁶ Bear Nicholas, 2008, p.26

²⁷ Ibid, p.31.

²⁸ See *Citizens Plus* by the Indian Chiefs of Alberta, 1970.

education dates back even further, to the Numbered Treaties of the Confederation Era.²⁹ Nevertheless, the difference now, is that there seems to be a new impetus for this discourse. The recent work of the Truth and Reconciliation Commission of Canada – with its intensive research of past educational policies, and collection of survivor testimonies of abuse and neglect – has brought forth ‘94 Calls to Action’, which has ushered in a new era of Indigenous education: one of reconciliation.³⁰ Yet, much work remains to be done before the goal of reconciliation can be realized or achieved. As a member of Lac Des Mille Lacs First Nation in Treaty #3 territory, I believe one way in which reconciliation can be supported is through the revitalization and ratification of a written Treaty #3 Education Law. Once translated into a written document from its oral origins, the law would have the ability to speak, and write back – that is, effectively communicate – in a form of logic and language that is recognized and understood by the settler-colonial State of Canada³¹, which to my mind represents one of the greatest obstacles in the pursuit of reconciliation. Moreover, an act or expression of self-determination such as this, is representative of the resurgence of Indigenous laws and practices that many scholars have called for in post-colonial discourse.³² At the most fundamental level, the law would stake a claim to our inherent jurisdiction in education, as well as address the ‘spirit and intent’ of the treaty right to education,

²⁹ See: Borrows, 2002; Stonechild, 2006; Craft, 2013.

³⁰ See Truth and Reconciliation Commission of Canada. *Final Report*. 2015.

³¹ Kulchyski, 2005, p.243

³² See: Alfred, 2009(a); Simpson, 2011; Coulthard, 2014.

while providing the necessary foundation to support an education system that is created by the people, for the people.

On Colonization

The doctrine of Christianity – that is, where “the pope had been given total control over the planet by God”³³ – should be considered the original justification Western civilizations used to colonize Indigenous nations, and the land of those that they entered. From Rome, Christianity spread to the colonial nations of Spain, France, and England, and from there, across the world. The zeal with which colonizers carried their beliefs gave them purpose to spread the word, and eventually, the means to accumulate massive wealth. In fact, the doctrine was believed in so profoundly that Western colonizers felt it was ‘their mission’ to “diffuse their own civilization to the peoples who were under their colonial tutelage.”³⁴ By the turn of the twentieth century, Western civilizations had succeeded in spreading Christianity to roughly 85% of the earth’s surface area in the form of “colonies, protectorates, dependencies, dominions, and commonwealths.”³⁵ Resistance to the doctrine was met with punishing and lethal force. In *A Fair Country*, John Ralston Saul points out that “in the late fifteenth century, there are thought to have been seven to ten million [Indigenous peoples] in North America, two million of them in Canada. By the end of the nineteenth century, two hundred and fifty thousand were left in the United States, one hundred thousand in

³³ Deloria Jr., 2003, p.260

³⁴ Blaut, 1993, p.28

³⁵ Said, 1993, p.8

Canada - a depopulation of 95 percent."³⁶ The colonizers, who were "carriers and observers of this tragedy, gradually concluded in the second half of the nineteenth century that these were dying cultures."³⁷ Remarkably, and to their credit, the colonizers decided to not complete the mass genocide – probably, because they needed the rest of the survivors for slave labor to complete their capital projects – but instead opted to assimilate the survivors. Perhaps it is most astonishing that the colonizers actually believed that their assimilative campaign was a somehow altruistic gesture, and an 'act of generosity'. As Saul says, "this was the underlying theory of the residential school system."³⁸ In this regard, the great literary scholar Edward Said once observed, "there is an unmistakable coincidence between the experiences of Arab Palestinians at the hands of Zionism and the experiences of those black, yellow, and brown people who were described as inferior and subhuman by nineteenth-century imperialists."³⁹ The 'coincidence' or reality, as Frantz Fanon puts it, is that "Europe's well-being and progress were built with the sweat and corpses of blacks, Arabs, Indians, and Asians. This we are determined never to forget."⁴⁰ In the last analysis, Vine Deloria Jr. puts it best: "One can only conclude that while Christianity can describe what is considered as perfect human behavior, it cannot produce such behavior."⁴¹

³⁶ Saul, 2008, p.23

³⁷ Ibid.

³⁸ Ibid. See also: Cairns, 2000, p.64.

³⁹ Said, 2000, p.127

⁴⁰ Fanon, 1963, p.53

⁴¹ Deloria Jr., 2003, p.201

Western civilizations' appetite for colonial expansion has been present from the outset of the colonial era, and has actually served to help construct a cultural identity through reference to the *other*. According to Emma LaRocque in *When the Other is Me*: "Everything the White man did was legitimized by 'civilization' and everything Indians did was 'explained' by their supposed savagery."⁴² This dichotomous relationship, which is defined by difference of the *other*, reveals something sinister about colonization and its assimilation project. As Deborah Root explains in *Cannibal Culture*, "On the one hand, the West appears as a hungry predator; on the other, it appears as something horribly confused and ill. The two actually do go hand in hand. The *wétiko* is one way to describe this conjunction."⁴³ Root goes on to explain that the *wétiko* psychosis "is characterized by a need or desire that grows and grows until it is completely out of control and in effect possesses the person who succumbs to it."⁴⁴ Moreover, John Borrows makes the point that "Windigos can also be institutions or individuals who selfishly cannibalize our social, emotional, economic, or environmental infrastructure."⁴⁵ In this regard, Leanne Simpson adds that the *windigo* concept is also used to "refer to colonialism and its capitalist manifestations, particularly around natural resources. The state is seen as having an insatiable hunger for natural resources, to the point where it will eventually destroy itself through over-exploitation."⁴⁶ In observance of these cannibalistic forces, the Anishinaabe – as well as other Indigenous

⁴² LaRocque, 2010, p.43

⁴³ Root, 1996, p.201

⁴⁴ Ibid. p.10

⁴⁵ Borrows, 2019, p.196

⁴⁶ Simpson, 2011, p.70

nations – have developed protocols which are embedded in their legal traditions for identifying and dealing with *windigo*-type situations and behaviors. In *Law's Indigenous Ethics*, Borrows notes that the Canadian *Criminal Code* just recently added the offence of 'luring a child' which requires the use of the internet, and that "this behavioural manifestation of a sexual offence could not have even existed 50 years ago."⁴⁷ His point being that if Canadian law can adapt to changing circumstances, then Indigenous laws can adapt too – contrary to what some lawyers and politicians might think. "There is no logical reason," Borrows writes, "to think the *wetiko* concept could not have similar breadth and fluidity over time, and a fair amount of evidence shows that it did (and does)."⁴⁸

While the Anishinaabe as well as other Indigenous nations have been theorizing the *windigo*, or *wétiko*, concept and accumulating knowledge about it for hundreds of years, it was Edward Said who rose to academic prominence in the late 1970s based on a remarkably similar theoretical discourse called 'Orientalism':

Orientalism is "a distribution of geopolitical awareness into aesthetic, scholarly, economic, sociological, historical, and philological texts; it is an elaboration not only of a basic geographical distinction (the world is made up of two unequal halves, Orient and Occident) ... *it is, rather than expresses, a certain will or intention to understand, in some cases to control, manipulate, even to incorporate, what is a manifestly different (or alternative and novel) world*; it is above all, a discourse that is by no means in direct, corresponding relationship with political power in the raw, but rather is produced and exists in an uneven exchange with various kinds power, shaped to a degree by the exchange with power political (as with a colonial or imperial establishment), power intellectual (as with reigning sciences like comparative linguistics or anatomy,

⁴⁷ Borrows, 2019, p.198

⁴⁸ *Ibid.*

or any of the modern policy sciences), power cultural (as with orthodoxies and canons of taste, texts, values), power moral (as with ideas about what 'we' do and what 'they' cannot do or understand as 'we' do).⁴⁹

This 'will or intention', on the part of the Occident (the West, or plainer still, the colonizers), to control, manipulate, incorporate, and essentially cannibalize cultural *difference* is fed through the production and distribution of ideological apparatuses such as the church, schools, and courts of law that enable the cannibalizing culture to establish and maintain a cultural hegemony.⁵⁰ Métis historian, Emma LaRocque, points out that the hegemonic relationship "centrally has to do with the 'civ/sav' ideology, which dichotomizes Native-White relations in terms of civilization inevitably winning over savagery, as most Western writers have assumed throughout the centuries."⁵¹ In fact, what we are actually talking about here can effectively be called colonial racism, where one culture assumes superiority over another based simply off a binary, categorical *difference*.

According to Albert Memmi, colonial racism is constructed from three major ideological components: "one, the gulf between the culture of the colonialist and the colonized; two, the exploitation of these differences for the benefit of the colonialist; three, the use of these supposed differences as standards of absolute fact."⁵² In this colonial context, the main difference between colonizers and the colonized that was

⁴⁹ Said, 2000, pp.78-79 (emphasis added)

⁵⁰ Adams, 1975, p.8

⁵¹ LaRocque, 2010, p.24

⁵² Memmi, 1991, p.71

used to exploit Indigenous cultures and resources was an attitude towards the land.⁵³ Whereas Indigenous peoples have historically lived off the land in a sustainable way, such that there was minimal environmental impact or disruption, Western civilizations have viewed the land as a commodity, something to be transformed and used for profit; that is, for the accumulation of wealth. As Gina Starblanket and Heidi Stark point out, “there is thus an important difference between *understanding* our place in the world as situated within relations of interdependence with all of creation and *living* in a way that carries out our responsibilities within these relationships.”⁵⁴ In that regard, Edward Said explains that this one ideological *difference* – almost singlehandedly – provided the basis of justification “by which whole native societies who lived on American, African, and Asian territories for centuries were suddenly denied their right to live on that land.”⁵⁵ At which point, Said goes on to say that “the great dispossessing movements of modern European colonialism [came], and with them all the schemes for redeeming the land, resettling the natives, civilizing them, taming their savage customs, turning them into useful beings under European rule.”⁵⁶ Albert Memmi’s memorable passage in *The Colonizer and the Colonized* comes to mind here: “Nothing could better justify the colonizer’s privileged position than his industry, and nothing could better justify the colonized’s destitution than his indolence. The colonized doesn’t let grass grow under his feet, but a tree, and what a tree! A eucalyptus, an American centenarian oak! A

⁵³ Root, 1996, p.155

⁵⁴ Starblanket and Stark, 2018, p.177)

⁵⁵ Said, 2000, p.133

⁵⁶ Ibid.

tree? No, a forest!”⁵⁷ There is an implication here, that ‘improving’ or cultivating nature is a good thing, and is in fact, a mark of civilized culture; whereas *others* who remain ‘in a state of raw nature’ are primitive, and uncivilized.⁵⁸ The dialectical construct evokes not so distant memories of class lectures on race biology and social Darwinism.

Up until the eighteenth century, the diffusion of Western progress was mainly accomplished through the bible and church. With the advent of the Enlightenment and Industrial era, J.M. Blaut argues that “it had become the practice in secular writings to discuss causality in history and philosophy without referencing God and Scriptures”, but the basic model of European progress “remained unchanged in its essence”; and indeed, became much more fortified.⁵⁹ Although the scientific method has produced vast streams of knowledge that has benefitted humankind and the world, the problem, as Margaret Kovach points out, is that this knowledge base was becoming privileged: “As positivism took increasingly more space to serve science, it squeezed out alternative forms of knowledge.”⁶⁰ Darwin’s evolutionary theories of ‘survival of the fittest’ and ‘natural selection’ were immensely influential, to the point that they soon inspired an entire academic field of eugenics, and ultimately became the justification for State policies of cultural assimilation.⁶¹ In an interesting chapter in *Indigenous Education*, Dwayne Donald takes Darwin’s evolutionary theory a step further by suggesting that in

⁵⁷ Memmi, 1991, p.79

⁵⁸ Kuokkanen, 2007, p.55

⁵⁹ Blaut, 1993, p.19

⁶⁰ Kovach, 2005, p.22

⁶¹ Battiste, 2013, p.131, Tuhiwai Smith, 1999, p.62

today's society, *homo economicus*, which is characterized by "neo-liberal understandings of innovation, progress entrepreneurship, competition, success, and well-being in the interests of building an economy", constitutes "the most natural and most developed form of human being in evolutionary terms."⁶² I should be clear in stating that Donald's analysis is not so much a tacit endorsement of *homo economicus*, as it is an observation of the trajectory of human values in today's society, if such 'understandings' persist without intervention.

There is a populist belief that the era of colonization is over. This belief maintains that whatever injustices that were committed against Indigenous peoples is historical, and that the passage of time has led to changed circumstances for both the perpetrators and its victims, therefore, there is no need to atone for these transgressions. But make no mistake, the processes of colonization are in fact continuing in all parts of the world, and as Marie Battiste and Sake'j Youngblood point out, "States and corporations are expanding their activities into regions previously considered remote, inaccessible, or worthless, such as deserts, Arctic tundra, mountain peaks, and rainforests."⁶³ This, of course, is a problem for local ecologies – through waste, pollution, and environmental degradation – but also for the Indigenous nations who still directly depend on the natural environment to support their social, cultural, economic, and spiritual ways of life. And as the distinguished Canadian scholar James Tully warns in his chapter in *Resurgence and Reconciliation*, "if 'business as usual'

⁶² Donald, 2019, p.111

⁶³ Battiste and Youngblood, 2000, p.61

continues, the system will destroy the social and ecological conditions that sustain life for most human beings and for hundreds of thousands of other species and ecosystems (the sixth mass extinction) – a set of processes that is well underway.”⁶⁴ In other words, if capitalism and its *windigo* psychosis continues to reign supreme, the next extinction level event could be triggered by human ignorance and greed.

Once upon a time, Western civilizations also had a connection to the land like Indigenous peoples, but as Sami scholar Rauna Kuokkanen argues, the connection “began to erode generations ago as a result of modernization, urbanization, and other developments.”⁶⁵ According to Karl Marx, in his immensely influential volume of *Capital*, the beginning of capitalism actually started with the colonizers thirst for new land and resources, a thirst that could only be quenched through force:

The discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the aboriginal population, the beginning of the conquest and looting of the East Indies, the turning of Africa into a warren for the commercial hunting of black-skins, signaled the rosy dawn of the era of capitalist production. These idyllic proceedings are the chief momenta of primitive accumulation. ... In England at the end of the 17th century, they arrive at a systematical combination, embracing the colonies, the national debt, the modern mode of taxation, and the protectionist system. These methods depend in part on brute force, e.g., the colonial system. But, they all employ the power of the state, the concentrated and organized force of society, to hasten, hot-house fashion, the process of transformation of the feudal mode of production into the capitalist mode, and to shorten the transition. Force is the midwife of every old society pregnant with a new one. It is itself an economic power.⁶⁶

⁶⁴ Tully, 2018, p.110

⁶⁵ Kuokkanen, 2007, p.39

⁶⁶ Marx. “Chapter Thirty-One: Genesis of the Industrial Capitalist”. Retrieved from: <https://www.marxists.org/archive/marx/works/1867-c1/ch31.htm>

This process, which has since been identified as *primitive accumulation*, also marks the beginning of the more common concept of private property. According to David Harvey, author of *The New Imperialism*, primitive accumulation “entailed taking land, say, enclosing it, and expelling a resident population to create a landless proletariat, and then releasing the land into the privatised mainstream of capital accumulation.”⁶⁷ Thus, in the final analysis, we can say that this ideological shift began “with the Renaissance and the Enlightenment and is continuing today, driven by the forces of neocolonialism, capitalism, consumerism, and globalization.”⁶⁸

Given the imperative of conquest, it is easy to see how colonization, or imperialism, can be considered “an act of geographical violence through which virtually every space in the world is explored, charted, and finally brought under control.”⁶⁹ Citing Alfred Crosby’s *Ecological Imperialism*, Edward Said writes:

wherever they went Europeans immediately began to change the local habitat; their conscious aim was to transform territories into images of what they had left behind. This process was never-ending, as a huge number of plants, animals, and crops as well as building methods gradually turned the colony into a new place, complete with new diseases, environmental imbalances, and traumatic dislocations for the overpowered natives.⁷⁰

In this regard, it is also noted that in the present day, Western science has further separated society from nature. Urbanization and technological innovations have made

⁶⁷ Harvey, 2005, p.145

⁶⁸ Kuokkanen, 2007, p.39

⁶⁹ Edward Said, “Yeats and Decolonization”. In Bayoumi and Rubin, eds., 2000, p.297

⁷⁰ Ibid, p.298

it increasingly difficult for people to relate to the environment. And as Lipe and Berkes have pointed out, “this alienation from nature has contributed to the many environmental issues of the contemporary world.”⁷¹ Moreover, the problem is exacerbated when we consider how “critiques of colonial ideologies have tended to focus on people”, which is tantamount to leaving the land to defend for itself, and is in fact “symptomatic of a naturalization of the dominant Western view and of the extent to which a distorting lens continues to deflect attention away from our increasing distance from the earth.”⁷² With regard to that point, Vine Deloria Jr. describes instances in the United States where state departments have proposed constructing parking lots(!) around Indigenous sacred sites, in order to make the sites more accessible for tourists.⁷³ A preposterous suggestion, no doubt, that seems to echo Joni Mitchell’s sentimental, but brilliant song “Big Yellow Taxi”.⁷⁴ As Métis scholar Emma LaRocque writes in *When the Other is Me*, “the loss cannot be measured strictly in terms of square footage or annual income because Native peoples’ relationship to the land is more than about commodities ... What White colonization of 500 years could not accomplish, modernization and industrialization is threatening to finish.”⁷⁵

⁷¹ Lipe, 2019, p.468

⁷² Root, 1996, p.159

⁷³ Deloria Jr., 2003, p.283

⁷⁴ “They paved paradise, they put up a parking lot
A pink hotel, a boutique and a swinging hot spot
Don't it always go to show
You never know what you got till it's gone?
They paved paradise, they put up a parking lot.”

⁷⁵ LaRocque, 2010, p.76

'Banking' on Education

As previously discussed, imperialism is a social construct that is manifested and supported by ideological apparatuses such as the church, schools, and courts of law, "whose aim and purpose for being is territorial expansion and its legitimization."⁷⁶ In the realm of education, schools have historically been and continue to be conduits for disseminating the imperialist agenda. This is accomplished in a number of ways, but the most important of which, "is that it teaches the language, literature, and history of the colonizer and thus forces the students to deny their language, culture, and essential being."⁷⁷ For Indigenous peoples, there has been no choice or alternative in educational practice since the beginning of the colonial era. To forego the education that is available is to sentence oneself to a lifetime of hardship and poverty. As Albert Memmi says in *The Colonizer and the Colonized*, any Indigenous person who "wants to obtain a job, make a place for himself, exist in the community and the world, he must first bow to the language of his masters."⁷⁸ The exclusion of Indigenous content and knowledge in the education system, however, is not just an issue of non-representation, as Rauna Kuokkanen has pointed out. More profoundly, it is "that Indigenous peoples are being blocked from various forms of cultural capital and the production of it."⁷⁹ The production of cultural capital, or the lack thereof, has been analyzed by some Marxist scholarship who have drawn attention "to the structural relationship between society

⁷⁶ Said, 2000, p.131

⁷⁷ Adams, 1975, p.152

⁷⁸ Memmi, 1991, p.107

⁷⁹ Kuokkanen, 2007, p.70

and schooling, with schools viewed as agencies which systematically reproduce social inequalities.”⁸⁰ It should not be surprising that an ideological apparatus that is centered on individualism, industry, and the accumulation of wealth produces such inequality, but it begs a question if the apparatus – to be clear, I am talking about the education system – can be transformed to teach relational values based on environmental sustainability and a redistribution of wealth, would there still be such inequality? I think not.

The modern education system has existed, relatively unchanged, for about two hundred years. The morals and principles that are taught in schools reflect the structural necessities required of those in positions of power, for the purpose of educating, and thus, establishing a skilled workforce in the production of capital projects. In this regard, critical social theorists such as Althusser and Rancière have argued that education was and continues to be used as a socially constructed state apparatus to reduce the cost of policing; the function of which is to put the police in everyone’s head, and therefore, produce law abiding citizens.⁸¹ Anishinaabe scholar, Aaron Mills comments on this perverse practice of social conditioning in these terms:

It was a gargantuan undertaking to build a citizenry so profoundly ignorant about its historical foundations and about the contemporary cost of sustaining its quality of life. It takes many full-time jobs to keep them misinformed, uneducated, and, once knowing, uninterested in the cost of settler-supremacy for Indigenous peoples. It’s a stunning feat of public education and social engineering to have calibrated the sense of citizen entitlement that serves the state’s interest, to have generated a national community that will consistently

⁸⁰ Tuhiwai Smith, 1999, p.165

⁸¹ See: Althusser, “Ideology and Ideological State Apparatuses”; Rancière

desire and even demand that its federal government offer support during humanitarian crises abroad, while maintaining a casual disinterest in Indigenous suffering in Canada.⁸²

In light of these perspectives, it is perhaps easier to see that the public education system was created “in response to an economic need for more qualified workers to be properly prepared for work in the emerging marketplace and to take full advantage of growing commercial opportunities.”⁸³ That is to say, the lessons taught at school are most often underlined with an economic imperative. In this sense, education is an act of depositing morals and values within students which supposedly enable them to become ‘productive members of society’.⁸⁴ In his classic work, *Pedagogy of the Oppressed*, Paulo Freire refers to this system as ‘banking education’, by which he describes the oppositional, dialectical relationship of teachers and students as such:

Banking education maintains and even stimulates the contradiction through the following attitudes and practices, which mirror oppressive society as a whole: a) the teacher teaches and the students are taught; b) teacher knows everything and the students know nothing; c) the teacher thinks and the students are thought about; d) the teacher talks and the students listen – meekly; e) the teacher disciplines and the students are disciplined; f) the teacher chooses and enforces his choice’ and the students comply; g) the teacher acts and the students have the illusion of acting through the action of the teacher; h) the teacher chooses the program content, and the students (who were not consulted) adapt to it; i) the teacher confuses the authority of knowledge with his or her own professional authority, which she and he sets in opposition to the freedom of the students; j) the teacher is the Subject of the learning process, while the pupils are mere objects.⁸⁵

⁸² Mills, 2018, p.147

⁸³ Donald, 2019, p.108

⁸⁴ Freire, 2000, p.72

⁸⁵ Ibid, p.73

According to the renowned critical theorist Ngũgĩ wa Thiong'o, Western ruling classes "reflected themselves, their images, and their history in the literature, while the colonized saw only distorted images of themselves and of their history" – that is if the colonized merited any representation whatsoever.⁸⁶ As Marie Battiste and Sake'j Youngblood have also pointed out, "these books were storehouses of purportedly incontrovertible information to be mined by armchair theorists engaged in comparative studies."⁸⁷ As such, as literature of colonial conquest expanded, and continued to be taught in schools, ethnographies of Indigenous peoples that were almost always written by white men, "became the only legitimate form for telling the 'literal' truth about Indigenous knowledge and heritage."⁸⁸

The exclusion of Indigenous content, knowledge, and values in the Western education system has been harmful to Indigenous peoples, as well as their communities, and the land, *aki*. On one level, many Indigenous people "do not feel that they are part of any Canadian identity but rather feel very much on the periphery."⁸⁹ Consequently, many people feel trapped in choosing between their inherent Indigenous values, as Vine Deloria Jr. explains, "and the values that they have been taught in schools and churches, which primarily demand conforming to seemingly foreign ideals."⁹⁰ At the community level, Dene scholar Glen Coulthard explains:

⁸⁶ Thiong'o, 1981, p.7

⁸⁷ Battiste and Youngblood, 2000, p.32

⁸⁸ Ibid.

⁸⁹ Deer, 2019, p.247

⁹⁰ Deloria Jr., 2003, p.243

adverse social indicators such as poverty, unemployment, substandard housing conditions, infant mortality, morbidity, youth suicide, incarceration, women as victims of abuse and sexual violence, and child prostitution are much more common in Indigenous communities than they are in any other segment of Canadian society, whereas educational success and retention, acceptable health and housing conditions, and access to social services and economic opportunity are generally far lower.⁹¹

This observation has led other scholars to conclude that these adverse social indicators are symptomatic of 'trauma induced stress', which sometimes do not even emerge until years, or even generations later.⁹² In *Like the Sound of a Drum*, Peter Kulchyski persuasively argues that the education system is merely one element of a grand imperial project that is designed to strip Indigenous peoples of their identity, self-determination, and connection to the land, *aki*. Beyond education, Kulchyski says there is "a whole set of institutional plans and practices" in the areas of "health care, housing, infrastructure, justice, family services, and economic development", all of which "work relentlessly to underwrite the continuing conquest" of Indigenous peoples and their lands.⁹³

Other Discontents

One of the main instruments that has been used to colonize and subdue Indigenous peoples in Canada is the *Indian Act*. With its inception in 1876, and still in effect today, the *Indian Act* is legislated policy of the federal government that is used to 'legitimize'

⁹¹ Coulthard, 2014, p.94

⁹² Maaka, 2019, p.11

⁹³ Kulchyski, 2005, p.4

its authority over the political, social, economic, and cultural aspects of Indigenous people and their communities.⁹⁴ Its paternalistic and patriarchal nature has effectively reduced Indigenous peoples from sovereign, self-determining communities to ‘wards of the state’, and as Sheila Cote-Meek argues, provided the state with the justificatory means “to appropriate resources, including land, and to participate in ongoing genocidal practices against Indigenous peoples.”⁹⁵ As one example to that point, section 35 of the *Indian Act* describes a process by which Indigenous peoples can be removed from their communities in the name of state ‘interest’ for the development of public works.⁹⁶ The same political objective also appears in the Numbered Treaties, stated as such: “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.”⁹⁷ In this regard, one might then try to argue that Indigenous nations ‘agreed’ to be subject to such relocation, or to the appropriation of their lands, but the logical retort to that argument would be: *not without ‘due compensation’*. In my view, this standing policy is not so dissimilar from archaic notions of *terra nullius* that were previously used by colonial agents to displace Indigenous

⁹⁴ For further reading on the *Indian Act*, see: Palmater, 2011.

⁹⁵ Cote-Meek, 2014, p.48

⁹⁶ Section 35(1) of the *Indian Act* reads: “Where by an Act of Parliament or a provincial legislature Her Majesty in right of a province, a municipal or local authority or a corporation is empowered to take or to use lands or any interest therein without the consent of the owner, the power may, with the consent of the Governor in Council and subject to any terms that may be prescribed by the Governor in Council, be exercised in relation to lands in a reserve or any interest therein.” Retrieved from: <https://laws-lois.justice.gc.ca/eng/acts/I-5/page-6.html#docCont>

⁹⁷ See Appendix A: Treaty #3.

peoples from their lands, to the extent that Indigenous peoples' interest in the land is apparently invisible to that of the state. For this reason, it is worthwhile to observe Article 10 of the *United Nations Declaration of Rights of Indigenous Peoples*, which states: "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."⁹⁸ It should be self-evident, but I guess it needs to be said that the relocation of Indigenous bodies and appropriation of their land base, without due compensation, is an unethical and unjust practice.

When one considers how Indigenous knowledge and traditions are so intimately connected to the land, the appropriation of reserve lands through the *Indian Act*, and perhaps more significantly, treaty related 'land surrenders' create massive chasms in Indigenous identities, in terms of how Indigenous ways of life are literally being stripped away, converted to a commodity, and sold. As Marie Battiste and James Youngblood explain, "Each time that happens, the heritage and knowledge die a little, and with them, the people."⁹⁹ Moreover, the imposition of colonial political structures such as the *Indian Act*, has led to compromised forms of Indigenous government that contradict traditional Indigenous values. In essence, this has effectively devastated traditional governance systems to the point that "the adverse effects of colonization

⁹⁸ See: United Nations. "United Nations Declaration of Rights of Indigenous Peoples", 2007.

⁹⁹ Battiste and Youngblood, 2000, p.12

demand more colonial intervention.”¹⁰⁰ The irony of the situation, as Glen Coulthard points out, is that it is precisely “the state’s assumed position in these struggles is itself what is contested by many Indigenous claims for cultural recognition.”¹⁰¹ The moribund state of many Indigenous communities has led scholars such as Taiaiake Alfred to conclude that “institutions and ideas that are the creation of the colonial relationship are not capable of ensuring our survival; this has been amply proven as well by the absolute failure of institutional and legalist strategies to protect our lands and our rights.”¹⁰² In other words, Indigenous nations do not want more colonial intervention, but rather, a reconciliation with, and resurgence of their traditional epistemes and practices.

Unfortunately, as unsuccessful as foreign social, economic, and political governance structures have been in Indigenous communities, Glen Coulthard argues that they are maintained “through a combination of coercion and consent. Under such conditions, colonial domination appears ‘more subtle, less bloody.’”¹⁰³ Coercion exists in the sense that Indigenous leadership *must* do something, with whatever means available, to manage the issues in their communities. In another way, Howard Adams suggests that because Indigenous peoples “are unable to resist it, they become conditioned to accept inferiority as a natural way of life. They soon recognize that all positions of authority –

¹⁰⁰ Coulthard, 2014, p.100

¹⁰¹ Ibid.

¹⁰² Alfred, 2009b, p.24

¹⁰³ Coulthard, 2014, p.113

such as teacher, priest, judge, Indian agent – are held by whites.”¹⁰⁴ In *Red Skin, White*

Masks, Coulthard explains:

where colonial rule is not reproduced through violent force alone, the maintenance of settler-state hegemony requires the production of what [Fanon] liked to call ‘colonized subjects’: namely, the production of the specific modes of colonial thought, desire, and behavior that implicitly or explicitly commit the colonized to the types of practices and subject positions that are required for their continued domination.¹⁰⁵

To reiterate, ‘colonized subjects’ – sometimes unwittingly – *internalize* colonial thought, desire, and behavior which facilitates an implied *consent* to their continued domination. Sadly, this is exactly what the colonial regime expects and wants to happen. Coulthard continues, “the long-term stability of a colonial system of governance relies as much on the ‘internalization’ of the forms of racist recognition imposed or bestowed on the Indigenous population by the colonial state and society as it does on brute force.”¹⁰⁶

In *The Wretched of the Earth*, Frantz Fanon writes: “Poverty, national oppression, and cultural repression are one and the same. After a century of colonial domination culture becomes rigid in the extreme, congealed, and petrified.”¹⁰⁷ Fanon’s analysis suggests that state apparatuses, such as the *Indian Act*, stifle cultural growth and heterogenous identities. Indeed, Indigenous peoples are commonly depicted in Western literature and media as members of a ‘timeless traditional culture’. From this

¹⁰⁴ Adams, 1975, p.9

¹⁰⁵ Coulthard, 2014, p.16

¹⁰⁶ Ibid, p.31

¹⁰⁷ Fanon, 1963, p.172

perspective, Marie Battiste explains that “Indigenous cultures appear to ‘need’ progress, an economic and moral uplifting to enable their capacities.”¹⁰⁸ In contrast, Western civilization is assumed to possess a fluid, dynamic, and progressive culture that adapts effortlessly with the passage of time. As Battiste goes on to argue, “this developmental perspective serves as a self-congratulatory reference point against which modern society can measure its own progressive historical evolution.”¹⁰⁹ On the other hand, any cultural adaptations that are undertaken or pursued by Indigenous peoples and communities to improve their social and economic conditions are commonly viewed as ‘inauthentic’, and are consequently met with unwarranted criticism and resistance. “Naturally it follows,” Harold Cardinal adds, “that no effort must be left untried to prevent that poor, benighted Indian from pursuing such a goal.”¹¹⁰ At the heart of such a view as inauthenticity, Linda Tuhiwai-Smith reminds us, “is a belief that Indigenous cultures cannot change, cannot recreate themselves and still claim to be Indigenous. Nor can they be complicated, internally diverse or contradictory. Only the West has that privilege.”¹¹¹

This concept of ‘timelessness’, given its ubiquitous stature in today’s society, deserves further analysis. Simply stated: it is not just benign rhetoric, it has significant ‘real-world’ ramifications. As Deborah Root points out, ‘timelessness’ “can be valorized and used to underpin a romanticized view of non-Western people, but more commonly

¹⁰⁸ Battiste, 2013, p.31

¹⁰⁹ Ibid.

¹¹⁰ Cardinal, 1977, p.13

¹¹¹ Tuhiwai Smith, 1999, p.74, see also: LaRocque, 2010, p.127

it appears as a sign of inferiority and stasis. This has obvious political implications, as it ignores both the transformations that occur and have always occurred within traditional societies and the reality of what change means in a colonial or neocolonial situation.”¹¹² As a prime example, the *Indian Act*, is very much implicated in this idea of ‘timelessness’, by which it maintains a stranglehold on ‘Indian’ identity. With a fundamentally basic – and much maligned – blood quantum formula, the state can determine who gets ‘Indian status’ and who does not, all of which is “designed to assimilate all Indians through legislative extinction.”¹¹³ In this regard, Peter Kulchyski has persuasively argued that Indigenous peoples have escaped such legislative extinction, in part, because of the fact that they subverted the meaning and representation of such policies in their favor.¹¹⁴ In other words, ‘Indians’ made having an arbitrary ‘status’ rather symbolic of the state’s obligations to its treaty partners.¹¹⁵

In an education context, ‘timelessness’ can be observed time after time, when curriculums focus too much on certain aspects of traditional Indigenous material culture such as: bows and arrows, canoes, totem poles, dreamcatchers, igloos and many other material objects. It seems that if an Indigenous person is not wearing buckskin and feathers, they can hardly be considered Indigenous. Sheila Cote-Meek explains that this teaching practice is problematic, in the sense that it has an effect of keeping the focus “on those who are subjected to racism and discrimination rather than challenging

¹¹² Root, 1996, p.38

¹¹³ Palmater, 2011, p.176

¹¹⁴ See: Kulchyski, “Orphans of the State”.

¹¹⁵ I will discuss the state’s treaty obligations in more detail in Chapter 2.

dominant colonial and imperial practices.”¹¹⁶ John Borrows further argues that, when Indigenous peoples are in a situation where they “must accord with a pre-existing set of values, doctrines, principles, laws, or traditions that have a fundamental *a priori*, essence”, their freedom is diminished.¹¹⁷ I am happy to say, that despite immense pressure for Indigenous peoples to remain the same, frozen in time, many of us have actively resisted that categorization. As Frantz Fanon once said: “We believe the conscious, organized struggle undertaken by a colonized people in order to restore national sovereignty constitutes the greatest cultural manifestation that exists.”¹¹⁸

Reconciliation

Albert Memmi was quite right when he said: “We have no idea what the colonized would have been without colonization, but we certainly see what has happened as a result of it.”¹¹⁹ The truth is, as a result of colonization and its *windigo* manifestations, many aspects of Indigenous culture including their languages, laws of governance, traditional practices, and their relationship to the land have been severely bitten. In order to heal this wound, Indigenous nations must be able to determine for themselves what steps need to be taken. And “if knowledge is fundamental to understanding, interpreting and establishing values within society,” as I have tried to show, “then control over its production becomes an integral component of cultural

¹¹⁶ Cote-Meek, 2014, p.60

¹¹⁷ Borrows, 2016, p.181

¹¹⁸ Fanon, 1963, p.178

¹¹⁹ Memmi, 1991, p.114

survival.”¹²⁰ Fortunately, within the past twenty-five years, a new generation of critical thinkers and Indigenous scholars has emerged to contest the Western canon and neoliberal ideology to education, which has helped many Indigenous nations take important strides to reclaim their self-determination. These scholars are now asserting: “We will no longer be the subjects of objective study; we are the subjects of our own knowledge creation. When we claim our location, we become congruent with Indigenous world views and knowledge, thus transforming our place within research.”¹²¹ This development reflects Edward Said’s societal observation in *Culture and Imperialism*:

Native Studies and other forms of cultural studies are no longer “commanded by ex-colonial officers or a platoon of academics speaking the appropriate language. Instead a new receptivity to both liberation movements and post-colonial criticism, and new conscious opposition groups (the civil rights movements in America, the immigrant rights movement in the United Kingdom) effectively took away the monopoly of discourse held by Eurocentric intellectuals and politicians.”¹²²

In Canada, there is general consensus amongst Indigenous scholars that the move towards ‘Indian Control of Indian Education’ began in 1969 as a response to the *Statement of the Government of Canada on Indian Policy*, which is commonly referred to as the ‘White Paper’.¹²³ Among the issues that were cogently resisted was the explicit proposal of the elimination of treaty rights and any other special or separate ‘Indian

¹²⁰ Kovach, 2005, p.23

¹²¹ Absolon & Willett, 2005, p.113

¹²² Said, 1993, p.261

¹²³ Deer, 2019, p.241 See also: Cote-Meek, 2014, p.55 and Coulthard, 2014.

status' (read: assimilation).¹²⁴ Although the sentiment for the extinguishment of 'Indian Status' was not new, this veiled progeny was still ugly. The 'White Paper', as Thomas King points out, draws easy comparisons to the state's previous efforts to assimilate Indigenous peoples in the 1920s: "I want to get rid of the Indian problem," said Duncan Campbell Scott, head of Canada's Department of Indian Affairs from 1913 to 1932. 'Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian department.'¹²⁵ The difference this time around is that the state's initiative served as a catalyst for the establishment of enduring, or lasting, pan-Indigenous organizations such as the National Indian Brotherhood (NIB), which ultimately became the Assembly of First Nations (AFN).¹²⁶ Although such pan-Indigenous institutional mechanisms have proved to be imperfect political structures¹²⁷, they still have an important role – and have had some success – in advocating on a full spectrum of Indigenous issues through the facilitation and coordination of "national and regional discussions and dialogue, advocacy efforts and campaigns, legal and policy analysis, communicating

¹²⁴ Borrows, 2016, p.114

¹²⁵ King, 2012, p.72

¹²⁶ In fact, a "League of Indians of Canada" was established under the leadership of Fred O. Loft in 1919 to contest Duncan Campbell Scott's regime, but this organization ultimately dissolved after his death in 1934. See: Kulchyski, "A Considerable Unrest: F.O. Loft and the League of Indians", 1989.

¹²⁷ In *Peace, Power, Righteousness*, Taiaiake Alfred argues that: "organizations such as the AFN consistently fail because they are predicated on the notion that a single body can represent the diversity of indigenous nations. The diversity of histories, cultures, interests, and goals among indigenous peoples in Canada and the United States means that there can never be a general cohesion." (Alfred, 2009, p.112)

with governments, including facilitating relationship building between First Nations and the Crown as well as public and private sectors and general public.”¹²⁸

In response to the ‘White Paper’, the Indian Association of Alberta, led by Harold Cardinal with support from NIB, developed a ‘Red Paper’ that was published in 1970, which “dealt extensively with issues related to Indigenous education, including jurisdiction and control.”¹²⁹ The ‘Red Paper’ was a key impetus in the state’s decision to temporarily shelf its legislative assimilation agenda. In addition to arguing for ‘Indian Control of Indian Education’, it contended that it was the federal government’s fiduciary responsibility to provide adequate funding for education as a result of the treaties it signed. Kanien’kehá:ka scholar, Frank Deer, also notes that the ‘Red Paper’, “which frequently asserted the importance of traditional perspectives on First Nations life (particularly language and culture), has led to such institutional changes as band-managed schools on First Nations, post-secondary and university educational programs that focus on Indigenous issues, and agencies devoted to Aboriginal child welfare services.”¹³⁰ Moreover, Emma LaRocque contends that the movement also provided inspiration for ‘Native resistance literature proper’, “for, on the heels of Cardinal came, first, a steady stream of socio-political commentaries, then poetry, and autobiographies.”¹³¹ To LaRocque’s point, Indigenous authored books like *Half-Breed*

¹²⁸ AFN.ca

¹²⁹ Cote-Meek, 2014, p.55

¹³⁰ Deer, 2019, p.241

¹³¹ LaRocque, 2010, p.25

(1973), *In Search of April Raintree* (1983), and *Slash* (1988), have been instrumental in cultivating a growing awareness of Indigenous history and politics in Canada.¹³²

In 1991, following a flood of land claims and class action law suits,¹³³ a Canadian Royal Commission was established to investigate a litany of issues regarding Indigenous peoples' complex status in Canada. In addition to an overwhelming backlog of litigation, the Commission was spurred on by recent events at the time, notably the Oka Crisis and Elijah Harper's filibuster with the Meech Lake Accord.¹³⁴ After a five-year investigation, a 4000 page *Royal Commission on Aboriginal Peoples Report* (RCAP) was finally published in 1996. In virtually every institutional office that the Commission investigated – whether it was education, child and family services, or the justice system – RCAP admonished the Canadian state for its role in perpetrating deliberate as well as inadvertent harms against Indigenous peoples by “encroaching on their ways of life and disregarding their ambitions,”¹³⁵ ultimately concluding that, “in every sector of public life there is an urgent need to liberate Aboriginal initiatives by making room for Aboriginal institutions.”¹³⁶ Of significance to this particular study, RCAP also made forty-four recommendations on Indigenous education, each one pointing to a different issue that Indigenous nations face in the state's existing education system. Some of these recommendations included: “increasing the number

¹³² See: Campbell, 1973; Culleton-Mosionier, 1983; Armstrong, 1988.

¹³³ I will describe these developments at more length in the following chapter.

¹³⁴ According to Glen Coulthard, Indigenous leadership “overwhelmingly opposed the Meech Lake deal because it failed to recognize the political interests of First Nations.” (Coulthard, 2014, p.90) See also: Wikipedia: RCAP.

¹³⁵ Cairns, 2000, p.118

¹³⁶ See: RCAP, 1996.

of Aboriginal people in education leadership; administrative and support positions; increased access to all levels of education; curriculum that includes Aboriginal perspectives and worldviews; involvement of Elders; Aboriginal language classes; increased mechanisms for family and community involvement and education to combat racism.”¹³⁷ Unfortunately, the significance of these recommendations has been muted by the fact that the state has chosen to ignore them, almost entirely.¹³⁸ When it comes to reconciliation, it seems that the state’s silence speaks louder than words.

Throughout the 1990s and early 2000s Indigenous grievances continued to pile up, particularly in relation to the claims of abuse and negligence suffered in residential schools. Unable to skirt the issue any longer, the state came to terms on an *Indian Residential Schools Settlement Agreement (IRSSA)* in 2006, which was developed in concert with the AFN and other Indigenous organizations, survivors, as well as several branches of the Christian church.¹³⁹ At over five billion dollars, the IRSSA is the largest class action settlement in Canadian history; it has five components: “the Common Experience Payment; Independent Assessment Process; the Truth and Reconciliation Commission; Commemoration; and Health and Healing Services.”¹⁴⁰ The Agreement was widely publicized in Canadian media, and even elicited a formal apology from the Prime Minister in 2008.¹⁴¹ But as some scholars have pointed out, “the state’s approach

¹³⁷ Cote-Meek, 2014, p.88

¹³⁸ Cairns, 2000, p.121

¹³⁹ Borrows, 2019, p.219

¹⁴⁰ AFN.ca

¹⁴¹ In part, the apology read: “In the 1870s, the federal government, partly in order to meet its obligations to educate aboriginal children, began to play a role in the development and administration of these schools.” See: Government of Canada, “Statement of apology to former students of Indian Residential Schools”, 2008.

to reconciliation serves to neutralize the legitimacy of Indigenous justice claims by offering statements of regret and apology for harms narrowly conceived of as occurring in the past, thus off-loading Canada's responsibility to address structural injustices that continue to inform our settler-colonial present."¹⁴² Thomas King adds that "There was nothing in the apology about treaty violations. Nothing about the theft of land and resources. Nothing about government incompetence, indifference, and chicanery. Nothing about the institutional racism that Aboriginal people have endured and continue to endure."¹⁴³ To King's point, whether we are talking about treaty violations, the *Indian Act*, the 'White Paper', or the residential school system, each one of these policies "sought to marginalize Indigenous people and communities with the ultimate goal being our *elimination*, if not physically, then as cultural, political, and legal *peoples* distinguishable from the rest of Canadian society," and are therefore deserving of an apology that is affirmed with a course of action for reconciliation.¹⁴⁴ As King says, "In real life, we expect apologies to be accompanied by a firm purpose of amendment ... But in the political world, apologies seem to have little to do with responsibility, and it appears that one can say 'I'm sorry,' and 'I'm not responsible,' in the same breath."¹⁴⁵

Despite harmful policies that have damaged Indigenous traditions and knowledges over the past century, Indigenous peoples still have hope that education

¹⁴² Coulthard, 2014, p.155; see also: Palmater, 2011, p.26; and Simpson, 2011, p.22

¹⁴³ King, 2012, p.123

¹⁴⁴ Coulthard, 2014, p.4

¹⁴⁵ King, 2012, p.124

can liberate their future, and are determined to see education fulfill its potential.¹⁴⁶

However, as Leanne Simpson argues, if reconciliation is going to be considered a worthwhile objective, it cannot be solely focused on the residential school system, but instead, must be responsive to “the broader set of relationships that generated policies, legislation and practices aimed at assimilation and political genocide.”¹⁴⁷ Reconciliation must be able to support Indigenous nations’ goals to revitalize our languages and oral histories, as well as our traditions of governance and law, all of which were attacked by *windigo* type forces and nearly destroyed.¹⁴⁸

In *Decolonizing Education*, Mik’maq scholar Marie Battiste offers several recommendations on achieving ‘Constitutional Reconciliation’ between Indigenous nations and the state. In addition to supporting Indigenous pedagogical practices and the inclusion of Indigenous content within educational curricula, Battiste contends that the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) should be implemented, and that ‘Aboriginal and Treaty Rights’ should be recognized and affirmed by the state as creating ‘constitutional educational jurisdictions’.¹⁴⁹ According to Battiste, “combined with antiracism, anti-oppressive, decolonizing, and reconstructing of Aboriginal education, the constitutional provision for affirming Aboriginal and treaty rights offers Indigenous Services Canada and provincial and territorial education systems a framework for renewing First Nations education in

¹⁴⁶ Battiste, 2013, p.72

¹⁴⁷ Simpson, 2011, p.22

¹⁴⁸ Ibid.

¹⁴⁹ Battiste, 2013, pp.170-174

Canada.”¹⁵⁰ Frank Deer also notes that the development and implementation of educational initiatives related to reconciliation must be congruent with the identity of the local community, and go beyond curriculum amendment and course content.¹⁵¹ Similar to Battiste, Deer argues further that “pedagogical practices, school climate, community involvement, and language should also be amended to reflect the character of the local community in an effort to address the contested spaces in which Indigenous identity development is situated.”¹⁵² In other words, given the vastly different circumstances of Indigenous peoples throughout Canada, it must be recognized that if reconciliation is to be effective, it ought to take different forms for different nations, a ‘one-size fits all’ approach will not work.¹⁵³

Indigenous peoples are working hard to reclaim our self-determination by implementing our cultural values and knowledges into existing education systems. But as John Ralston Saul points out, to the extent that the state continues to maintain control of education, “it is still more often than not constructed as a straight rejection of the Indigenous reality.”¹⁵⁴ Rauna Kuokkanen has identified this issue as ‘epistemic ignorance’, and argues that it “arises at both the institutional and individual levels and manifests itself by excluding and effacing indigenous issues and materials in curricula, by denying indigenous contributions and influences, and by showing a lack of interest

¹⁵⁰ Ibid, p.177

¹⁵¹ Deer, 2019, p.248

¹⁵² Ibid.

¹⁵³ Battiste, 2013, p.78

¹⁵⁴ Saul, 2008, p.103

and understanding of indigenous epistemes or issues.”¹⁵⁵ Because of ‘epistemic ignorance’, Linda and Keith Goulet explain that changes to curricula and educational programming continue to meet resistance, and schools therefore “continue to fail to ensure success for many Indigenous students.”¹⁵⁶ Moreover, when state institutions fail to show respect for Indigenous knowledges, or engage in healthy, responsible relationships as a principle of reciprocity, they are in fact activating their unconscious epistemic ignorance. In this regard, Michelle Pidgeon has pointed out, “honouring the principle of reciprocity is not just about offering a one-time program and checking the ‘done’ box; for many Indigenous communities, it is an ongoing commitment to provide relevant programs and services that evolve with the needs of the community.”¹⁵⁷ That is to say, the reconciliation of Indigenous education is not a checklist of items that can be crossed off as ‘done’; rather, as Sandra Styres explains, “it is an active process of engagement, activism, patience, and unwavering persistence” that is done with the knowledge and input of Indigenous peoples.¹⁵⁸

Self-Determination

When we think of such terms as social and political sovereignty in a colonial context, self-determination is often the basis of those considerations. However, the omnipresence of structural power imbalances (read: hegemony), necessarily means that the process of self-determination has been dependent on the (re)centring of colonial

¹⁵⁵ Kuokkanen, 2007, p.67

¹⁵⁶ Goulet & Goulet, 2014, p.3

¹⁵⁷ Pidgeon, 2019, p.208

¹⁵⁸ Styres, 2019, p.45

relations through a constant cycle of negotiation and compromise with the state.¹⁵⁹ But in order for self-determination to have any meaningful impact and positive change within Indigenous communities, Taiaiake Alfred contends that “we need authentic ideas and intellectual tools” that are drawn from the heritage of Indigenous peoples, as well as “physical infrastructure, and reinforcement of community cohesion in communications and media and education.”¹⁶⁰ Similarly, Tom Happonook has argued that “at the root of Indigenous self-determination are duties, responsibilities, philosophies, jurisdictions, and authorities that have evolved over millennia into unwritten Indigenous laws.”¹⁶¹ While I agree that maintaining Indigenous intellectual traditions is important in the quest for self-determination and reconciliation, as Indigenous scholars, policy analysts, and legal practitioners, we must be careful with how the term ‘authentic’ is wielded in academic and political discourse, since ‘authenticity’ also carries a notion of ‘inauthenticity’ against which the former is evaluated. And as Deborah Root has pointed out, the idea of ‘authenticity’ presupposes “the existence of someone doing the deciding, who presumably is able to stand above the action and choose the good, someone who is likely to be our old friend, the Western subject.”¹⁶² Fortunately, the growth of Indigenous scholarship over the past couple of decades has meant that we have begun to assert our knowledge and power, and we are no longer allowing others to speak in our stead. As Shawn Wilson explains in *Research*

¹⁵⁹ Ibid, p.47

¹⁶⁰ Alfred, 2009b, p.59

¹⁶¹ Lipe, 2019, p.469

¹⁶² Root, 1996, p.79

is Ceremony, “We are beginning to articulate our own research paradigms and to demand that research conducted in our communities follows our codes of conduct and honours our systems of knowledge and worldviews.”¹⁶³ Moreover Marie Battiste adds, “it is Indigenous people who must provide the standards, principles, and protections that accompany the centring of Indigenous knowledge, and articulate and clarify the visions for how these can support self-determination, healing, and the future.”¹⁶⁴

There seems to be a fundamental link between self-determination and quality education; one cannot exist without the other. As such, the need for good schools in Indigenous communities is an urgent matter. According to Harold Cardinal, “these schools should have two goals: (a) providing adequate and appropriate educational opportunity, where skills to cope effectively with the challenge of modern life can be acquired; (b) creating the environment where Indian identity and culture will flourish.”¹⁶⁵ Similarly, the “banking concept of education”, where “knowledge is a gift bestowed by those who consider themselves knowledgeable upon those whom they consider to know nothing,” must be abandoned, and replaced with “the posing of the problems of human beings in their relations with the world.”¹⁶⁶ In ‘problem-posing’ or ‘libertarian education’, Paulo Freire argues that “people develop their power to perceive critically *the way they exist* in the world *with which* and *in which* they find themselves; they come to see the world not as a static reality, but as a reality in process, in

¹⁶³ Wilson, 2008, p.8

¹⁶⁴ Battiste, 2013, p.73

¹⁶⁵ Cardinal, 1977, p.78

¹⁶⁶ Freire, 2000, p.79

transformation.”¹⁶⁷ The basis of ‘libertarian education’, Freire continues, fundamentally “lies in its drive towards reconciliation. Education must begin with the solution of the teacher-student contradiction, by reconciling the poles of the contradiction so that both are simultaneously teachers *and* students.”¹⁶⁸ This idea is consistent with the recent analysis of Linda and Keith Goulet who have elsewhere argued, “in the aspect of equality, no one is superior to or has authority over another. All knowledge is shared on equal terms no matter who is in the teaching-learning situation, whether it is adults and youth or males and females.”¹⁶⁹

With any consideration that is aimed to construct an education plan based on Indigenous knowledge, the first principle of any such plan should be to respect Indigenous languages. According to Battiste, this is mainly because “each language represents a knowledge system that holds a depth of knowing that has not yet been tapped for contemporary education and the future of sustainable development.”¹⁷⁰ And as John Ralston Saul points out: “When one indigenous language slips away, it is as if heavy doors, once open and giving us access to a particular understanding of this place, have slammed shut, shutting us out forever.”¹⁷¹ The preservation and maintenance of Indigenous languages is thus vital to our collective understandings of

¹⁶⁷ Ibid, p.83 (emphasis in text)

¹⁶⁸ Ibid, p.72

¹⁶⁹ Goulet & Goulet, 2014, p.68

¹⁷⁰ Battiste, 2013, p.146

¹⁷¹ Saul, 2008, p.106

place, and how we might be able to live harmoniously in an ever changing global climate. On the other hand, Emma LaRocque points out:

We are in the twenty-first century, and English is as much our birthright as our Indigenous languages. English is in many respects our new 'native' language, not only because English may become the only language known to future Native generations but also because it has become the common language through which we now communicate. English is now serving to unite us, and, in many ironic respects, serving to decolonize us. ... Since we have a painful and political relationship with this language, we attend to the task of 'reinventing the enemy's language' as Native American poet Joy Harjo so aptly put it.¹⁷²

Nevertheless, as Harold Cardinal stated in the 'Indian Control of Indian Education' report over fifty years ago, "school curricula in federal and provincial/territorial schools should recognize Indian culture, values, customs, languages and the Indian contributions to Canadian development."¹⁷³ In order to support this initiative, Canadian education institutions ought to "view elders, knowledge keepers, and workers who are competent in Aboriginal languages and knowledge as living educational treasures. These individuals comprise a functioning Aboriginal university based on Indigenous knowledge and pedagogy."¹⁷⁴ In this view, the community can be seen "both as a source of knowledge and a network of human resources that, with the development of respectful relationships, will support and reinforce the goals of learning with the students."¹⁷⁵ Parents, too, must be able to regain the right to be involved and "make decisions about the lives of their children; their education, the values they grow

¹⁷² LaRocque, 2010, p.21

¹⁷³ Cardinal, 1977, p.66

¹⁷⁴ Battiste, 2013, p.185

¹⁷⁵ Goulet & Goulet, 2014, p.95

up with, their preparation for life.”¹⁷⁶ Research from Sheila Cote-Meek shows that Indigenous students have spoken “at length of the value of having access to cultural ceremonies, medicines, and traditional supports” in educational settings which has helped them deal with “ongoing colonial violence.”¹⁷⁷ Cote-Meek further notes that “none of these strategies are difficult pedagogical and support measures to provide in education institutions,” which is to say that there is no good reason *not* to implement any or all of these strategies.¹⁷⁸ Moreover, it is worth noting that these strategies are consistent with Article 14(1) of the *United Nations Declaration of Rights of Indigenous Peoples*, which states: “Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.”¹⁷⁹

Recently, an academic debate has emerged over the politics of ‘inclusion’ within institutional paradigms. Some scholars have suggested that “a strong policy of inclusion of Indigenous peoples is required by governments, institutions, and private corporations at all levels, including training, hiring, and management, as well as meaningful representation in governance and board structures.”¹⁸⁰ These scholars say that “a robust policy of positive and qualitative inclusion of Indigenous peoples in the societal sphere will have a significant long-term impact on the forward movement of

¹⁷⁶ Cardinal, 1977, p.222; see also: Simpson, 2011.

¹⁷⁷ Cote-Meek, 2014, p.144

¹⁷⁸ Ibid, p.145

¹⁷⁹ See: United Nations, “United Nations Declaration of Rights of Indigenous Peoples”, 2007.

¹⁸⁰ Goulet & Goulet, 2014, p.74

Indigenous peoples.”¹⁸¹ On the other side of the debate, scholars such as Sandy Grande have pointed out that “liberal models of democracy and education” use “politics of inclusion as an accomplice to the broader project of assimilation.”¹⁸² Such models apparently “ignore the historic economic, and material conditions of ‘difference,’ conspicuously averting the whitestream gaze away from issues of power.”¹⁸³ To this point, Rauna Kuokkanen adds: “When a university includes a course on indigenous studies or includes readings on indigenous issues, it is not building a new knowledge edifice – in terms of transformation, it doesn’t amount to much more than changing furniture in the classroom.”¹⁸⁴ Thus, Indigenous peoples struggle is thus not about ‘inclusion’ and what might be considered as “enfranchisement to the ‘new world order’ but, rather are part of the Indigenous project of sovereignty and indigenization” and self-determination.¹⁸⁵ Inclusion, in this context, constitutes a ‘melting pot’ that beckons the martyrdom of Indigenous knowledge.¹⁸⁶ That is not to say that settler-colonial institutions cannot benefit from at least some red pedagogy in their otherwise black and white curricula.¹⁸⁷ If anything, a little color could go a long way towards repainting a dreary educational picture.

The project of self-determination needs not be inimical to Western knowledge and science. As Marie Battiste says, “the interrelated strands of scholarship and

¹⁸¹ Ibid.

¹⁸² Grande, 2004, p.34

¹⁸³ Ibid.

¹⁸⁴ Kuokkanen, 2007, p.89

¹⁸⁵ Grande, 2004, p.28

¹⁸⁶ See: Adorno

¹⁸⁷ The term ‘red pedagogy’ comes from Sandy Grande’s book: *Red Pedagogy: Native American Social and Political Thought*.

experience intersect to weave solutions not only to decolonize education, but also to sustain the Indigenous renaissance and to empower intercultural diplomacy.”¹⁸⁸ Self-determination is thus not about rejecting all theory and or research of Western knowledge; rather, as Linda Tuhiwai-Smith argues, it is about “centring our concerns and world views and then coming to know and understand theory and research from our own perspectives and for our own purposes.”¹⁸⁹ In that regard, Anishinaabe scholar Leanne Simpson adds, “Our children live in a very different world than their pre-colonial counterparts, and they have to be able to live and function in (at least) two worlds, so complete immersion into pre-colonial parenting traditions is not only impossible, it is also not desirable.”¹⁹⁰ According to Battiste, the answer is to develop what she calls a ‘trans-systemic’ analysis and methodology, that reaches “*beyond* the two distinct systems of knowledge to create fair and just educational systems and experiences so that all students can benefit from their education in multiple ways.”¹⁹¹ When we talk about introducing Western knowledge into Indigenous forms of education, and vice versa, it seems to evoke a concept of “multidisciplinary education – of the ecological and life sciences, the social sciences and humanities, and the Indigenous arts and sciences”, which James Tully says is “the most important pedagogical task of the twenty-first century if we are to have a sustainable shared

¹⁸⁸ Battiste, 2013, p.185

¹⁸⁹ Tuhiwai-Smith, 1999, p.39

¹⁹⁰ Simpson, 2011, p.127

¹⁹¹ Battiste, 2013, p.103

future.”¹⁹² Thus, if we are to live harmoniously with each *other*, our respective knowledges must be respected and cared for – life does not exist within a vacuum.

Political Discontent

Fanon once said, “The customs of the colonized, their traditions, their myths, especially their myths, are the very mark of this indigence and innate depravity.”¹⁹³ In contrast, Howard Adams reminds us: “Colonial myths are very powerful because they become an organic part of the thought process of the people in the imperial nation and serve as their reality.”¹⁹⁴ Since the beginning of the colonial relationship, Western knowledge – as observed through the social institutions of education and justice – has always been valorized, while Indigenous knowledge is denigrated. One example of this fact, as Shawn Wilson points out, “is the notion of the superiority of empirical knowledge that leads to the idea that written text supersedes oral tradition.”¹⁹⁵ As John Ralston Saul has also observed: “At the core of higher learning in Canada lies an obsession with the written and a concept in which learning means written. The higher your studies go, the more they are built around narrow exclusionary ideas of truth, tightly tied to a world of people footnoting one another.”¹⁹⁶ It has been further argued by Andrea Bear Nicholas that “the writing of history is a political act designed to control the past for the purpose of controlling the present and maintaining the social

¹⁹² Tully, 2018, p.86

¹⁹³ Fanon, 1963, p.7

¹⁹⁴ Adams, 1975, p.13

¹⁹⁵ Wilson, 2008, p.58

¹⁹⁶ Saul, 2008, p.36

order.”¹⁹⁷ With regard to writing and texts, Edward Said has effectively shown that students are almost always taught that historic and literary texts “embody, express, represent what is best” in society, and that such texts “exist in a relatively neutral political element, that they are to be appreciated and venerated, that they define the limits of what is acceptable, appropriate, and legitimate so far as culture is concerned.”¹⁹⁸ But as Gerald Vizenor once quipped, “What has been published and seen is not what is heard or remembered in oral stories.”¹⁹⁹ In *Iskwewak*, Janice Acoose elaborates on Said’s paradigm shifting insight:

More than literary art belonging to an unreal or metaphysical realm whose aesthetic qualities please the reader, literature is powerfully political because it persuades and influences the oftentimes unsuspecting reader. Because it absorbs and conforms, in varying degrees, to place of origin, political and nationalistic agenda, literature manifests ideology and expresses the dominant group’s economic, philosophic, religious, and political codes and conventions.²⁰⁰

While universities and other schools might see themselves as being ‘neutral’, or being part of an ‘inclusive’, international community, it is clear that that these institutions are implicated in the historical processes of imperialism and colonization.²⁰¹ Similarly, advocates of the justice system have long insisted that the law is impartial, neutral, and free or above moral complicity, but as Anishinaabe legal scholar John Borrows points out, it is not. Law, “as practised in state forums seems unable to escape from

¹⁹⁷ Bear Nicholas, 2008, p.23

¹⁹⁸ Edward Said, “Secular Criticism”. In Bayoumi and Rubin, eds., 2000, p.236.

¹⁹⁹ Vizenor, 1994, p.70

²⁰⁰ Acoose, 1995, p.51

²⁰¹ Tuhiwai-Smith, 1999, p.65

metaphysics. Implicit appeals to truth, faith, belief, speculation, logic (which always involves emotional calibration of how we perceive the world) are omnipresent in Canadian legal reasoning.”²⁰² Borrows goes on to argue that even the Supreme Court does not occupy a neutral space in its decision making processes, as it has historically placed economic imperatives above Indigenous peoples concerns of land-based and cultural appropriation: “The Court’s own assumptions, tenets, and actions spread world views about life’s purposes despite their seeming silence as to these questions, or other claims to the contrary.”²⁰³ A poignant counterpoint to this analysis is offered by Maori scholar, Graham Hingangaroa Smith, who asserts that the power structures of such institutions as education and justice can be revealed by “questioning the basis of what counts as knowledge, how knowledge is produced, and whose interests are served by this,” which “exposes the myth that knowledge is neutral.”²⁰⁴

Despite decades of dispossession, Indigenous legal and oral traditions continue to be vibrant sources of knowledge, and have more than enough potential to find solutions to complex legal questions and educational issues.²⁰⁵ But as Andrea Bear Nicholas has pointed out, “We know now that this dispossession, upon which the modern social order of North America has been built, could not have occurred without the enormous lie of racism to condone and justify it. By the same token, this dispossession could not be maintained today without the continuing existence of

²⁰² Borrows, 2019, p.66

²⁰³ Ibid, p.83

²⁰⁴ Pihama, 2019, p.69

²⁰⁵ Borrows, 2019, p.181

racism, and the official stories (histories) that support it.”²⁰⁶ For that reason, Sheila Cote-Meek argues that Indigenous education *is* political, in the sense that it should: “promote self-determination collective agency, culturally preferred pedagogy/Indigenous knowledge and articulate with Indigenous political, social, cultural, economic and intellectual aspirations.”²⁰⁷ In that regard, Sandy Grande argues in *Red Pedagogy*, that Indigenous education must make no claim to political neutrality, and must instead “engage a method of analysis and social inquiry that troubles the capitalist, imperialist aims of unfettered competition, accumulation, and exploitation.”²⁰⁸ This assertion, however, has been met with some resistance by teacher candidates in one study conducted by Restoule and Nardozi, who complained that the political nature of Indigenous education is taught with bias.²⁰⁹ In order to distance their discomfort with the curriculum, these teacher candidates chose not to engage at all, thereby “allowing cycles of stereotyping, prejudice, discrimination, and racism to continue unchallenged.”²¹⁰ This form of resistance has been criticized by George Sefa Dei, who has argued that “professors’ and teachers’ inability to ‘see why they should teach diverse histories and multiple forms of knowing the world’ is an example of ‘racelessness’ and an enactment of white normativity and dominance.”²¹¹ As a way of addressing this concern, Starblanket and Stark have suggested that the key to

²⁰⁶ Bear Nicholas, 2008, p.23

²⁰⁷ Cote-Meek, 2014, p.162

²⁰⁸ Grande, 2004, p.26

²⁰⁹ Restoule &Nardozi, 2019, p.320

²¹⁰ Ibid, p.326

²¹¹ Kuokkanen, 2007, p.71

understanding the significance of Indigenous knowledge is to place it in contrast with tools or systems of oppression:

it is most useful to understand Indigenous modes of relating as presenting a *challenge* to modernity that calls into question its hegemonic claims and highlights the destructive and oppressive nature of its inherent logic by way of contrast, while also creating specific opportunities to bring forward the values and precepts underlying our traditional laws and values within contemporary contexts. Rather than getting discouraged by the seeming futility of enacting past practices in the present, we might instead understand these practices as the embodiment of values and beliefs that were given life in the past in relation to particular contexts, that have lived on in spite of efforts explicitly aimed at their erasure or assimilation, and that can continue to be given life anew.²¹²

Similarly, Shawn Wilson adds to this insight in *Research is Ceremony*, by stating: “We need to recognize that” culture “is an important part of how all people think and know (not just Indigenous people). Once we recognize the importance of the relational quality of knowledge and knowing, then we recognize that all knowledge is cultural knowledge. The foundations of this cultural knowledge guide the way that our societies come to be formed.”²¹³ Thus, while it is impossible for the production and dissemination of knowledge to be non-political, or acultural, we can mitigate the negative effects of this just by being aware of, and respecting our relationality with each *other*, and the land that we share.

The Assembly of First Nations estimates that there are about 70,000 Indigenous youth living in their communities and attending community schools across Canada

²¹² Starblanket and Stark, 2018, p.199

²¹³ Wilson, 2008, p.91

“who do not have access to the same standard and quality of educational programs and services that are available to other children.”²¹⁴ As evidence of this fact, a 2013 Report from the Fraser Institute found that on average, provincial governments spent about \$10,000 per student to educate children, while the federal government only spent about \$7,000 per Indigenous student.²¹⁵ Consequently, a pre-existing education gap has actually widened because of increased investment in non-Indigenous populations, while Indigenous communities continue to face chronic underfunding.²¹⁶ According to Dawn Zinga, “The national and provincial trends indicate that Indigenous youth ages 12-18 tend to leave school before completing high school, and drop-out rates among Indigenous youth aged 15 and over are reported 40% in comparison to 13% rates for their non-Indigenous counterparts.”²¹⁷ Exacerbating this problem further is the fact that the Indigenous population in Canada is experiencing a boom, which means that more Indigenous youth will be in classrooms at all levels in the future.²¹⁸ It seems obvious that if the state is serious about achieving ‘real equity’ in Indigenous education, then a commitment to a principle of equalization in funding must be adopted. Linda and Keith Goulet argue that equity can only be achieved when we have equality “in staff salaries and benefits as well as infrastructure, including up-to-date technologies; quality curriculum resources, including those that support Indigenous languages and cultures;

²¹⁴ Styres, 2019, p.42

²¹⁵ Ibid.

²¹⁶ Goulet & Goulet, 2014, p.4

²¹⁷ Zinga, 2019, p.284

²¹⁸ Restoule & Nardozi, 2019, p.312

specialized programming to support students with special needs; and access to specialized programs to expand student life choices in science, sports, and the arts.”²¹⁹

Transforming the Education System

For Indigenous education to reach fruition, a ‘transformative model of redistribution’ must be pursued. Glen Coulthard explains that such a model is one that seeks to “correct unjust distributions of power and resources *at their source*; that is, they not only seek to alter the *content* of current modes of domination and exploitation, but also the *forms* that give rise to them.”²²⁰ The first step in this transformative process should involve a thorough examination of every subject at every grade level in every school “to consider how and to what extent current content and pedagogy reflect the presence of Indigenous peoples and the valid contribution of Indigenous knowledge.”²²¹ As Restoule and Nardozi have pointed out, “The notion that Indigenous content belongs only in a specific grade level or a particular subject area is a privileged one, and one that takes for granted the dominance of Euro-Western perspectives on all subjects, not just history and social studies.”²²² Educators (both administrators and teachers) should also examine themselves through a process of self-reflection that includes an interrogation of one’s own prejudices, which accompanies an understanding “that the status quo and the systems that perpetuate hegemonic views rooted in colonialism are the problems that need to be addressed.”²²³ In *Dancing on Our*

²¹⁹ Goulet & Goulet, 2014, p.198

²²⁰ Coulthard, 2014, p.52 (emphasis in text)

²²¹ Pidgeon, 2019, p.205

²²² Restoule & Nardozi, 2019, p.330

²²³ Zinga, 2019, p.285; see also: Cote-Meek, 2014, p.33

Turtle's Back, Leanne Simpson describes what a process similar to this looks like in an Anishinaabe context:

Biskaabiiyang is a verb that means to look back. In this context it means 'returning to ourselves,' a process by which Anishinabek researchers and scholars can evaluate how they have been impacted by colonialism in all realms of being. Conceptually, they are using *Biskaabiiyang* in the same way Indigenous scholars have been using the term 'decolonizing' – to pick up the things we were forced to leave behind, whether they are songs, dances, values, or philosophies, and bring them into existence in the future.²²⁴

Another way in which educators can help transform the education system is through active "engagement with community members and attendance at appropriate social events; and communication with community members to solve educational problems."²²⁵ As public intellectuals, educators at all levels are saddled with an enormous responsibility to not only excel in teaching, research, and service, but also to ensure that their education programs are "directly relevant and centered on the needs of local Indigenous communities."²²⁶ In other words, educators carry a heavy burden in the pursuit of decolonization, they are literally on the front line of the transformational process.

At the institutional level, traditional customs and ceremonies should be respected and honored on all campuses and schoolgrounds.²²⁷ As Frank Deer says, the integration of Indigenous identity and knowledge within educational institutions can be enhanced "by school-based interventions that include language exploration, content,

²²⁴ Simpson, 2011, p.49

²²⁵ Goulet & Goulet, 2014, p.20

²²⁶ Pidgeon, 2019, p.223

²²⁷ Ibid, p.218

and academic themes and topics that are reflective of Indigenous knowledge and traditional pedagogies.”²²⁸ Moreover, the immersion of traditional customs and ceremonies is a form of creating space – physically, theoretically, and conceptually – in educational institutions that includes “the active recognition and practice of worldviews and knowledge bases that are distinctly Indigenous, which encompass the ways in which Indigenous Peoples think about the world, articulate their relationships with it, and aspire to their own self-determinations and developments.”²²⁹ As Patricia Johnston points out, ‘creating space’ is also about the ‘vacating of space’ “by members of dominant groups, about accepting Indigenous Peoples’ rights to ownership of their own knowledge, culture, and worldviews. Vacating space is recognizing that those referred to in the ‘walk’ (research), the ‘talk’ (policy), and the ‘chalk’ (teaching) might like to occupy those spaces themselves.”²³⁰ This is consistent with what Gina Starblanket and Heidi Stark have elsewhere argued, stating: “it is not enough to make space for Indigenous knowledge. We must allow for this space to be reconfigured by Indigenous knowledge.”²³¹

Closing

In Paulo Freire’s immortal words, “The pedagogy of the oppressed, is a pedagogy which must be forged *with*, not *for*, the oppressed (whether individuals or nations) in the incessant struggle to regain their humanity.”²³² This ‘incessant struggle’,

²²⁸ Deer, 2019, p.249; see also Cote-Meek, 2014, p.157

²²⁹ Johnston, 2019, p.484

²³⁰ Ibid, p.489

²³¹ Starblanket and Stark, 2018, p.182

²³² Freire, 2000, p.48 (emphasis in text)

as previously argued, is predicated on 'difference'. In being defined by 'difference', Indigenous peoples very existence is thus dependent on the survival of what makes us different; "but this difference includes more than just cultural practices; it also includes their land base, laws, and governance."²³³ Moreover, maintaining 'difference' could also mean recognizing 'different' histories, which is to also hold alternative forms of knowledge. As Linda Tuhiwai Smith explains in *Decolonizing Methodologies*, "The pedagogical implication of this access to alternative knowledges is that they can form the basis of alternative [or different] ways of doing things."²³⁴ When it comes to addressing the 'sanctioned ignorance' that prevails within today's social institutions, Rauna Kuokkanen argues that the primary issue is the *acceptance* of Indigenous 'intellectual conventions', but also the protection of this knowledge, from "the practices and discourses that exclude, marginalize, and efface them" in such state apparatuses.²³⁵ The difference of Indigenous knowledges offers an alternative to a neoliberal, capitalist understanding of the world, "regarding the establishment of relationships within and between peoples and the natural world built on principles of reciprocity and respectful coexistence."²³⁶ Anishinaabe traditions, for example, around dispute resolution, restorative justice, and international diplomacy as Leanne Simpson has pointed out, "have been consistent throughout history: to restore balance, justice and good health to

²³³ Palmater, 2011, p.60

²³⁴ Tuhiwai Smith, 1999, p.34

²³⁵ Kuokkanen, 2007, p.56

²³⁶ Coulthard, 2014, p.48

our lands and our peoples based on respect for our sovereignty, independence and jurisdiction over our territories.”²³⁷

The processes of colonization – with its *windigo* psychosis – has severely damaged Indigenous social institutions. The decolonization process has proven to be slow and arduous, especially as we work within institutional structures of the dominant culture, but one way to subvert the power of these institutions, Larissa Behrendt suggests, is to “rely upon our traditional laws and their values and processes to guide our advocacy.”²³⁸ This idea is similar to what Glen Coulthard describes in *Red Skin, White Masks*: “those struggling against colonialism must ‘turn away’ from the colonial state and society and instead find in their own *decolonial praxis* the source of their liberation.”²³⁹ And as Leanne Simpson again points out: “We do not need funding to do this. We do not need opportunity to do this. We need our Elders, our languages, and our lands, along with vision, intent, commitment, community and ultimately, action.”²⁴⁰ In other words, only when we have sufficiently decolonized ourselves will we then be able to recover, contemplate, and envision ways in which education and law can be used to eradicate racism and our systemic oppression: “The answers, our Elders tell us, are in our own Indigenous knowledges, cultures, and ways.”²⁴¹ Within an Anishinaabe context, decolonization or “*Biskaabiiyang*” does not literally mean returning to the past, but rather re-creating the cultural and political flourishing of the past to support the

²³⁷ Simpson, 2011, p.87

²³⁸ Behrendt, 2019, p.180

²³⁹ Coulthard, 2014, p.48 (emphasis in text)

²⁴⁰ Simpson, 2011, p.17

²⁴¹ Absolon & Willett, 2005, p.120

well-being of our contemporary citizens.”²⁴² In the last analysis, I agree with John Borrows in that Indigenous peoples’ own laws and traditions of governance can and should be applied in the pursuit of reconciliation and decolonization.²⁴³ They have the potential to come up with creative, but also culturally respectful, responsible, and relevant solutions to complex problems, particularly in the field of education. In this chapter, I have attempted to show that there is a dire need to transform the existing education system. One way in which this can be accomplished is through the revitalization and application of Indigenous law, which will provide Indigenous nations, particularly the Anishinaabe nation of Treaty #3, the foundation it needs to establish our own education system, according to our own traditions of governance and self-determination. In the following chapters, I will provide further justification for this process, and what an Indigenous Education Law might look like for those who wish to pursue it.

²⁴² Simpson, 2011, p.51

²⁴³ Borrows, 2019, p.235

Chapter 2

Indigenous Laws and the State

We don't serve your country

We don't serve your king

White man listen to the songs we sing

White man came took everything

We carry in our hearts the true country

And that cannot be stolen

We follow in the steps of our ancestry

And that cannot be broken

- Midnight Oil, "The Dead Heart"

Self-determination cannot be given or taken away. It is an act of conviction that resides in the heart of every individual, and is cultivated through the cohesion of community values, customary practices, and education. From a collective standpoint, self-determination is the means by which nations exercise their right to freedom in the face of tyranny and oppression. As John Borrows and James Tully have observed, self-determination "is deployed by communities as a force for reclaiming and reconnecting with traditional territories by means of Indigenous ways of knowing and being. These individual and collective powers include the resurgence of governance, Indigenous legal systems and languages, economic and social self-reliance, and sustainable relationships with the ecosystems that co-sustain all life and well-being."²⁴⁴ Despite

²⁴⁴ Borrows and Tully, 2018, p.4

sedition attempts by the Canadian state to undermine traditional Anishinaabe governance and cultural sovereignty through colonial mechanisms such as the *Indian Act* and the residential school system, the will of our people – and *others* around the world – is alive and strong.²⁴⁵ For the Anishinaabe Nation in Treaty #3, the strength of our conviction is in the knowledge that all sacred gifts and trusts, including our cultural sovereignty and nationhood, as well as our inherent jurisdiction to governance, are bestowed upon us by the Creator and our ancestors.²⁴⁶ According to Treaty #3 Elder, Fred Kelly, this truth is preserved and maintained in our unwritten, traditional constitution that is contained in our knowledge of “the four directions, four levels of sky, four layers of earth, the feathers, the four drums, the four lodges, petroglyphs and pictographs, songs, dances, birchbark scrolls and in so any other sacred things, places and ceremonies.”²⁴⁷ It is our position that our cultural sovereignty and right to self-determination was recognized in our ‘nation to nation’ agreement with the Canadian state, known commonly as Treaty #3, the Northwest Angle Treaty of October 3, 1873.²⁴⁸ The treaty established a “unique constitutional relationship”, which simultaneously established “The Anishinaabe Nation in Treaty #3 as a distinct nation.”²⁴⁹ As Elder

²⁴⁵ While some of what I say may have general application to Indigenous peoples elsewhere in Canada, and around the world, the purpose of this chapter will be to focus on the specific context of the Anishinaabe Nation in Treaty #3 relating to our own education needs, and means to reconciliation.

²⁴⁶ Treaty #3 Chiefs Assembly. “Draft Record of Decision on the Making of a Written Law in Kinaamatiwin.”

²⁴⁷ Kelly, Fred. “Eternal Law and Traditional Law: The Source of the Anishinaabe Constitution”. nd.

²⁴⁸ While this opinion is my own, it is substantiated by the fact that I am a member of The Anishinaabe Nation in Treaty #3, informed by the wisdom and guidance of national leaders and Elders. The use of the term “our” is a reflection of Emma LaRocque’s great axiom, which I keep present in mind as much as possible: “One’s own voice is never totally one’s self, in isolation from community. At the same time, one’s self is not a communal replica of the collective.” (LaRocque, 2010, p.29)

²⁴⁹ Kelly, “Executive Summary and Elements of the Constitutional Government of the Anishinaabe Nation in Treaty #3”. nd.

Fred Kelly says, “The principal effect of the Treaty is the sharing of sovereignty. By making the Treaty with Canada, the Nation acknowledged the sovereignty of the Queen and affected the exercise of its jurisdiction accordingly. By making the Treaty with the Nation, Canada acknowledged the sovereignty of the Nation and affected the exercise of its jurisdiction accordingly.”²⁵⁰ This point is substantiated by the fact that during the Treaty #3 negotiations, the Treaty Commissioner, Alexander Morris told Treaty #3 leadership: “I wish to treat with you as a Nation, not as separate bands.”²⁵¹ In this chapter, I will attempt to show that several forms of external jurisprudence, in the form of Canadian case law, as well as the *United Nations Declaration on the Rights of Indigenous Peoples*, and the Truth and Reconciliation Commission’s “94 Calls to Action”, support our right to autonomous governance, especially as it relates to our treaty right to education. In that regard, it is the will of the Anishinaabe Nation in Treaty #3 to exercise this right through a revitalization our traditional Education Law, *kinamaadiwin inaakonigewin*, into a written form. We believe that this will enable our people to establish our own education system for the benefit of our children, and our children’s children, so that they may live a good Anishinaabe life, *mino-bimaadziwin*.²⁵²

²⁵⁰ Ibid.

²⁵¹ Morris, 1880.

²⁵² A basic translation of *mino-bimaadziwin* is: “the good life”. Many Anishinaabe Elders and scholars identify *mino-bimaadziwin* as the *raison d’être*, or purpose of life, or the reason for our existence on Earth. For reference, see: Ningewance, Patricia (2004); Johnston, Basil (1976); Craft, Aimée (2013); Simpson, Leeann (2011); Benton-Banai, Edward (1988); Borrows, John (2002); Doerfler, Jill, Sinclair, Niigaanwewidam, & Stark, Heidi (2013).

On Writing

In the previous chapter, I discussed how cultural *difference* was used to exploit, manipulate, and expropriate Indigenous peoples' relationship with their lands, which thereby facilitates the construction of cultural identities for both the colonizers and the colonized. With most Indigenous nations being primarily oral cultures, one of the ways with which colonization achieved its capitalist ends is through the written word.

According to the eminent critical theorist, Jacques Derrida: "It has long been known that the power of writing in the hands of a small number, caste, or class, is always contemporaneous with hierarchization, let us say with political *differance*; it is at the same time distinction into groups, classes, and levels of economico-politico-technical power, and delegation of authority, power deferred and abandoned to an organ of capitalization."²⁵³ Cultural anthropologists have long assumed that there are societies 'with or without writing', and it is the presence of writing which gives societies the glorified status of a 'civilization'. As one example of this fact, in *Tristes Tropiques*, Claude Levi-Strauss writes:

After eliminating all other criteria which have been put forward to distinguish between barbarism and civilization, it is tempting to retain this one at least: *there are peoples with, or without, writing*; the former are able to store up their past achievements and to move with ever-increasing rapidity towards the goal they have set themselves, whereas the latter, being incapable of remembering the past beyond the narrow margin of individual memory, seem bound to remain imprisoned in a fluctuating history which will always lack both a beginning and any lasting awareness of an aim.²⁵⁴

²⁵³ Derrida, 1974, p.130 (emphasis in text)

²⁵⁴ Levi-Strauss, 1974, p.298 (emphasis added)

Thus, in Levi-Strauss' opinion, it is the absence of recognizable writing – that is, linear, phonetic notation, which makes Indigenous peoples uncivilized or barbaric, and is therefore, the reason which justifies their exploitation. Put another way: No writing equals no history; no history equals no law. In this regard, settler-colonial common laws, treaties, and the construction of a canon of recognized knowledge have all systematically enabled Western civilizations and their state apparatuses to marginalize Indigenous nations from being sovereign, free-peoples to slaves and prisoners on their own lands, by way of denying Indigenous writing and legal practices.

In *Of Grammatology*, Jacques Derrida rejects the claim that there are societies without writing, because for him, writing is inscribed within the 'structure' and 'usage' of a society's language.²⁵⁵ In an Anishinaabe context, Aimée Craft has pointed out that Anishinaabe law "is not codified, but is taught ... Laws are also infused and contained in the *Anishinabemowin* language and passed down through the teachings related to *mino-bimaadiziwin* (leading a good life)".²⁵⁶ Thus, it is the *structure* of *anishinaabemowin* – it being verb based, so that every word is not just a word, but a concept or an idea or a way of life²⁵⁷ – and the way it is *used* that gives the language a presence of writing. That being said, if writing can be conceived as something other than "linear and phonetic notation", like perhaps a *device to articulate history and law*, then we can see as Derrida does that "no reality or concept would therefore correspond to the expression 'society

²⁵⁵ Derrida, 1974, p.108

²⁵⁶ Craft, 2013, p. 70; see also: Hamilton and Sinclair, 1991, p.45

²⁵⁷ Johnston, 1976.

without writing”²⁵⁸ For example, in his aptly titled article “bush writing”, Peter Kulchyski argues that the presence of trails on a trapline are a form of writing, as is a name of any given location, as well as designs on clothing and housing structures, each of which has a set of local stories and knowledge attributed to its being.²⁵⁹ Furthermore, when language is considered as a form of *exchange*, as it is through human interaction, then there are economic connotations by which language is given a property of law. According to Derrida, the word ‘economy’, comes from the Greek words ‘*oikos*’ and ‘*nomos*’, which literally translates into the term property or exchange law:

Among its irreducible predicates or semantic values, economy no doubt includes the values of law (*nomos*) and of home (*oikos*, home, property, family, the hearth, the fire indoors). *Nomos* does not only signify the law in general, but also the law of distribution (*nemein*), the law of sharing or partition [*partage*], the law as partition (*moira*), the given or assigned part, participation ... Besides the values of law and home, of distribution and partition, economy implies the idea of exchange, of circulation, of return.²⁶⁰

That is to say, not only is there no reality which corresponds to the idea of ‘societies without writing’, we can also conclude that *there are no societies without their own laws*. By virtue of possessing and using their own languages, Indigenous nations effectively practice their own laws. As Treaty #3 Elder, Fred Kelly, has pointed out to me: “The Constitution of Great Britain is not written, and many other constitutions are not written. Our traditional constitution is also not written. Before the Treaty, there was no need to explain the Constitution, the people just lived it. Now it is becoming an urgent

²⁵⁸ Derrida, 1974, p.109

²⁵⁹ See: Kulchyski, “Bush Writing”.

²⁶⁰ Derrida, 1992, p.6

matter of survival. That is why it must be taught and relearned.”²⁶¹ Writing, in the common sense of the word, is therefore not a necessary element of law, but could be a useful instrument to communicate between laws or *different* languages.

Anishinaabe Nation in Treaty #3

The oral tradition, in *anishinaabemowin*, affirms that our laws and ways of knowing the world were given to us by the Creator: “when *Kizhe Manito* came down through the star constellation, *Paagonekishig*, the Hole in the Sky.”²⁶² Etymologically, the word ‘*anishinaabe*’ meaning ‘man’ is derived from the word ‘*niisinaabe*’ which means ‘descended’. It is said that the Creator, upon descension, provided the Anishinaabe with ‘original instructions’, which came to be recognized as ‘Sacred Law’. Indigenous legal scholar, Diane Longboat explains that “sacred laws speak of the origins of life and creation and the evolution of human beings with their gifts, duties and responsibilities, moral and ethical codes of behavior, challenges to the human spirit, and ceremonies and medicines to strengthen the journey of life.”²⁶³ In *anishinaabemowin*, ‘sacred law’ means *kagagiwe inaakonigewin*, which represents the first order of Anishinaabe law. *Kagagiwe Inaakonigewin* forms the basis of the Anishinaabe constitution, the sanctity of which is preserved in the oral tradition, and is thus forbidden to be written (in the narrow sense of phonetic notation).²⁶⁴ As Elder Fred Kelly says: “The oral Constitution is an invaluable cultural and legal asset. It is sacred and not a matter for negotiation.

²⁶¹ Kelly, Fred. “Implications of an Oral Constitution”. nd.

²⁶² Grand Council Treaty #3, “The Creator Placed Us Here”. nd.

²⁶³ Longboat, 2013(b), p.3

²⁶⁴ Kelly, Fred. “Implications of an Oral Constitution”. nd.

The Anishinaabe citizens must see that Canada's insistence on a written constitution will not be necessary. The Constitution should remain unwritten."²⁶⁵ This view is given support by Justices A.C. Hamilton and C.M. Sinclair in *The Justice System and Aboriginal People*, who state: "There were and are Aboriginal laws. There were and continue to be Aboriginal governments with lawmaking powers and with provisions to enforce those laws. There were and are Aboriginal constitutions that are the supreme "law of laws" for some Aboriginal peoples and their nations."²⁶⁶ With regard to *kagagiwe inaakonigewin*, Elder George Kakeway explains that the Creator, *Kizhe Manito*, "gave us the sacred duty to provide care and protection for all life on the lands, in the soil, skies, and water in our territory."²⁶⁷ Sacred law, thus provides instruction on how to practice: "medicine, science, technology, engineering, health, transportation, food security, economy, weather readings, environmental concerns, mining, forestry, animal harvesting, fishing, water conservation, land restoration, climate change, kinship and social customs."²⁶⁸ In short, 'sacred law', or *kagagiwe inaakonigewin*, provides the Anishinaabe with their worldview, and the knowledge with which to sustain their way of life on the land, *aki*.

The second of four orders of Anishinaabe law is *kete inaakonigewin*, or 'traditional law'. Like 'sacred law', Anishinaabe 'traditional law' is not permitted to be written, in the common usage of the term. *Kete Inaakonigewin* is observed by Anishinaabe Elders

²⁶⁵ Ibid.

²⁶⁶ Hamilton and Sinclair, 1991, p.22

²⁶⁷ Kakeway, 2016, p.4

²⁶⁸ Ibid.

and traditional knowledge holders who participate in ceremonial and spiritual practices such as the 'sweat lodge' and 'shaking tent'.²⁶⁹ There are several organized Anishinaabe societies, such as the *midewi'win*, *waabanowin*, and *jiisakiiwin* that are custodians of 'sacred' and 'traditional law'. These societies have been maintained over many generations, and are dedicated to the preservation and protection of traditional Anishinaabe knowledge, as well as to the maintenance of cultural protocols in ceremonies and special events. The third order of Anishinaabe law is *Anishinaabe Inaakonigewin*, or 'customary law'. Anishinaabe 'customary law' is most often practiced by community members who maintain a strong connection to the land through the maintenance of customary practices such as fishing, hunting, trapping, and food harvesting. Some important principles of *Anishinaabe Inaakonigewin* are key reference points to environmental sustainability, which include: do not take more than what is needed; use all of which is taken; hunt and fish during the appropriate seasons; and ensure that the next generation can also enjoy the bounty of the land.²⁷⁰ Unlike 'sacred' and 'traditional law', which are deeply rooted in tradition and creation as their names imply, *Anishinaabe Inaakonigewin* can be adapted for contemporary circumstances, and some aspects of it may be written down, as opposed to being strictly maintained through ceremony, storytelling, and other traditional practices.²⁷¹

²⁶⁹ Johnston, 1976.

²⁷⁰ Treaty #3 Elders Gathering, March 2019.

²⁷¹ Ibid.

The fourth order of Anishinaabe law is *Ozhibiige Inaakonigewin*, which translates to “written temporal law”. As the last order of law, it is distinguished by its phonetic form of representation; *Ozhibiige Inaakonigewin*, must conform to, and be consistent with all of the principles inherent to the other three orders of Anishinaabe law.²⁷²

Importantly, *Ozhibiige Inaakonigewin*, is most often used to harmonize with the administration of other laws (e.g., Crown laws).²⁷³ According to the Grand Council Treaty #3, which is the traditional government of the Anishinaabe Nation in Treaty #3: “In modern times, we have felt the need to write down some especially important laws given the shared jurisdiction of territory and people in the 55,000 square miles dealt with under Treaty #3.”²⁷⁴ Following Elders gatherings in “Kay-Nah-Chi-Wah-Nung at Manito Ochi-waan on April 22 and 23, 1997 and on July 31, 1997”, the first written temporal law – *Manito Aki Inakonigaawin*, or the ‘Great Earth Law’ – was approved and petitioned for ratification by the National Assembly of Chiefs.²⁷⁵ Accordingly, “The Nation, with approval of the Elders and validation in traditional ceremony, and with ratification by the National Assembly, proclaimed this law on the 3rd day of October 1997.”²⁷⁶ *Manito Aki Inakonigaawin*, or the ‘Great Earth Law’, establishes that the Anishinaabe Nation in Treaty # 3:

maintains rights to all lands and water in the Treaty # 3 territory commonly referred to Northwestern Ontario and south-eastern Manitoba. Accordingly, any development in the Treaty # 3 Territory such as, but not limited to,

²⁷² Ibid.

²⁷³ Ibid.

²⁷⁴ GCT3.ca

²⁷⁵ Ibid.

²⁷⁶ Ibid.

forestry, mining, hydro, highways and pipeline systems that operate in the Treaty # 3 Territory require the consent, agreement and participation of the Anishinaabe Nation in Treaty # 3.²⁷⁷

The Grand Council Treaty #3 is currently in the process of developing and ratifying several other written temporal laws relating to their inherent jurisdiction of governance. Two of which deal respectively with 'childcare' and 'healthcare' laws. Another law that is being developed – which is the focus of this study – is *kinamaadiwin inaakonigewin*, or Education Law.

Indigenous peoples, for many years, have yearned for an education process that respects their traditional knowledge and values, as it has become clear that the existing system does not meet their needs and desires. As Rauna Kuokkanen points out: “A significant factor in declining academic performance beyond grade four ‘seems to be a growing feeling of isolation, rejection, and anxiety felt by Indigenous children as they confront the incompatibility of their cultural value system with that of Anglo-American classmates.”²⁷⁸ Adding to this problem, however, is the unwillingness of the settler-colonial state to reach an agreement that would support constructive changes to the education system that would benefit Indigenous nations. As Glen Coulthard explains in *Red Skin, White Masks*, “although the state no longer requires the formal ‘extinguishment’ of Aboriginal rights as a precondition to reaching an agreement, the purpose of the process has remained the same: to facilitate the ‘incorporation’ of

²⁷⁷ Ibid.

²⁷⁸ Kuokkanen, 2007, p.51

Indigenous people and territories into the capitalist mode of production.”²⁷⁹ Given the state’s reluctance to adopt any transformational measures in the field of education on its own merit, I will discuss some historic events that support Indigenous nations rights to education, including their inherent jurisdiction to govern and administer their own education systems, as justification to meaningfully address these concerns.

On Treaties

There are four distinct eras of treaty-making on the land now known as Canada. The first era is the *Pre-Contact Era*, which predates the era of colonization, and is distinguished by the fact that it is still preserved, maintained, renegotiated, and resettled through the oral traditions of many Indigenous nations today. The second era of treaty-making could be considered as the *Peace and Friendship Era*, which sometimes involved written agreements between colonial agents (mostly English and French), and various Indigenous nations east of the Mississippi River. Ironically, ‘Peace and Friendship’ treaties could actually be thought of as instruments of war, such that Indigenous nations “were considered ‘assets’ that could be co-opted or convinced to fight for one side or the other” or against each other.²⁸⁰ Importantly, ‘Peace and Friendship’ treaties “did not involve land transfers and usually did not include any payments besides gift distributions.”²⁸¹ The third era of treaty-making, and the one of interest in this study, is the *Confederation Era*. This era most often refers to the post-

²⁷⁹ Coulthard, 2014, p.66

²⁸⁰ Frideres, 2011, p.10

²⁸¹ Ibid, p.203

Confederation 'Numbered Treaties', but also includes treaties such as the Robinson-Huron and Robinson-Superior treaties from 1850. These treaties have written documents that are officially recognized by the state, and are distinguished by the usage of a phrase, similar to: "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" as is written in Treaty #3.²⁸² The Confederation Era treaties are significant in the sense that they are the means by which the Canadian state – by right of the royal monarch in Great Britain – validated its previously illegitimate claim to sovereignty, which depended on antiquated doctrines of 'discovery' and '*terra nullius*'.

The fourth era of treaty-making in Canada is the *Modern Era*, which began with the *James Bay and Northern Quebec Flood Agreement* in 1975. 'Modern' treaties are settlement agreements with the Canadian state that sometimes began as lawsuits by Indigenous nations in the form of 'Comprehensive Land Claims'. Whereas 'Confederation Era' treaties are silent on issues of Indigenous self-governance, the 'Modern Era' treaties are distinguished by the legalism employed to limit Indigenous rights. Peter Kulchyski explains: "While comprehensive land claims are constitutionally defined as treaties, and hence have constitutional status and protection, a clause in the self-government section

²⁸² See: 'Appendix A: Treaty #3'.

of the claim ensures that the whole section does not have such protection, nor does any agreement negotiated as a result of the section.”²⁸³ According to Kulchyski:

Some of the highly paid staff on the ironically named Justice Department in the federal government came up with a two-word solution to that problem and the solution then found its way into all the land claims that followed. All their Aboriginal claims, *if any*. Even in the moment of surrender of Aboriginal title, the very instant of extinguishment that so much energy is spent achieving, the government has not entirely recognized that such title ever existed or had legal force.²⁸⁴

As Kulchyski notes, the legalism by which the Canadian state continually attempts to strip Indigenous nations of their inherent rights is astonishing, and in fact, “betrays an unwarranted faith in legal process.”²⁸⁵ Nevertheless, the process continues, and Indigenous nations continue to stack up comprehensive land claims in hopes of reaching a fair agreement that recognizes their inherent right to self-governance and self-determination. In this regard, there have been substantial changes in the Comprehensive Land Claim process, as well as in federal policy which has benefitted Indigenous nations, since 1975. As one example, newer settlement agreements now include constitutionally protected self-government agreements, so long as the Indigenous nation agrees to the application of Canada’s *Charter of Rights and Freedoms*. In the last analysis, it is worth noting that in every era of treaty-making, Indigenous nations relied on their own laws and protocols – as much as what has been written –

²⁸³ Kulchyski, 2005, p.99

²⁸⁴ Ibid, (emphasis added).

²⁸⁵ Ibid.

when negotiating these ‘nation to nation’ agreements, and that these practices were observed and adhered to by the nations they treated with, including the Canadian state.

Many people in Canada are aware that a treaty relationship exists between its state and Indigenous peoples, and some probably even know about the tumultuous history, but very few people apprehend that they actively contribute to the frayed relationship simply by maintaining the status quo.²⁸⁶ A number of scholars, both Indigenous and non-Indigenous, including John Borrows in *Recovering Canada*, and Michael Asch in *Aboriginal and Treaty Rights in Canada* have pointed out that much of the discord in the treaty relationship has to do with a fundamental gap in mutual understanding of what treaties actually represent or signify.²⁸⁷ For Aimée Craft, this discord stems from the uncoordinated operation of two distinct legal systems in treaty making, interpretation, and implementation practices.²⁸⁸ As a result, many Canadians believe treaties were merely a tool for “cataloguing rights” in exchange for the subjugation of Indigenous lands and bodies.²⁸⁹ On the other hand, “to Indian people,” as Harold Cardinal points out, “the actions of the colonial powers in entering into treaties with Indian peoples were an acknowledgement of sovereignty and a recognition of Indian rights to the land.”²⁹⁰ This notion of ‘rights’ in treaties is prevalent in treaty discourse, and rightly so. In *The Right Relationship*, John Borrows and Michael

²⁸⁶ Mills, 2017, p.245

²⁸⁷ Borrows, 2010; Asch, 1997.

²⁸⁸ Craft, 2013.

²⁸⁹ Borrows, 2017, p.13

²⁹⁰ Cardinal, 1977, p.137

Coyle, among other scholars assert that “treaties first and foremost are concerned with right relations between First Peoples and settler governments.”²⁹¹ For these scholars, this means asking, ‘what is right in the treaty?’, as in what is just, moral; as opposed to asking, ‘what are rights in the treaty?’, as in cataloging a list of rights. Mark Walters explains, “to claim a right is not always the same thing as seeking right. To ask what rights one has is to ask what one is owed by others, an inquiry that looks backward to an *a priori* conception of rights, whereas to ask what is right between people seems to involve asking what it is that they should do in relation to each other, an inquiry that looks forward towards establishing just relationships.”²⁹² Michael Coyle adds that “political partnership and the ethics of caring, mutual respect, and trust were clearly intended to be integral to the new order created by the historical treaties.”²⁹³ In order to understand *what is right* in treaties, however, it is important to have a historical frame of reference upon which to base that inference.

A Brief History, Pt. 1: Treaty-Making in Canada

In a Canadian context, the era of colonization began in 1534 with Jacques Cartier, who was the first to meet and establish economic trade relations with Indigenous nations around the province of Quebec and the Maritimes.²⁹⁴ It is important to note that the provinces did not exist as such at this time, since they were under the control and authority of the Indigenous nations who occupied those lands. In the following

²⁹¹ Borrows, 2017, p.13

²⁹² Walters, 2017, p.189

²⁹³ Coyle, 2017, p.69

²⁹⁴ Miller, 2009, p.11

decades, British settlers and merchants joined their French counterparts in what became a very lucrative fur trade with Indigenous nations.²⁹⁵ Less commonly understood, however, is that the economy of the fur trade was actually practiced under the authority of local Indigenous laws and protocols. As Canadian historian J.R. Miller points out in *Compact, Contract, Covenant*, Western merchants and settlers were instructed to ‘make compact’ with Indigenous nations, and ‘purchase their lands and rivers’ “by the Religion of Custome [sic] of their Country should be thought most sacred & obliging to them for the confirmation of such Agreements.”²⁹⁶ This practice was followed for many years, but beginning in 1670 with the *Royal Charter*, the British Crown started drafting its own legislation regarding land rights without consultation of the Indigenous nations who inhabited those lands. The *Royal Charter*, in fact, illegitimately granted the Hudson’s Bay Company [HBC] title and benefits, including monopoly trading privileges, to an enormous tract of land consisting of the entire drainage basin of Hudson Bay that was preoccupied by several Indigenous nations, including the Anishinaabe in Treaty #3 territory.²⁹⁷ Despite whatever illegitimate authority that was granted by the British Crown, the HBC actually operated its business, *de facto*, in accordance with Indigenous laws of the land at the time. “The rituals of [the HBC’s] yearly negotiations with Indigenous Nations wherever they traded were lengthy, formal, filled with exchanges of information and presents, formal pipe smoking, and the leaving behind of such things as the grand calumet pipe - to be smoked again the next

²⁹⁵ Ray, 1974.

²⁹⁶ Miller, 2009, p.12

²⁹⁷ Ray, Miller, & Tough, 2000, p.46

year as a sign of long-term continuing negotiation.”²⁹⁸ As a principal feature of Indigenous law, it is worthwhile to consider the significance of the pipe ceremony, with its relationship to tobacco, and treaty-making.

The smoking of tobacco in a pipe ceremony is a spiritual event symbolizing a sworn oath, a contract or exchange, a proper act of law. In *Given Time*, Jacques Derrida notes that, “tobacco is a symbol of this symbolic, in other words, of the agreement [*engagement*], of the sworn faith, or the alliance that commits the two parties when they share the two fragments of a *symbolon*, when they must give, exchange, and obligate themselves one to the other.”²⁹⁹ As a highly revered and recognized symbol of honor, justice and law, the smoking of tobacco obligates one to keep their word. For European merchants and settlers then, failure to abide the law could have had grave consequences resulting in hostile conflict, starvation, and/or death. As J.R. Miller notes, it was European settlers “commercial ambitions that compelled them to adapt themselves to the Indigenous Nations who outnumbered them and exceeded them in locally relevant knowledge and economically essential skills.”³⁰⁰ Thus, we can say that when European settlers ‘adapted themselves to Indigenous nations’ system of exchange or economic trade, they were in fact complying with Indigenous law.

Following the establishment of the *Royal Charter* of 1670, the next key event in Canadian history is the ‘Great Peace’ of Montreal in 1701. With approximately 1300

²⁹⁸ Saul, 2008, p.65

²⁹⁹ Derrida, 1992, p.111

³⁰⁰ Miller, 2009, p.31

Indigenous representatives from forty different nations in attendance, John Ralston Saul points out that the idea "was to establish a continuous equilibrium of shared interests and shared welfare. The phrase in the Great Peace was that they would all 'Eat from a Common Bowl.' Which is to say that relationships were about looking after one another. ... Here the idea of future treaties was born."³⁰¹ The 'Great Peace' was short-lived though, as a growing United States national identity necessitated the construction of another colonial document in 1763, called the *Royal Proclamation*. The document, which is still recognized by the *Constitution Act* today, explicitly states that any negotiation with 'Indians', 'of any Lands', must be done by representatives of the highest political office, and in a public gathering:

We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where, We have thought proper to allow Settlement: but that, *if at any Time any of the said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie.*³⁰²

Moreover, it has been additionally argued that the *Royal Proclamation* implicitly states that 'Indian nations' did not cede their rights and title to any of their lands or their right to self-government.³⁰³ The following year, the *Royal Proclamation* was effectively consecrated in a formal ceremony, with the participation of 2000 Indigenous

³⁰¹ Saul, 2008, p.69

³⁰² Asch, 2014, p.74 (emphasis added)

³⁰³ Borrows, 2002

representatives, commonly known as the 'Treaty of Niagara' in 1764. At the Treaty of Niagara, "Indigenous leaders entered into an agreement of peace, friendship, and respect in which Indigenous peoples received promises that settler governments would not have authority over them."³⁰⁴ In their landmark book, *Bounty and Benevolence*, Arthur Ray, J.R. Miller, and Frank Tough support John Borrows' argument, that when read together, the *Royal Proclamation* and the Treaty of Niagara constitute a formal agreement "between First Nations and the Crown that positively guarantees First Nations the right of self-government."³⁰⁵ This argument is further supported by the physical presence of a wampum belt that was created to mark the significance of the occasion.³⁰⁶ Undoubtedly, the presentation of the wampum belt – which constitutes another form of Indigenous writing – would have opened and closed with a pipe ceremony in order to sanctify the peace and goodwill of the event, which again demonstrates the application of Indigenous law.³⁰⁷ As Miller explains in *Compact, Contract, Covenant*: "Using these Indigenous devices to record the important pact for Indigenous Nations was an example of the bicultural practice that by now was common in eighteenth-century treaty making. The protocols involved were ones of which the Indian superintendent was a master."³⁰⁸ Thus, the Treaty of Niagara was an archetypal

³⁰⁴ Borrows, 2017, p.22

³⁰⁵ Ray, Miller, Tough, 2000, p.33

³⁰⁶ At the gathering of the Treaty of Niagara, Sir William Johnson, the Superintendent of Indian Affairs at the time, presented a wampum belt to the large assembly and described it as such: "a large Belt, with two Men holding it fast on each side and a Road through it.' To the Western Nations,' in particular, he said, 'I desire you will take fast Hold of the same, and never let it slip, to which end I desire that after you have shewn [sic] this Belt to all Nations you will fix one end of it with the Chipaweighs at St. Mary's [Sault Ste. Marie] whilst the other end remains at my House.'" See: Miller., 2009, p.72.

³⁰⁷ On wampum belts, see: Sake'j Henderson, in *Indigenous Diplomacy and the Rights of Peoples*, 2008.

³⁰⁸ Miller, 2009, p.73

event in pre-Canadian history. And according to treaty scholar, Aimée Craft: “The *Proclamation* and the Treaty of Niagara set the terms for the relationship between the Crown and Indigenous people, and set the stage for the negotiations of the future treaties.”³⁰⁹ In other words, the Treaty of Niagara was the foundation upon which future treaties, and ultimately, the Canadian state was built.

Over the next hundred years after the Treaty of Niagara, the social landscape in Canada changed dramatically. A rapid influx of Western settlers, and their increasing westward expansion eventually pushed Indigenous peoples to the margins of society. The collapse of the fur trade, coupled with famine and disease, had decimated Indigenous populations.³¹⁰ The shift in balance enabled Western settlers to establish more permanent settlements, and ultimately, introduce their own systems of governance and law. Although Indigenous nations and the British Crown maintained a relatively peaceful relationship throughout this time, the precipitous shift in authority culminated in the Confederation of Canada on July 1, 1867. In the few short years following Confederation, the newly formed government of Canada moved quickly to validate its claim to ‘sovereignty’ over the lands illegitimately acquired by the HBC in the *Royal Charter* back in 1670. The result of this arrangement was the ‘Rupert’sland Transfer’ which took place in 1870. Opposition from Indigenous peoples to the ‘Transfer’ was immediate and fierce, led by Louis Riel in the ‘Red River Resistance’,

³⁰⁹ Craft, 2013, p.32

³¹⁰ For a comprehensive account of this time period (1763-1867), see *A Concise History of Canada’s First Nations*: Dickason, 2010.

which eventually culminated in the Manitoba Act of 1870.³¹¹ The ‘Red River Resistance’ is also significant in the sense that it signalled to the Canadian government “the importance of recognizing and accommodating Aboriginal title to territory.”³¹² With that being said, the following year, the government entered treaty negotiations with the Anishinaabe of the Red River valley, in what would eventually become Treaty Number 1: The Stone Fort Treaty.³¹³

The Stone Fort Treaty formally concluded on August 3rd, 1871 after seven days of difficult negotiations.³¹⁴ Like all other formal diplomatic negotiations and economic transactions with Indigenous nations up to this time, Treaty 1 (as well as the other numbered treaties that followed) was conducted in accordance with Indigenous law – but with a few new wrinkles. John Ralston Saul explains:

Once treaties began to be put on paper, the methodology of the early negotiations was an almost exact continuation of the Hudson's Bay Company approach, which ... had been shaped by indigenous approaches to how civilized people should deal with one another. Highly ritualized, lengthy, filled with formalized statements of purpose, these negotiations were not about clarity and completion. They were about ongoing and developing relationships.³¹⁵

³¹¹ The ‘Red River Resistance’ was a flashpoint event in Canadian history that has an important place in the nationhood of Métis peoples. For more on this history, see: Peterson & Brown, 2001; and St. Onge, N. Et Al., 2012.

³¹² Ray, Miller, & Tough, 2000, p.55

³¹³ As a side note, the first numbered treaties negotiations actually took place at the Northwest Angle of Lake of the Woods, in what is now Treaty #3 territory, but the state representatives, led by Wemyss Simpson, were unable to negotiate a settlement agreement, and therefore went back to Winnipeg to negotiate the Stone Fort Treaty instead.

See Craft, 2011; Talbot, 2009; and Morris, 1880.

³¹⁴ Morris, 1880, p.31

³¹⁵ Saul, 2008, p.66

Whereas the smoking of tobacco and the pipe ceremony remained a prominent feature of the event, the terms of the treaty were, at best, partially written down - but there remains much controversy as to what was actually agreed to. As one example of this fact, Aimée Craft argues in her book, *Breathing Life into the Stone Fort Treaty*, that the written text of the Numbered Treaties is nothing more than a 'pre-written' set of instructions delivered from Ottawa.³¹⁶ As such, the written text of treaties has been a source of consternation for Indigenous peoples, and has proven to be woefully insufficient as a representation of *truth*, especially as a *sole representation* of truth, as it is more or less regarded by the Canadian state today. The problem with a written text, as I have previously discussed, is that it is merely a signifier, that is, a *representation* of the truth. Accordingly, whenever the *representation* is interpreted differently, a deliberation must take place to decide the meaning of the text. And as Derrida has pointed out, "one cannot abstract from the written text to rush to the signified [of what] it *would mean*, since the signified is here the text itself."³¹⁷ Yet, in regard to the treaty, state officials have heretofore typically *only* considered the written document as a representation of truth. As a result, many of today's socioeconomic and political problems in Indigenous communities have arisen from this narrow field of interpretation.³¹⁸

³¹⁶ Craft, 2013.

³¹⁷ Derrida, 1974, p.150 (emphasis added)

³¹⁸ In 2007, the Ontario Ipperwash Inquiry determined that "the existence of long-standing, unresolved treaty disputes is perhaps the most important indicator of the potential for an occupation or protest." (Coyle, 2017, p.41)

Treaty Interpretation

According to Alexander Morris, who was the Treaty Commissioner and Crown representative for Treaties #3 - #6, the principal features of the treaty were:

*the relinquishment to Her Majesty of the Indian title; the reserving of tracts of land for the Indians, sufficient to furnish 160 acres of land to each family of five; providing for the maintenance of schools, and prohibition of the sale of intoxicating liquors on the reserves, a present of three dollars per head to the Indians and the payment to them of an annuity of three dollars per head.*³¹⁹

This point of view, however, is complicated by the fact that the historical record is filled with testimony from treaty witnesses who maintain that the written text of the treaty does not correspond with what was verbally agreed to.³²⁰ Moreover, several scholars have noted that there is no evidence that the notorious extinguishment clause was even mentioned at the negotiations, and “much less that the Indigenous parties had agreed to cede and surrender their lands.”³²¹ It has long been contended by virtually all Indigenous nations across Canada, since ink was first put to paper, that the treaties would be a device with which to *share the land*, not transfer ownership. For Indigenous nations, the concept of ‘fee simple’ title was incomprehensible in the sense that it is completely and utterly incompatible with their worldview: The land, as one’s *Mother*, is not for sale; or to put it another way, it is impossible to own one’s mother, much less so

³¹⁹ Morris, 1880, p.31 (emphasis added)

³²⁰ On treaty testimony by Indigenous Elders, see: Pratt, Bone, & Dakota Elders of Manitoba, 2014.

³²¹ Asch, 2009, p.88; see also: Craft, 2013; Borrows, 2002.

to sell her.³²² This notion is further articulated by renowned Anishinaabe historian, Basil Johnston in *Ojibwe Heritage*:

The principle of equal entitlement precludes private ownership. No man can own his mother. This principle extends even into the future. The unborn are entitled to the largesse of the earth, no less than the living. During his life a man is but a trustee of his portion of the land and must pass on to his children what he inherited from his mother. At death, the dying leave behind the mantle that they occupied, take nothing with them but a memory and a place for others still to come. Such is the legacy of man: to come, to live, and to go; to receive in order to pass on. No man can possess his mother; no man can own the earth.³²³

Accordingly, as John Ralston Saul and others have pointed out, Indigenous leaders “weren't even negotiating ownership. Instead, they were putting on the table concepts of complex, inclusive, balanced existence on the land.”³²⁴

Myriad references to *kinship relations* during the treaty negotiations, such as the land or Earth as *mother*; and, the Queen or Crown as *mother*; and the Treaty Commissioner as *brother* demonstrates the importance of relationships to Indigenous nations that was repeatedly invoked at the negotiations. Kinship relations is a fundamental element of many Indigenous epistemologies, that could perhaps be best summed up as ‘all my relations’. Writing for the *Kamloops Daily News*, the late Richard Wagamese explains:

when you say those words you mean everything that you are kin to. Not just those people who look like you, talk like you, act like you, sing, dance,

³²² Fred Kelly, Treaty #3 Education Summit, February 2019.

³²³ Johnston, 1976, p.25

³²⁴ Saul, 2008, p.50

celebrate, worship or pray like you. Everyone. You also mean everything that relies on air, water, sunlight and the power of the Earth and the universe itself for sustenance and perpetuation. It's recognition of the fact that we are all one body moving through time and space together.³²⁵

Similarly, within an Anishinaabe context, Aimée Craft argues that “there is no fiction in Anishinabe kinship. The Anishinabe are kin to the rocks, the trees, the animals, the birds, the fish, to each other, and to ‘the other.’”³²⁶ Thus, by invoking kinship law through a proper ceremony, Indigenous nations and Western settlers were made family, and consequently inherited sacred obligations of alliance and goodwill to each other. In *Two Families*, Cree Elder Harold Johnson writes:

When my family adopted your family, we became relatives, and that cannot be undone. A bond far stronger than any contractual obligation holds us together. Your law of contract and treaty allows for breach and remedy. The Creator’s law does not allow for any breach whatsoever. Failure to comply had consequences, and no matter how severe the failure, the promise never becomes null and void; the consequences just keep getting greater and greater.³²⁷

In other words, Indigenous *kinship law*: defines the level of relationship, maintains calls for renewal, establishes responsibility, and demands reciprocity.³²⁸

While one might be inclined to interpret words such as ‘brother’ and ‘relatives’ as loose metaphors, or perhaps as mere figures of speech, Michael Asch argues that by

³²⁵ Wagamese. “All My Relations’ about respect.” June 11, 2013. Retrieved from: <https://www.kamloopsnews.ca/opinion/columnists/wagamese-all-my-relations-about-respect-1.1237759>

³²⁶ Craft, 2013, p.70

³²⁷ Johnson, 2007, p.29

³²⁸ Craft, 2013, p.83

invoking kinship relations through a proper ceremony, and “by becoming family members, all have become members of the same ethical community, that is, the community within which promises are kept.”³²⁹ Moreover, John Borrows points out that the “relational aspect of the treaty-making venture is irrefutably manifested by the frequency with which, across the country, both sides’ negotiators used language of kinship in describing the intended goal of the treaty process.”³³⁰ This point is substantiated by Michael Coyle, who states: “the fact that Crown representatives took such pains historically to adopt relational metaphors in treaty-making is a reflection of that fact that the clarification and building of relationships were central to Indigenous perspectives on treaty-making.”³³¹ Thus, given how extensively kinship law was invoked during these formal proceedings, it is imperative that the treaty relationship is renewed and honored in a good way, which means observing our kinship relations, and treating our family members with respect and keeping one’s word.

The difference in ideology and epistemological beliefs between Indigenous nations and the settler-colonial state may have caused some confusion during treaty negotiations, but it does not mean that Indigenous nations did not understand the value of the land, *aki*. Social, economic, and political forces compelled many Indigenous nations to sign the best deal they could, while maintaining integrity to their worldview, and a sense of self-determination. Indigenous nations “were neither gullible nor

³²⁹ Asch, 2014, p.124

³³⁰ Borrows, 2017, p.3

³³¹ Coyle, 2017, p.50

ignorant in those nineteenth and twentieth century negotiations. They knew exactly what they were saying and trying to do in very difficult circumstances.”³³² Harold Cardinal illustrates this point best in his seminal work, *The Re-Birth of Canada's Indians*:

When the white man's commissioner came to sign treaty, one of the elders took off his coat, put it on the ground, then scooped up a pile of earth and put it on the cloak. He said to the commissioner, 'You want to buy our land, this is how you have to buy it. When I go to your store to buy anything, you weigh it and charge so much by the pound. If you have money enough to buy our land on that basis, then we can deal.' And the reply, according to our elders, was, 'The land you have is so valuable that I never would have enough money to pay for it on that basis. The five dollars that we give you is not payment for your land; it's an annual and continuing token of our recognition of the partnership that we are entering into.'³³³

Moreover, during the Treaty #3 negotiations, Chief Mawedopenais is on record of telling the Treaty Commissioner, Alexander Morris: “The sound of the rustling of the gold is under my feet where I stand; we have a rich country; it is the Great Spirit who gave us this; where we stand upon is the Indians' property, and belongs to them.”³³⁴

When observed in this context, it is evident that Indigenous leadership understood the value of land was so much that it could not possibly be bought with cash, and therefore conducted negotiations with an aim of securing rights – such as the right to education – that would enable them to carry on their traditional ways of life, as well as participate in the practices of Western society if they so wished. Thus, with regard to reconciling the treaty relationship, in terms of establishing what is *right*, as in what is fair and just,

³³² Saul, 2008, p.67

³³³ Cardinal, 1977, p.146

³³⁴ Morris, 1880, p.62

the state must provide appropriate or 'due compensation' to the Indigenous nations who agreed to open up their lands for settlement, in exchange for "what allowance they are to count upon and receive from Her Majesty's bounty and benevolence."³³⁵ As Michael Asch states in *Resurgence and Reconciliation*, this involves rejecting "a path that disavows the obligations passed down to us", and instead take the high road which begins "with honouring the commitments made on our behalf by our forebears."³³⁶

Paypom Treaty

Written transcripts of the treaty negotiations provided by Alexander Morris in *The Treaties of Canada* show that Anishinaabe leadership were very wary about how the treaty was being transcribed. They repeatedly asked for someone who knew their language and customs to draft the document. One Chief at the Treaty 3 negotiations, for example, said: It is not "to my convenience to have a stranger here to transact our business between me and you. It is a white man who does not understand our language that is taking it down. I would like a man that understands our language and our ways. We would ask your Excellency as a favor to appoint him for us."³³⁷ In this regard, another document was in fact drafted during the negotiations, which has since become known as the *Paypom Treaty*. The document, which is unique to Treaty #3, lists eighteen terms of the treaty agreement, as noted by Joseph and August Nolin at the request of Chief Powasson. Curiously, of the Paypom Treaty copies I have observed,

³³⁵ See: 'Appendix A: Treaty #3'

³³⁶ Asch, 2018, p.44

³³⁷ Morris, 1880, p.71

terms #4 - #6 appear to be missing. The whereabouts of the original, hand-written document are unknown. Nevertheless, the *Canadian Encyclopedia* notes that Nolin's record of the negotiations differs from the 'official', state recognized, text of Treaty #3 in several ways: "First, the Paypom Treaty includes two signatures that the original does not – those of Joseph Nolin and August Nolin. Second, it includes the four verbal promises excluded from the written text of Treaty 3. Interestingly, however, it does not make any mention of education, or fishing rights on unoccupied crown land, which are included in the written terms of Treaty 3."³³⁸ According to Wayne Daugherty, who wrote a research report on Treaty #3 for the Department of Indian and Northern Affairs Canada – now, Indigenous Services Canada – the four verbal promises that are recorded in the Paypom Treaty are the following:

1. If their children that are scattered come inside of two years and settle with you, they will have the same privilege as you have.
2. The English Government never calls the Indians to assist them in their battles but he expects you to live in peace with red and white people.
3. If some gold or silver mines be found in their reserves, it will be to the benefit of the Indians but if the Indians find any gold or silver mines out of their reserves they will surely be paid the finding of the mines.
4. You will get rations during the time of the payment every year.³³⁹

One possible explanation as to why these terms were excluded from the Crown's version of the treaty, as I have previously discussed, is that the document had already

³³⁸ See: The Canadian Encyclopedia: "Treaty 3".

³³⁹ Daugherty. "Treaty Research Report – Treaty Three (1873)". See also: "Paypom Treaty".

been drafted before the final negotiations took place. As evidence of that point, in an 1895 letter to the Deputy Minister of Indian Affairs, Hayter Reed, S.J. Dawson writes:

I was one of the commissioners appointed by the Government to negotiate a Treaty with the Saulteaux tribe of the Objibbeway Indians and as such was associated with Mr. W.M. Simpson in 1872, and subsequently acted in the same capacity with Lieut: Governor Morris and Mr. Provencher in 1873. The Treaty was practically completed by myself and Mr. Simpson in 1872, and it was the draft we then made that was finally adopted and signed at the Northwest Angle of the Lake of the Woods in 1873.³⁴⁰

The absence of any mention of fishing rights – as well as any rights to education – on the other hand, could potentially be explained by the fact that the treaty did not affect any rights that the Anishinaabe believed they already possessed. Put differently, such rights were implied, and were therefore taken as granted. More significantly, the Paypom Treaty does not mention anything about the extinguishment clause – which is supposedly the main purpose of the treaty – which lends support to the argument that this clause was not discussed at the negotiations. Yet another consideration to be made of the Paypom Treaty is with respect to a post-script memo in which Elder Paypom explains how he came in possession of the document. In the memo, Paypom states: “Linde was a photographer and a friend to the Indian people. One day, about forty or fifty years ago, he told me he had a paper and the Government wanted to buy it from him. He said they would give him \$5,000.00 for it. But he wanted me to have it, ‘for your children’ he said.”³⁴¹ It is unclear who precisely offered Linde the money for the

³⁴⁰ Ibid.

³⁴¹ See: “Paypom Treaty”.

document, or how the document became known to the government, and why they would want to pay such a substantial fee for it, but Paypom obviously thought it was important to obtain since “the paper had on it the promises made to the people by the Government, and they were breaking those promises.”³⁴² If nothing else, the very existence of the Paypom Treaty raises questions as to the veracity of the Crown’s version of the treaty. At a more fundamental level, it is different accounts of the treaty negotiations such as this that has led to over a century of misunderstanding and uncompromising resistance on treaty interpretation between Indigenous nations and the Canadian state.

A Brief History, Pt. 2: Political Subordination

When we consider how Canada has blossomed into an exceedingly prosperous nation as a result of the treaties it agreed to, it is a terrible, and indefensible shame that its treaty partners have suffered tremendous harms and injustices. It is for this reason that it is so important to critically examine the colonial foundation of the Canadian state. As mentioned above, the 1870s was a period of social and political upheaval for Indigenous nations in Canada. The collapse of the fur trade was a major factor in the demise of Indigenous ways of life, but so was industrialization, and the imposition of Canadian law. As Michael Asch explains in *On Being Here to Stay*: “For each of the numbered treaties, governments in Canada (and others) insist that Indigenous peoples consented to transfer all authority to the Crown, thereby leaving Settlers free to do as

³⁴² Ibid.

they please with their lands.”³⁴³ Of key importance to this prerogative, was the *Indian Act*, which was established in Canadian legislature in 1876. On one hand, the state appeared to be acting in good faith through the treaty process in order to provide a “hopeful future”³⁴⁴ for Indigenous nations; but at the very same time, the state was using its other hand to compose the *Indian Act* in an apparent effort to take any such future away from them. Canadian historian, Alan Cairns explains: “The factual post-Confederation subordination of Indian nations [through the *Indian Act*], accordingly, reflects both a misunderstanding and a violation of the relationship the treaties were intended to serve, and derivatively is based on an illegitimate use of federal and provincial authority to undermine Native autonomy, culture, and identity independently of the existence or non-existence of a treaty relationship.”³⁴⁵ John Borrows also argues that “the federal government’s ‘transfer’ of legislative responsibility from itself and First Nations to provincial governments is a significant derogation from a First Nations-derived constitutional narrative.”³⁴⁶ Indeed, this particular section of the *Indian Act* [sec.88], does in fact have significant ramifications for some treaty rights, including the right to education, whose legislative jurisdiction presides with the province. Further, the unilateral imposition of the *Indian Act* exemplifies the state’s presumed authority to dictate Indigenous affairs, as though they are non-human entities incapable of governing themselves and exercising self-

³⁴³ Asch, 2014, p.76

³⁴⁴ Morris, 1880, p.11

³⁴⁵ Cairns, 2000, p.180

³⁴⁶ Borrows, 2017, p.26

determination. It is a presumption that demonstrates the imbalance of power that Indigenous nations are still confronted with today, and one that “distributes privilege to settlers and oppression to Indigenous peoples.”³⁴⁷

During the tumultuous period of the 1870s, once treaties were negotiated, the commitments made to Indigenous nations were soon forgotten by the state. Alexander Morris though, for his part, often pleaded with members of the federal government to make them aware of “the complex history of the negotiations, and the protracted and delicate diplomacy by which a final agreement with the bands had been arrived at.”³⁴⁸ Robert Talbot additionally notes that “Morris clearly suspected that the government was attempting to plead ignorance of its previous commitments in order to shirk its treaty responsibilities.”³⁴⁹ Despite the efforts of Alexander Morris to hold the politicians in Ottawa accountable to their treaty obligations, those same politicians had already decided to proceed with an assimilation policy in which Indigenous peoples would be forced to conform to a new way of life, or else be punished by Canadian law. In 1879, Edgar Dewdney was appointed to the ‘all-powerful’ position of Commissioner of Indian Affairs for the North West Territory. At that time, Dewdney adopted a policy he called ‘sheer compulsion’, by which “he confronted an increasingly agitated Indigenous leadership with starvation tactics, withholding rations and farm implements from those

³⁴⁷ Mills, 2017, p.223

³⁴⁸ In a letter to the Secretary of State, Joseph Howe, Alexander Morris writes that the government “should maintain constant communication with these tribes, and see that all the provisions of the treaty are rigidly carried out ... It is of the utmost importance to retain the confidence and maintain the friendliest relations with the Indians.” See: Talbot, 2009, p.118.

³⁴⁹ Talbot, 2009, p.140

bands who protested the government's behaviour."³⁵⁰ According to Robert Talbot, Dewdney also "undercut First Nations autonomy by incarcerating chiefs; he impoverished bands by confiscating horses and carts; he increased the size of the Mounted Police to station officers on reserves; and he prohibited people from leaving their reserves."³⁵¹ An 1882 anecdote from one doctor helps elucidate what effect the state's 'sheer compulsion' policy actually had on Indigenous communities:

'many of those [living on reserves he visited] who have died this winter have died from absolute starvation'. ... Others have pointed out that spikes in death rates 'can be directly linked to economic conditions'. ... Father Cochin writes, 'I saw gaunt children, dying of hunger, come to my place to be instructed. Although it was 30-40 degrees below zero their bodies were scarcely covered with torn rags ... The hope of having a little morsel of good dry cake was the incentive which drove the, to this cruel exposure each day ... The privation made many die.' ... To underscore the point, he compared it to amounts given to, among others, state prisoners in Siberia, who, he found, received more than twice as much. In fact, the ration was so meagre that 'gaunt men and women with hungry eyes were seen everywhere seeking or begging for a mouthful of food - little children - fight over tidbits.'³⁵²

'Sheer compulsion', indeed. To paraphrase Aaron Mills in *The Right Relationship*: only under conditions of dominance is governance with so flagrant a policy, and even the need to offer a pretence of its justification, imaginable.³⁵³ In short, the 'sheer compulsion' policy and the *Indian Act* were devised as ways of keeping Indigenous nations under the thumb of the state, and ultimately strip them of their treaty rights

³⁵⁰ Ibid, p.160

³⁵¹ Ibid.

³⁵² Asch, 2014, p.145

³⁵³ Mills, 2017, p.223

through legislative, if not, actual extinction. Despite these (de)pressing circumstances – which say nothing about the residential school system that followed – it is somewhat of a miracle that Indigenous nations continue to push for a “relationship of peace, mutual respect and mutual benefit” today.³⁵⁴

Treaty Case Law

Treaty litigation in Canadian courts has a long history that has been mostly unfavorable to Indigenous nations. The first case of significant consequence was *St. Catharines Milling and Lumber Co. v. R* in 1888. At issue in this case were treaty lands thought to be within Rupert’s Land when Canada negotiated Treaty #3 with the Anishinaabe in 1873. At the time, Canada presumed to be entitled to administer treaty lands, under the auspices of the Treaty, and its legislative authority under section 91 (24) of the *Constitution Act, 1867* (Indians and Lands reserved for Indians), and therefore granted a permit for a timber berth to St. Catharines Milling and Lumber Co., which was subsequently challenged by the province of Ontario.³⁵⁵ As the case made its way through the Chancery Division, the Court of Appeal, the Supreme Court of Canada, and finally, the Judicial Committee of the Privy Council, at no time were the Anishinaabe of Treaty #3 ever consulted, or even approached to participate in the proceedings.³⁵⁶ Nevertheless, the highest court, the Judicial Committee of the Privy Council, affirmed the lower courts’ ruling in a decision delivered by Lord Watson, that:

³⁵⁴ Simpson, 2011, p.114

³⁵⁵ Kulchyski, 1994.

³⁵⁶ Ibid.

the tenure of the Indians was a personal and usufructuary right, dependent upon the good will of the Sovereign. The lands reserved are expressly stated to be 'parts of Our dominions and territories;' and it is declared to be the will and pleasure of the sovereign that, 'for the present,' they shall be reserved for the use of the Indians, as their hunting grounds, under his protection and dominion. There was a great deal of learned discussion at the Bar with respect to the precise quality of the Indian right, but their Lordships do not consider it necessary to express any opinion upon the point. It appears to them to be sufficient for the purposes of this case that there has been all along vested in the Crown a substantial and paramount estate, underlying the Indian title, which became a *plenum dominium* whenever that title was surrendered or otherwise extinguished.³⁵⁷

In other words, 'their Lordships' determined, per *The Royal Proclamation*, that Indigenous title only existed as a usufructuary right, such that Indigenous people could use the land as 'their hunting grounds', and that this title was 'extinguished' once the treaty commenced. This statutory interpretation of the *Royal Proclamation* is undoubtedly based on a textual approach, where statutes are interpreted "according to their plain wording and ordinary meaning."³⁵⁸ Unfortunately, the textual approach, as Aimée Craft points out, "yields a lot of faith in the judges interpreting the statute" to be "impersonal and objective", but as I have shown, this was not the case in late nineteenth century Canada.³⁵⁹ The irony of the matter is had the federal government won its case,

³⁵⁷ *St. Catharines Milling and Lumber Co. v. R*

³⁵⁸ According to Aimée Craft, the textual analysis is based off the following legal maxims:

- a) Ordinary meaning
- b) *Ejusdem generis* (of the same kind) – list of words given same meaning
- c) *Expressio unius est exclusio alterius* (the mention of one excludes the others)
- d) *In pari materia* (same matter or subject) – use other legislation to enlighten
- e) *Noscitur a sociis* – determine by reference to the rest of the statute
- f) *Reddendo singula singulis* (refers to the last)
- g) *Generalia specialibus non derogant* (general does not detract from the specific) – new law should not be interpreted as repealing old law (unless explicit)

See: Craft, "Treaty Interpretation: A Tale of Two Stories", 2011.

³⁵⁹ *Ibid.*

“the entire property of the land” would have remained with Indigenous nations.³⁶⁰ As an aside note, one would think that having an Elder or two provide testimony on the Dominion’s behalf would have helped their case. Nevertheless, this case proved to be the benchmark ruling on Indigenous title in Canada for more than 80 years, and continues to be so today.

Entering the twentieth century, Indigenous peoples were bombarded with a litany of amendments to the *Indian Act* and regulation changes that were aimed to deny their self-determination. Such amendments include: the forced attendance of ‘Indian youth’ in school (1884); a ban on “all dances, ceremonies and festivals that involve the wounding of animals or humans, or the giving away of money or goods” (1895); the forced removal of Indigenous people from “reserves near towns with more than 8,000 residents” (1905); and a ban to anyone “from soliciting funds for Indian legal claims without a special license from the Superintendent-General” (1927).³⁶¹ It was not until 1951 when the *Indian Act* was amended again that the most onerous regulations relating to Indigenous ceremonies and attempts to pursue land claims were no longer prohibited by law. Suffice it to say that the first half of the twentieth century was a dark and very bleak period for Indigenous nations in Canada.

In 1973, another case, *Calder v. British Columbia*, made its way to the highest court in Canada, now the Supreme Court of Canada. This time the action was brought

³⁶⁰ Ibid.

³⁶¹ King, 2003.

forward by Frank Calder and the Nisga'a Nation Tribal Council for a declaration that Indigenous title to certain lands in the province had never been lawfully extinguished, since they were not part of any treaty. Although the Nisga'a ultimately lost their case on a technicality, the Supreme Court actually recognized that the Nisga'a had Indigenous title to their lands, because of the fact that the Nisga'a had been "organized in societies and occup[ied] the land as their forefathers had done for centuries" and because they had "possession from time immemorial."³⁶² In a stirring, dissenting opinion, Justice Emmett Hall reasoned whether a "competent legislative authority" had enacted specific legislation revealing "clear and plain" intention to extinguish Indigenous title. He and two other Justices concluded that this had not happened, which in their opinion, meant that the Nisga'a still had Indigenous title in 1973.³⁶³ Justice Hall's argument was so persuasive that the test which now determines whether Indigenous title exists was eventually accepted as the proper test for extinguishment in subsequent cases, such as *R v Sparrow*, [1990].³⁶⁴ With this decision, Canada finally overhauled its land claim negotiation process, and formally recognized and affirmed "Aboriginal and treaty rights" in the *Constitution Act* of 1982.

Over the past forty or so years, since the *Constitution Act* federally recognized and affirmed 'Aboriginal and treaty rights' in section 35, Canadian courts have "ruled

³⁶² The reason for the technicality was due to a procedural point raised by Justice Pigeon that the Nisga'a did not receive permission from the Attorney General to sue the provincial government. Pigeon did not render an opinion on the substantive issue of the case. See: *Calder v. British Columbia*.

³⁶³ Ibid.

³⁶⁴ Kulchyski, 1994.

that the treaties were intended to treat the Indians fairly and should be interpreted liberally, as the Honour of the Crown was in question.”³⁶⁵ The development of a more liberal interpretation of treaties in Canadian case law began in the 1980’s with *R. v. Taylor and Williams*, *R. v. Nowegijick*, and *R. v. Sioui*.³⁶⁶ Following these cases, in the *R. v. Marshall (No 1)* decision, Supreme Court Justice McLachlin developed a “compendium of principles governing treaty interpretation”³⁶⁷ which are stated as such:

1. Aboriginal treaties constitute a unique type of agreement and attract special principles of interpretation.³⁶⁸
2. Treaties should be liberally construed and ambiguities or doubtful expressions should be resolved in favour of the aboriginal signatories.³⁶⁹
3. The goal of treaty interpretation is to choose from among the various possible interpretations of common intention the one which best reconciles the interests of both parties at the time the treaty was signed.³⁷⁰
4. In searching for the common intention of the parties, the integrity and honour of the Crown is presumed.³⁷¹
5. In determining the signatories’ respective understanding and intentions, the court must be sensitive to the unique cultural and linguistic differences between the parties.³⁷²
6. The words of the treaty must be given the sense which they would naturally have held for the parties at the time.³⁷³
7. A technical or contractual interpretation of treaty wording should be avoided.³⁷⁴
8. While construing the language generously, courts cannot alter the terms of the treaty by exceeding what “is possible on the language” or realistic.³⁷⁵
9. Treaty rights of aboriginal peoples must not be interpreted in a static or rigid way. They are not frozen at the date of signature. The interpreting court must update treaty rights to provide for their modern exercise. This involves

³⁶⁵ Stonechild, 2006, p.115

³⁶⁶ Craft, 2011, p.12

³⁶⁷ Ibid.

³⁶⁸ *R. v. Sundown*, [1999] 1 S.C.R. 393, at para. 24; *R. v. Badger*, [1996] 1 S.C.R. 771, at para. 78; *R. v. Sioui*, [1990] 1 S.C.R. 1025, at p. 1043; *Simon v. The Queen*, [1985] 2 S.C.R. 387, at p. 404.

³⁶⁹ *Simon*, *supra*, at p. 402; *Sioui*, *supra*, at p. 1035; *Badger*, *supra*, at para. 52.

³⁷⁰ *Sioui*, *supra*, at pp. 1068-69.

³⁷¹ *Badger*, *supra*, at para. 41.

³⁷² *Badger*, *supra*, at paras. 52-54; *R. v. Horseman*, [1990] 1 S.C.R. 901, at p. 907.

³⁷³ *Badger*, *supra*, at paras. 53 et seq.; *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at p. 36.

³⁷⁴ *Badger*, *supra*; *Horseman*, *supra*; *Nowegijick*, *supra*.

³⁷⁵ *Badger*, *supra*, at para. 76; *Sioui*, *supra*, at p. 1069; *Horseman*, *supra*, at p. 908

determining what modern practices are reasonably incidental to the core treaty right in its modern context.³⁷⁶

According to Ruth Sullivan, the “liberal construction” of legislation relating to Indigenous nations and peoples “is in part an attempt to remedy injustice resulting from the Crown’s past failures to live up to its commitments and to discharge its fiduciary responsibilities.”³⁷⁷ But as Aimée Craft points out, the courts nevertheless continue to interpret Indigenous rights and law “with a high level of deference” to Eurocentric ideology.³⁷⁸ In *R. v. Sioui*, the Supreme Court of Canada determined that: “Even a generous interpretation of the document... must be realistic and reflect the intention of both parties, not just that of the Hurons. The Court must choose from among the various possible interpretations of the common intention the one which best reconciles the Huron’s interests and that of the *conqueror*.”³⁷⁹ This notion of ‘common intention’ has proven to be an almost imperceptible, razor-thin line, that seems to only magnify the *difference* between Indigenous and Eurocentric ideologies when it comes to interpreting Treaty and ‘Aboriginal’ rights. In whatever pursuit to determine the ‘common intention’ of treaties, a growing number of scholars are arguing that the historic circumstances and context leading up to the treaty must be considered.

According to Leonard Rotman for example: “Treaties are time and context-specific, and must be examined in light of the circumstances under which they arose, including the

³⁷⁶ *Sundown, supra*, at para. 32; *Simon, supra*, at p. 402

³⁷⁷ Sullivan, 2008.

³⁷⁸ Craft, 2011, p.13

³⁷⁹ *Ibid*, p.15 (emphasis in text)

Crown's and the Indigenous people's understandings of their terms... One must observe their *spirit and intent*, which includes the substance of the negotiations between the Crown and the Indigenous peoples *leading up* to the conclusion of the treaties."³⁸⁰ Thus, what was said and agreed to during the negotiations at the treaty ceremony is just as important as the treaty text itself. As Aimée Craft points out: "Privileging the text of the treaty gives undue weight to the Crown perspective and puts the Crown signatory in the privileged position of the 'legislator'."³⁸¹

The "absence of consensus" in the interpretation of historic treaties has led some legal scholars to consider other "principles to govern the continuing treaty relationship".³⁸² In *R. v. Badger*, for example, Supreme Court Justice Cory, writing for the majority, wrote: "Certain principles apply in interpreting a treaty. First, treaty represents an exchange of solemn promises between the Crown and the various Indian nations. Second, the honour of the Crown is always at stake; the Crown must be assumed to intend to fulfill its promises. No appearance of 'sharp dealing' will be sanctioned."³⁸³ As evidence that the Crown indeed intended to keep its promises in the treaties, Michael Asch recovered a parliamentary letter written to the Queen stating that fact: "*the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have*

³⁸⁰ Rotman, 1997, p.36 (emphasis added)

³⁸¹ Craft, 2011, p.23

³⁸² Asch, 2014, p.79

³⁸³ *R. v. Badger*

uniformly governed the British Crown in its dealings with the aborigines."³⁸⁴ Moreover, it has been additionally argued that 'extrinsic evidence' such as oral testimony should also be considered in treaty interpretation, such that: "If there is evidence by conduct or otherwise as to how the parties understood the terms of the treaty, then such understanding and practice is of assistance in giving content to the term or terms."³⁸⁵ In *The Right Relationship*, Julie Jai builds on this framework to include several other principles that should be considered in treaty interpretation. These principles consist of:

1. a government-to-government relationship of mutual respect;
2. recognition of treaties as a solemn covenant between governments;
3. sharing of lands and resources, with specific rules to clarify the parties' respective rights in order to facilitate mutual coexistence;
4. recognition and protection for the Indigenous way of life, including the relationship with the land;
5. tools to facilitate economic development and employment by Indigenous people;
6. right to self-government within certain parameters;
7. co-management and consultation on matters affecting the other party;
8. the treaty is not frozen in time. It is a relationship which must be nurtured, reviewed and revisited (like the polishing of the Covenant Chain, or the annual meetings and ceremonies which were used to renew historic treaties).³⁸⁶

The adoption of principles such as these in Canadian jurisprudence would not only facilitate a greater understanding of the 'spirit and intent' of treaties, but also provide balance in treaty interpretation with regard to the consideration and inclusion of an

³⁸⁴ Asch, 2018, p.40 (emphasis added)

³⁸⁵ Craft, 2013, p.14

³⁸⁶ Jai, 2017, p.136

Indigenous understanding to these ‘nation to nation’ agreements. Moreover, this would provide the justification with which to resolutely reject the state’s literal approach to treaty interpretation that has stymied treaty implementation for almost 150 years. Adopting such principles would also recognize and affirm Indigenous self-determination, and enable Indigenous nations to apply their own systems of law and knowledge exchange, in their pursuit to live the good life: *mino-bimaadziwin*. Having said that, let us now analyse what a principled, but balanced and relational approach to treaty interpretation and implementation would be like with regard to the education clause in the numbered treaties, with specific reference to Treaty #3.

The Treaty Right to Education

The education clause in the numbered treaties is a rather nondescript line that reads: “And further, *Her Majesty agrees to maintain schools for instruction* in such reserves hereby made as to Her Government of Her Dominion of Canada may seem advisable *whenever the Indians of the reserve shall desire it.*”³⁸⁷ In my view, there are two key elements to this clause: one is the notion that schools will be ‘made’ and ‘maintained’ by the state government; the other is that the schools will be ‘made’ whenever the ‘Indians’ ask for them, or whenever they ‘shall desire it’. As I have previously discussed, Elders of the Anishinaabe Nation in Treaty #3 have long argued that the written text of the treaty differs in ‘content and context’ from notes and memory of the treaty negotiations that is maintained respectively by the Paypom Treaty and the oral tradition. The

³⁸⁷ See: ‘Appendix A: Treaty #3’ (emphasis added)

dispute mostly stems from the phrase 'may seem advisable', which the state has taken to mean that the establishment of schools must 'seem advisable' to the Government of Canada. In contrast, Anishinaabe Elders and their elected leadership have maintained that "the actual promise spoken by Lt. Gov. Morris during the Treaty negotiations did not include any provision that the Government, following a Band request to establish a school, would have to deem it 'advisable'."³⁸⁸ That is to say, the promise of education, as articulated at the treaty negotiations, was not limited to what the state thinks is appropriate. As Harold Cardinal says in *The Rebirth of Canada's Indians*: "The Indian position is that all education, irrespective of level, was prepaid by our treaties, and consequently we are entitled precisely to that - all education."³⁸⁹ This view is supported by Blair Stonechild, in *The New Buffalo*, who points out that the first part of the phrase, the 'maintenance of the school', should be interpreted to mean that the government will finance the school that is to be built.³⁹⁰ On the second part of the education clause - 'whenever the Indians of the reserve shall desire it' - Sake'j Henderson contends that it is a provision that "rests on the choice of the community, which thus defines the nature of the schools. No authority to establish the content of the education system was delegated to the imperial Crown or to the Dominion of Canada. Indigenous choice also informs the nature and scope of the educational system."³⁹¹

³⁸⁸ Notes from Grand Council Treaty #3 Education Conference, 1989.

³⁸⁹ Cardinal, 1977, p.35

³⁹⁰ Stonechild, 2006, p.115

³⁹¹ Battiste & Henderson, 2000, p.249

The matter of the education clause, as yet, has not been litigated in court, since “they have repeatedly said these issues should be dealt with in a fair political process,” meaning that the state and Indigenous treaty signatories are urged to reach a settlement agreement to the satisfaction of both parties without court intervention.³⁹² However, in observing the principles set forth by Justice McLachlin, the court has made clear that the “respective understanding and intentions” of the education clause “must be sensitive to the unique cultural and linguistic differences between the parties.”³⁹³ Moreover, the court has also acknowledged that “Treaties should be liberally construed and ambiguities or doubtful expressions should be resolved in favour of the aboriginal signatories;”³⁹⁴ and that, “the words of the treaty must be given the sense which they would naturally have held for the parties at the time.”³⁹⁵ It is worth noting that these principles are actually drawn from a United States court decision that famously stated:

In construing any treaty between the United States and an Indian tribe, it must always be borne in mind that the negotiations for the treaty are conducted, on the part of the United States, an enlightened and powerful nation, by representatives skilled in diplomacy, masters of a written language, understanding the modes and forms of creating the various technical estates known in their law, and assisted by an interpreter employed by themselves; that the treaty is drawn up by them and in their own language; that the Indians, on the other hand, are a weak and dependent people, who have no written language and are wholly unfamiliar with all the forms of legal expression, and whose only knowledge of the terms in which the treaty is framed is that imparted to them by the interpreter employed by the United States; ... The treaty must therefore be construed, not according to the

³⁹² Office of the Treaty Commissioner, 2007, p.vii

³⁹³ *Badger, supra*, at paras. 52-54; *R. v. Horseman*, [1990] 1 S.C.R. 901, at p. 907.

³⁹⁴ *Simon, supra*, at p. 402; *Sioui, supra*, at p. 1035; *Badger, supra*, at para. 52.

³⁹⁵ *Badger, supra*, at paras. 53 et seq.; *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at p. 36.

technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians.³⁹⁶

While the decision, at once, subordinates Indigenous nations as being “weak and dependent people”, and debases their understanding of justice and law as “wholly unfamiliar with all the forms of legal expression”, it also makes an important point that the treaty process undertaken by the state already has all the imaginable advantages to privilege state interpretation; so, “*the treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians.*”³⁹⁷ Regardless of the marginalizing sentiment, this view properly acknowledges that there will be different understandings of the treaty due to different canons of interpretation, and that given all the advantages afforded to the state, it is only appropriate that the treaties be interpreted as they are understood by Indigenous nations. In light of this fact, the interpretations given by Stonechild and Henderson with regard to the treaty right to education – which are also supported by Treaty Elders and *other* scholars – seem to be in line with the principles articulated by Justice McLachlin, and should therefore be seriously taken into account upon the implementation of the said right.

It has been nearly 150 years since the signing of Treaty #3, and the treaty right to education has still not been implemented. It is almost comical, albeit darkly, that the

³⁹⁶ *Jones v. Meehan*, 175 U.S. 1 (1899) at 11.

³⁹⁷ *Ibid* (emphasis added).

state, as represented by Prime Minister Stephen Harper, would even attempt to justify the residential school system as a way of fulfilling “its obligation to educate Aboriginal children.”³⁹⁸ The legacy of the residential school system, as a system of genocide, has been extensively researched and studied, so I will not make the reader shed tears with that history here³⁹⁹; except to only make clear that residential schools was not what Indigenous nations had in mind when they secured a right to education, nor did they have any choice in the matter.⁴⁰⁰ The fact is, the Canadian state has failed egregiously in administering education policy for Indigenous nations, and there is now a heavy responsibility to atone for the mistake. One such way to do that is by “respecting and honouring Treaty relationships,” as called for in the Truth and Reconciliation Commission’s *Final Report*.⁴⁰¹ With regard to treaty rights that have not yet been implemented, such as education, it is important to bear in mind the principle: “Treaty rights of aboriginal peoples must not be interpreted in a static or rigid way. They are not frozen at the date of signature. The interpreting court must update treaty rights to provide for their modern exercise. This involves determining what modern practices are reasonably incidental to the core treaty right in its modern context.”⁴⁰² In applying this principle, it does not take much imagination to envision the education clause as something to mean that it would be *advisable* of the state to fund an Anishinaabe education system whenever their treaty partners *desire* it. A simple interpretation such

³⁹⁸ Government of Canada, *Statement of Apology to former students of Indian Residential Schools*, 2008.

³⁹⁹ Truth and Reconciliation Commission of Canada, 2015, p.1

⁴⁰⁰ See: Milloy, 1999; Miller, 2006; Regan, 2010

⁴⁰¹ Truth and Reconciliation Commission of Canada, “Calls to Action”, 10(vi).

⁴⁰² *Sundown, supra*, at para. 32; *Simon, supra*, at p. 402

as this, is one that would be “guided by the spirit and intent of the original treaty relationship, one that respect inherent rights, treaty jurisdictions, and one that respects the decisions of our courts;” which, ironically, has been articulated by Prime Minister Justin Trudeau himself.⁴⁰³ Accordingly, if an *other* education system were to be established as the implementation of the treaty right to education, then it must be recognized and affirmed that it will be the Anishinaabe who articulate the standards, curriculum, and general administration of the education system, in accordance with their laws to meet their education needs, and further promote their healing and self-determination.⁴⁰⁴

United Nations Declaration on the Rights of Indigenous Peoples

In 2015, the Liberal Party of Canada was elected into government office on the strength of an ambitious, but nonetheless pro-Indigenous policy agenda, which included a commitment to implement the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). Although UNDRIP has been criticized by some scholars, including Peter Kulchyski, who has argued that “aboriginal rights are not human rights”⁴⁰⁵, and by some Indigenous peoples themselves on grounds that “no consensus was ever reached on the majority of the Preambular Paragraphs and Articles or on the document as a whole”⁴⁰⁶, it is nevertheless generally recognized as “a global human rights instrument setting out minimum standards for the ‘survival, dignity and well-

⁴⁰³ Prime Minister Justin Trudeau. Assembly of First Nations General Assembly, December 2015.

⁴⁰⁴ Battiste, 2013, p.73

⁴⁰⁵ See: Kulchyski, 2012.

⁴⁰⁶ White Face, 2013, p.3

being' of Indigenous peoples around the world."⁴⁰⁷ Several months after the 2015 Federal Election, a private member's Bill, *Bill C-262: An essential framework for implementation of the United Nations Declaration on the Rights of Indigenous Peoples*, was tabled in parliament by New Democrat Member of Parliament, Romeo Saganash, and won majority support in the House of Commons by a vote of 206 to 79.⁴⁰⁸ In a public statement, dated May 4, 2016, the Assembly of First Nations endorsed Bill C-262, noting that the Bill: "sets out the key principles that must guide implementation of the *Declaration*," and most importantly, "Bill C-262 provides clear public affirmation that the standards set out in the *UN Declaration* have 'application in Canadian law'."⁴⁰⁹ Just when it seemed that Indigenous and state representatives were on the same page, and working together to draft and implement pro-Indigenous legislation, the inevitable happened: "The bill died in the Senate after being blocked by Conservative senators."⁴¹⁰ Conservative Senator Scott Tannas explained the reasoning to CBC News, as such:

"I support the UNDRIP in its entirety, with the exception of the word that gives me heartburn, which is 'consent'. What does that mean? If it turns out that consent equals a veto or anything approaching a veto for Indigenous people over activities and projects affecting their traditional lands, then we need to know that before we vote on this bill and bring it into law."⁴¹¹

Despite the apparent impasse within Senate Chambers, the UNDRIP Bill was actually

⁴⁰⁷ AFN, Policy Statement on Bill C-262, May 4, 2016.

⁴⁰⁸ www.cbc.ca "Romeo Saganash's Indigenous rights bill passes in the House of Commons." May 30, 2018.

⁴⁰⁹ AFN, Policy Statement on Bill C-262, May 4, 2016.

⁴¹⁰ www.cbc.ca "Trudeau government moving forward on UNDRIP legislation, says minister", December 4, 2019.

⁴¹¹ www.cbc.ca "Indigenous groups accuse Conservatives of 'shameful' stalling tactics on rights bill", April 10, 2019.

revived at the provincial level, when British Columbia passed “Bill 41 – 2019: Declaration on the Rights of Indigenous Peoples Act” in December 2019, which essentially mirrors its federal predecessor.⁴¹² On the hotly debated word ‘consent’, B.C. Premier John Horgan said: “Free prior and informed consent is not the end of the world,” and that adding the UNDRIP legislation would create more certainty in the province because it has clearly enshrined Indigenous rights in law.⁴¹³ Within days of the province of British Columbia’s motion to support UNDRIP, the territorial government of the North West Territories did the same thing, to become the second government in Canada to “write the *Declaration* in law.”⁴¹⁴ In the aftermath of another federal election in 2019, Justice Minister David Lametti and Crown-Indigenous Relations Minister Carolyn Bennett have since said: “Our government has committed to co-develop legislation, to implement the legislation” with the goal of passing it by the end of 2020.⁴¹⁵ The question remains, however, if passed, what will UNDRIP mean for “Aboriginal and treaty rights” for Indigenous people in Canada?

For greater clarity, UNDRIP is a United Nations Declaration that consists of 46 articles that recognize the basic human rights of Indigenous people, including their right to self-determination, which was passed in a formal General Assembly in 2007. In exercising their right to self-determination, UNDRIP states that Indigenous peoples “have the right to autonomy or self-government in matters relating to their internal and

⁴¹² www.cbc.ca “Trudeau government moving forward on UNDRIP legislation, says minister”, December 4, 2019.

⁴¹³ Ibid.

⁴¹⁴ www.cbc.ca “What does 'implementing UNDRIP' actually mean?”, November 2, 2019.

⁴¹⁵ www.cbc.ca “Trudeau government moving forward on UNDRIP legislation, says minister”, December 4, 2019.

local affairs, as well as ways and means for financing their autonomous functions.”⁴¹⁶ Moreover, UNDRIP recognizes that: “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”⁴¹⁷ Given that Indigenous nations – particularly, the Anishinaabe Nation in Treaty #3 – understand the treaty relationship in accordance with their own principles and systems of law, these Articles provide a foundation upon which to enact and enforce those laws in matters relating to the Treaty. Article 37, in particular, states that Indigenous nations have the right “to the recognition, observance, and enforcement of treaties” and that States must “honour and respect such treaties, agreements, and other constructive arrangements.”⁴¹⁸

With regard to education, UNDRIP clearly states that: “Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.”⁴¹⁹ For the Anishinaabe in Treaty #3, our law related to education is called *kinamaadiwin inaakonigewin*. Like all other Anishinaabe laws, *kinamaadiwin inaakonigewin* is informed by Anishinaabe principles, and is derived from sacred and traditional laws, and is classified as *Ozhibiige Inaakonigewin*: ‘written

⁴¹⁶ United Nations Declaration on the Rights of Indigenous Peoples, Article 4.

⁴¹⁷ Ibid, Article 5; Article 27.

⁴¹⁸ Ibid, Article 37 (1).

⁴¹⁹ Ibid, Article 14 (1).

temporal law'.⁴²⁰ *Kinamaadiwin Inaakonigewin* is the focus of the following chapter, so I will discuss it in more detail there, but I mention it here because *kinamaadiwin inaakonigewin* is the law by which the Anishinaabe Nation in Treaty #3 interpret the treaty right to education, and would henceforth, govern and administer an Anishinaabe education system. For now, if we consider the fact that the state has tried and failed disastrously (on multiple occasions) to administer an effective education policy for Indigenous peoples, we can perhaps agree that the time is long overdue that Indigenous peoples are given the opportunity to establish their own education systems and policies, in accordance with their own laws, cultural values, and beliefs in a way that is enshrined in Canadian law. Article 18 of UNDRIP provides a means to accomplish this by recognizing that "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions."⁴²¹ As previously discussed, many Indigenous nations, including the Anishinaabe Nation in Treaty #3, already possess decision-making institutions that govern and administer the laws of their people. This is significant because if the State acts in "good faith in the fulfilment of the obligations in accordance with the Charter," as it seems committed to do, then the adoption of federally recognized and affirmed UNDRIP legislation can provide a strong

⁴²⁰ Fred Kelly. Treaty #3 Youth and Elders Gathering, March, 2019.

⁴²¹ United Nations Declaration on the Rights of Indigenous Peoples, Article 18.

foundation with which to implement Treaty rights, as well as fulfill the Truth and Reconciliation Commission's '94 Calls to Action.'⁴²²

One of the reasons, perhaps the only reason, the Canadian state has made a push to legislate UNDRIP – after deriding it for years under a Conservative government – is because it is so prominently featured in the Truth and Reconciliation Commission's '94 Calls to Action', which was part of the Liberal Party electoral platform in 2015.⁴²³ Indeed, recognition of UNDRIP is explicitly called for in 16 of the '94 Calls to Action', which includes #43 and #44 which state: "We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation;" and, "We call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the *United Nations Declaration on the Rights of Indigenous Peoples*."⁴²⁴ Significantly, the Truth and Reconciliation Commission also called "on the federal government to draft new Aboriginal education legislation with the full participation and informed consent of Aboriginal peoples."⁴²⁵ This legislation is supposed to include a commitment to "sufficient funding", while also "respecting and

⁴²² Ibid, p.1

⁴²³ Following his win, Prime Minister Justin Trudeau attended an AFN National Chiefs Assembly and said: "We recognize that true reconciliation goes beyond the scope of the Commission's Calls to Action, I am therefore announcing that we will work with First Nations, the Métis Nation, Inuit, provinces and territories, parties to the Indian Residential Schools Settlement Agreement, and other key partners to design a national engagement strategy for developing and implementing a national reconciliation framework, including a formal response to the Truth and Reconciliation Commission's Calls to Action." See: www.theglobeandmail.com "Trudeau vows to develop plan to put Canada on path to 'true reconciliation'", December 15, 2015.

⁴²⁴ Truth and Reconciliation Commission, "94 Calls to Action", 2015.

⁴²⁵ Ibid, (#10).

honouring Treaty relationships."⁴²⁶ The TRC's 'Calls to Action', however, can hardly be considered an exhaustive list of measures that could be adopted in the pursuit of reconciliation. As Métis scholar, Laura Forsythe points out:

In the seventeen calls the TRC presented on education, other than encouraging consultation and participation with First Nations on the creation of new Aboriginal education legislation, there is no call to recognize the inherent right of First Nations to control education, nor is there a mention of jurisdictional issues that require partial or full transfers of authority to First Nations. Therefore, the TRC's contribution to support the journey to assert Indigenous educational sovereignty is strikingly minimal.⁴²⁷

To Forsythe's point, it is also worth noting that there is also no 'Call' from the TRC for the federal government to recognize the treaty right to education. Despite these shortcomings, even if the 'Calls to Action' are satisfied as is, and UNDRIP legislation is adopted, then I believe that this can go a long way towards recognizing and affirming the treaty right to education in a way that truly respects and honors Indigenous understanding of the treaty relationship. Indigenous laws are vital to this understanding, and furthermore, they have the capacity to govern and administer an education system in a manner that is consistent with our own principles of teaching and learning.

⁴²⁶ Ibid.

⁴²⁷ Forsythe, 2018, p.86

Summary

In this chapter I have demonstrated that Indigenous nations had their own laws prior to colonial contact, and that these laws continue to be observed and practiced in all diplomatic negotiations today as they have in the past. In addition to asserting cultural sovereignty through an Oral Constitution, Indigenous laws provide principles on duties and responsibilities associated with moral and ethical codes of behavior and the governance of a nation, so they are therefore, a mark of self-determination. Until recently, Indigenous laws were “not codified, but taught” to its constituents, but historical circumstances with colonizing nations has created a need to harmonize Indigenous laws to help with the administration of *other, or, different* laws, which is being done through the development of written temporal laws: *Ozhibiige Inaakonigewin*. Although an extended history of cultural and political subordination has displaced Indigenous understandings of the treaty relationship, recent progress with human and civil rights issues has stoked whatever embers of hope that remained, into a flame, that is now illuminating a path to reconciliation. The path to reconciliation has always been there; it was established by sacred and traditional laws, which have been maintained and reinforced through the knowledge and wisdom of our Elders and ancestral knowledge keepers. But a light that illuminates a path towards reconciliation is only as good, or useful, to the extent that it is used effectively. It is one thing to see, or recognize the presence of a path that has been made visible through the development of enlightened principles and laws, drawn from the history of relevant case laws, national

commissions, international declarations, and most importantly, the voices of our people. It is quite a *different* thing to feel or touch that path, and affirm its being, by walking on it in a good way as our ancestors did. The way to do that is to put our tobacco down, give thanks to the Creator, and always bear in mind that we walk for those who walked before us, and also for those who will walk in our footsteps long after us.

Chapter 3

Kinamaadiwin Inaakonigewin

All the world will be your enemy, Prince with a Thousand Enemies

And whenever they catch you, they will kill you.

But first they must catch you,

Digger, Listener, Runner, Prince with the Swift Warning.

Be cunning and full of tricks

And your people shall never be destroyed.

- Richard Adams, *Watership Down*

Education is the primary means for the transmission of cultural values, history, and law in all societies. As an institution of knowledge production, dissemination, and acquisition, the rules of an education system are always governed by, and accountable to a relevant and corresponding education law. Canadian laws and regulations, however, particularly as they relate to education, have been extremely detrimental to Indigenous nations. Nevertheless, in Canada, the state continues to be responsible for administering education programs for Indigenous peoples, in spite of the fact that its history of failed policies has produced a legacy of calamitous social conditions in Indigenous communities that is marked by poverty, alcohol and drug addiction, and domestic violence. These systemic circumstances have given rise to the false belief that Indigenous peoples are dull and incompetent, and therefore, cannot and should not govern their own education systems. Yet, if colonial institutional structures of education have failed to produce the law abiding, productive citizens that the state

covets, then it stands to reason, perhaps, that localized Indigenous institutions could be more effective in that endeavor. In *Like the Sound of a Drum*, Peter Kulchyski points out that Indigenous nations have produced “a clearly defined vision” of governance structures “that is coherent, workable yet working towards the achievement of ideals that correspond with prominent critical notions of social justice.”⁴²⁸ In this regard, Leanne Simpson adds, “The act of visioning for Nishnaabeg people is a powerful act of resurgence, because these visions create Shki-kiin, new worlds.”⁴²⁹ In other words, envisioning processes for social change is the first step towards actualizing social change. However, as Kulchyski goes on to say, that Indigenous concepts of social justice remain “a vision and not an actuality is a testament to the failure of the dominant political system, not to the lack of definition or the unpreparedness” of Indigenous nations.⁴³⁰ Thus, in order for reconciliation to occur, Indigenous nations visions for education must be turned to reality.

As I previously discussed in Chapter 1, one of the main factors that contributes to Indigenous peoples’ woeful social condition has been an absence of Indigenous content in education programs, which has led to low achievement rates for Indigenous youth. As far back as 1975, Indigenous scholars such as Howard Adams were asserting that this is because “the curriculum is so strange that students have difficulty relating it to their frame of reference and making it part of their knowledge.”⁴³¹ Another cause of

⁴²⁸ Kulchyski, 2005, p.177

⁴²⁹ Simpson, 2011, p.146

⁴³⁰ Kulchyski, 2005, p.177

⁴³¹ Adams, 1975, p.153

concern has been the state's continuous attempts to jam square pegs into a round hole, by using a one-size-fits-all approach to Indigenous education.⁴³² The failure of settler-colonial education policies underlines a need for local control of local education systems. Fortunately, many education programs across the country are trending in the right direction, as increasingly more local school boards are exerting more control and self-determination in their respective curriculums and programs of study. Thus, in this new era of reconciliation, Indigenous nations have even more reason to hope that our woes in education will soon be relieved. Should the state follow through with its commitment to fulfill the Truth and Reconciliation Commission's "94 Calls to Action" and implement the *United Nations Declaration of Rights of Indigenous Peoples*, it will be well on its way towards honoring its long overdue obligations to the treaty right to education. In this regard, Indigenous nations will have another catalyst with which to revitalize our own education laws, and thereby facilitate the construction of our own education systems. This chapter will provide an overview of Anishinaabe law-making processes, and discuss how our education law, *kinamaadiwin inaakonigewin*, will administer an Anishinaabe education system, as well as interact with provincial and federal education laws of Canada.

On Writing Oral Laws

Since time immemorial, the oral transmission of Anishinaabe sacred, traditional, and customary laws have been sufficient legal practices to govern our people, however,

⁴³² Battiste, 2013, p.78

the institution of Western forms of law has brought forth a need to revitalize our legal traditions in a way that accommodates the written word. Revitalizing our laws, a process called *ozhibiige inaakonigewin*, or written temporal law, enables our people to more effectively communicate our legal traditions in a way that can be recognized and understood by settler-colonial society. Although the translation of our laws into English may seem to be an obvious or natural development, it is in fact, an imprecise science and complicated endeavour, especially if considered in the context that writing is permanent, and that once something is written, it has a tendency to be locked, or frozen in time. In *Research is Ceremony*, Shawn Wilson helps explain this conflict: “Writing ideas down fixes them as objects that can be taken out of context of time and relationship. As fixed objects, ideas lose the ability to grow and change, as those who hold relations with the ideas grow and change themselves. They lose their relational accountability.”⁴³³ In this regard, it needs to be said that *Anishinaabemowin* – as a language based on relational thought – needs to be able to breathe; it is both flexible and malleable, and subject to change, and somewhat open to interpretation.⁴³⁴ Moreover, the process of translating Anishinaabe concepts into English is further complicated by the fact that a standardized orthography has yet to be achieved. Although the double-vowel system is becoming more commonplace, as can be seen in such texts such as *Talking Gookom’s Language*, it is still in a nascent stage of development.⁴³⁵ As of today, if

⁴³³ Wilson, 2008, p.123

⁴³⁴ At an education gathering Hayward, Wisconsin at Lac Courte Oreilles Ojibwe School, a local teacher explained how they were developing new words in Anishinaabemowin that describe technological innovations. As one example, the word for ‘projector’ in Anishinaabemowin was translated as “that one that emits light onto the wall.”

⁴³⁵ Ningewance, 2004.

one were to ask three different Anishinaabe language speakers about '*kinamaadiwin*', which I very loosely translate here as 'education', one would likely receive three different orthographic representations of the word, accompanied by three different definitions. For example, it could be viewed that a more precise translation of '*kinamaadiwin*' might be: 'the process by which we practice teaching and learning'. Similarly, with regard to the word '*inaakonigewin*', which I have plainly interpreted here as 'law', could also be translated as 'the rules given to us by the Creator'. Therefore, *kinamaadiwin inaakonigewin* could perhaps be more properly defined as: 'the process by which we practice teaching and learning, according to the rules provided to us by the Creator'.

Bearing in mind that language is central to a culture's distinctive knowledge and value system, the difference between *Anishinaabemowin* and English is as vast as our respective cultural epistemes. This fact alone introduces substantial interpretive and translational issues between the two languages. Thus, the challenge of arriving at a national-level consensus on a written law is immense since such a task is far more complex than defining any one word. Cree scholar, Tasha Hubbard explains: "Placing Indigenous concepts over Western European concepts is a difficult exercise, and the tendency is to dismiss Indigenous concepts, or to label them as metaphors rather than as a reflection of the Indigenous world."⁴³⁶ Simply put, Anishinaabe legal concepts do not translate easily, or even satisfactorily well, into a foreign language, particularly one

⁴³⁶ Hubbard, 2008, p.146

that is as linguistically different as English. Nevertheless, given the state of our communities, and what is at stake for our future, it is a task that is more than worthwhile attending to; it is one of utmost urgency. The task is not one of validating our law, but one that is about preserving the integrity of our language and traditional knowledge, as well as protecting the culture and future of our people.

On Nationalism

The challenge of achieving national consensus on a written law is driven, in part, by the existence of regional dialects of the Anishinaabe language, but also because of regional differences in local history and needs as a result of unique geographical, sociological, economic, and political circumstances. Although Anishinaabe from different regions may identify as such, and even effectively communicate in the same language, *anishinaabemowin*, the unique geosocioecopolitical factors of each *community* – let alone region – warrants and constitutes a unique identity and claim to nationhood, hence, *First Nation*. Yet, notwithstanding First Nations' inherent rights to local autonomy, self-governance, self-determination, and/or sovereignty, any community on its own is likely to find it difficult to advocate on behalf of itself, and therefore, *self-determine* good enough reason (common language, history, values, goals, aspirations, etc.) to join a larger entity for the sake of better political representation, access to resources, and lesser costs for social infrastructure and public works. In the context of this study, think: schools, transportation, teachers, administration of services, among other considerations.

The most significant and divisive geosocioecopolitical factor among the Anishinaabe seems to be the practice of treaty-making that took place throughout the Confederation era. During that time, the Anishinaabe occupied a vast tract of land consisting of much of the Hudson Bay watershed, and the basin of the Great Lakes. The expanse of our region can be traced back to the 'Seven Fires Prophecy' (sometimes referred to as the 'Eight Fires'), which is an intergenerational saga that forms part of an extensive Anishinaabe oral tradition. As Leanne Simpson explains, "The prophecy of the Seventh Fire foretold of a time when the most oppressive parts of the colonial regime would loosen and Nishnaabeg people would be able to pick up the pieces of their language, culture and thought-ways and begin to build, in essence, a resurgence."⁴³⁷ According to Anishinaabe historian, Edward Benton-Banai, the first prophet said to the people:

"In the time of the First Fire, the Anishinabe nation will rise up and follow the Sacred Shell of the Midewiwin Lodge. The Midewiwin Lodge will serve as a rallying point for the people and its traditional ways will be the source of much strength. The Sacred Megis will lead the way to the chosen ground of the Anishinabe. You are to look for a turtle-shaped island that is linked to the purification of the Earth. You will find such an island at the beginning and end of your journey. There will be seven stopping places along the way. You will know that the chosen ground has been reached when you come to a land where food grows on the water. If you do not move, you will be destroyed."⁴³⁸

Thus, over the span of many generations, the Anishinaabe migrated from the "northeastern coast of North America" into the heartland of the Canadian Shield

⁴³⁷ Simpson, 2011, p.66

⁴³⁸ Benton-Banai, 1988, p.89

around the Great Lakes.⁴³⁹ In the course of this diaspora, there were seven “major stopping places” at which some families settled onto, while others continued to move further west.⁴⁴⁰ To be sure, each ‘major stopping place’ was a unique, local ecology – whether it was on the east coast, the eastern woodlands, the sub-arctic, or the plains – which spawned different, regional practices that were influenced by the local ecologies and cultures they interacted with. However, as colonial legislators subsequently moved in and began treating with different ‘bands’ of Anishinaabe (or Indians as they were called) in the nineteenth century, distinct political entities were being forged, literally paving the way towards unique identities of nationhood. Thus, with each treaty, through the stroke of a pen, a new Anishinaabe nation was being born, distinctively dyed by its own ink.⁴⁴¹ Through this piecemeal process, some Anishinaabe communities were united, while *others* were separated by arbitrary borders facilitated by treaty.⁴⁴² In other words, a once united Anishinaabe nation was now formally

⁴³⁹ Ibid.

⁴⁴⁰ Ibid, p.99; For more on Anishinaabe history, see also: George Copway, *The Traditional History and Characteristic Sketches of the Ojibway Nation*, 1850 and William Warren, *History of the Ojibway People*, 1885.

⁴⁴¹ While the Anishinaabe Nation in Treaty #3 is the most prominent example of this phenomenon, it is less true of other treaty territories which contain multiple Indigenous nations.

⁴⁴² The boundaries of Treaty 3 territory, like other treaties of the Confederation Era, was painstakingly and meticulously outlined to the nth degree. The parameters of which are shown here: “Commencing at a point on the Pigeon River route where the international boundary line between the Territories of Great Britain and the United States intersects the height of land separating the waters running to Lake Superior from those flowing to Lake Winnipeg; thence northerly, westerly and easterly along the height of land aforesaid, following its sinuosities, whatever their course may be, to the point at which the said height of land meets the summit of the watershed from which the streams flow to Lake Nepigon; thence northerly and westerly, or whatever may be its course, along the ridge separating the waters of the Nepigon and the Winnipeg to the height of land dividing the waters of the Albany and the Winnipeg; thence westerly and north-westerly along the height of land dividing the waters flowing to Hudson’s Bay by the Albany or other rivers from those running to English River and the Winnipeg to a point on the said height of land bearing north forty-five degrees east from Fort Alexander, at the mouth of the Winnipeg; thence south forty-five degrees west to Fort Alexander, at the mouth of the Winnipeg; thence southerly along the eastern bank of the Winnipeg to the mouth of White Mouth River; thence southerly by the line described as in that part forming the eastern boundary of the tract surrendered by the Chippewa and Swampy Cree tribes of Indians to Her Majesty on the third of August, one thousand eight hundred and seventy-one, namely, by White Mouth River

divided into several distinct political and national entities, with the Anishinaabe Nation in Treaty #3 being one of those entities.

The influence of colonization has had a different effect at different times for different Indigenous nations. In *When the Other is Me*, Emma LaRocque explains the nature of this process: “We do not have a uniform Native identity even if we have a common experience under colonization. Of course, in important ways, we have many things in common, which come from our colonial experience as well as shared indigeneity. ... We have all experienced colonial intrusion, but we have not all experienced it at the same time or in the same way or to the same degree.”⁴⁴³ For this reason, on the matter of Anishinaabe education law, it is best if the law only applies to those communities or nations who subscribe to it, and for those who do not, then a separate or *different* law will be needed. The development of such national laws is a key expression of self-determination, and is a precursor to the grand goal of liberation, that is, freedom from colonial oppression. As Howard explains, “such nationalism is linked to or contains within itself, a progressive political ideology that serves to advance the social awareness of oppressed native people regarding their colonized circumstances, as well as directing the cultural revolution.”⁴⁴⁴ To this point, Frantz Fanon adds: “We are dealing with a strategy of immediacy which is both all-embracing and radical. The

to White Mouth Lake, and thence on a line having the general bearing of White Mouth River to the forty-ninth parallel of north latitude; thence by the forty-ninth parallel of north latitude to the Lake of the Woods, and from thence by the international boundary line to the place beginning.” See: Morris, 1883.

⁴⁴³ LaRocque, 2010, p.32

⁴⁴⁴ Adams, 1975, p.194

objective, the program of every spontaneously formed group is *liberation at a local level*.”⁴⁴⁵ Thus, the development of ‘Nationalism’ through national laws can be considered a process which Edward Said describes as “the mobilizing force that coalesced into resistance against an alien and occupying empire on the part of peoples possessing a common history, religion, and language.”⁴⁴⁶ Nationalism, in the final analysis, is a force that is driven by a people’s shared struggle for self-determination.

Beginning in the 1950s and carrying through the rest of the twentieth century, the wake of the residential school system left a vacuum in Indigenous education programming within Treaty #3 territory, as well as across Canada. As the residential school system disintegrated, Indigenous youth were then registered into the public education system, which employed its own assimilative agenda. While some of these youth found hard-earned success, there were many others who struggled to find meaning and comfort in another foreign education system that did not represent their culture, or even provide basic infrastructure within their communities to support their education needs. Some families were forced to relocate in order to be able to send their children to school, while others who remained in their communities or lived in other rural areas were faced with a long commute to travel to and from school.⁴⁴⁷ These circumstances led to a surge of Indigenous youth placed in foster homes (read: ‘60s

⁴⁴⁵ Fanon, 1963, p.83 (emphasis added).

⁴⁴⁶ Said, 1993, p.223

⁴⁴⁷ If my own experience can serve as an example, there were times in my upbringing when my cousins and I had to commute one hour each way, to and from school, every day in Northwestern Ontario, often times on an empty stomach for reasons related to poverty and alcoholism.

scoop'). As Bonita Lawrence explains: "Even when children were placed in 'good' homes, they were raised in ignorance of their culture, with no knowledge of their own identity, and few defenses against the racism of outsiders – or foster family members. The practice of obscuring the Native heritage of adoptees appears to have been too common to be dismissed as a 'mistake.'"⁴⁴⁸ On a personal note, I had one Anishinaabe friend who was placed in a so-called 'good' foster home with a very affluent white family. I remember being over at his house to eat dinner one evening, and being amazed at the size of the house – they even had two pet scarlet macaws! – but more so puzzled why us 'Indian kids' had to eat at a separate table for dinner. Only later did I come to understand that such privilege was apparently reserved for 'civilized' individuals. Suffice it to say that Seneca did not learn anything about his Anishinaabe heritage at that house.

Moving forward with this analysis, we can say that within one generation, statistics were soon able to show that the public education system was not working for our people. Dropout rates were and continue to be higher among Indigenous youth, and other socioeconomic indicators such as poverty and crime provided a dismal view of Indigenous community wellness.⁴⁴⁹ It is conditions such as these that prompted leadership within Treaty #3 territory to establish the Treaty #3 Anishinaabe Education Secretariat in 1991, with a goal of designing, implementing, and controlling an

⁴⁴⁸ Lawrence, 2004, p.114

⁴⁴⁹ For a comprehensive report on education achievement and community wellness, see: RCAP.

Anishinaabe education system.⁴⁵⁰ Building off this initiative, Treaty #3 Elder, Fred Kelly, penned a report for the Grand Council Treaty #3 in March 1994, entitled: “A Treaty-Based, Community-Driven Model of Self-Government in Education and Language and Culture” which is the first document that articulates the need for a written Treaty #3 education law. In that report, Kelly asserts that jurisdiction is the most fundamental aspect of ownership and control in the governance of education. According to Kelly, jurisdiction “is the law-making capacity of the owners which immediately and directly rests within the primacy of the First Nations,” and that it must be “promulgated within the context of the inherent right of self-government.”⁴⁵¹ Therefore, as Kelly goes on to argue, it is the responsibility of the Grand Council Treaty #3, in concert with the Federal and Provincial governments, to “enable and facilitate the recognition of a national [education] law within Treaty 3 territory.”⁴⁵² Although the state effectively stymied these early efforts for policy reform by cutting off funding to the Treaty #3 Anishinaabe Education Secretariat, the development of a national Treaty #3 education law remained a top priority for the Grand Council Treaty #3.

Finding Purpose

Following a brief hiatus of political action in the 2000s, the development of a written national education law again gathered momentum in 2007 at the Annual Elders

⁴⁵⁰ Grand Council Treaty #3.

⁴⁵¹ Kelly, 1994, p.65

⁴⁵² Ibid.

Gathering in Kenora, Ontario. There, the Assembled Elders determined a five-fold purpose of a written education law for the Anishinaabe Nation in Treaty #3:

1. To preserve the Anishinaabe in the student.
2. To protect the language and cultural identity of the student.
3. To provide an education that enables the student to become a functional citizen in the Anishinaabe Nation and society-at-large.
4. To clarify relationships between the Grand Council and other governments in Canada.
5. To harmonize administration of Anishinaabe law in education and administration of Crown government laws in education.⁴⁵³

These imperatives are to be understood in conjunction with Kelly's thesis that the central purpose of establishing a written education law is to "exercise the inherent jurisdiction in education of the Anishinaabe Nation in Treaty #3, now and for future generations"; that is to say, exercise self-determination.⁴⁵⁴ This objective is in line with what legal scholar Michael Asch has written who argues that Indigenous nations: "do not lose their right to self-determination merely because a numerically larger Settler population showed up and drew borders around territories in such a way that that right could no longer apply."⁴⁵⁵ According to Diane Longboat, undertaking a law-making process has the effect of enhancing "the distinctive political, economic and cultural heritage" of an Indigenous nation, "through education as a pillar of sovereignty and self-determination through a targeted investment in the human capital" of the

⁴⁵³ Treaty #3 Elders Gathering, 2007.

⁴⁵⁴ Kelly, "Executive Summary and Elements of The Constitutional Government of the Anishinaabe Nation in Treaty #3", nd.

⁴⁵⁵ Asch, 2014, p.63

nation.⁴⁵⁶ For the Anishinaabe Nation in Treaty #3, the concept of sovereignty relates to a word in *Anishinaabemowin* known as *dibendizowin*, which loosely translates to ‘sacred freedom’. According to Elder Fred Kelly, *dibendizowin*, is the “sacred gift to the Anishinaabe Nation to do whatever is necessary to achieve all its legitimate ends that comes from the Creator and the Ancestors, including the inherent right to its system of governance; laws and institutions; citizenship; trade and commerce; and the right to enter into treaties with other nations.”⁴⁵⁷ Thus, by establishing an education law that facilitates the construction of an Anishinaabe education system, it seems obvious that the students of the education system will be able to benefit in a multitude of ways.

Some of these benefits include:

- (a) Fully develop one's individual potential as distinct Anishinaabe members living in a modern era while also honouring one's heritage;
- (b) Engage in studies with high academic standards as well as technical studies and skilled trades, land-based learning for traditional knowledge, as well as institutional learning;
- (c) Become fluent in Anishinaabemowin and ensure cultural transmission of the oral history to the next generation;
- (d) Develop a connection to *Aki*, the land, and gain a sense of responsibility to care for the land using traditional knowledge systems;
- (e) Engage in learning opportunities with Anishinaabe Elders, Knowledge Holders, and Oral Historians so that they can transmit their knowledge to the next generation of youth for maintaining the strength of the culture and language and the living civilization of the Nation;
- (f) Understand the nature of Indigenous rights from an international perspective, know the inherent rights of the Anishinaabe Nation in Treaty #3,

⁴⁵⁶ Longboat, 2013, p.18

⁴⁵⁷ Kelly, “Pimaatiziwin ~ Kizhewaatiwin In Treaties”, Treaty #3 Youth and Elders Gathering, 2019.

and be competent to speak to those rights publicly and transmit the knowledge to future generations;

(g) Promote a sense of social responsibility and tolerance for the beliefs of others in a global community;

(h) Understand the importance of contributing to the social, economic, political, and spiritual development of the Anishinaabe Nation in Treaty #3.⁴⁵⁸

Guiding Principles

In 2008, Treaty #3 Elders again met in an open discussion to provide direction and guidance towards the initiation and development of a written law on education, *kinamaadiwin inaakonigewin*. At this gathering, the Elders established seven “Guiding Principles” that are to be observed in the development of a written education law. It should come as no surprise that with the loss and declining use of our language, the first guiding principle was related to *anishinaabemowin*: language revitalization. In particular, the Elders were concerned how younger generations were being ridiculed for imprecise pronunciation, which in turn deterred youth from attempting to speak and learn the language. The ridicule suffered by younger generations, however, has not just been limited to the way we talk, but also to the way we look, and the way we act. In *‘Real’ Indians and Others*, Bonita Lawrence describes an instance when: “one woman mentioned how her mother would scold her in Cree whenever she grew her hair long - telling her that she looked like ‘a big, thick Indian!’”⁴⁵⁹ In my own experience, I too, can recall a time when my aunt scornfully called me a “Real Anishinaabe!”, for not knowing

⁴⁵⁸ Longboat, 2013, p.18

⁴⁵⁹ Lawrence, 2004, p.110

how to operate an outboard motor, with the implication of course being, that “real Anishinaabe” know nothing of modern technology.⁴⁶⁰ This type of ridicule and scorn is indicative and symptomatic of an internalization to colonization that is suffered by many Indigenous peoples, as a result of their acute experiences with colonization, which then develops into intergenerational trauma. As Sheila Cote-Meek explains, these effects, which “have largely been passed from one generation to another as a direct result of unresolved historical trauma,” and “originate from the loss of lives, land and vital aspects of Native culture promulgated by the European conquest of the Americas.”⁴⁶¹ Thus, in order to counter this problem, it was decided at the Elders Gathering that a safe and supportive learning environment must be developed, one that reflects our Anishinaabe identity, values, and beliefs. With this in mind, the Elders determined that “the first guiding principle for Anishinaabe education is to revitalize and maintain our way of speaking, our way of processing and expressing thought; our way of communicating with the creation, with the spirit, and with one another. It is to ensure the connection of our language to our worldview, language to culture, language

⁴⁶⁰ My aunt’s phrase, “real Anishinaabe” is actually saturated with irony, and is in truth, a joke. Amongst my family, I am different in the sense that I grew up and still live in an urban environment, which came at the cost of not learning how to speak my language, episodic experiences of common cultural practices: fishing, hunting, trapping, and a general sense of disattachment from the rest of my family. Most of my extended family, on the other hand, grew up and continue to live on or near the land where they were born and raised. In this way, skills in fishing and hunting were acquired and developed at a very early age. So, as a 14 year old, out on the land, I am expected to have the basic knowledge of firing up an outboard motor, take us from place to place, and know where all the good fishing spots are. But of course, I did not grow up that way, and did not have such experience or knowledge yet, so when I am struggling to get us going, my aunt identified an opportunity to rip a joke at my expense. The irony of which, is that if I were a “real Anishinaabe”, I would know what the hell I am doing, as opposed to being an obvious city slicker.

⁴⁶¹ Cote-Meek, 2014, p.30

to relatedness and identity, and, language to the natural environment.”⁴⁶² Accordingly, with the establishment of an Anishinaabe education system, the corresponding education law will ensure that *anishinaabemowin* is “the first language of the education system.”⁴⁶³ In this system, the “students will be encouraged to speak Anishinaabemowin as their first language”, with the objective of every school and learning lodge being “to graduate students who are equally proficient in Anishinaabemowin, as they are in English.”⁴⁶⁴ In order to help accomplish this task, it was further decided that “the teaching staff and administrative staff of every school” and learning lodge will use *anishinaabemowin* “to the greatest possible extent as their language of work,” including as the language of instruction for course content.⁴⁶⁵ In view of these objectives, a section of the draft education law, *kinamaadiwin inaakonigewin*, is specifically dedicated to the use and priority of our language, *anishinaabemowin*.

The second guiding principle on education is *Anishinaabe Inendamowin*, which has been articulated as “our way of thinking, our beliefs, our way of perceiving and of formulating thought. It is the foundation for our Anishinaabe philosophy and worldview.”⁴⁶⁶ The basis of this principle is formed by the intent to “develop in learners the ability to source and employ Anishinaabe ways of thinking that use the

⁴⁶² Seven Generations Education Institute. “Education Guiding Principles”. nd.

⁴⁶³ See Appendix B, sec. 9.1

⁴⁶⁴ Ibid, sec. 9.4

⁴⁶⁵ Ibid, sec. 9.5

⁴⁶⁶ Seven Generations Education Institute. “Education Guiding Principles”. nd.

totality of the mind in its intellectual, intuitive and spiritual capacity – a way of knowing where the intelligence of the mind is inspired and informed from the intelligence of the heart.”⁴⁶⁷ This involves developing a student’s ability to operate within an Anishinaabe paradigm of seeing the whole of reality, which “is informed by all the senses (physical, emotional, mental, and spiritual) and maintains the interdependent, interconnected and holistic experience and integrity of the total environment.”⁴⁶⁸ *Anishinaabe Inendamowin* is similar to what Linda and Keith Goulet describe as the ‘life force system’, which they say, “encapsulates the centrality of life, action, and intentionality for living beings.”⁴⁶⁹ Additionally, “the universe, nature, culture, and the inanimate tools we create and use also become an essential part of the overall life force system.”⁴⁷⁰ In other words, *Anishinaabe Inendamowin* answers questions that are of an epistemological nature. Within an educational context, Sandra Styres argues that:

Developing an understanding of the contemporary and historical connections Indigenous people have to their places, and the ways Indigenous peoples have existed and continue to exist first and foremost in deeply intimate, spiritual, and respectful relationships to their lands, one another, and indeed all relations (animate and inanimate)/human and non-human), is the key to success for all students as active and respectful participants, first in their own places, as well as in the wider global arena.⁴⁷¹

⁴⁶⁷ Ibid.

⁴⁶⁸ Ibid.

⁴⁶⁹ Goulet & Goulet, 2014, p.56

⁴⁷⁰ Ibid.

⁴⁷¹ Styres, 2019, p44

The principle of *Anishinaabe Inendamowin* was developed with regard to Elders concerns about “the thought processes that seem to dominate Treaty #3 Anishinaabe youth.”⁴⁷² They felt that many of the youth are embarrassed or ashamed to use our language, as well as learn about our Anishinaabe ways of life. In order to rectify this wayward trend, the Elders thought that “the youth need to be taught at a young age about our relationship with the land, water, creatures, plants, and one another through the clan system.”⁴⁷³ This restorative process would include ascribing traditional Anishinaabe names to youth, while also teaching them about ceremonies and rites of passage.

The third Anishinaabe guiding principle on education is *Anishinaabe Gikendaasowin*, which is stated as “our knowledge and way of knowing. It is the knowledge of our origins, way of life, way of being, and our worldview.”⁴⁷⁴ While it may seem that there is significant overlap in these principles, there are certain nuances that differentiate the metaphysics between epistemological and ontological lines of inquiry. Yet, as Rauna Kuokkanen explains, “In attempting to explain indigenous epistemes in language that is foreign to them, we risk violating their integrity, because they are not easily translatable into other systems, nor can they be reduced to simple categorizations.”⁴⁷⁵ One way in which these principles might be supported, however, is through the application of an ‘Indigenous Wholistic Framework’, which Michelle Pidgeon says “provides guidance on how to address complex questions theoretically

⁴⁷² Treaty #3 Elders Gathering, 2008.

⁴⁷³ Ibid.

⁴⁷⁴ Seven Generations Education Institute. “Education Guiding Principles”.

⁴⁷⁵ Kuokkanen, 2007, p.60

and methodologically while honouring Indigenous epistemology, ontology, and axiology.”⁴⁷⁶ In that sense, *Anishinaabe Gikendaasowin* speaks to our collective goal of advancing our ways of knowing, the knowledge of our origins, as well as ways of life and being to the next generation. It directs us to increase the highest sense of consciousness from a place of Anishinaabe identity, thinking, knowing, and way of being.⁴⁷⁷ The Elders described this principle as being “everything what we learn from the time of our birth, until the time when we pass to the other world.”⁴⁷⁸ *Anishinaabe Gikendaasowin* is also understood to be the process by which we share our knowledge; that is to say, through the oral tradition, which Renee Hulan and Renate Eigenbrod have described as “distinct ways of knowing and the means by which knowledge is reproduced, preserved and conveyed from generation to generation.”⁴⁷⁹ According to the Elders, with every teaching, there are certain protocols in place that dictate “what we learn, when we teach, and how and where.”⁴⁸⁰

Anishinaabe Inaadiziwin is the fourth Anishinaabe guiding principle on education. It is described as “our behavior, our values and our way of living our life, and being Anishinaabe in the fullest sense. It is the development of the highest quality of Anishinaabe personhood, connected to the earth and in relationship to all of creation.”⁴⁸¹ Significantly, *Anishinaabe Inaadiziwin* is considered to be the process by

⁴⁷⁶ Pidgeon, 2019, p.207

⁴⁷⁷ Seven Generations Education Institute. “Education Guiding Principles”.

⁴⁷⁸ Treaty #3 Elders Gathering, 2008.

⁴⁷⁹ Hulan and Eigenbrod, 2008, p.7

⁴⁸⁰ Treaty #3 Elders Gathering, 2008.

⁴⁸¹ Seven Generation Education Institute. “Education Guiding Principles”.

which a person develops their creative and artistic expression. As the Elders say, *Anishinaabe Inaadiziwin* activates “the whole person in the learning experience – body, mind, heart and spirit – in such a way to generate the highest quality of experience and inspire the finest creativity of response and expression.”⁴⁸² The fifth guiding principle is *Anishinaabe Izhichigewin*, which relates to the form and content of the education process, both teaching and learning. According to knowledge holders at the Seven Generations Education Institute, “the guiding principle of *Anishinaabe Izhichigewin* is to strengthen the capacity and capability inherent within the Anishinaabe learner of the Anishinaabe way of doing things, and, to develop the abilities and skills for effective Anishinaabe functioning in the world and for quality of living and contributing to the quality of community.”⁴⁸³

Given the Residential School System’s injurious and sustained attack on Indigenous languages and spirituality for such a long period of time, and accounting for the subsequent impact on communities, as well as the dearth of Indigenous spiritual expression in the public school system, revitalizing Anishinaabe spirituality has been a major point of emphasis for Elders in Treaty #3 territory. Attending to this concern, the Elders developed two related, but distinct guiding principles to be applied in the pursuit of education. The first of which, and sixth in total, is *Anishinaabe Enawendiwin*, which is described as “our way of relating to each other and to all of Creation. It is an all-inclusive relationship that honors the interconnectedness of all our relations, and

⁴⁸² Ibid.

⁴⁸³ Ibid.

recognizes and honors the human place and responsibility within the family of Creation.”⁴⁸⁴ As scholars such as Marlene Brandt-Castellano and Margaret Kovach have argued, “Indigenous ethics can never be limited to a defined set of rules; they are about knowing who you are, the values you hold, and your understanding of how you fit within a spiritual world.”⁴⁸⁵ In this regard, *Anishinaabe Enawendiwin* can be thought of as a cultivation of values that relate to the individual, but are “responsive to the integrity of the collective whole.”⁴⁸⁶ It is the promotion of relationships that are deeply personal, and attended to with care and compassion in accordance with kinship law. Similarly, *Gidakiiminaan*, the seventh and final guiding principle, explores “our connection and relationship to our land and the total experience of connecting to and relating to the Earth and the environment.”⁴⁸⁷ According to the Elders, *Gidakiiminaan* is distinguished as being “the primary shaper of Anishinaabe identity,” which constitutes the “total relationship with Creation that informs our environmental ethic.”⁴⁸⁸ Moreover, as Gina Starblanket and Heidi Stark explain, “Indigenous ways of relating with one another, animals, and the environment, and with past and future generations form the basis for projects of decolonization as they call into question the hegemony of Western thought.”⁴⁸⁹ This principle is perhaps best understood alongside another important Indigenous concept: ‘all our relations’, or ‘relationality’ which I have

⁴⁸⁴ Ibid.

⁴⁸⁵ Kovach, 2009, p.146; see also: Brandt-Castellano, 2004.

⁴⁸⁶ Seven Generation Education Institute. “Education Guiding Principles”.

⁴⁸⁷ Ibid.

⁴⁸⁸ Treaty #3 Elders Gathering, 2008.

⁴⁸⁹ Starblanket and Stark, 2018, p.194

previously discussed.⁴⁹⁰ Finally, *Gidakiiminaan* is meant to ensure that learners develop and maintain a connection to the land and all of Creation, and that educators “provide an environment of teaching and learning that is situated on the land and within the natural environment.”⁴⁹¹

Taken and applied together, the seven Anishinaabe guiding principles of education form the foundation of *kinamaadiwin inaakonigewin*, Anishinaabe education law.⁴⁹² The law is designed to facilitate the administration and operation of an education system that will provide a learning experience that is both relevant and responsible to the members of Anishinaabe Nation in Treaty #3 in the preparation of life, both on and off the territory. *Kinamaadiwin Inaakonigewin* recognizes that the youth of our nation are “the most valuable of all resources”, and is intended to protect and perpetuate Anishinaabe “cultural and linguistic transmission over the generations.”⁴⁹³ *Kinamaadiwin Inaakonigewin* further serves to “promote intra-government coordination” within the Anishinaabe Nation in Treaty #3, as well as the provincial and federal governments of Canada.⁴⁹⁴ The law also recognizes that “each so-called First Nation has its own cultural, historical and constitutional meaning and significance within the Nation,” and affirms the autonomy of individual communities to govern themselves in

⁴⁹⁰ Although the term “all my relations” is the term I referenced earlier, and the one that is more widely used in Indigenous discourse, I prefer the term “all our relations” for its stronger connotation of inclusivity. For a more comprehensive explanation of ‘all our relations’, see: Talaga in *All Our Relations*, 2018; see also Wilson, 2008.

⁴⁹¹ Treaty #3 Elders Gathering, 2008.

⁴⁹² See: ‘Appendix B: *Kinamaadiwin Inaakonigewin*’

⁴⁹³ Ibid, sec. 4.1

⁴⁹⁴ Ibid, sec. 4.3

accordance with their local and specific needs and interests.⁴⁹⁵ These objectives are in line with what Linda and Keith Goulet have argued in *Teaching Each Other*, where they write that “Hierarchical, paternalistic relationships of the colonial past” must be “replaced by interactive, more equitable social relationships that serve to create learning environments conducive to the success of Indigenous students.”⁴⁹⁶ In this regard, the legislative and institutional structure of the law is designed to be consistent with the principles of governance adhered to by the Grand Council Treaty #3; it is a structure that is non-hierarchical, which means that it is of an *egalitarian* constitution or disposition, unlike Western or colonial forms of governance.

Practical Considerations

According to notes from a 2008 Treaty #3 Chiefs Assembly, the Chiefs provided direction on other considerations to be made in the development of the written education law such as:

the meaning, purpose, and mission of Anishinaabe education; the provision of Anishinaabemowin and culturally relevant education; jurisdiction over, and provision for access to: Early Childhood Education, Elementary Education, Secondary Education, Post-Secondary Education, and Special Education; and administrative considerations such as: Educational Authority; Planning, Policy and Regulations; Curriculum Development; Teaching Methodology; Standards, Quality and Accreditation; Counselling; Facilities; and Finance, Personnel and Administration.⁴⁹⁷

⁴⁹⁵ Kelly. “Executive Summary and Elements of The Constitutional Government of the Anishinaabe Nation in Treaty #3”. nd.

⁴⁹⁶ Goulet & Goulet, 2014, p.215

⁴⁹⁷ Grand Council Treaty #3. “Chiefs in Assembly: Draft Record of Decision On the Making of a Written Law in Kinaamatiwin”. 2008.

The Chiefs also stated that the written law should provide provisions that “clarify the relationship of national and community laws having regard for the protection and support of local community autonomy,” as well as “other jurisdictions.”⁴⁹⁸ Given the experiences of the Anishinaabe Nation in Treaty #3, as well as other Indigenous nations in Canada who have been subjected to unilateral decisions by the federal government, particularly those decisions that relate to education, it is not surprising that the Chiefs were mindful and attentive to the importance of local autonomy and jurisdiction. As such, the Chiefs unanimously agreed that the written law ought to “provide that the Nation and any of its communities may enter into an agreement with any other government for services that it may want or to harmonize the administration of its jurisdiction.”⁴⁹⁹ Lastly, but certainly not least, the finance of the education system was also discussed at the Assembly, where it was decided that “the written law will provide for Canada to pay for the provisions for all aspects of education according to the promises in Treaty #3.”⁵⁰⁰ Based on these directives, the Grand Council Treaty #3 was then tasked with establishing a Technical Working Group for the drafting phase of the written education law, *kinamaadiwin inaakonigewin*.

Following the Chiefs in Assembly gathering, an initial Technical Working Group was indeed established to draft a written law on education in 2008. However, faced with mounting financial difficulties due to cutbacks from the federal government, the

⁴⁹⁸ Ibid.

⁴⁹⁹ Ibid.

⁵⁰⁰ Ibid.

Technical Working Group struggled to collaborate effectively, and were therefore, unable to complete their task. The dream of having a written education law thus remained only a dream for several more years. It was not until 2015, with the incumbency of a Liberal federal government that fortunes began to change. The Liberals' pro-Indigenous education platform during the election, brought a record number of Indigenous voters to the polls, which undoubtedly helped Justin Trudeau get elected as Prime Minister of Canada. As I have previously discussed, Trudeau made concrete promises during his campaign to fulfill the Truth and Reconciliation Commission's '94 Calls to Action', implement UNDRIP, and lift the 2% funding cap on Indigenous education.

First Nations Lifelong Learning Table

While Indigenous nations, including the Anishinaabe Nation in Treaty #3, continue to wait for the substantive elements of these promises to be honored, a framework for a "First Nations Lifelong Learning Table" was negotiated in 2016, which provided Treaty #3 with much needed funds to provide culturally relevant education programs for its youth. Described as a 'bilateral process' between the Ministry of Education, the Indigenous Education Office, and the Chiefs of Ontario, the First Nations Lifelong Learning Table "aims to support mechanisms in which First Nations and the Province work together as full partners in the design, development and implementation of First Nations education programs for First Nation learners in the provincial

education system.”⁵⁰¹ Over a three-year period, the program was designed to deliver a vast series of education programs and services, based on five ‘mutual priorities: Relationships; Languages and Culture; Curriculum, Information, Access and Accountability; and Policy Development.

Early reports from Grand Council Treaty #3, however, have demonstrated that there continue to be “existing barriers to effective partnerships between First Nations and school boards.”⁵⁰² These barriers include: insufficient representation on school boards and committees; lack of communication and collaboration between school boards and community Education Directors; unclear roles and responsibilities of school board staff and members; and a need to share resources, while also providing teachers and staff with culturally relevant professional development opportunities. Regarding the priority areas of ‘Languages and Culture’ and ‘Policy Development’, community Education Directors reported that the “recruitment and retention of First Nations” language and knowledge holders must be a top priority, and that the unique skillset of these subject matter experts must be recognized and valued by providing them “with pay that is equal to other teachers within a school board.”⁵⁰³ The issue of equal pay for Indigenous staff has been a source of malcontent for Indigenous communities for a number of years, which Linda and Keith Goulet have discussed in *Teaching Each Other*, where they said: “Real equity can be achieved in Indigenous education only when a

⁵⁰¹ See: <http://education.chiefs-of-ontario.org/upload/documents/priority-area-relationships-04-21-2017.pdf>

⁵⁰² Grand Council Treaty #3. “First Nations Lifelong Learning Table”. 2018.

⁵⁰³ Ibid.

principle of equalization is adopted, so that we have equality in staff salaries and benefits as well as infrastructure, including up-to-date technologies ... including those that support Indigenous languages and cultures".⁵⁰⁴ In addition to equal pay, community Education Directors have also said that "First Nations community based approaches to languages programs and language teacher certification must be adopted within the provincial education system."⁵⁰⁵ On the issue of 'Curriculum', it was reported that "First Nations expressed concern regarding First Nations representation on curriculum development teams within the Ministry of Education."⁵⁰⁶ To this point, Treaty #3 Elders said that "First Nations curriculum development needs to be First Nations led, based on regional, territorial culture and knowledge," on account that "certain things should only be discussed and/or taught by people who have the background, understanding and expertise."⁵⁰⁷ Finally, with regard to the priority area of 'Information, Access and Accountability', it was determined that provincial school boards need to share any relevant data with Treaty #3 communities "that may affect the success and well-being of all First Nations students within provincial schools."⁵⁰⁸

The frustration that was expressed at the 2018 Treaty #3 Education Gathering seems to echo Glen Coulthard's criticism of the state's approach to reconciliation, such that "the current politics of reconciliation" is unable "to adequately transform the

⁵⁰⁴ Goulet & Goulet, 2014, p.198

⁵⁰⁵ Grand Council Treaty #3. "First Nations Lifelong Learning Table". 2018.

⁵⁰⁶ Ibid.

⁵⁰⁷ Ibid.

⁵⁰⁸ Ibid.

structure of dispossession that continues to frame Indigenous peoples' relationship with the state."⁵⁰⁹ Coulthard goes on to explain that what sometimes gets represented in the media and by the state as 'Indigenous resentment' is actually a manifestation of 'righteous resentment': "that is, our bitter indignation and persistent anger at being treated unjustly by a colonial state both historically and in the present. ... It is actually a sign of our *critical consciousness*, of our sense of justice and injustice, and of our awareness of and unwillingness to *reconcile* ourselves with a structural and symbolic violence that is still very much present in our lives."⁵¹⁰ Despite the rosy verbiage of 'partnership' in its 'strategic plan', one wonders if the "First Nations Lifelong Learning Table" will just be another inadequately funded, short-sighted state sponsored initiative that falls short of its mark. "After all," Taiaiake Alfred writes, "the negotiation is between unequal partners; the terms of restitution are calculated not according to morality or rationality, but according to what the Settlers themselves determine they can afford or want to pay in return for their new post-colonial identity."⁵¹¹ It is a reminder that Sandy Grande warns of, that "strident language in political statements most often gets lost in translation when it comes to enacting such language into policy."⁵¹²

The consensus at the 2018 Treaty #3 Education Gathering – which hosted Community Directors of Education, Elders, education personnel from the Grand

⁵⁰⁹ Coulthard, 2014, p.120

⁵¹⁰ Ibid, p.126

⁵¹¹ Alfred, 2009b, p.138

⁵¹² Grande, 2004, p.18

Council Treaty #3, as well as Grand Chief Francis Kavanaugh – is that the education programs and services of the Lifelong Learning Table – that is to say, the actual teaching and learning that takes place within an ever shape-shifting education system – are being asphyxiated on the exhaust of travel expenses and high administrative costs, most notably, senior management salaries.⁵¹³ It is a problem all too familiar that plagues many Indigenous communities, and one that seems to underline the challenge of recruiting and retaining talented Indigenous professionals, especially for communities who are isolated in remote regions of Northwestern Ontario. The reality is that the price is high to persuade the best minds to leave a luxurious metropolis for a boil water advisory; compensation for these circumstances is a fundamental necessity.

Consequently, many Indigenous nations and communities are most often forced to juggle staffing dollars and programming expenses with an inadequate budget, which means that either staffing or programming is likely to suffer in the administration of education services.

In order to run successful education programs, education and administrative professionals are needed, but they must also be equipped with sufficient resources to do their job. In that regard, it seems clear that if any indigenized education program is going to have any chance at success, a significantly larger investment must be made; it has to be an investment that accounts for the expensive isolation costs associated with remote, rural bush living; it has to be an investment that eventually leads to a

⁵¹³ Grand Council Treaty #3. “Treaty #3 Education Gathering”. 2018.

redistribution of wealth. As Fanon wrote in *Wretched of the Earth*, “What matters today, the issue which blocks the horizon, is the need for a redistribution of wealth. Humanity will have to address this question, no matter how devastating the consequences may be.”⁵¹⁴ That truth is as poignant now, as it was over fifty years ago when he wrote it. The only way that this can be accomplished is through a collective change of heart and mind of people in leadership positions. These individuals who occupy leadership positions must be willing to take on a level of self-sacrifice for the betterment of the community and nation. They must be willing to adjust their standard, quality, or way of life to meet the needs and demands of the community, and understand that quantity of material goods, money, and wealth is not synonymous with quality, healthy living. This means that these individuals must be able to recognize the value of philanthropy, and of redistribution of wealth, and give back some their time and money to the community without any expectation of return. One tangible way of doing this is by donating a portion of their salary towards the establishment of academic bursaries and scholarships, or by hosting community fundraisers for education activities and programs. Thus, for those Anishinaabe intellectuals who wish to return, and work as true leaders in their communities, “it means clipping those wings which had been left to grow”, as Fanon so eloquently said.⁵¹⁵

⁵¹⁴ Fanon, 1963, p.55

⁵¹⁵ Ibid, p.158

The legacy of the First Nations Lifelong Learning Table remains to be seen, but if history is any guide, it will soon perish and be forgotten.⁵¹⁶ In preparation of this circumstance, the Treaty #3 Chiefs once again gathered on the matter of education at the 2018 Fall Assembly, and again, resolved to draft a written education law. At this particular gathering, the Chiefs focused on administrative aspects of an Anishinaabe education system, seeking concrete answers to how an Anishinaabe education system will be administered, how communities will be represented, and how those communities will receive their education programs and services. In order to answer these questions, I had the honor of being invited to be part of another Technical Working Group, and “draw upon a consolidation of existing reports and previous bona fide consultations in addition to their expert advice to identify elements for inclusion in the drafting of the law and for use in community consultations.”⁵¹⁷ Based on the advice of Elders and other knowledge holders of the education law, over the next few months, a Treaty #3 archival review was conducted, as well as several engagement sessions with Community Directors of Education, and a visit to Lac Courte Oreilles, Wisconsin to observe the administration of an existing Anishinaabe education system.

Administrative Tasks and Responsibilities

Discussions of *kinamaadiwin inaakonigewin* with Elders and other Treaty #3 education stakeholders reaffirmed the importance of claiming legislative jurisdiction

⁵¹⁶ Visit <https://www.sac-isc.gc.ca/eng/1308840098023/1531400115587> for a fossilized collection of “First Nation Education Partnerships and Agreements”.

⁵¹⁷ Grand Council Treaty #3. “Chiefs in Assembly Draft Record of Decision”.

within the broad field of education. Citing *kagagiwe inaakonigewin*, our sacred law, which “establishes sovereignty over Treaty #3 territory and occupies the field of jurisdictional issues affecting the people of the Anishinaabe Nation in Treaty #3”, the Elders said “jurisdiction over education is vested in the membership of the Anishinaabe Nation in Treaty #3 who are the rights holders and are represented through their leadership of the Ogichidaa [that is, the Grand Chief] and the Grand Council Treaty #3.”⁵¹⁸ Similarly, the Community Directors of Education said its incumbent upon the Grand Council Treaty #3 to “support Treaty #3 communities local jurisdiction over education through *kinamaadiwin inaakonigewin* and follow its provisions and regulations.”⁵¹⁹ Within Treaty #3 territory, there historically has been an uneasy relationship between the communities and the central government, Grand Council Treaty #3, based on concerns of unilateral authority that communities have been subjected to through their experiences with the *Indian Act*. In order to alleviate these concerns, it was suggested by Elder Fred Kelly that the Grand Council Treaty #3 “establish and authorize a Treaty #3 Education Commission to act on its behalf to implement the provisions of the written education law.”⁵²⁰ Under this arrangement, “all matters of education” would be managed by the Treaty #3 Education Commission, who is then “responsible to the members” of Anishinaabe Nation in Treaty #3 as represented by Grand Council Treaty #3.⁵²¹ In other words, the Treaty #3 Education

⁵¹⁸ See Appendix B, sec. 6.1

⁵¹⁹ Treaty #3 Education Gathering, 2018.

⁵²⁰ Kelly, 2018.

⁵²¹ See Appendix B, sec. 7.1

Commission would effectively administer, and better communicate the elements of our education law with external forms of government, in conjunction with the consensus of its constituent communities.

From the Elders' perspective, the initial responsibility of the Treaty #3 Education Commission would be the formulation of policies, procedures, and regulations to guide the application of the written education law. This includes the establishment of a "Treaty #3 Education Plan, Code of Conduct, Curriculum, and Education Standards for the benefit of the Anishinaabe Nation in Treaty #3 and its communities" and is articulated as such in *kinamaadiwin inaakonigewin*.⁵²² In so doing, the Community Directors of Education stressed the importance of "ensuring that the language in education agreements that describe the provision of education services and programs is consistent with the language for jurisdiction" as expressed in our Sacred Law, *kagagiwe inaakonigewin*.⁵²³ These conversations eventually led to a litany of other administrative considerations such as the design of education programs and resource materials, enrollment criteria, assessments and appeals procedures, including other services such as: transportation, counselling, student housing, and means for parental engagement through an independent Community Education Council. With regard to education programming, there was unanimous consensus among all Treaty #3 stakeholders that Anishinaabe knowledge should be a part of "every course in the school curriculum."⁵²⁴

⁵²² Kelly, 2018.

⁵²³ Treaty #3 Education Gathering, 2018.

⁵²⁴ Ibid.

According to Marie Battiste, the source of Indigenous knowledge, “lies within the changing ecosystem, from which Indigenous peoples develop their awareness and their strategies of living within that ecology.”⁵²⁵ In other words, Indigenous knowledge is *local*. Thus, Treaty #3 Anishinaabe knowledge is unique to its territory, which is located in the heart of the Canadian Shield, that the *Canadian Encyclopedia* helpfully explains: “While at times a barrier to settlement, the Shield has also yielded great resources, including minerals, coniferous forests and the capacity for hydroelectric developments.”⁵²⁶ For the Anishinaabe in Treaty #3, the rugged terrain has not been a ‘barrier to settlement’, demonstrated by the fact that we have occupied the territory for thousands of years, and have effectively mastered *bush life*, in the rich tradition of the hunting and gathering mode of production.⁵²⁷ This way of life has produced knowledge that is unique, and local to its territory. Over many generations, as Marie Battiste goes on to explain, “the knowledge manifests itself in many other social forms and processes: stories, symbolic and creative manifestations, technologies, ways of being and learning, traditions, and ceremonies.”⁵²⁸ To this point, it was further agreed at the 2018 Treaty #3 Education Gathering, that Anishinaabe spirituality will be “part of the curriculum, along with ceremonies practiced in the school system, with a place offered to other faith traditions as well,” as is stated in the draft version of *kinamaadiwin inaakonigewin* of the Anishinaabe Nation in Treaty #3.⁵²⁹ This directive responds to

⁵²⁵ Battiste, 2013, p.121

⁵²⁶ Canadian Encyclopedia online. “Canadian Shield”.

⁵²⁷ See: Kulchyski, “Bush Writing”.

⁵²⁸ Battiste, 2013, p.121

⁵²⁹ Treaty #3 Education Gathering, 2018; See also: Appendix B, sec. 7.5

James Youngblood's call in *Protecting Indigenous Knowledge and Heritage* that, "Indigenous students must see themselves and their heritage as part of the educational system. In most existing educational systems, Indigenous heritage and the transmission of that heritage are missing."⁵³⁰ With this in mind, it must be said that Indigenous spiritualities, ceremonies, and cultural practices are not hollow activities; they are real, legitimate needs. They are, as Vine Deloria Jr. explains, "complexes of attitudes, beliefs, and practices fine-tuned to harmonize with the lands on which the people live."⁵³¹ As one pertinent example, Deloria Jr. goes on to say, "It is not difficult to understand that the Hopi people, living in the arid plateau and canyonlands of northern Arizona, had need of a rain dance to ensure the success of their farming."⁵³² Above all, the major purpose of religion or spirituality, within an Indigenous context at least, seems to be to understand one's place on the land, *aki*. Again, I turn to Vine Deloria Jr. in *God is Red*:

The task of the tribal religion, if such a religion can be said to have a task, is to determine the proper relationship that the people of the tribe must have with other living things and to develop the self-discipline within the tribal community so that man acts harmoniously with other creatures. The world that he experiences is dominated by the presence of power, the manifestation of life energies, the whole life-flow of a creation. Recognition that the human beings holds an important place in such a creation is tempered by the thought that they are dependent on everything in creation for their existence.⁵³³

Having said that, Treaty #3 leadership was also attentive and responsive to the fact that there will be some Anishinaabe students who will not be able to attend schools where

⁵³⁰ Battiste and Youngblood, 2000, p.88

⁵³¹ Deloria Jr., 2003, p.69

⁵³² Ibid.

⁵³³ Ibid., p.87

Anishinaabe ceremonial and spiritual practices are offered. In order to accommodate those students who attend schools within the provincial education system, the draft law states that an Anishinaabe School Trustee should be appointed to the provincial school board, so that they may ensure that the educational, cultural, and spiritual needs of our youth are being met.⁵³⁴

As the institutional structure of the Treaty #3 Education Commission continues to develop in accordance with the provisions set forth in *kinamaadiwin inaakonigewin*, another important aspect of its administration will be finance. In that regard, the draft law states that the Treaty #3 Education Commission will be responsible for negotiating and entering into contracts and agreements with funding agencies, the prime examples being the provincial and federal governments of Canada, for its “capital programs, construction, operations and maintenance.”⁵³⁵ This objective includes achieving “recognition of the inherent right and treaty right obligation of the Crown and the government of Canada to provide funds for the education of Anishinaabe learners of Treaty #3 through long term Agreements, Settlements and Contracts between the government of Canada and the Grand Council Treaty #3.”⁵³⁶ As such, while all “agreements and comprehensive transfer payments” from the federal and provincial governments are to be negotiated with the approval of the Grand Council Treaty #3, the key priority of this endeavor will be to ensure that the funding is equitable, consisting

⁵³⁴ See Appendix B, sec. 7.25

⁵³⁵ *Ibid*, sec. 7.22

⁵³⁶ *Ibid*, sec. 15.0

of “multi-year payments with mutually agreed upon accountability standards that are clear, consistent and comparable across Canada.”⁵³⁷

Additional budget considerations in the administration of an Anishinaabe education system include the costs of regional and community-based infrastructure for second and third level education services such as: professional development for faculty; curriculum research, development and evaluation; the purchase of educational materials; as well as the establishment of policies and regulations; data collection and analysis; strategic planning; and special education needs.⁵³⁸ Importantly, it will be incumbent upon the Treaty #3 Education Commission to ensure that any revenue that is collected from the state, includes “compensatory funding” that accounts for a history of failed education programs, i.e. the residential school system, incidental emergencies related to unforeseen events such as natural disasters, which can help offset the overall higher costs associated with remote, bush living.⁵³⁹ Additionally, the law states that the Treaty #3 Education Commission would be expected to apply for grants from charitable foundations and other external sources for projects related to education, such as the establishment of endowment funds, as well as scholarships and bursaries for its students.⁵⁴⁰ Further still, the development of partnerships with post-secondary institutions could be another source of revenue for the education system through

⁵³⁷ Ibid, sec. 15.7

⁵³⁸ A section of *kinamaadiwin inaakonigewin* is reserved for “special needs and gifted students” whereby a Special Education Policy Framework is to be developed by the Treaty #3 Education Commission that makes provision for schools, courses, or services for the blind, physically challenged and gifted children within the cultural and linguistic context of the Anishinaabe Nation in Treaty #3. See: Appendix B, sec. 12

⁵³⁹ Longboat, 2013, p.46

⁵⁴⁰ See Appendix B, sec. 7.13

research grants. In order to meet these objectives, and comply with internal policies relating to transparency and accountability, the Treaty #3 Education Commission would be expected to prepare an annual budget that is to be approved by the Grand Council Treaty #3, and passed by resolution from the Chiefs in Assembly. This process would “include an annual report on the Education Plan with statistics and performance indicators,” as well as reports on “the review of education standards and recommendations, a review of policies and recommendations, and a staffing review.”⁵⁴¹ As neat and tidy as that may sound, it is much more complicated in practice, as these governance processes often take months to organize and convene.

Community Education Council

Another important consideration in the development of any Indigenous education system is community participation, particularly as it relates to the involvement of parents, guardians, and Elders. The lack of community participation in educational activities has been an ongoing, steadfast complaint of Indigenous leadership that goes, at least, as far back as the ‘Indian Control of Indian Education’ opus in 1970. Harold Cardinal, a key figure in the development of that work, wrote again in 1977, stating: “Parents must regain the right to make decisions about the lives of their children; their education, the values they grow up with, their preparation for life. We are talking about the right to make the decisions that will allow our communities to flourish, the simple right to earn a living in the way we feel will best

⁵⁴¹ Ibid, sec. 7.17

reflect our identity and our society.”⁵⁴² More recently, Anishinaabe scholar Leanne Simpson has said that parental involvement in educational policy development is vital, in terms of “figuring out the kinds of citizens we want to create, the kinds of communities we want to live in, and the kinds of leaders we want to create, then tailoring our parenting and our schooling to meet the needs of our nations.”⁵⁴³ To that point, Simpson adds, “If we are truly interested in decolonizing, then we must critically evaluate how we are parenting and educating the next generation because it is one of the few areas of our lives we can assert a certain degree of control and it is critical to the decolonizing project.”⁵⁴⁴ In response to these assertions, *kinamaadiwin inaakonigewin* states that “parents, guardians, and community members may form a Community Education Council, to bring their recommendations” to the Treaty #3 Education Commission.⁵⁴⁵ As such, a representative of the Community Education Council, as chosen by its constituents, would be eligible to occupy a seat on the board of the Treaty #3 Education Commission, with an active role in “the development of education standards, policies, programs, extra-curricular services, planning, evaluating standards, setting policies on school governance, improving communication and the preparation of the Annual Report on the state of education in the school system” for the Anishinaabe Nation in Treaty #3.⁵⁴⁶ In addition to providing guidance on policy development, *kinamaadiwin inaakonigewin* states that the Community Education Council will also be

⁵⁴² Cardinal, 1977, p.222

⁵⁴³ Simpson, 2011, p.127

⁵⁴⁴ Ibid.

⁵⁴⁵ See Appendix B, sec. 13.0

⁵⁴⁶ Ibid, sec. 13.1

involved in the hands-on learning of Treaty #3 students by providing instruction on “land-based learning, oral history, cultural and spiritual knowledge, and cultural mapping of the territory,” as well as serving as a mediator in instances of student misconduct prior to the case being advanced to the Treaty #3 Education Commission for disciplinary action.⁵⁴⁷ As Linda and Keith Goulet explain, “giving voice to our language and our people in the curriculum,” and in the administration of education, helps foster “a sense of balanced ownership” between the school and the community.⁵⁴⁸

In general, the Community Education Council serves as a check and balance measure in the administration of *kinamaadiwin inaakonigewin*, that is complemented by the existence of a dispute resolution clause, whereby a ‘Special Hearing Committee’ will be established to adjudicate complaints. Moreover, the administration of the written education law is to be further supplemented by the drafting of regulations and procedures that are specifically related to any amendments that might need to be made to the law. The regulations are to be drafted by the Treaty #3 Education Commission and brought to the Grand Council Treaty #3 for approval, where they will then have the “force of law”.⁵⁴⁹ Some of the regulations that are to be considered under this section of the law include, but are not limited to: duties of the Director of the Treaty #3 Education Commission; the establishment of professional staff qualifications, training, and certification of teachers, counsellors, therapists, and other professional staff employed

⁵⁴⁷ Ibid, sec. 13.3

⁵⁴⁸ Goulet & Goulet, 2014, p.53

⁵⁴⁹ See Appendix B, sec. 17

by the Treaty #3 Education Commission; the organization, administration, and supervision of all constituent schools under the law; the establishment of education and curriculum standards; counselling services; fiscal management policies; as well as school administration guidelines that could include: attendance policy, truancy, social programming for students and their families, the calendar year, special needs and gifted students policy, home schooling, and student code of conduct.⁵⁵⁰

Treaty #3 Law-Making Process

In outlining these considerations, as well as the purpose of a written Anishinaabe education law, along with its “Guiding Principles”, I have tried to show a certain level of development or progress that has been made in a ten step approach to the Treaty #3 Law-Making Process.⁵⁵¹ According to Grand Council Treaty #3, Anishinaabe traditional law, *kete inaakonigewin*, recognizes that our relationship with all people is “based on harmony and balance between human beings and the natural world, respect for diversity and the autonomy of all peoples, the value of consensus building to manage disputes, and holistic approaches to problem solving.”⁵⁵² As such, *kete*

⁵⁵⁰ Ibid.

⁵⁵¹ Grand Council Treaty #3: “Law-Making Process”. nd.

Step 1: The people of the Nation determine a need for a law.

Step 2: Chiefs in Assembly agree with the people.

Step 3: Chiefs seek advice from Elders.

Step 4: Feast the process.

Step 5: Community Consultation.

Step 6: Report to Chiefs in Assembly.

Step 7: Chiefs move on the direction provided by the People.

Step 8: Ceremonies take place.

Step 9: Final Elders feast.

Step 10: National Assembly Approval.

⁵⁵² Longboat, 2013, p.19

inaakonigewin, requires that “consent is needed in matters affecting our traditional lands, resources, and all matters affecting our self-determination as a Nation.”⁵⁵³ These principles are consistent with the articles of the *United Nations Declaration on the Rights of Indigenous Peoples*, and other international instruments that confirm rights of Indigenous governments which state that “free, prior, and informed consent” must be obtained “before adopting and implementing legislative or administrative measures that may affect them.”⁵⁵⁴ In this regard, on May 16, 2007 at the National Assembly of the Anishinaabe Nation in Treaty #3, the principles of consultation and consensus were satisfied in resounding fashion, when one Elder exclaimed: “It is acknowledged that a written law on education has been discussed for some time. Indeed, the communities have said: ‘Get on with it!’”⁵⁵⁵ After which, a feast was had. At that moment, it could be said that Step 4: ‘Feast the Process’ and Step 5: ‘Community Consultation’ of the Treaty #3 Law-Making Process were satisfied.

In the months following this historic occasion, which has since dragged into years, a “Draft Record of Decision” emerged from the 2008 Treaty #3 Chiefs in Assembly on the “Making of a Written Law in Kinaamatiwin”.⁵⁵⁶ According to the Draft Record of Decision, *kinamaadiwin inaakonigewin* “shall be subject to, and consistent

⁵⁵³ Ibid.

⁵⁵⁴ United Nations Declaration on the Rights of Indigenous Peoples, Article 19. See also: “International Covenant on the Rights of the Child”, “International Covenant on Economic, Social and Cultural Rights”, “Expert Mechanism on the Rights of Indigenous Peoples Human Rights Council”, “Convention on the Rights of the Child”, “World Declaration on Education for All.”

⁵⁵⁵ Grand Council Treaty #3. “Notes to the Elders Gathering on Education”. 2007.

⁵⁵⁶ Grand Council Treaty #3. “Chiefs in Assembly: Draft Record of Decision On the Making of a Written Law in Kinaamatiwin”. 2008.

with, all aspects of *kagagiwe inaakonigewin* and *Anishinaabe inaakonigewin*”, which for greater certainty is our sacred and customary laws.⁵⁵⁷ It further stipulates, “notwithstanding that the law may be written in another language, Anishinaabemowin shall be its official language.”⁵⁵⁸ This provision is significant in the sense that it attends to the interpretation issues I identified earlier, of translating Anishinaabe legal concepts into a foreign language, while also making it accessible to non-language speakers, thus maintaining, and even revitalizing our legal tradition. Moreover, this stipulation recognizes that English is the language of international diplomacy, and there is a certain necessity to use it, even if only to better communicate with our neighbors. With Step 6 of the Treaty #3 Law-Making Process being “Report to Chiefs Assembly”, the Draft Record of Decision implies that a report was made to the Chiefs in Assembly, whereby the Chiefs gave direction to the Executive Director, which is the administrative arm of the Grand Council Treaty #3, on how to draft a written law on education.

In March 2019, a draft of the written education law was completed by the Technical Working Group, based on the guidance provided by Elders, youth, parents, educators and other relevant Treaty #3 stakeholders, and submitted to the Grand Council Treaty #3.⁵⁵⁹ As of the time of this writing, the draft law remains in the possession of Grand Council Treaty #3, as they determine whether the draft requires

⁵⁵⁷ Ibid.

⁵⁵⁸ Ibid.

⁵⁵⁹ A copy of the working draft of *kinamaadiwin inaakonigewin*, the written education law, is attached at the back of this dissertation. See: ‘Appendix B’.

editing or revisions, or if it is ready for another round of community consultations.⁵⁶⁰ According to Step 7 of the Treaty #3 'Law-Making Process', the Chiefs will "move on the direction provided by the People."⁵⁶¹ In order to initiate this phase, a motion will be made at a formal gathering to discuss the draft education law at a subsequent Treaty #3 Chiefs Assembly, at which time, the Chiefs will vote and by resolution, "accept in principle the draft Education Law and begin the community consultation phase and public information sessions."⁵⁶² In due time, Grand Council Treaty #3 will then provide copies of the draft education law to its communities, notifying the members of its intention to pass a Treaty #3 Education Law based upon community approval. Once copies of the draft law have been distributed to the communities, Grand Council Treaty #3 is to give community members at least 30 days notice of a 'General Meeting' "to discuss the proposed Education Law."⁵⁶³ Following the 'General Meeting', community members will be given another 30 day time period to provide comments on the draft law, which can be submitted "in writing or orally by deposition" to a designated official of the Grand Council Treaty #3.⁵⁶⁴ At the end of the second 30 day period, Grand Council Treaty #3 will then "review the comments and decide on amendments to the draft Education Law."⁵⁶⁵ If amendments to the draft law are required, Grand Council Treaty #3 will make the necessary amendments, and then reintroduce the amended

⁵⁶⁰ Longboat, 2013b, p.7

⁵⁶¹ Grand Council Treaty #3. "Law-Making Process". nd.

⁵⁶² Longboat, 2013b, p.8

⁵⁶³ Ibid.

⁵⁶⁴ Ibid.

⁵⁶⁵ Ibid.

draft law to the communities, following the same procedures as before, so as to give the communities sufficient time to review the amendments of the draft law. Once it is determined that the people are in favor of the draft law, and no other amendments are necessary, a vote can take place at a 'Special Meeting' with the Treaty #3 Chiefs in Assembly to pass the Education Law. In order to pass, the Education Law must receive 75% support from the Chiefs in Assembly, at which time, it can finally be said that Step 7 of the Treaty #3 'Law-Making Process' has been fulfilled.

Once the draft education law has been accepted by the Treaty #3 Chiefs in Assembly, the *Ogichidaa* and the Head of the Education Portfolio will then refer the document to the Elders for direction as to the next protocols required. As stated in the Treaty #3 'Record of Decision', "Upon receipt of the completed draft written law by the Elders, they will advise on the protocols for its validation and consecration in ceremony."⁵⁶⁶ This traditional, highly ritualized practice involving the Elders constitutes Step 8 of the Treaty #3 'Law-Making Process': "Ceremonies take place."⁵⁶⁷ While in ceremony – which for greater clarity, traditionally involves Sweat Lodge and Shaking Tent ceremonies – the Elders in Assembly will scrutinize the draft and ensure it is consistent with Sacred and Traditional Laws.⁵⁶⁸ During this time, the Elders may also "advise on revisions or reconsideration of the written law", based on their respective

⁵⁶⁶ Grand Council Treaty #3. "Chiefs in Assembly: Draft Record of Decision On the Making of a Written Law in Kinaamatiwin". 2008.

⁵⁶⁷ Grand Council Treaty #3. "Law-Making Process". nd.

⁵⁶⁸ Kelly, "Executive Summary and Elements of The Constitutional Government of the Anishinaabe Nation in Treaty #3." nd.

knowledges.⁵⁶⁹ Following the written law's validation and consecration in traditional ceremony, the Elders will then "transmit the written law in Kinaamatiwin to the Ogichidaa who will acknowledge its receipt in the name of the Anishinaabe Nation in Treaty #3 and certify a true copy."⁵⁷⁰ When the Education Law is approved, Grand Council Treaty #3, will pass a resolution, by way of a National Chiefs Assembly, to proclaim the effective date of the law. At this time, "all members" of the Treaty #3 National Assembly "will sign the resolution"⁵⁷¹, and a traditional feast and celebration of the written law will follow. In complying with these directives and protocols, the Treaty #3 'Law-Making Process' can be said to be complete, with the final two steps being "Final Elders Feast", and "National Assembly Approval".⁵⁷² Notwithstanding the approval of the written law, it is important to note that "the law takes effect locally when an individual constituent nation assents" to the provisions of the law, so as to maintain harmony and respect for an individual nation's inherent right to autonomy, self-determination, and independent sovereignty.⁵⁷³

Summary

In the time period since our travails with the Residential School System, and more recently, the public education system, much energy and vision has gone into

⁵⁶⁹ Grand Council Treaty #3. "Chiefs in Assembly: Draft Record of Decision On the Making of a Written Law in Kinaamatiwin". 2008.

⁵⁷⁰ Ibid.

⁵⁷¹ Longboat, 2013b, p.12

⁵⁷² Grand Council Treaty #3. "Law-Making Process". nd.

⁵⁷³ Kelly, "Executive Summary and Elements of The Constitutional Government of the Anishinaabe Nation in Treaty #3." nd.

revitalizing our traditional Education Law, so that we may begin to establish and administer our own education systems. For the Anishinaabe, as Leanne Simpson writes in *Dancing On Our Turtle's Back*, we are entering the period of the 'Seventh Fire'. During this time, she says, it is the responsibility of this generation of Anishinaabe to, "pick up the pieces of our lifeways, collectivize them and build a political and cultural renaissance and resurgence. It is also foretold that if this is done in a good way, it has the power to transform settler society generating political relationships based on the Indigenous principles of peace, justice, and righteousness as embodied in *mino bimaadiziwin*."⁵⁷⁴ In order to do this, the written laws we create, *ozhibiige inaakonigewin*, must be consistent with our traditional values and beliefs, and especially our Sacred and Traditional Laws, but must also reflect the conditions of our present society, both locally and abroad. By establishing purpose and guiding principles that follow a traditional law-making process, a foundation has been laid for a written law in education, *kinamaadiwin inaakonigewin*. It is a foundation that is further reinforced by the *consent* and *consensus* of its people, which has the Anishinaabe Nation in Treaty #3 on the cusp of achieving 'peace, justice, and righteousness' as described by Simpson. Yet, for now, there is still much more work to be done before our act of self-determination is actually actualized. Beyond carrying out the last steps of the law-making process, an institutional entity must be formed – that is, the Treaty #3 Education Commission – and equipped with a leader who is one of our people, and one

⁵⁷⁴ Simpson, 2011, p.66

who has the knowledge and the ability to transform our vision into reality. That is not to say all power will rest with this one person, but to be someone who has a strong, representative voice that speaks and acts on behalf of the people. Moreover, a vast series of policies and regulations need to be established that not only supplement the written education law, but also give form and content to the incumbent Treaty #3 education system. In the next chapter, I will attempt to address these outstanding issues with an examination of administrative concerns such as the implementation of an Education Plan and other policy and regulatory matters such as the development of curriculum and education standards. This analysis will include insights learned from the success and failures of *other* education systems, and further discuss why *kinamaadiwin inaakonigewin* must be recognized and affirmed by the Canadian state.

Chapter 4

Reconciliation as Recognition *and* Affirmation

*When the waiting creatures had given up,
The muskrat floated to the surface more dead than alive,
But he clutched in his paws a small morsel of soil.
Where the great had failed, the small succeeded.
While the muskrat was tended and restored to health,
The spirit woman painted the rim of the turtle's back
With the small amount of soil that had been brought to her.
She breathed upon it and into it the breath of life.
Immediately the soil grew, covered the turtle's back,
And formed an island.*

- Basil Johnston, *Ojibway Heritage*

As I have argued throughout this study, the hardships that Indigenous peoples and nations have endured as a result of colonization, have made it necessary to revitalize our legal traditions. Fortunately, as we have entered a new era of Indigenous and Settler relations, the Canadian state has taken important first steps towards reconciling its relationship with Indigenous nations – to the extent that it has admitted its guilt in the Residential School System; committed to implement the *United Nations Declaration of Rights of Indigenous Peoples*; as well as promised to fulfill the Truth and Reconciliation Commission's 'Calls to Action' - but has yet to meaningfully deliver on these promises. I believe that these are commitments that also require a reconciliation of the treaty relationship. As John Borrows has said in *Resurgence and Reconciliation*, "If

we followed these principles, we would find ourselves implementing Indigenous law as embedded in treaties. In the process we would discover that the resurgence of Indigenous law would help reconcile us to one another and bind ourselves in healthier relationships with the earth."⁵⁷⁵ In order to accomplish these tasks, it is imperative that the governments of Canada recognize Indigenous laws – particularly as they relate to education – and affirming that gesture with concrete, observable action. This chapter will attempt to further illuminate what these processes of recognition and affirmation look like when applied in the context of *kinamaadiwin inaakonigewin*, the Anishinaabe written law in education.

Recognition, in a Hegelian sense, is earned and won through struggle and confrontation. According to Hegel, when a ‘consciousness’ – which could represent an individual or national consciousness – meets an ‘other consciousness’, an inevitable ‘struggle’ will ensue at some point over the course of time in order to assert order in any given social dynamic. The ‘struggle’ may not necessarily be a physical confrontation, a battle of brawn per se; it could be a battle of wits, a confrontation of an intellectual, or perhaps, one of an ideological or legal nature. Through this struggle, one consciousness recognizes the *other* consciousness, and order is achieved.⁵⁷⁶ Indigenous peoples in Canada have certainly experienced their share of struggle as a result of deceit and coercion manifested by state policy that is only beginning to be recognized by broader society. In more practical terms, deceit has been and continues to be experienced by

⁵⁷⁵ Borrows, 2018, p.53

⁵⁷⁶ See: Hegel in *Phenomenology of Mind*.

Indigenous peoples through the state's refusal to honor its treaty obligations, while the residential school system epitomizes the coercion employed by the state to suffocate Indigenous consciousness. That we, as Indigenous peoples, are still here, still struggling, is a testament to the virtue of our consciousness, and the catalyst to which our right to self-determination will eventually be recognized. In other words, the struggle will continue until our consciousness is recognized and affirmed. It is our *truth*, Fanon says, "what hastens the dislocation of the colonial regime, what fosters the emergence of the nation. Truth is what protects the 'natives' and undoes the foreigners."⁵⁷⁷ Thus, Indigenous peoples must continue to speak our truths of injustice, oppression, redemption, and reconciliation. In order for our voice to be heard, however, I think we must be able to speak the truth in such a way that is recognized and understood by Western society – that is, through the written word, or phonetic notation – without resorting to violence.

Recognition, however, means nothing without affirmation. It is like pillow talk without follow through. As Harold Cardinal says: "If claims regarding treaties or aboriginal rights are not settled using our definitions of nation, identity, and religious right, there will be a continuing sense of injustice and grievance among Indians, which will destroy the settlement."⁵⁷⁸ For justice to be served then, state affirmation must come bearing gifts of political, legal, and economic action that support Indigenous education initiatives. Some Indigenous scholars, however, have challenged this

⁵⁷⁷ Fanon, 1963, p.14

⁵⁷⁸ Cardinal, 1977, p.152

assertion on the basis that there is no willingness on the part of Canadians or the state to change the status quo, and have therefore decided to ‘turn their back’ on Canada. In *As We Have Always Done*, for example, Leanne Simpson writes:

Very few Canadians will directly proclaim they are in favor of the position of Indigenous peoples in Canada, but a very large number of Canadians will do everything they can to preserve the social, cultural, and economic systems of the country, even though this system is predicated on violence and dispossession of Indigenous lands and bodies. Therefore, we do not need the help of Canadians.⁵⁷⁹

In the context of Treaty #3 – with regard to recognition and affirmation of the written education law – I share the concern of Aaron Mills in terms of the effectiveness of a ‘turn away’ strategy to have the law recognized and affirmed by the federal government because of the anti-relational nature of the strategy, “which cannot be squared with Anishinaabe constitutionalism.”⁵⁸⁰ Moreover, I am of the opinion that such a position fundamentally contradicts the ‘spirit and intent’ of treaties, which are predicated on the notion of ‘peace, friendship, and respect’, *as long as the sun shines, and the rivers flow*. That said, it is to be acknowledged that different social, economic, and political contexts may require different strategies and approaches to cultural resurgence in order to be effective in the pursuit of justice. For example, Anishinaabe scholar Gail Guthrie Valaskakis has written about the “walleye warriors” who resolutely practiced their treaty rights to fish season after season – even while slogans such as “save a

⁵⁷⁹ Simpson, 2017, p.101

⁵⁸⁰ Mills, 2017, p.244

pickerel, spear an Indian” abounded – until their treaty right was eventually formally recognized by the United States government.⁵⁸¹ Thus, for Leanne Simpson, who theorizes cultural resurgence in the context of the Michi Saagig Nishnaabeg territory – whose lands are completely occupied by Eastern Ontario settler townships, as a result of fraudulent land surrenders stemming from the Williams treaties – a ‘turn away’ strategy might be the only viable option to have their treaty rights recognized and affirmed.

On Struggle and Resolution

Affirmation, as a form of restitution in the reconciliation process, involves “the return of what was stolen, accepting reparations (either land, material, or monetary recompense) for what cannot be returned, and forging a new socio-political relationship based on the Settler state’s admission of wrongdoing and acceptance of the responsibility and obligation to engage Indigenous peoples in a restitution-reconciliation peace-building process.”⁵⁸² Without this, I suspect that Canada will experience an uptick – both in frequency and scale – of Indigenous protest and civil disobedience, the likes of which most recently observed in Tyendinaga.⁵⁸³ In Glen Coulthard’s view, however, this is exactly what *needs* to happen. He says that in order

⁵⁸¹ See: Valaskakis, Dion Stout, and Guimond, 2009.

⁵⁸² Alfred, 2009a, p.154

⁵⁸³ In February 2020, members of the Mohawk nation set up a rail blockade in Tyendinaga in support of the Wet’suwet’en hereditary chiefs who oppose the construction of a natural gas pipeline that is scheduled to be built across Wet’suwet’en traditional territory. This action was followed up with similar protests in other parts of Canada. See: CBC News, “OPP arrest 10 demonstrators at Tyendinaga blockade site, charges pending”, February 24, 2020.

to remove colonial, racist, patriarchal, legal and political obstacles, Indigenous peoples must “continue to assert our presence on all of our territories, coupled with an escalation of confrontations with the forces of colonization through the forms of direct action that are currently being undertaken by communities like Elsipogtog” and Tyendinaga.⁵⁸⁴ Coulthard goes on to explain that rail and road blockades, and other sites of reoccupation – Oka and Ipperwash immediately come to mind – should be considered expressions of ‘direct action’ for the following reasons:

First, the practices are directly undertaken by the subjects of colonial oppression themselves and seek to produce an immediate power effect; second, they are undertaken in a way that indicates a loosening of internalized colonialism, which is itself a precondition for any meaningful change; and third, they are prefigurative in the sense that they build the skills and social relationships (including those with the land) that are required within and among Indigenous communities to construct alternatives to the colonial relationship in the long run.⁵⁸⁵

Taiaiake Alfred further argues that these forms of ‘direct action’ are the basis of a contention on the part of Indigenous peoples, which “demands accountability for the underlying power relationship and the state’s domination of our existence. It refuses to be drawn into maintaining the colonial system, and takes a firm stand (intellectually, politically, and physically) in defence of the principles, institutions, and lands that form the core of indigenous nations.”⁵⁸⁶ From this perspective, Albert Memmi’s astute words in *The Colonizer and the Colonized* are prescient: “Far from being surprised at the revolts

⁵⁸⁴ Coulthard, 2014, p.172

⁵⁸⁵ Ibid, p.166

⁵⁸⁶ Alfred, 2009a, p.100

of colonized peoples, we should be, on the contrary, surprised that they are not more frequent and more violent.”⁵⁸⁷ Similarly, Frantz Fanon adds to this critical analysis with a poignant rebuke of state authority:

The very same people who had it constantly drummed into them that the only language they understood was that of force, now decide to express themselves with force. In fact the colonist has always shown them the path they should follow to liberation. The argument chosen by the colonized was conveyed to them by the colonist, and by an ironic twist of fate it is now the colonized who state that it is the colonizer who only understands the language of force.⁵⁸⁸

Yet, as important as Indigenous forms of resistance are to tyrannical government policies, it must also be acknowledged that a full-scale revolution is not a realistic option for Indigenous peoples, given their drastically minority status in Canada, as well as the fact that the use of violence runs contrary to many Indigenous philosophies. With this in mind, it is important to make clear that Indigenous peoples’ expressions of ‘direct action’ – in the forms of blockades, reoccupation, marches, hunger strikes, and even the writing of our own laws – are not meant to usurp state authority, but to attain recognition and affirmation to the fact that our communities are suffering, and that a collective shift in ideological values is needed in order to properly address the suffering. To put it differently, when Indigenous people protest the injustices perpetrated against them and their communities, they are drawing attention to the fact that they are in crisis mode, and require political and economic support from a state

⁵⁸⁷ Memmi, 1965, p.127

⁵⁸⁸ Fanon, 1963, p.42

whose own financial resources and wealth come in large measure from tax revenues gained through underwriting the extraction of natural resources on Indigenous lands. As Harold Cardinal and others have repeatedly said, Indigenous nations and the Canadian state “must discover that not only are they not adversaries, they are in fact partners, more than partners – brothers and sisters – who have similar problems to face, the first of which is the creation of a better environment for the future.”⁵⁸⁹ In this context, it is imperative that the state recognizes and affirms the kinship relationship that exists with Indigenous peoples as well as with the land, and that unilateral policy decisions will not work: “A joint effort is the only answer. Both parties must get to know each other better by encountering new situations and ideas together. It’s got to be done by both. It will not succeed if it is done by one without the other.”⁵⁹⁰

There are many lessons to be drawn from previous and ongoing political engagements between Indigenous peoples and the Canadian state. One such lesson is in fact universal: violence begets more violence. In order to avert potentially violent confrontations, we must return to moral principles of kinship, and “peace and good will” – as I discussed in Chapter 2 – as it was stated in the treaties.⁵⁹¹ These principles invoke the spirit and intent of treaties and other agreements such as the Covenant Chain, which is notably, “one of the original agreements” between Indigenous nations and the Crown.⁵⁹² In *Linking Arms Together*, Robert Williams Jr. uncovers a quote from a

⁵⁸⁹ Cardinal, 1977, p.21

⁵⁹⁰ Ibid, p.30

⁵⁹¹ See: ‘Appendix A: Treaty 3’

⁵⁹² National Post. “Minister reports ‘modest progress’ after blockade talks with First Nation.” February 16, 2020.

1796 Treaty Council that describes how the treaty relationship should be observed and acted upon:

“Brothers: We pray you to take this matter into good consideration, and do by us as you would wish to be done by Brothers, this is what we wish for; that every brother might have their rights throughout this continent, and all to be of one mind, and to live together in peace and love, as becometh brothers; and to have a chain of friendship made between you and us, too strong ever to be broke, and polished and brightened so pure as never to rust. This is our sincere wishes.”⁵⁹³

The notion of ‘polishing the silver’ – or to put it differently, renewing the relationship – is as old as the art of diplomacy itself, and is in fact, a fundamental element of any diplomatic negotiation. In this regard, the failure to renew treaties from the Confederation era is nothing short of negligent. In the context of Treaty #3, specifically, if we consider what was spoken – as well as written – of the negotiation by the Treaty Commissioner Alexander Morris himself, it seems evident that an enduring, healthy relationship is predicated on principles of peace and goodwill. By his own account in *The Treaties of Canada*, just prior to signing the treaty, Morris said:

I hope we are going to understand one another today. And that I can go back and report that I left my Indian friends contented, and that I have put into their hands the means of providing for themselves and their families at home. ... we are anxious to show you that we have a great desire to understand you – that we wish to do the utmost in our power to make you contented so that the white and the red man will always be friends.⁵⁹⁴

⁵⁹³ Williams Jr., 1999, p.121

⁵⁹⁴ Morris, 1880, p.66

I will note here that the phrase, “I have put into their hands the means of providing for themselves” is of particular interest, since it connotes an element of self-determination with which the Anishinaabe are recognized to possess in the pursuit of the good life: *mino-bimaadziwin*. One such pursuit would no doubt include education, for which the means, or resources, must be provided. Apart from that, Robert Talbot notes that upon concluding the treaty negotiation, “Morris took Mawedopenais’s hand and promised that he would keep his word, believing that the treaty he was signing would ‘bind the red man and the white together as friends forever.’”⁵⁹⁵ Again, we see that the promises were meant to be honored, in the interest of being friends, ‘always’ and ‘forever’; principles that can only be accomplished through regular maintenance and renewal.

On the interpretation of sociopolitical discourse, which would include diplomatic processes such as the treaties and the Covenant Chain, Michel Foucault argues in *The Archaeology of Knowledge and the Discourse on Language* that “these systems of formation must not be taken as blocks of immobility, static forms that are imposed on discourse from the outside, and that define once and for all its characteristics and possibilities.”⁵⁹⁶ Rather, they should be viewed as living entities that must be nourished, and treated with respect, since they help define and articulate the spirit and intent of the relationship set forth. The statements made during these diplomatic processes must

⁵⁹⁵ Talbot, 2009, p.78

⁵⁹⁶ Foucault, 1972, p.74

obviously be considered within the context that they were made, but also allow for modification with the passage of time. According to Foucault:

The statement, then, must not be treated as an event that occurred in a particular time and place, and that the most one can do is recall it - and celebrate it from afar off - in an act of memory. ... [The statement] is endowed with a certain modifiable heaviness, a weight relative to the field in which it is placed, a constancy that allows for various uses, a temporal permanence that does not have the inertia of a mere trace or mark, and which does not sleep on its own past.⁵⁹⁷

In other words, the treaty must be allowed to be constantly modified in order to give relevance to its temporal permanence. As Michael Coyle points out in *The Right Relationship*, in entering into a relationship expected to endure indefinitely, “the historical treaty partners would be prepared, in the face of significant changes in circumstances over time, to negotiate, in good faith, a new consensus as to how their treaty understandings should be renewed to address both sides’ contemporary needs and interests in relation to the treaty lands.”⁵⁹⁸ That is to say, a formal process must be established to renew the terms of the treaty, the likes of which that are typical – if not, mandatory – in standard collective bargaining agreements today. In my view, it makes sense to renew the terms every ten years, so that treaty obligations become major political platforms, and are in constant view of the public, thereby facilitating a transparent and accountable political environment. Moreover, renewing the terms of the treaty every ten years would give

⁵⁹⁷ Ibid, p.104

⁵⁹⁸ Coyle, 2017, p.61 (emphasis in text)

enough time to implement new policies and assess their impact, while also bridging the needs of one generation to the next.

A second lesson, as I previously discussed in Chapter 1, relates to ideological differences about the land, *aki*. When treaties were negotiated between Indigenous nations and the Crown, a major point of emphasis for Indigenous leadership was ensuring that their people would be able to maintain their traditional way of life, as well as teach this way of life to their children, but also have the choice to participate in broader society and the market economy if they so wanted. As Michael Asch points out in *On Being Here to Stay*, the Crown promised “to provide assistance in times of need so that they would be ‘free from hunger’, to ensure that they would be as ‘wealthy’ as the Settlers, and, perhaps most important of all, to make certain that their economic security would not require that they be required by the Crown to change their way of life.”⁵⁹⁹ At the same time, however, the Crown also sought to preserve its interest in the land by stipulating its desire to take up “settlement, mining, lumbering” and “other purposes”.⁶⁰⁰ Curiously, these different ideologies with fundamentally opposing, dichotomous interests in fact meet together in the hunting and fishing clause of the numbered treaties, shown here:

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*

⁵⁹⁹ Asch, 2014, p.94

⁶⁰⁰ See: ‘Appendix A: Treaty #3’ (emphasis added)

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. ⁶⁰¹

That the Crown exercised its right to pursue its mining, lumbering, and hydro avocations, and that these practices in effect interfered – indeed, compromised – Indigenous nations’ ability to sustain their ways of life is one of the primary reasons why there has been so much dispute and discord in the treaty relationship. As Gina Starblanket and Heidi Stark have pointed out, “settler movements towards development, technological advancement, progress, and innovation have a strong association with the discontinuity or loss of Indigenous traditions.”⁶⁰² Moreover, Sandy Grande argues that the omnipresence of corporate development and its “pervasive impact on indigenous lands has forced local tribes into relations of economic dependency (read: exploitation), cultivating an unhealthy reliance on the revenues and jobs generated from the mining industry.”⁶⁰³ In this regard, Harold Cardinal writes that Indigenous nations bear a responsibility to offer a solution that is beneficial for all stakeholders:

If we go to the government and tell them why they are doing something wrong, then we have a responsibility to offer a solution. It cannot be a solution beneficial only to Indian people. In the long run, that sort of one-sided solution never works. The onus is on us to make certain that the government can live with that solution, that the government can see the value and benefit of that solution, and that it is just as beneficial for them as it is for us.⁶⁰⁴

⁶⁰¹ Ibid.

⁶⁰² Starblanket and Stark, 2018, p.196

⁶⁰³ Grande, 2004, p.75

⁶⁰⁴ Cardinal, 1977, p.167

With that in mind, in *Red Skin, White Masks*, Glen Coulthard discusses a concept of 'grounded normativity' which he says is:

best understood as a struggle primarily inspired by and oriented around *the question of land* – a struggle not only *for* land in the material sense, but also deeply *informed* by what the land *as a system of reciprocal relations and obligations* can teach us about living our lives in relation to one another and the natural world in nondominating and nonexploitative terms – and less around our emergent status as 'rightless proletarians.' I call this place-based foundation of Indigenous decolonial thought and practice *grounded normativity*, by which I mean the modalities of Indigenous land – connected practices and longstanding experiential knowledge that inform and structure our ethical engagements with the world and our relationships with human and nonhuman others over time.⁶⁰⁵

Coulthard's concept of 'grounded normativity' and the teachings it provides, seems to point to a potential solution to our collective worries: *indigenized education*, a system of education that is founded on traditional Indigenous philosophies of relationship, land stewardship, balance, peace, and harmony. Indeed, in this age of environmental crisis due to deforestation, resource extraction, and industrial development, Indigenous knowledge about the land, and how we care for it, has never been more important to the survival of our species, and ultimately the world.⁶⁰⁶ As James Tully says: "There are important lessons from a sustainable human-with-nature relationship for a sustainable human-with-human relationship because all human-with-human relationships (social

⁶⁰⁵ Coulthard, 2014, p.13

⁶⁰⁶ As one example supporting this fact, in 1987, the World Commission on Environment and Development stated that Indigenous "communities are the repositories of vast accumulations of traditional knowledge ... the larger society ... could learn a great deal from their traditional skills in sustainably managing very complex ecological systems." See: Goulet & Goulet, 2014, p.55

systems) are embedded in and dependent on human-with-nature relationships.”⁶⁰⁷ As a critical construct, ‘grounded normativity’ has many elements that are in line with the principles I outlined in the previous chapter on *kinamaadiwin inaakonigewin*, the Treaty #3 written education law. Thus, it could be said that by developing and implementing *kinamaadiwin inaakonigewin* in a good way – that is, with recognition and affirmation from the state – we will be taking important steps towards repairing our frayed relationship. This process would be akin to re-polishing the silver on the Covenant Chain, which means honoring the treaties, and ultimately recommitting to peacefully co-exist with one another. Finally, with regard to indigenized education, Leanne Simpson makes the critical point that “Indigenous education is not Indigenous or education from within our intellectual practices unless it comes through the land, unless it occurs in an Indigenous context using Indigenous processes.”⁶⁰⁸ In other words, *indigenized education* means Indigenous peoples must be in control of Indigenous education using Indigenous processes. *Kinamaadiwin Inaakonigewin* is the framework for which that can happen. In light of these extensive considerations, the rest of this chapter will attempt to chart a path upon which these objectives, and the overall goal of reconciliation can be traced and followed.

⁶⁰⁷ Tully, 2018, p.86

⁶⁰⁸ Simpson, 2017, p.154

On Transitioning from Canadian Law to Indigenous Law

In the previous chapter, I provided some historical context to the circumstances that has led the Anishinaabe Nation in Treaty #3 to develop our own written law in education, *kinamaadiwin inaakonigewin*. Briefly stated, “the primary reason for the initiative and the thrust Indian organizations put into Indian control of Indian education was that the existing educational programmes, devised and provided by Indian Affairs, and the monies allotted to those education programmes, were not adequate.”⁶⁰⁹ Although significant progress has been made in the Treaty #3 law-making process, including the drafting of a proposed education law, a lot remains to be done before the law can be ratified, and an Anishinaabe education system can be established. As I previously indicated in Chapter 3, one of the primary tasks will be to establish a Treaty #3 Education Commission to administer the programs and services of the corresponding Treaty #3 Anishinaabe education system. In addition to assessing the education needs and demands of each constituent community, as well as acquiring the requisite financial support from funding agencies to do its work, the Treaty #3 Education Commission will have to produce a number of policies and regulations related to its administrative agenda.⁶¹⁰ Once the law is ratified, however, the Grand Council Treaty #3 will have to recruit and select a Head of Education to provide leadership and direction in the administration of the Treaty #3 Education Commission. As Chairperson of the Board, and Head of the education portfolio, this person will be

⁶⁰⁹ Cardinal, 1977, p.87

⁶¹⁰ Longboat, 2013, p.11

responsible for designing “policies, plans, and programs that serve the educational goals” of the Anishinaabe Nation of Treaty #3, as well as addressing the specific – that is to say, local – education needs of each constituent community.⁶¹¹ This process will include establishing a Board of Directors for the Treaty #3 Education Commission comprised of Treaty #3 Elders, parents who are active members on the Community Education Council, and community Directors of Education.

In consideration of the initial tasks and responsibilities of implementing *kinamaadiwin inaakonigewin*, Diane Longboat – who is a respected Indigenous legal scholar – suggests that from the point in time that a written education law is ratified until its full implementation, that “a period of transition of two years”, be allowed, “before coming into full implementation in order to enact all of the normal procedures of the Education Law.”⁶¹² During this ‘period of transition’, it will be the responsibility of the Treaty #3 Education Commission to seek formal recognition and affirmation from the state that its federal and provincial laws relating to education “will cease to apply” wherever *kinamaadiwin inaakonigewin* is decided to be the prevailing education law.⁶¹³ This process is consistent with what John Borrows has written about in *Law’s Indigenous Ethics*: “Anishinaabe law calls for the reversal of federal and provincial laws directed towards diminishing reserves and assimilating Indigenous peoples.”⁶¹⁴ Until such recognition and affirmation can be achieved however, the existing education programs

⁶¹¹ Ibid, p.27

⁶¹² Ibid, p.12

⁶¹³ Ibid, p.11

⁶¹⁴ Borrows, 2019, p.43

and services of each community will continue to be administered under the authority of its local government, with support from the Grand Council Treaty #3. That is also to say that all contracts of education personnel, as well those contracts and agreements made for the purpose of finance, “will continue to be in force until they have been renegotiated, terminated, or reorganized with mutual consent according to the provisions of the Education Law.”⁶¹⁵ According to Longboat, Indigenous education law “does not abrogate the rights of its members based on inherent or Treaty rights or their rights established in the federal laws of Canada;” nor does the law “diminish the Honour of the Crown, the trust responsibility of the government of Canada or its duty to provide funds for the education of the First Nation members.”⁶¹⁶ Finally, notwithstanding the state’s cooperation of these objectives, the transition period is also important in the sense that it allows for the completion of all policies and regulations relating to the written education law; at which point, it can finally be said that *kinamaadiwin inaakonigewin* “supersedes any other Act passed federally or provincially or territorially, or any regulations of any institution, agency or body with respect to management, finances, programs, certification of standards and all matters regarding First Nation education” as defined by the Grand Council Treaty #3 and its representative body, the Treaty #3 Education Commission.⁶¹⁷

⁶¹⁵ Longboat, 2013, p.12

⁶¹⁶ Ibid

⁶¹⁷ Ibid, p.13

Education Plan

Given that Indigenous communities and nations in Canada have historically struggled to launch successful education programs as a result of chronic underfunding, this will undoubtedly be a challenge that the Anishinaabe Nation in Treaty #3 must address. That said, in order to ensure a smooth period of transition, the Treaty #3 Education Commission will have a monumental task of striking a delicate balance between developing an Education Plan that not only meets the needs of the people it is intended to serve, but one that is also palatable to its primary funding agency, the Canadian government. As Harold Cardinal says, “to be successful, any development proposal must first have the support of the group or individual it is designed to help, and second, the support of whoever or whatever is financing it.”⁶¹⁸ In this regard, the Education Plan should be structured and re-structured continually as both, a five year and a ten year strategic plan that reflects the Anishinaabe Nation of Treaty #3's “spiritual, social, cultural, health, education, economic and environmental objectives and the long term development goals” of the education system, with a view towards sustainability and execution of goals.⁶¹⁹ As such, *kinamaadiwin inaakonigewin* contains a clause which allows the Education Plan to be modified on a cyclical basis so as to best represent the educational needs of the Anishinaabe Nation in Treaty #3 for each generation of learners, as well as incorporate the most recent “social and economic trends of Canadian society with a view to impacts on the Anishinaabe Nation of Treaty

⁶¹⁸ Cardinal, 1977, p.52

⁶¹⁹ Longboat, 2013, p.28

#3 and the need for skilled labour, workers in the professions, technology professionals, general labour needs for employment.”⁶²⁰

Apart from assessing annual costs for education programming and service delivery, which would include construction and renovation projects, *kinamaadiwin inaakonigewin* states that the Education Plan must also weigh the “housing, sanitation, nutrition, and the general health and social needs that impact educational success” of Treaty #3 youth.⁶²¹ At a fundamental level, the Education Plan ought be to viewed as an exercise of the Anishinaabe Nation in Treaty #3’s basic human rights to in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples*, as well as a manifestation of the treaty right to education. This point is in line with a policy paper written by the Assembly of First Nations, entitled ‘Tradition and Education: Towards a Vision of Our Future, A Declaration of First Nations Jurisdiction Over Education’, which asserts: “Education for First Nations people is a matter of an inherent aboriginal right. The federal government has a legal obligation through various treaties to provide adequate resources and services for education. The federal government is obligated to provide resources for quality education programs, facilities, transportation, equipment, and materials to meet the needs as determined by First Nations.”⁶²² Thus, if longstanding treaty disputes and the denial of basic human rights accorded to Indigenous peoples is the cause of so much conflict – particularly as this relates to

⁶²⁰ See: Appendix B, sec. 8.4

⁶²¹ Ibid, sec. 8.2

⁶²² AFN, “Tradition and Education: Towards a Vision of Our Future, A Declaration of First Nations Jurisdiction Over Education”, p.2

education – then the recognition and affirmation of an Education Plan that is designed by Indigenous peoples for Indigenous peoples is one tangible way in which the state can redeem itself from its past, heinous history.

Education Standards

In addition to the development of an Education Plan, the Treaty #3 Education Commission will also be responsible for the establishment of Education Standards for the Treaty #3 Anishinaabe education system. According to Diane Longboat, Education Standards refer to the “levels of performance of students or requirements demanded by the educational institution for successful completion of programs of study.”⁶²³ In this regard, *kinamaadiwin inaakonigewin* states that the Education Standards of the Treaty #3 Anishinaabe education system will take into account, “the importance of language, culture, history, spirituality and traditional knowledge systems of the Anishinaabe Nation in Treaty #3.”⁶²⁴ From a procedural standpoint, the Education Standards are to be developed in accordance with the nation’s sacred law, *kagagiwe inaakonigewin*, under the supervision and counsel of “Elders, educators, community members, parents, and students.”⁶²⁵ This means that once the standards have been developed by the Treaty #3 Education Commission, they are to be approved and ratified through a formal resolution by the Grand Council Treaty #3 at a National Chiefs Assembly.

⁶²³ Longboat, 2013, p.40

⁶²⁴ See Appendix B, sec. 11.3

⁶²⁵ Longboat, 2013, p.43

As I previously mentioned in Chapters 2 and 3, one of the major, and potentially contentious, aspects of getting *kinamaadiwin inaakonigewin* recognized and affirmed involves achieving the harmonization of intra-government education laws. That said, the challenge is presented as one in which provincial governments in Canada have historically been very zealous in defending their legal jurisdictions, with education being one of those jurisdictions. In this regard, ever since the signing of Treaty #9, where the Crown first insisted that the provincial government of Ontario be included in treaty negotiations, Canada has always made a point to say that Indigenous governance structures and laws are subject to existing federal and provincial laws.⁶²⁶ With this in mind, one of the knocks on Indigenous education systems is that they are lacking in academic rigor. As such, virtually all agreements that have ever been negotiated by Indigenous nations and the state since the treaties, contain a ‘transferability clause’ which essentially states that any education program that is undertaken by an Indigenous nation must conform to provincial standards.⁶²⁷ Nevertheless, with regard to *kinamaadiwin inaakonigewin*, the Anishinaabe Nation in Treaty #3 is essentially flipping this caveat on its head by insisting, in its own terms, that the Education Standards of the Treaty #3 education system must “meet or exceed those of the provinces and territories, will preserve Anishinaabemowin, cultural and spiritual traditions, while enabling students to develop to their maximum potential.”⁶²⁸ One of the reasons that Treaty #3 leadership have identified this clause as important – in

⁶²⁶ For a more comprehensive account of this history, see: Long, 2010.

⁶²⁷ See: Forsythe, 2018.

⁶²⁸ See Appendix B, sec. 11.2

addition to obtaining Crown support – is so that students may transfer to an adjacent education system, if circumstances dictate as such. Some scholars, however, have challenged the notion of transferability on grounds that the necessity of transferability constitutes an infringement of ‘Indigenous educational sovereignty’. As one example, Métis scholar Laura Forsythe argues that “the transferability clause regarding content and assessment along with set standards for certification and accreditation do not provide the nation with the autonomy required for true Indigenous educational sovereignty, which demands cultural and language education free from external interference.”⁶²⁹ Notwithstanding Forsythe’s astute analysis of 2016’s *Tla’amin Final Agreement Act*, I think the term ‘sovereignty’ as it is constructed here, merits closer attention.

If sovereignty is only understood or recognized as absolute authority or autonomy, then taken at its extreme, I question whether *any* nation has any such omniscient power or authority. As Felix Hoehn argues in *Reconciling Sovereignties*, “sovereignty can be imagined and defined in a number of different ways in international and domestic law that need not adhere to an absolutist stereotype.”⁶³⁰ It could be further argued that each nation is inextricably linked, or related, and thereby accountable to *others*, regardless of any claim to ‘national sovereignty’. Indeed, the idea that we are all related, including non-human beings, is the foundational philosophy upon which relationality was conceived; hence, *all* our relations. As such, it may be

⁶²⁹ Forsythe, 2018, p.131

⁶³⁰ Hoehn, 2012, p.43

more appropriate to view sovereignty as a 'shared' concept, as described by the Commissioners of RCAP:

Shared sovereignty, in our view, is a hallmark of the Canadian federation and a central feature of the three-cornered relations that link Aboriginal governments, provincial governments and the federal government. These governments are sovereign within their respective spheres and hold their powers by virtue of their constitutional status rather than by delegation. Nevertheless, many of their powers are shared in practice and may be exercised by more than one order of government.⁶³¹

In his chapter "Rooted Constitutionalism", Anishinaabe scholar Aaron Mills offers a beautiful analogy of a forest as a theoretical representation of shared sovereignty. In the analogy, each nation or order of government represents a *different* tree within a forest. With regard to the Anishinaabe, Mills envisualizes our constitutional order as such:

Creation stories set out a people's way of being in and (if rooted) of the earth. They give us our ideas of what a person is, what freedom is, and thus what community is. The trunk is the constitutional order that manifests these understandings as political community. It's our framework for living together called into being by the story we tell. I mean as peoples, which may have nothing to do with founding documents. Our branches are our legal tradition(s): the assemblage of processes and institutions we use to generate, sustain, alter, and destroy norms. The leaves are our provisionally settled norms. They experience the highest degree of change within the set of relationships that constitute a normative order. Some will fall off, never to return. Others will return after renewal. All come from, all recur with, earth.⁶³²

⁶³¹ RCAP, *Report*, vol. 2, p.240

⁶³² Mills, 2018, p.157

With this in mind, it is my view that the transferability of Education Standards across *other* jurisdictions only serves to benefit those Anishinaabe students who wish to continue their education at another institution, post-secondary or otherwise, and has no bearing on the breadth or scope of any Indigenous nation's sovereignty. Having said that, another option for Indigenous nations – one which would require further study – is the development a two-track education system, in which one track is more in line with a conventional, mainstream curriculum (but still with culturally relevant components); whereas the *other*, is focused on land-based and cultural practices (but still with access to read and write). Whatever the case may be, the point is that Indigenous nations possess the inherent right to determine for themselves, what their education system will be, and how they will govern it.⁶³³

One of the issues that frequently came up during the course of my research for this study is with regard to the provision of programs and services for special needs and gifted students. Parents, educators, administrators, and Elders unanimously agreed that services must be available for early detection and diagnosis of physical, mental, and spiritual (dis)abilities, along with appropriate learning schedules. By that same token, it was further decided that enriched learning opportunities should also be

⁶³³ I wish to acknowledge here, that although I believe Indigenous nations possess an inherent right to self-determination, in this post 9/11 era of international diplomacy, it is to be noted that any challenge to state sovereignty is always defended to the extreme from external threats, as well as internal ones – where Indigenous forms of 'direct action' have sometimes have been labeled as 'domestic terrorism' – therefore, for this reason, I am of the opinion that Indigenous nations who wish to exercise their right to self-determination, especially as it relates to education, should do so with utmost tact in order to have their needs met, or else be prepared for blowback from the state. On the criminalization of Indigenous resistance, see: Pasternak, 2017.

available for exceptional or gifted students in order to maximize their potential. Therefore, in response to these concerns, *kinamaadiwin inaakonigewin* states that “The Treaty #3 Education Commission may provide the establishment and operation of special schools, courses, and learning services suited to the special education needs of the students within the cultural and linguistic context of the Anishinaabe Nation in Treaty #3.⁶³⁴ With regard to student performance evaluation, *kinamaadiwin inaakonigewin* also states that the Education Standards of the Anishinaabe education system will take into account linguistic achievement as well as other ‘culture added values’ such as “emotional literacy, development of character according to rites of passage, civic duty for nation building” as indicators of educational success.⁶³⁵ In order to develop these skills, language instruction is to be offered at all grade levels with emphasis on the teaching of cultural and spiritual knowledge. This includes teaching the history and modern governance structure of the Anishinaabe Nation of Treaty #3, its relationships to external governments, Treaties and inherent rights, as well as sovereignty and self-governing status.

In this discussion of Education Standards, it bears repeating that one of the main reasons that Indigenous nations want to establish and administer their own education systems is because of the failure of the dominant public education system to, at best, adequately represent our distinctive cultures and contributions to history; and at worst,

⁶³⁴ See Appendix B, sec. 12.1

⁶³⁵ *Ibid*, sec. 11.7

address the ways in which it marginalizes and/or assimilates our youth. As Harold Cardinal pointed out over forty years ago:

The children were leaving their home communities and their parents at grade 8, in their most formative teen years. The social consequence, which was brought constantly to my attention on reserves I visited, was that parents lost control over their children. They sent them off, hopefully to receive the best education possible, and the next contact they had with the children was when they dropped out of school, or perhaps got into trouble with the law. Frighteningly frequent, teen-aged girls came home pregnant.⁶³⁶

Sadly, today, these adverse social conditions are still present in Anishinaabe and other Indigenous communities across Canada. Thus, in order to address and mitigate social issues such as addictions, teen pregnancy, and domestic violence, *kinamaadiwin inaakonigewin* states that course content in the Anishinaabe education system will comprise of health and nutrition instruction and teaching on noxious substances, addictions, safe sex and parenting, “and the effect on the individual, family and Nation with a view to discussing traditional healthy foods and lifestyles.”⁶³⁷ In *Colonized Classrooms*, Sheila Cote-Meek explains this involves the development of a ‘holistic pedagogy’ which includes a number of strategies such as:

creating space in the academic programming for students to speak and/or write about any relevant issues that arise in the class that affect them personally; supporting the rekindling of the student’s spirit; exposing the ways in which power relations diminish women who are survivors of violence; creating an environment where abuse and violence are made visible and not tolerated; treating students respectfully and worthily; teaching to and supporting students’ strengths; and supporting culture-based initiatives and

⁶³⁶ Cardinal, 1977, p.194

⁶³⁷ See: Appendix B, sec. 11.16

traditional spiritual practices that build cultural pride and understanding of oppression and increase a student's self worth.⁶³⁸

Moreover, with the land and environmental sustainability being key aspects of Anishinaabe knowledge, the Anishinaabe education system has an opportunity to be a leading institution in the fight against climate change and environmental destruction. In conversations with Treaty #3 Elders and educators, it was decided that this can be best achieved by developing courses and course content for all grade levels on the historical, political, cultural, and socioeconomic elements of the land base and natural resources. As such, *kinamaadiwin inaakonigewin* states that Treaty #3 courses should include "the historical development of the land base, the legal status of the land tenure, cultural knowledge of the land, modern management practices of lands and resources, social and economic impacts of natural resource extraction, careers in land management, ecology, Indigenous environmental studies and the sciences."⁶³⁹ In reclaiming authority over the education of our youth in this way, the Anishinaabe Nation in Treaty #3 is exercising its inherent right to self-determination and cultural resurgence, which as Anishinaabe scholar Lindsay Borrows explains: "When First Nations communities control their civic life, there is a strong correlation of lower rates of suicide. Self-determination makes a difference. It can actually save lives."⁶⁴⁰ In other words, self-determination is associated with healthy living.

⁶³⁸ Cote-Meek, 2014, p.157

⁶³⁹ See Appendix B, sec. 11.18

⁶⁴⁰ Borrows, L., 2019, p.45

With regard to teaching, parents and Elders have consistently said that the number or ratio of Anishinaabe teachers should reflect the composition of the student body. This assertion is therefore stipulated as such in *kinamaadiwin inaakonigewin*.⁶⁴¹ Policies such as this are consistent with and responds to what other Indigenous leaders have said, including Harold Cardinal who writes: “Native teachers and counsellors who have an intimate understanding of Indian traditions, psychology, way of life and language are best able to create the learning environment suited to the habits and interests of the Indian child.”⁶⁴² Moreover, Linda and Keith Goulet have also argued that: “Students should not have to leave their Indigenous identities behind to be successful in school. It is incumbent upon teachers to find and incorporate Indigenous knowledge and understandings (epistemologies) and to use Indigenous practices and methods to support learning and fully develop students’ potential.”⁶⁴³ This is also consistent with what the respected education scholar, Frank Deer, has written about in “Anishinaabe Perspectives: A Study of the Cultural Dimensions of Well Being in Primary and Secondary Education in Manitoba.” In that publication, Deer says: “the localized exploration of Indigenous identities in educational contexts are important to the maintenance of Indigenous culture and language.”⁶⁴⁴ In other words, an Anishinaabe education system must be employed by Anishinaabe teachers,

⁶⁴¹ See Appendix B, sec. 11.8

⁶⁴² Cardinal, 1977, p.75

⁶⁴³ Goulet & Goulet, 2014, p.5

⁶⁴⁴ Deer, 2019, p.249

administrators, and staff; it is in other words a local occupation.⁶⁴⁵ This is important to the extent that Anishinaabe students will then be able to relate with their teachers and course content easier, while also developing strong relationships that sustain and enhance their education.

During the Treaty #3 Education Gatherings I have attended, Elders often commented that their experience with the public education system was one that is cold and sterile. In this regard, the Elders have said that the student-teacher relationship they experienced in their time was one that is 'severe and authoritarian'. This, of course, is contrary to Anishinaabe ways of knowing and being. In analyzing this issue, Linda and Keith Goulet have reported that: "teachers emphasized that relationships were the key to effective teaching – that is, relationships between the teacher and students, among the students, and class, with the learning environment (the how, or the process, of learning), and to the construction of knowledge (the what, or content) in the classroom."⁶⁴⁶ This is based on the knowledge that each person – whether they are a teacher or a student – offers intrinsic value and contribution to the well-being of others. As Jill Bevan-Brown further explains, "this sentiment is echoed in the course mantra of 'learning with, from and about each other' and exemplified in interaction with children, families, and community."⁶⁴⁷ Moreover, the development of strong teacher-student

⁶⁴⁵ I will mention here that there is a certain inevitability on the basis of need, that there will be some non-Anishinaabe teachers and staff hired, which to that extent, preference should be given to those that have knowledge of Anishinaabe Worldview; or those have a basic understanding of Anishinaabemowin, and understand Anishinaabe protocols and customs.

⁶⁴⁶ Goulet & Goulet, 2014, p.77

⁶⁴⁷ Bevan-Brown, 2019, p.385

relationships has been shown to improve student attendance at school. “This insight is important,” Linda and Keith Goulet continue, “since attendance is tied to achievement and remains an ongoing educational issue for many Indigenous students.”⁶⁴⁸ In this regard, one of the top challenges for Treaty #3 educators will be to cultivate an environment of respect and trust, predicated on Anishinaabe values of teaching and learning, that makes students feel welcomed and venerated so that they want to be there and participate in class instruction to the best of their ability.

Curriculum and Pedagogy

The last aspect of *kinamaadiwin inaakonigewin* that I would like to discuss relates to Treaty #3 curriculum and pedagogy. In this regard, the draft law defines curriculum as “a systematic, planned program of culturally responsive study with goals, objectives, content, pedagogy, assessment tools and schedules, evaluation and reporting across the grade levels.”⁶⁴⁹ In order to construct a culturally relevant curriculum, Sheila Cote-Meek argues that the education program must “consider how Aboriginal peoples have been oppressed, marginalized and subjected to ongoing forms of colonial violence in larger society,” and “question how systems of domination are reinforced and perpetuated in sites such as the classroom through the positionality of the educator, the use of pedagogy, the relationships with others and through the curricula itself.”⁶⁵⁰ For example, Dwayne Donald explains that if a traditional story “is ‘infused’ or

⁶⁴⁸ Goulet & Goulet, 2014, p.111

⁶⁴⁹ See Appendix B, sec. 10.1

⁶⁵⁰ Cote-Meek, 2014, p.33

‘incorporated’ into curricula as just a story, and without the necessary care and attention given the ideologies, mythologies, and ways of becoming real human beings it describes, nothing good will grow from it.”⁶⁵¹ In this scenario, Donald argues that “the fundamental curriculum mythologies of individualism, progress, and anthropocentrism maintain their hegemonic influence as universalized common sense, and the story is marginalized based on those cultural assumptions.”⁶⁵² In other words, storytelling, as a form of Indigenous pedagogy, needs to be recognized and respected as a valid form of knowledge transmission, along with the relational values such traditional stories teach. As Gina Starblanket and Heidi Stark explain in their chapter in *Resurgence and Reconciliation*: “relational understandings of knowledge are a key feature of Indigenous intellectual traditions and can perhaps most clearly be seen in oral traditions of knowledge generation and transmission.”⁶⁵³ In that regard, Margaret Maaka adds that “stories are the vehicle by which knowledge – accounts of love, death, sadness, revenge, family, childhood, work, laughter, oppression, and the like – are passed from one person to another and from one generation to another.”⁶⁵⁴ From this perspective, storytelling could be seen as an act of cultural resurgence.

As master storytellers and gatekeepers of vast sums of knowledge, the presence and contribution of Elders is absolutely essential in the development and application of a culturally relevant education curriculum. This point cannot be emphasized enough.

⁶⁵¹ Donald, 2019, p.120

⁶⁵² Ibid.

⁶⁵³ Starblanket and Stark, 2018, p.197

⁶⁵⁴ Maaka, 2019, p.5

Their expertise as language and cultural knowledge holders is critical in the teaching and learning of Anishinaabe pedagogical practices. One such practice is: *akinoomaage*. As John Borrows points out in *Law's Indigenous Ethics*, respected Anishinaabe Elder Basil Johnston “uses the word *akinoomaage* for learning by observation. He says the word is formed from two roots: *aki: noomaage*. In his description, *aki* means ‘earth’ and *noomaage* means ‘to point towards and take direction from.’ The concept conveys that teaching and learning occurs through observing the earth and those around us.”⁶⁵⁵ In order to help us envision what this land-based pedagogical practice would look like in an educational setting, Glen Coulthard offers the following perspective:

This could take the form of ‘walking the land’ in an effort to refamiliarize ourselves with the landscapes and places that give our histories, languages, and cultures shape and content; to revitalizing and engaging in land-based harvesting practices like hunting, fishing, and gather, and/or cultural production activities like hide-tanning and carving, all of which also serve to assert our sovereign presence on our territories in ways that can be profoundly educational and empowering; to the reoccupation of sacred places for the purposes of relearning and practicing our ceremonial activities.⁶⁵⁶

In other words, *akinoomaage* represents yet another act or expression, of Anishinaabe self-determination and cultural resurgence by virtue of just teaching and practicing our local land-based traditions. With this in mind, *akinoomaage* may also be interpreted as an occupation of ‘Indigenous space’. According to Patricia Johnston, “*Indigenous space* refers to the recognition, theory, and practice of worldviews that draw from knowledge

⁶⁵⁵ Borrows, 2019, p.150

⁶⁵⁶ Coulthard, 2014, p.171

bases that encompass the ways in which Indigenous Peoples think about their world and articulate their relationships within their world.”⁶⁵⁷ Thus, in accordance with these insights, *kinamaadiwin inaakonigewin* states that “the worldview of the Anishinaabe Nation of Treaty #3, both from traditional times to the present day cultural traditions, will be reflected in all aspects of the curriculum in the schools and learning lodges of the Nation to provide context to all parts of the curriculum.”⁶⁵⁸ As John Borrows says, “Indigenous laws are best revitalized when they are rooted in a peoples’ longer-term relationship with the earth, and that the application of Indigenous law is drawn from these enduring connections.”⁶⁵⁹

One of the more recent developments in Indigenous education in Canada has been the advancement of land-based and treaty curricula that have been developed by many different “Indigenous artists, writers, academics, educators, and government departments.”⁶⁶⁰ Most recently, Bimose Tribal Council, a Treaty #3 organization that provides education and technical services in an advisory capacity, has developed primary and secondary level Treaty Curricula for the Anishinaabe schools it serves in Treaty #3 territory.⁶⁶¹ The Treaty Curriculum offers four core strands for teaching and learning about treaties, which are: Treaty Relationships, Spirit and Intent of Treaties,

⁶⁵⁷ Johnston, 2019, p.485 (emphasis in text)

⁶⁵⁸ See Appendix B, sec. 10.9

⁶⁵⁹ Borrows, 2018, p.56

⁶⁶⁰ Goulet & Goulet, 2014, p.197

⁶⁶¹ The Treaty Curriculum is based off an initiative that was previously developed by the Federation of Saskatchewan Indian Nations, First Nations University of Canada, Office of the Treaty Commissioner, Curriculum Sub-committee for the Shared Standards and Capacity Building Council, and the Ministry of Education back in 2013, and adapted to meet the needs of teachers and students in Treaty #3 territory. See: Saskatchewan Ministry of Education. “Treaty Education Outcomes and Indicators”, 2013.

Historical Context of Treaties, and Treaty Rights and Provisions. From Bimose's perspective, "by examining these issues, as well as other critical concepts such as interpretation and implementation, through a historical context, learners of Manitou Mazinaa'igan Gakendaasowin will gain a comprehensive understanding of the treaty relationship, and what it means to be Anishinaabe."⁶⁶² This is a critical development in treaty education from my days in grade school where students were awarded full marks if they simply remembered the jarring maxim: "*wined them, dined them, and signed them.*" In another initiative, Bimose Tribal Council is also working on a land-based curriculum which is still currently under development. The land-based curriculum will be designed to teach students about traditional Anishinaabe land-based practices such as fishing, hunting, and harvesting with an aim towards environmental sustainability in the face of ongoing resource extraction, as well as an immersion of Anishinaabe customs and ceremonies that is dedicated to the preservation and maintenance of our linguistic, spiritual, and legal traditions, as specified in *kinamaadiwin inaakonigewin*.⁶⁶³

Another aspect in which a prospective curriculum can be made to reflect Anishinaabe culture is through the substitution of certain literary texts for Anishinaabe texts. Drawing from my own experience, I can testify that I failed Grade 10 English based on the fact that I struggled to relate with the course content, which had a heavy emphasis on Shakespeare. Although the study of Shakespeare is obviously important, given his stature in world literature, I am suggesting that more space could be created

⁶⁶² Bimose Tribal Council. "Manitou Mazinaa'igan Gakendaasowin: Treaty Learning", 2019.

⁶⁶³ See Appendix B, sec. 10.10

for *other* writers such as Tomson Highway, who is a celebrated playwright in his own right.⁶⁶⁴ The same could be said of Harper Lee's *To Kill a Mockingbird*, which is another staple text in the dominant education system. While Lee's book is admittedly more culturally relevant in the sense that it discusses racial prejudice and oppression in the United States, the point being made here is that these same themes could be explored locally, as they are in Beatrice Mosionier's classic, *In Search of April Raintree*.⁶⁶⁵ That Indigenous texts continue to be marginalized in the public education system points to a problem of 'hyperseparation' in literary study, as Rauna Kuokkanen explains:

Indigenous literatures are not regarded as 'proper' compared to European literatures, with their centuries-old aesthetic and literary traditions. Because of differences in structure, format, story line, mode of expression, and even purpose, indigenous literary conventions are often looked down on as 'folklore,' 'myths,' and 'legends,' or even worse, as 'primitive,' 'childlike,' 'overpopulated,' or 'having no clear plot.' All of these terms denote inferiority.⁶⁶⁶

In this regard, it is imperative that teachers get the necessary cultural training in order to understand that classical humanism, as represented in Western texts, plays the same role as the oral tradition does in Anishinaabe and *other* Indigenous cultures. That said, such training is stipulated as mandatory in *kinamaadiwin inaakonigewin*.⁶⁶⁷ Moreover, expanding our understanding of *other* literature in this way could open the possibility for students to be introduced to *other* great writers and storytellers, who are deserving

⁶⁶⁴ See: Highway, 1988.

⁶⁶⁵ See: Culleton, 1983.

⁶⁶⁶ Kuokkanen, 2007, p.69

⁶⁶⁷ See Appendix B, sec. 17.5

of as much attention that is given to William Shakespeare and Jane Austen. From an Anishinaabe pedagogical perspective, it would make sense to first teach Anishinaabe students about their own 'classics' from the oral tradition, as told by Elders; perhaps, secondly, students could be acquainted with contemporary Anishinaabe literature, with Louise Erdrich and Winona LaDuke being the most obvious examples; from there, students could venture to learn about Indigenous literature in a Canadian context (Jeanette Armstrong comes to mind); then international literature (Harper Lee); and finally, Western literature, preferably that which would still somehow have relevance to Anishinaabe students. Prioritizing Anishinaabe literature in this way has the potential to strengthen the students' cultural identity as well as support their academic success. In reference to that point, Frank Deer has written: "the perspective, the exploration of the people, histories, narratives, and values, is as essential to Indigenous identity development as any activity, artifact, or other referent reflected in a student outcome."⁶⁶⁸ That is to say, if the texts we were assigned in my Grade 10 English class were more culturally relevant, I am certain I would have been much more engaged in the course, better informed about the history and culture of my people, which undoubtedly would have resulted in better academic achievement. That could be true of any one Anishinaabe, at any grade level.

The catalogue of potential Indigenous education resources also includes Indigenous music, film, and other art forms (beading, painting, dance, etc.).⁶⁶⁹ In this

⁶⁶⁸ Deer, 2019, p.244

⁶⁶⁹ I mean 'catalogue' in the proverbial sense.

regard, Anishinaabe students would have the benefit of learning traditional drum songs, beading techniques, powwow dances, and regalia design. Although powwows and other ceremonies have creative and artistic elements such as song and dance, the *raison d'être* of these traditional practices is spiritual in nature, which distinguishes them from performance art such as opera and ballet. As Vine Deloria Jr. points out in *God is Red*, however, “authorization to perform ceremonies comes from higher spiritual powers and not by certification through an institution or any formal organization.”⁶⁷⁰ For this reason, as important as it is for Indigenous youth to learn about these aspects of their cultural heritage, the implementation of traditional ceremonies and practices as part of an academic curriculum must be done so with extreme care, so that they do not become a spectacle to be exploited, or worse, lose their intrinsic spiritual purpose. “The issue,” Emma LaRocque points out, “is how these concepts get stereotyped and how they get played out in real-life circumstances, such as in government policies, legislation, education, or health, or in our textbooks and theatres.”⁶⁷¹ If done properly, however, Indigenous spiritual, cultural, artistic, and land-based practices have the potential “to disrupt and interrogate forms of settler colonialism and advance the project of resurgence and Indigenous nation building.”⁶⁷² That said, in the process of teaching students about our traditional practices, teachers and administrators must also bear in mind the harmful effects of gender roles that have been engendered in Indigenous communities as a result of colonization. This point is particularly pertinent

⁶⁷⁰ Deloria, Jr., 2003, p.274

⁶⁷¹ LaRocque, 2010, p.137

⁶⁷² Simpson, 2017, p.198

with regard to the exclusion of females in drum groups, as well as restrictions on female participation in ceremonies such as the Sweat Lodge and Sun Dance. Finally, with regard to other Indigenous knowledge forms and artistic mediums, such as painting, students can learn about traditional techniques such as petroglyphs as a form of writing, as well as conventional styles made famous by Norval Morrisseau. In the last analysis, the possibilities with which Indigenous knowledge forms and aesthetic practices can be used as educational resources is almost endless; they are as rich in tradition and offer as deep insight to the human and social condition – as well as our shared relationship to the land – as any settler-colonial form of art can aspire to. For these reasons, they form a core component of *kinamaadiwin inaakonigewin*.⁶⁷³

Reflections

In this study, I have tried to show that the success of an Anishinaabe education system depends not so much on the laws and regulations we create, but more on our ability to effectively apply the law and its regulations. This can only be accomplished with the requisite resources needed to administer programs and services. That said, if we are truly in a new era of Indigenous-Settler relations in Canada, one where reconciliation is indeed a matter of state and public concern, then mistakes of the past cannot and must not be repeated. By this, I mean we must learn from failures, like those in 1970 where the state “accepts our policy paper publicly with great fanfare, says it marks a milestone, but they don’t do a damned thing about providing the necessary

⁶⁷³ See Appendix B, sec. 4.0

new money.”⁶⁷⁴ Lip-service such as this is only good to the extent that the actions of the author of such words are equal to, or the same as their word. And as Jacques Derrida has said, “one should accredit, guarantee, and legitimate the discourse ... otherwise, one pays with words ... by which one understands the words in this case are simulacra, money without value – devalued or counterfeit.”⁶⁷⁵ In other words, one who breaks their word also breaks their honor. So, if the state says that it wants to make treaties right; and that it intends to implement the *United Nations Declaration of Rights of Indigenous Peoples*; and that it will answer the Truth and Reconciliation Commission’s ‘Calls to Action’; and it has said so, then there is an obligation and duty and responsibility to affirm these words with appropriate action.⁶⁷⁶ At the most basic, material level, we are talking about providing the necessary new funding to provide quality education programs and services for Anishinaabe youth and communities. It is an obligation that is even recognized by the state’s very own officials who have said that “*the Crown must be assumed to intend to fulfill its promises.*”⁶⁷⁷ I legitimately fear that if the state fails to do so, there will be significant repercussions in the form of increased protest and civil disobedience, that could eventually lead to violent confrontations.

If we accept that the purpose of ‘Aboriginal and Treaty Rights’, as I discussed in Chapter 2, is for “the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown”, then there is a Constitutional obligation on the part of the

⁶⁷⁴ Cardinal, 1977, p.87

⁶⁷⁵ Derrida, 1992, p.61

⁶⁷⁶ See: Prime Minister Justin Trudeau. Assembly of First Nations General Assembly, December 2015.

⁶⁷⁷ *R v. Badger* (emphasis added)

Crown to fulfill its treaty promises.⁶⁷⁸ As Michael Asch points out in *On Being Here to Stay*, reconciliation “requires the establishment of proper principles to govern the continuing treaty relationship and to complete treaties that are incomplete because of the absence of consensus”; and ‘justice’ which “requires the fulfillment of the agreed terms of the treaties as recorded in the treaty text and *supplemented* by oral evidence”.⁶⁷⁹ As I have tried to show elsewhere in this dissertation, oral evidence includes testimony from Treaty Elders who have long asserted that “Indians were promised Crown protection and assistance to develop and prosper. The promise is described in general terms, with reference to a continuing, and comprehensive, Crown responsibility, and also in specific terms with respect to economic development assistance”.⁶⁸⁰ With regard to the treaty right to education, Harold Cardinal, among others, have consistently argued that “the Indian people asked for control of Indian education to enable them to develop a programme that would meet their needs. In our eyes, the acceptance of the policy paper by the government [in 1970] unequivocally meant their assumption of the responsibility to fund the programme.”⁶⁸¹ Unfortunately, as I have heretofore shown, the state has consistently failed to meet this responsibility.

While it can be acknowledged that the state has a limited budget to finance Indigenous education programs and services under its existing structure, it is unreasonable to let Indigenous communities to suffer for it. Again, if reconciliation is to

⁶⁷⁸ *Van Der Peet, supra*, para. 31.

⁶⁷⁹ Asch, 2014, p.79 (emphasis in text)

⁶⁸⁰ *Ibid*, p.78

⁶⁸¹ Cardinal, 1977, p.87

be considered a genuine political platform, the state must be willing to step outside of its comfort zone. One potential solution, as suggested by Julie Jai, is to create “a jointly appointed Crown-First Nation dispute resolution body,” “to oversee the renewal of historic treaties.”⁶⁸² According to Jai, establishing a resolution process such as this offers the opportunity to “encourage negotiations between the parties, bring the historic treaty rights into a modern form that recognizes the ongoing treaty relationship and the need for static provisions to evolve, and more accurately reflect the spirit and intent of the treaty.”⁶⁸³ Related to this, in 2005 the Treaty Relations Commission of Manitoba was established as “a partnership between the Assembly of Manitoba Chiefs (AMC) and Canada with a mandate to strengthen, rebuild and enhance the Treaty relationship and mutual respect between First Nations and Manitobans as envisaged by the Treaty Parties.”⁶⁸⁴ While this would seem to be an appropriate forum with which to resolve treaty issues, it strangely does not adjudicate on such matters. If anything, it further demonstrates the immense challenge of operating within state sponsored institutions.

In the final analysis, in order to build an Anishinaabe education system that can be considered a worthy representation of the treaty right to education, as well as one that can be said to reflect the articles of the *United Nations Declaration of Rights of Indigenous Peoples*, and fulfills the Truth and Reconciliation Commission’s ‘Calls to Action’, the state must recognize and affirm the authority of *kinamaadiwin inaakonigewin*,

⁶⁸² Jai, 2017, p.148

⁶⁸³ Ibid, p.144

⁶⁸⁴ Source: trcm.ca

the Treaty #3 written Education Law. This process requires cooperation and commitment from the state to negotiate, in good faith, potential funding solutions through respectful and constructive dialogue to finance Indigenous education initiatives. In this regard, one potential solution could include the creation of a new tax for the sole purpose of fulfilling treaty obligations, or perhaps, providing a share of revenue from taxes already gathered from land-based industries. Strategies such as this would not only generate the revenue required to develop and implement the education system, it would also symbolize all Canadians contribution to the treaty relationship. This is the type of commitment and investment in Indigenous education that is required to facilitate and achieve the broader goals of reconciliation in Canada. By making Indigenous education a priority with demonstrated, definitive action, the state will signal to Indigenous nations and the rest of the country that it truly has the needs and interests of *all* its citizens at heart. Only then will reconciliation between the Crown and Indigenous nations become a reality.

Summary

The struggle for Indigenous self-determination is only beginning to be properly understood in Canada. For many decades, treaties have been neglected and forgotten, civil rights have been abused and broken, and hopes and dreams have been crushed by the weight of law. In spite of these adversities, Indigenous peoples have remained vigilant: rehearsing our stories, remembering our ceremonies, and revitalizing our own laws. In this regard, the Anishinaabe Nation in Treaty #3 has composed a written

education law for the establishment of a local Anishinaabe education system. Acts of cultural resurgence such as this, are the means with which to facilitate the state's recognition of Indigenous consciousness and self-determination. Recognition without affirmed action, however, is mere lip-service. Although the state has recently committed to honor its treaty promises, and adopt the *United Nations Declaration of Rights of Indigenous Peoples*, as well as answer the Truth and Reconciliation Commission's 'Calls to Action', it has yet to do so. Until the state's actions speak louder than its words, the struggle for Indigenous self-determination will only continue to escalate. One way in which the state can affirm its commitment to reconciliation is by recognizing and affirming *kinamaadiwin inaakonigewin*, the Treaty #3 education law. This process would include a formal negotiation process that works to find funding solutions with an aim to bring historic treaty promises into a modern form, thus honoring the original spirit and intent of the treaty. The 'Seventh Fire' is now upon us, and a new age is dawning. But what will that future hold? Will the lessons of today be forgotten, or will we co-exist in peace and harmony as originally intended in the treaties?

Epilogue:

As I write these final words, our world, indeed the globe, is headed for uncertain times. Within several short months, COVID-19 has killed hundreds of thousands of people worldwide, and infected millions more. In Canada alone, almost 20,000 people have died.⁶⁸⁵ In order to ‘flatten the curve’ of the pandemic, many governments shut their borders, and urged their citizens to stay home, and practice ‘social distancing’. As a result, many people have lost their jobs and businesses, which caused unemployment rates to approach all-time highs, and global markets to teeter on collapse. Schools and daycares were closed, as were parks, playgrounds, and movie theatres; sporting events and concerts have been cancelled, leaving homebound children with nothing to do but drive their parents mad.⁶⁸⁶ In short, the pandemic has created a new world order. In the midst of this crisis, however, a global humanity is emerging, revealing itself to be resilient, compassionate, and resourceful. As proof of this fact, the federal government of Canada has pumped over \$100,000,000,000 (one hundred billion dollars) into its national economy without barely batting an eye. As Bill Morneau, the Minister of Finance has said, “With the Canada Emergency Wage Subsidy, we are making sure to support Canadian businesses and Canadian workers through this crisis, ensuring they are well-positioned to recover quickly when the COVID-19 pandemic is over. We will continue to do whatever it takes to ensure Canadians are supported through the

⁶⁸⁵ Source: CBC News.

⁶⁸⁶ I am a parent, and I love my children, but as we all well know, “it takes a small village to raise a child”, and under these circumstances, no such village is available.

outbreak, and that our economy remains resilient during these difficult times.”⁶⁸⁷ While I support any measures that need to be taken to alleviate the stress and suffering of this genuine health crisis, I just have one question that relates back to this study: surely, with all this apparent goodwill and massive wealth available, the government can spare a few more dollars to spend on Indigenous education? I think it can.

Yet, as Canada and the rest of the world races toward getting things ‘back to normal’, I find myself, left, wondering: is getting ‘back to normal’ really what is needed right now? If getting ‘back to normal’ means going back to ‘business as usual’, then I fear that would also likely mean that Indigenous peoples – as well as the land, *aki* – will continue to be ignored and disrespected; that our treaty rights will continue to be denied; that the government will forsake its commitment to reconciliation; that we have learned nothing from this COVID experience. If COVID has taught us anything, we should have learned that we are all intimately related with each *other* and the land; and that for all of us to coexist together, harmoniously, we must treat each *other* and the land like the family we are, which is to say, with love and respect. To continue to ignore all the warning signs around us, is to demonstrate a profound amount of negligence and selfishness that is far from anything that could be remotely considered an aspect of a civilized society. As Canadians, we owe it to ourselves and our family to do better; and do better, we must.

⁶⁸⁷ Government of Canada. “Government Introduces COVID-19 Emergency Response Act, No. 2 to Help Businesses Keep Canadians in their Jobs”. April 11, 2020

The Canadian government, under its current administration, has promised to answer the Truth and Reconciliation Commission's 'Calls to Action', as well as implement the *United Nations Declaration of Rights of Indigenous Peoples*, both of which require the state to respect and honor its treaty obligations, in accordance with its own jurisprudence. The Anishinaabe Nation in Treaty #3 is in the process of developing a written Treaty #3 education law, *kinamaadiwin inaakonigewin*, that outlines the rules and regulations by which an Anishinaabe education system will be established and governed. Once the law is ratified through its own governance process, and is recognized and affirmed by the state, *kinamaadiwin inaakonigewin* can be the blueprint by which the state can fulfill its obligations to honor the treaty right to education. This act of reconciliation represents what could be a pivotal point in the relationship between Indigenous peoples, settler-colonial society, the land, and the state. According to our ancient stories, we are now entering the period of the 'Seventh Fire', and the path to reconciliation has been lit by those who walked before us. The only question that remains is: will the state honor its commitment to reconciliation, and walk the path in a good way? The answer lies not in what is said, but ultimately, in what is done. After all, actions speak louder than words.

In closing, I wish to put my tobacco down and offer prayer and thanks to Elder Fred Kelly for sharing his love and wisdom with me; as well as my community Lac Des Mille Lacs for believing me and supporting me throughout this process; and to Grand Council Treaty #3 for giving me the immense honor and privilege to participate in the

greatest act of cultural resurgence I can possibly imagine, the revitalization of traditional education law: *kinamaadiwin inaakonigewin*.

Chi-Miigwech.

Appendix A: Treaty #3

ARTICLES OF A TREATY made and concluded this third day of October, in the year of Our Lord one thousand eight hundred and seventy-three, 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; Joseph Alfred Norbert Provencher and Simon James Dawson, of the one part, and the Saulteaux Tribe of the Ojibway 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 a meeting at the north-west angle of the Lake of the Woods 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 purpose 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 the following persons for that purpose, that is to say:

KEK-TA-PAY-PI-NAIS (Rainy River.)

KITCHI-GAY-KAKE (Rainy River.)

NOTE-NA-QUA-HUNG (North-West Angle.)

NAWE-DO-PE-NESS (Rainy River.)

POW-WA-SANG (North-West Angle.)

CANDA-COM-IGO-WE-NINIE (North-West Angle.)

PAPA-SKO-GIN (Rainy River.)
MAY-NO-WAH-TAW-WAYS-KIONG (North-West Angle.)
KITCHI-NE-KA-LE-HAN (Rainy River.)
SAH-KATCH-EWAY (Lake Seul.)
MUPA-DAY-WAH-SIN (Kettle Falls.)
ME-PIE-SIES (Rainy Lake, Fort Frances.)
OOS-CON-NA-GEITH (Rainy Lake.)
WAH-SHIS-KOUCE (Eagle Lake.)
KAH-KEE-Y-ASH (Flower Lake.)
GO-BAY (Rainy Lake.)
KA-MO-TI-ASH (White Fish Lake.)
NEE-SHO-TAL (Rainy River.)
KEE-JE-GO-KAY (Rainy River.)
SHA-SHA-GANCE (Shoal Lake.)
SHAH-WIN-NA-BI-NAIS (Shoal Lake.)
AY-ASH-A-WATH (Buffalo Point.)
PAY-AH-BEE-WASH (White Fish Bay.)
KAH-TAY-TAY-PA-E-CUTCH (Lake of the Woods.)

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 purpose 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 Saulteaux Tribe of the Ojibbeway 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 a point on the Pigeon River route where the international boundary line between the Territories of Great Britain and the United States intersects the height of land separating the waters running to Lake Superior from those flowing to Lake Winnipeg; thence northerly, westerly and easterly along the height of land aforesaid, following its sinuosities, whatever their course may be, to the point at which the said height of land meets the summit of the watershed from which the streams flow to Lake Nepigon; thence northerly and westerly, or whatever may be its course, along the ridge separating the waters of the Nepigon and the Winnipeg to the height of land dividing the waters of the Albany and the Winnipeg; thence westerly and north-westerly along the height of land dividing the waters flowing to Hudson's Bay by the Albany or other rivers from those running to English River and the Winnipeg to a point on the said height of land bearing north forty-five degrees east from Fort Alexander, at the mouth of the Winnipeg; thence south forty-five degrees west to Fort Alexander, at the mouth of the Winnipeg; thence southerly along the eastern bank of the Winnipeg to the mouth of White Mouth River; thence southerly by the line described as in that part forming the eastern boundary of the tract surrendered by the Chippewa and Swampy Cree tribes of Indians to Her Majesty on the third of August, one thousand eight hundred and seventy-one, namely, by White Mouth River to White Mouth Lake, and thence on a line having the general bearing of White Mouth River to the forty-ninth parallel of north latitude; thence by the forty-ninth parallel of north latitude to the Lake of the Woods, and from thence by the international boundary line to the place beginning.

The tract comprised within the lines above described, embracing an area of fifty-five thousand 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 also to lay aside and reserve 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, in such a manner as shall seem best, other reserves of land in the said territory hereby ceded, which said reserves shall be selected and set aside where it shall be deemed most convenient and advantageous for each band or bands of Indians, by the officers of the said Government appointed for that purpose, and such selection shall be so made after conference with the Indians; provided, however, that such reserves, whether for farming or other purposes, shall in no wise exceed in all one square mile for each family of five, or in that proportion for larger or smaller families; and such selections shall be made if possible during the course of next summer, or as soon thereafter as may be found practicable, it being understood, however, that if at the time of any such selection

of any reserve, as aforesaid, there are any settlers within the bounds of the lands reserved by any band, Her Majesty reserves the right to deal with such settlers as She shall deem just so as not to diminish the extent of land allotted to Indians; and provided also that the aforesaid reserves of lands, or any interest or right therein or appurtenant thereto, may be sold, leased or otherwise disposed of by the said Government for the use and benefit of the said Indians, with the consent of the Indians entitled thereto 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 Her 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 influences 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 five dollars per head yearly.

It is further agreed between Her Majesty and the said Indians that the sum of fifteen hundred dollars 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.

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 actually cultivating the soil or who shall hereafter commence to cultivate the land, that is to say: two hoes for every family actually cultivating, also one spade per family as aforesaid, one plough for every ten families as aforesaid, five harrows for every twenty families as aforesaid, one scythe for every family as aforesaid, and also one axe and one cross-cut saw, one hand-saw, one pit-saw, the necessary files, one grindstone, 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 one yoke of oxen, one bull and four cows; all the aforesaid articles to be given once 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 three for each band, shall receive fifteen dollars per annum; and each such Chief and subordinate officer as aforesaid shall also receive once in every three years a suitable suit of clothing; and each Chief shall receive, in recognition of the closing of the treaty, a suitable flag and medal.

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, that 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 tract, and that they will not molest the person or property of any inhabitants of such ceded tract, or the property of Her Majesty the Queen, or interfere with or trouble any person passing or travelling through the said tract, 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 the North-West Angle of the Lake of the Woods this day and year herein first above named.

Signed by the Chiefs within named, in presence of the following witnesses, the same having been first read and explained by the Honorable James McKay:

JAMES MCKAY, MOLYNEUX St. JOHN, ROBERT PITHER, CHRISTINE V. K. MORRIS, CHARLES NOLIN, A. McDONALD, Capt., Comg. Escort to Lieut. Governor. JAS. F. GRAHAM, JOSEPH NOLIN, A. McLEOD, GEORGE McPHERSON, Sr., SEDLEY BLANCHARD, W. FRED. BUCHANAN, FRANK G. BECHER, ALFRED CODD, M.D., G. S. CORBAULT, PIERRE LEVIELLER, NICHOLAS CHATELAINE.

ALEX. MORRIS L.G., J. A. N. PROVENCHER, Ind. Comr., S. J. DAWSON,

KEE-TA-KAY-PINAIS, his x mark KITCHI-GAY-KAKE, his x mark NO-TE-NA-QUAHUNG, his x mark MAWE-DO-PENAIS, his x mark POW-WA-SANG, his x mark CANDA-COM-IGOWI-NINE, his x mark MAY-NO-WAHTAW-WAYS-KUNG, his x mark KITCHI-NE-KA-BEHAN, his x mark SAH-KATCHEWAY, his x mark MUKA-DAY-WAHSIN, his x mark ME-KIE-SIES, OOS-CON-NAGEISH, his x mark WAH-SHIS-KOUCE, his x mark KAH-KEE-Y-ASH, his x mark GO-BAY, his x mark KA-ME-TI-ASH, his x mark NEE-SHO-TAL, his x mark KEE-JEE-GO-KAY, his x mark SHA-SHA-GAUCE, his x mark SHAW-WIN-NA-BINAIS, his x mark AY-ASH-A-WASH, his x mark PAY-AH-BEEWASH, his x mark KAH-TAY-TAY-PAO-CUTCH, his x mark

We, having had communication of the treaty, a certified copy whereof is hereto annexed, but not having been present at the councils held at the North West Angle of the Lake of the Woods between Her Majesty's Commissioners, and the several Indian Chiefs and others therein named, at which the articles of the said treaty were agreed upon, hereby for ourselves and the several bands of Indians which we represent, in consideration of the provisions of the said treaty being extended to us and the said bands which we represent, transfer, surrender and relinquish to Her Majesty the Queen, Her heirs and successors, to and for the use of Her Government of Her Dominion of Canada, all our right, title and privilege whatsoever, which we, the said Chiefs and the said bands which we represent have, hold or enjoy, of, in and to the territory described and fully set out in the said articles of treaty, and every part thereof. To have and to hold the same unto and to the use of Her said Majesty the Queen, Her heirs and successors forever.

And we hereby agree to accept the several provisions, payments and reserves of the said treaty, as therein stated, and solemnly promise and engage to abide by, carry out and fulfil all the stipulations, obligations and conditions therein contained, on the part of the said Chiefs and Indians therein named, to be observed and performed; and in all

things to conform to the articles of the said treaty as if we ourselves and the bands which we represent had been originally contracting parties thereto, and had been present and attached our signatures to the said treaty.

IN WITNESS WHEREOF, Her Majesty's said Commissioners and the said Indian Chiefs have hereunto subscribed and set their hands, this thirteenth day of October, in the year of Our Lord one thousand eight hundred and seventy-three.

Signed by S. J. Dawson, Esquire, one of Her Majesty's said Commissioners, for and on behalf and with the authority and consent of the Honorable Alexander Morris, Lieutenant Governor of Manitoba and the North-West Territories, and J. A. N. Provencher, Esq., the remaining two Commissioners, and himself and by the Chiefs within named, on behalf of themselves and the several bands which they represent, the same and the annexed certified copy of articles of treaty having been first read and explained in presence of the following witnesses:

THOS. A. P. TOWERS, JOHN AITKEN, A. J. McDONALD. UNZZAKI.

For and on behalf of the Commissioners, the Honorable Alexander Morris, Lieut. Governor of Manitoba and the NorthWest Territories, Joseph Albert Norbert Provencher, Esquire, and the undersigned

S. J. DAWSON, Commissioner. PAY-BA-MA-CHAS, his x mark RE-BA-QUIN, his x mark ME-TAS-SO-QUE-NESKANK, his x mark JAS. LOGANOSH, his x mark PINLLSISE.

Appendix B: Kinamaadiwin Inaakonigewin

Whereas:

Saagima Manito provided the Anishinaabe with Kinamaadiwin through Aandakikendamowin, Kaagikwe'inan, and Bidaajige'inan so that they could live a good life, biimaadziwin; and

Holding that all sacred gifts and trusts bestowed upon us by the Creator and our ancestors, including our sovereignty and nationhood, and inherent jurisdiction and governance; and

Upholding Kagagiwe Inaakonigewin as our Supreme Law that bestows:

Legislative jurisdiction upon the Anishinaabe Nation in Treaty #3 as the sole and exclusive prerogative of the people as a democratic nation and in accordance with their procedures; and

Executive jurisdiction as delegated authority to the Grand Council Treaty #3, the traditional government of the Anishinaabe Nation in Treaty #3, under the will of the people; and

Administrative jurisdiction to officials and employees of the government to carry out policy; and

Knowing that abinooji are sacred gifts from the Creator and raising and teaching them is the exclusive responsibility of the family, the community, and the nation; and

The Anishinaabe in Treaty #3 believe in lifelong learning as it pertains to our people and Aki, the land. We exercise this through the use of our Anishinaabe language, Anishinaabemowin, Culture, and Traditional ways of our ancestors that continue to be practiced in our communities and taught to our abinooji; and

Reaffirming that education is an inherent Aboriginal and Treaty right guaranteed in the Northwest Angle Treaty of October 3rd, 1873, which states:

"And further, Her Majesty AGREES TO MAINTAIN SCHOOLS for instruction in such reserves hereby made as to Her Government of Her Dominion of Canada may seem advisable WHENEVER THE INDIANS OF THE RESERVE SHALL DESIRE IT"; and

During the treaty negotiations, the Crown's official representative, Alexander Morris, affirmed Chief Sakatcheway's request:

"If you give what I ask, the time may come when I will ask you to lend me one of your daughters and one of your sons to live with us; and in return I will lend you

one of my daughters and one of my sons for you to teach what is good, and after they have learned, to teach us"; and

Have it be known that the Anishinaabe Nation in Treaty #3 has never relinquished claims to sovereignty or sovereign lands and have a continuing inherent right to autonomy in internal affairs, a right of self-determination, and a right to self-government; and

The government of Canada has a fiduciary obligation to act in the best interest of the Anishinaabe Nation in Treaty #3, and this obligation has been further entrenched and protected by sub-section 35 (1) of the Canadian Constitution Act of 1982, as well as corresponding case laws, which state in part:

R v. Sioui: "treaties and statutes relating to Indians should be liberally construed and uncertainties resolved in favour of the Indians"; and

Haida Nation v. British Columbia: "In all its dealings with Aboriginal peoples, from the assertion 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"; and

In accordance with Articles 13 and 14 of the United Nations Declaration of Rights of Indigenous Peoples, the Anishinaabe Nation in Treaty #3 declares its right to:

revitalize, use, develop and transmit to future generations our histories, languages, oral traditions, philosophies, writing systems and literatures; and

establish and control our own educational systems and institutions that provide education in Anishinaabemowin, which is delivered in a manner appropriate to our distinct cultural methods of teaching and learning.

Therefore:

The Anishinaabe Nation in Treaty #3, with the approval of Elders and citizens, and through validation in traditional ceremony, and with ratification by the National Assembly, proclaims this law:

Name:

1.0 This Law is called Kinamaadiwin Inaakonigewin.

Interpretation:

2.0 The official language of this law is Anishinaabemowin.

- 2.1 This law is to be interpreted in accordance with:
Kagagiwe Inaakonigewin (Sacred/Supreme Law); and
Kete Inaakonigewin (Traditional Law); and
Anishinaabe Inaakonigewin (Customary Law).
- 2.2 For greater certainty, in this law:
- "aandakikendamowin" means experience and wisdom of the ages;
- "abinooji" means children;
- "aki" means land;
- "Anishinaabe" means the Anishinaabe people of Treaty #3;
- "Anishinaabemowin" is the traditional language of the Anishinaabe;
- "biimaadziwin" means the good life;
- "bidaajige'inan" means ceremonies and protocols;
- "community" refers to any one of the twenty-eight (28) Anishinaabe communities located in Treaty #3 territory;
- "counselling" means career preparation, applications to post-secondary level studies, scholarships and bursaries, personal counselling, academic counselling, social and mental health counselling;
- "curriculum" means a planned and ongoing systematic learning program provided for students as an accredited program of studies;
- "Education Plan" means an annual plan that establishes priorities for the school and determines how the staff will address the priorities;
- "Education Standards" means the acceptable level of performance that an educational institution will meet in order to provide high quality education programs, curriculum and services;
- "Elders" are respected wisdom keepers, political statesmen, ceremonial leaders, with traditional Anishinaabe knowledge systems needed in the education system to act as Teachers, Planners, Speakers;
- "Inaakonigewin" means law;
- "kaagikwe'inan" means sacred teachings;
- "kete" means ancient or traditional;

"kinamaadiwin" means education;

"schools" are defined as having students within an educational institution governed by the Treaty #3 Education Commission attending an accredited learning program duly authorized by Kinamaadiwin Inaakonigewin and the Grand Council Treaty #3;

"school facilities" include the standard established for floor space with gymnasium, cafeteria, library with information technology, science labs, sports fields, suited to the needs of the Anishinaabe Nation in Treaty #3, the geographical terrain and location;

"Special needs student" means a student who has a challenge of a cognitive, physical, sensory, emotional, or behavioural nature, has a learning disability or has special gifts or talents;

"Teacher" means a professionally accredited person holding a valid Teacher's Certificate; a member in good standing with the Elementary Teachers Federation of Ontario and the Ontario Secondary Schools Teachers Federation; Teachers in schools under the Treaty #3 Education Commission must also hold a valid certificate in cultural competency on the history, language, and culture from the Treaty #3 Education Commission;

"Treaty #3 Education Commission" is a legislated body under Kinamaadiwin Inaakonigewin with responsibility to govern the education system of the Anishinaabe Nation in Treaty #3.

Purpose:

- 3.0 To exercise the inherent jurisdiction in education of the Anishinaabe Nation in Treaty #3, now and for future generations.
- 3.1 To enhance the distinctive political, economic, and cultural heritage of the Anishinaabe Nation in Treaty #3 through education as a pillar of sovereignty and self-determination and through a targeted investment in the human capital of our Nation.
- 3.2
 - (a) to preserve the Anishinaabe in the student;
 - (b) to protect the language and cultural identity of the student;
 - (c) to provide an education that enables the student to become a functional citizen in the Anishinaabe Nation and society-at-large;
 - (d) to clarify relationships between the Grand Council and other governments in Canada;

(e) to harmonize administration of Anishinaabe law in education and administration of Crown government laws in education.

3.3 The education system of the Anishinaabe Nation in Treaty #3 will enable students to:

(a) Fully develop one's individual potential as distinct Anishinaabe members living in a modern era while also honouring one's heritage;

(b) Engage in studies with high academic standards as well as technical studies and skilled trades, land-based learning for traditional knowledge, as well as institutional learning;

(c) Become fluent in Anishinaabemowin and ensure cultural transmission of the oral history to the next generation;

(d) Develop a connection to Aki, and a sense of responsibility to care for the land using traditional knowledge systems;

(e) Engage in learning opportunities with Anishinaabe Elders, Knowledge Holders, and Oral Historians so that they can transmit their knowledge to the next generation of youth for maintaining the strength of the culture and language and the living civilization of the Nation;

(g) Understand the nature of Indigenous rights from an international perspective, know the inherent rights of the Anishinaabe Nation in Treaty #3, and be competent to speak to those rights publicly and transmit the knowledge to future generations;

(h) Promote a sense of social responsibility and tolerance for the beliefs of others in a global community;

(i) Understand the importance of contributing to the social, economic, political, and spiritual development of the Anishinaabe Nation in Treaty #3.

Guiding Principles:

4.0 This law declares and gives effect to the following principles:

a) Anishinaabemowin (Language): The first guiding principle for Anishinaabe education us to revitalize and maintain our way of speaking, our way of processing and expressing thought; our way of communicating with the creation, with the spirit, and with one another. It is to ensure the connection of our language to our worldview, language to culture, language to relatedness/identity, and, language to the natural environment.

b) Anishinaabe Inendamowin (Thinking): Develop the learner's ability to source and employ Anishinaabe ways of thinking that use the totality of the mind in its intellectual, intuitive and spiritual capacity - a way of knowing where the intelligence of the mind is inspired and informed from the intelligence of the heart.

c) Anishinaabe Gikendaasowin (Knowing): Instil and advance in learners our ways of knowing, our knowledge of our origins, way of life, way of being, ways of doing things, and our worldview. It directs us to increase in the learner the highest consciousness and ability at all levels of sensing, knowing and experiencing, from a place of Anishinaabe identity, thinking, knowledge base, and way of being.

d) Anishinaabe Inaadiziwin (Being): Develop in the learner the fullest capacity of the Anishinaabe way of being that is the total response of the total person with and within the total environment. It is to activate the whole person in the learning experience - body, mind, heart, and spirit - in such a way as to generate the highest quality of experience and inspire the finest creativity of response and expression.

e) Anishinaabe Izhichigewin (Doing): Strengthen the capacity inherent in the learner of the Anishinaabe way of doing things, and, to develop the abilities and skills for effective Anishinaabe functioning in the world and for quality of living and contributing to the quality of community. The processes and style of teaching and learning will be consistent with the values and directives of this principle.

f) Anishinaabe Enawendiwin (Relations): Provide a learning process and environment that is in keeping with our all-encompassing way of relating to the world which is respectful of the individual and responsive to the integrity of the collective whole - a relationship that is personal, caring, responsive and sharing, and, built upon our identity with and connection to the land and family of creation.

g) Gidakiiminaan (Connecting to the land): Ensure the learners connections and relationship to the land and to Creation, and to provide an environment of teaching and learning that is situated on the land and within the natural and cultural environment - and that encourages operating within and being sensitive to the essential principles the environmental ethic of Gidakiiminaan.

- 4.1 Kinamaadiwin Inaakonigewin will protect and perpetuate the members of the Anishinaabe Nation in Treaty #3 as the most valuable of all resources in their homelands to ensure cultural and linguistic transmission over the generations.

- 4.2 Kinamaadiwin Inaakonigewin is designed to provide a learning experience of excellence for the members of the Anishinaabe Nation in Treaty #3 as a preparation for life, both on and off the territory.
- 4.3 Kinamaadiwin Inaakonigewin will promote intra-government coordination within the Anishinaabe Nation in Treaty #3.
- 4.4 Kinamaadiwin Inaakonigewin will provide opportunities for improvement of education through the development of local solutions to local issues.
- 4.5 All policies or resolutions in education are subject to Kinamaadiwin Inaakonigewin, and those inconsistent with the Law will be revised or repealed.
- 4.6 Regulations will accompany Kinamaadiwin Inaakonigewin to ensure the effective implementation of the Law and financial transparency for accountability purposes.

Duty to Consult and Accommodate, International Standards of Free, Prior and Informed Consent

- 5.0 Kete Inaakonigewin has governed external relations with other peoples and are based on harmony and balance between human beings and the natural world, respect for diversity and the autonomy of all peoples, the value of consensus building to manage disputes and holistic approaches to problem solving.
- 5.1 Kete Inaakonigewin requires that our consent is needed in matters affecting our traditional lands, resources, and all matters affecting our self-determination as a Nation.
- 5.2 UNDRIP sets out government obligations in instruments of international law to consult with Indigenous nations including explicit requirements for governments to seek our free, prior and informed consent to certain proposed government decisions or actions (UNDRIP, General Assembly Resolution 61/296, October 2, 2007).
- 5.3 Federal and provincial governments will consult with the Anishinaabe Nation in Treaty #3 for any proposed change to education policy, legislation or standards that may affect our Nation's education system regarding programs, standardized assessments, teacher certification, graduation requirements, curriculum, facilities, accreditation, transferability of students to other jurisdictions, transportation, labour laws, equity programming, evaluation, services and other areas to be specified in the regulations.

- 5.4 The Anishinaabe Nation in Treaty #3 will define Consultation Standards to which it holds external governments and agencies accountable for doing business within the boundaries of its jurisdiction.
- 5.5 The Crown owes the Anishinaabe Nation in Treaty #3 the duty of consultation to arrive at a solution to accommodate the Nation's rights and interests and provide funding to ensure that the Anishinaabe Nation in Treaty #3 can adequately participate in the consultation process to ensure free, prior and informed consent.
- 5.6 Governments, corporations, agencies, boards and organizations must be made aware of the Anishinaabe Nation in Treaty #3's laws and policies on consultation in order to respect and implement our fundamental rights as a people and Nation.

Administration

Role of the Grand Council of Treaty #3:

- 6.0 Kagagiwe Inaakonigewin establishes sovereignty over Treaty #3 territory and occupies the field of jurisdictional issues affecting the people of the Anishinaabe Nation in Treaty #3.
- 6.1 Jurisdiction over education is vested in the membership of the Anishinaabe Nation in Treaty #3 who are the rights holders and are represented through their leadership of the Ogichidaa and the Grand Council Treaty #3.
- 6.2 The Grand Council Treaty #3 shall support Treaty #3 communities jurisdiction over education through Kinamaadiwin Inaakonigewin and follow its provisions and regulations.
- 6.3 The Grand Council Treaty #3 will establish and authorize a Treaty #3 Education Commission to act on its behalf to implement the provisions of Kinamaadiwin Inaakonigewin.
- 6.4 On behalf of the Treaty #3 Education Commission, the Grand Council Treaty #3 holds the Chair of the Treaty #3 Education Commission through the Education Portfolio Holder of the Grand Council Treaty #3;

Role of the Treaty #3 Education Commission:

- 7.0 Implementation of Kinamaadiwin Inaakonigewin.
- 7.1 Formulation of policies, procedures, and regulations to guide the implementation of Kinamaadiwin Inaakonigewin, including the establishment of a Treaty #3 Education Plan, Code of Conduct, Curriculum, and Education

Standards for the benefit of the Anishinaabe Nation in Treaty #3 and its communities.

- 7.2 Ensuring that the language in education agreements that describe the provision of education services and programs is consistent with the language for jurisdiction as expressed in Kinamaadiwin Inaakonigewin of the Anishinaabe Nation in Treaty #3.
- 7.3 Designing education programs, assessments, services, appeals procedures, enrolment criteria, approve education resource materials and other supplies, establish a code of conduct for students, attendance policies, counselling, transportation schedules, routes and buses, provide a system of traffic controls on roads if necessary, provide housing for students and supervision of students within such housing, manage volunteers, parental engagement through an Community Education Council.
- 7.4 Indigenous knowledge is part of every course in the school curriculum and defined broadly to include the beliefs, practices, values, attitudes implicit in the integrated Indigenous worldview of the Nation both past and present.
- 7.5 Spirituality is part of the curriculum, along with ceremonies practiced in the school system, with a place offered to other faith traditions as well, as defined in Kinamaadiwin Inaakonigewin of the Anishinaabe Nation in Treaty #3.
- 7.6 Counselling services.
- 7.7 Maintain records, evaluations of personnel, minutes of meetings, student information.
- 7.8 Evaluations.
- 7.9 Research, Development, Publishing.
- 7.10 Central purchasing of educational materials, cost sharing with neighbouring Indigenous governments.
- 7.11 Responsible for finance and administration, performance and productivity.
- 7.12 Enter into contracts or agreements.
- 7.13 Administer grants from foundations and other external sources for projects related to education under the auspices of the Treaty #3 Education Commission.
- 7.14 Raise, invest, or borrow money and guarantee the repayment.
- 7.15 Establish endowment funds, award scholarships and bursaries.

- 7.16 Prepare financial reports to the Grand Council Treaty #3 to be submitted annually with projections for the coming school year.
- 7.17 Reports to the Grand Council Treaty #3 will include an annual report on the Education Plan with statistics and performance indicators; report on the review of education standards and recommendations; review of policies and recommendations; staffing review.
- 7.18 Establish Committees for Curriculum, Teacher Classification, and Education Standards to ensure the design and content meet or exceed those of the province in content, pedagogy, assessment and quality.
- 7.19 Establish a Community Education Council of parents and community members.
- 7.20 Evaluate and recognize the education activities of an education program undertaken by a student outside of Treaty #3 education system.
- 7.21 Inspections of schools.
- 7.22 Capital programs, construction, operations and maintenance.
- 7.23 Standards for hiring, evaluation, and dismissal of teachers, counsellors, specialists, technical support, therapists, principal, Director of Education, and administration of staff specified in the regulations.
- 7.24 Dispute resolution through an Ombudsman employed by the Grand Council Treaty #3 and serving all programs of the government as an Arbitrator.
- 7.25 Appoint an Anishinaabe School Trustee to the provincial school board to represent the educational needs of Anishinaabe students in the provincial system of education.
- 7.26 Mount events that celebrate the linguistic, cultural and spiritual life of the Anishinaabe Nation in Treaty #3.
- 7.27 Establish financial regulations, policies for transparency and accountability.

Education Plan:

- 8.0 Prepared by the Director of Education for the Treaty #3 Education Commission in respect of seeking authorization from the Grand Council Treaty #3.
- 8.1 Education Plan is a 5 year strategic plan and a 10 year strategic plan that reflects the Anishinaabe Nation in Treaty #3's spiritual, social, cultural, health, education, economic and environmental objectives and the long term development goals of the Grand Council Treaty #3 for sustainability and self-determination.

- 8.2 Education Plan is integrated with housing, sanitation, nutrition, and the general health and social needs that impact educational success within the Anishinaabe Nation in Treaty #3.
- 8.3 The Education Plan feeds into the long term strategy of the Anishinaabe Nation in Treaty #3 for its staffing requirement in programs, services and institutions for Nation building purposes.
- 8.4 The Education Plan incorporates social and economic trends of Canadian society with a view to impacts on the Anishinaabe Nation in Treaty #3 and the need for skilled labour, workers in the professions, technology professionals, general labour needs for employment.
- 8.5 The Education Plan includes an annual School Success Plan that provides the goals for the education system, key indicators, performance measures based on the value system of the Grand Council Treaty #3 and the Treaty #3 Education Authority.
- 8.6 The Education Plan estimates annual costs for education programming and service delivery, construction, and renovation requirements.
- 8.7 The Education Plan will provide a one year summary of that coming year's goals, objectives, performance indicators, measurable key elements and be submitted to the Grand Council Treaty #3 for approval as the Annual Education Plan for that particular year.
- 8.8 The Education Plan will include a report on attendance of students and counselling offered to truant students and their families with options on next steps.
- 8.9 Prepare an annual Operational Report based on the last school year measured against the goals set out in the Annual Education Plan and submit the report for the approval of the Grand Council Treaty #3.
- 8.10 Prepare operational reports especially concerning emergency measures.

Anishinaabemowin:

- 9.0 Fluency in Anishinaabemowin is prescribed in the curriculum of the schools under the jurisdiction of the Grand Council Treaty #3 and with support from the Treaty #3 Education Commission.
- 9.1 Anishinaabemowin is deemed to be the first language of the school system.
- 9.2 Students will be encouraged to speak Anishinaabemowin as their first language.

- 9.3 Every school, learning lodge, and curriculum in use shall teach Anishinaabemowin.
- 9.4 The objective of every school and learning lodge will be to graduate students who are equally proficient in Anishinaabemowin, as they are in English.
- 9.5 The teaching staff and administrative staff of every school and learning lodge will use Anishinaabemowin to the greatest possible extent as their language of work.
- 9.6 Language of instruction is Anishinaabemowin, and English as determined by the Treaty #3 Education Commission according to the wishes of the community.
- 9.7 The Treaty #3 Education Commission will negotiate with post-secondary institutions so that proficiency in Anishinaabemowin be considered as fulfilling the requirement for having a second language for admission to their programs.

Curriculum:

- 10.0 The Treaty #3 Education Commission will be responsible for ensuring the curriculum in schools, learning lodges, alternative education programs, institutes, College and University courses, are consistent with the goals of Grand Council Treaty #3.
- 10.1 Curriculum means a systematic, planned program of culturally responsive study with goals, objectives, content, pedagogy, assessment tools and schedules, evaluation and reporting across the grade levels.
- 10.2 The school program will contain core subject areas to meet or exceed those education standards of the province.
- 10.3 Supplemental electives will be offered to deepen the students' understanding of the core areas of study.
- 10.4 Integrated learning modules will also be available to show students how their core subjects are fundamental to careers and applicable in the modern world.
- 10.5 In every grade, a spiral curriculum will be offered in Anishinaabemowin fluency in the early years and primary grades, with a view to reading and writing beginning in grades 4-8 and continuing through senior grade levels; traditional cultural knowledge systems will be woven through all grades and learning programs under the jurisdiction of the Treaty #3 Education Authority.
- 10.6 Anishinaabemowin will be used as the first language in the school system with a view to proficiency in this language as being equal to proficiency in English on graduation.

- 10.7 Teachers and administrative staff at each school will use Anishinaabemowin as their language of work to the greatest possible extent consistent with the benefits to the students and their families and with the efficient working of the school.
- 10.8 Council of Elders will approve the historical, traditional, cultural and linguistic curriculum and include the complex worldview of values, attitudes, beliefs, and behaviours significant to the tradition of the Anishinaabe Nation in Treaty #3.
- 10.9 The worldview of the Anishinaabe Nation in Treaty #3, both from traditional times to the present-day cultural traditions, will be reflected in all aspects of the curriculum in the schools and learning lodges of the Nation to provide context to all parts of the curriculum.
- 10.10 Traditional ceremonies will be practiced in the schools and learning lodges under the direction of the Treaty #3 Education Commission and the Council of Elders.

Education Standards:

- 11.0 Education standards will apply to all Treaty #3 Education Commission programs and services and facilities.
- 11.1 Education Standards refers to levels of performance of students or requirements demanded by the educational institution for successful completion of programs of study.
- 11.2 The education standards will meet or exceed those of the provinces and territories, will preserve Anishinaabemowin, cultural and spiritual traditions, while enabling students to develop to their maximum potential.
- 11.3 Education Standards recognize and include the importance of language, culture, history, spirituality and traditional knowledge systems of the Anishinaabe Nation in Treaty #3.
- 11.4 The Treaty #3 Education Commission will establish education standards for every grade level and shall be the final arbiter of whether a student has achieved the expected outcomes for graduation.
- 11.5 Transferability of students across jurisdictions is a primary concern and every effort will be made to meet or exceed the education standards of other jurisdictions.
- 11.6 Equity in education services, programs, facilities with the standards of the province will be established over a specified period of time as the Treaty #3 Education Authority evolves its Education Plan with sufficient federal funding commitments.

- 11.7 Student performance measures with key indicators include linguistic and "culture added values" as indicators of educational success, as well as social and emotional literacy, development of character according to rites of passage, civic duty for nation building.
- 11.8 Percentage of Anishinaabe Teachers should reflect the student composition in the classroom.
- 11.9 Sports and recreational programs, and physical education are essential parts of the school program to promote optimal physical health and build character and camaraderie among peers.
- 11.10 Special needs abinooji will have timely assessments, diagnosis and placement and their needs will be part of the educational standards.
- 11.11 Enriched learning opportunities for gifted children will be part of the school program and embedded in the educational standards.
- 11.12 Culturally Responsive Education Standards will govern all schools and education programming under the jurisdiction of the Grand Council Treaty #3 and managed under the Treaty #3 Education Commission.
- 11.13 Assessment Standards include tests, standardized testing, reporting, data collection and usage, monitoring and evaluation that meet culturally responsive education standards of the Treaty #3 Education Commission.
- 11.14 Parental involvement in designing Education Standards will be established through the Community Education Council to ensure all parents and guardians have a voice in determining the kind of education offered to their children.
- 11.15 Education standards will involve language instruction in all grade levels, courses, and course content including an orthography.
- 11.16 Education Standards also comprise health and nutrition instruction and teaching on noxious substances, addictions, and the effect on the individual, family and Nation with a view to discussing traditional healthy foods and lifestyles.
- 11.17 Education Standards consist of studies in parenting and family life for all grade levels, courses and course content that describe Anishinaabe family life in the community, parenting, cultural practices, and the need for parental involvement in the school.
- 11.18 Education Standards include courses and course content for all grade levels that provides knowledge on the historical, political, cultural, environmental and socio-economic elements of the land base and natural resources. The courses will include the historical development of the land base, the legal status of the land

tenure, cultural knowledge of the land, modern management practices of lands and resources, social and economic impacts of natural resource extraction, careers in land management, ecology, Anishinaabe environmental studies and the sciences.

Special Needs and Gifted Students:

- 12.0 A Special Education Policy Framework will be developed by the Treaty #3 Education Commission.
- 12.1 The Treaty #3 Education Commission may provide the establishment and operation of special schools, courses, and learning services suited to the special education needs of the students within the cultural and linguistic context of the Anishinaabe Nation in Treaty #3.
- 12.2 The Treaty #3 Education Commission may make provision for schools, courses, or services for the blind, physically challenged and gifted children.

Community Education Council:

- 13.0 Parents, guardians and community members may form a Council to bring their recommendations to the Treaty #3 Education Commission, Director of Education, Principal, School Administration, and professional staff at the school.
- 13.1 The Community Education Council will be involved in the development of Education Standards, policies, programs, extra-curricular activities, planning, evaluating standards, setting policies on school governance, improving communication and the preparation of the Annual Report on the state of education in the education system for the Anishinaabe Nation in Treaty #3.
- 13.2 Parents and community members will have one seat on the Treaty #3 Education Commission.
- 13.3 The Community Education Council offers additional resources to assist the school in informal learning for the students, particularly land-based learning, oral history, cultural and spiritual knowledge, cultural mapping of the territory.
- 13.4 The Community Education Council will consult with the Principal to advise on regulated Early Childhood Education programming and maternal infant care, parenting programs, K-12 programming to bring the community voice forward in policies, programs and services at the elementary and secondary school levels.
- 13.5 Principal, Teachers, and school professional staff along with community members and local Elders Council in consultation with the Community Education Council will develop a culturally appropriate behaviour policy based

on cultural values of the Nation for the discipline of the students, student conduct, managing positive relationships, and resolving conflict.

- 13.6 Student failure to meet one's responsibilities will be mediated by the Community Education Council prior to advancing to the Treaty #3 Education Commission.
- 13.7 Parent involvement is encouraged in all aspects of the school's functions and especially through the Community Education Council.
- 13.8 Principal will seek out ways to involve parents in school functions and ensure monthly communication with parents through newsletters sent home with students.
- 13.9 The Treaty #3 Education Commission will communicate to the Community Education Council any amendments to Kinamaadiwin Inaakonigewin.
- 13.10 The Treaty #3 Education Commission will provide in-service training for parents and community members on the priority education issues.

Dispute Resolution:

- 14.0 When disputes occur between the Grand Council Treaty #3 and the Treaty #3 Education Commission, a process to set a Special Hearing and a Special Hearing Committee begins.
- 14.1 A Special Hearing Committee shall be struck with one member each from the Grand Council Treaty #3 and the Treaty #3 Education Commission, a member from a neighbouring Anishinaabe community appointed by a Tribal Council providing second level services to the Treaty #3 Education Commission, two persons appointed by the regional political First Nations organization of which the Grand Council Treaty #3 is a member and these persons cannot be members of the Anishinaabe community where the complaint was lodged, the Chair of the Committee shall be the Director of Education for the regional political organization or a designate such as the Ontario Native Education Counselling Association or other First Nations organization.
- 14.2 A complaint will be received by the Grand Chief of the regional political organization of which the Grand Council Treaty #3 is a member who will set a Special Hearing within 45 days of receiving the complaint and establish the Special Hearing Committee.
- 14.3 The Special Hearing Committee shall make a report to the regional political organization within 90 days of the hearing and the decision will be final of the Grand Chief and the Executive Committee.

Finance of Anishinaabe Nation in Treaty #3 Education

Comprehensive Transfer Payments: Crown Funding Agencies:

- 15.0 Recognition of the inherent right and treaty right obligation of the Crown and the government of Canada to provide funds for the education of Anishinaabe learners of Treaty #3 through long term Agreements, Settlements and Contracts between the government of Canada and the Grand Council Treaty #3.
- 15.1 The Treaty #3 Education Commission is granted the authority to pursue funding from external and multiple sources through agreements to fulfill education obligations under Kinamaadiwin Inaakonigewin in order to meet the objectives of the Education Plan.
- 15.2 Education Funds will be confirmed by Agreement with the government of Canada and/or its provincial representatives to the Grand Council Treaty #3 and transferred to the education account under the control of the Treaty #3 Education Commission.
- 15.3 Funds will be used according to terms of the funding agreement and according to agreed upon plans and budget established in the Agreement with the Treaty #3 Education Commission and the funding agencies.
- 15.4 Agreements or comprehensive transfer payments from the federal or provincial government, including equalizing payments, will be negotiated with Grand Council Treaty #3.
- 15.5 The Treaty #3 Education Commission will prepare an annual budget for approval by the Grand Council Treaty #3 to be passed by resolution.
- 15.6 On the approval of the Grand Council Treaty #3, the Treaty #3 Education Commission may request by resolution, a budget that provides expenditures exceeding revenue.
- 15.7 Funding shall be deemed to be equitable, multi-year payments with mutually agreed upon accountability standards that are clear, consistent and comparable across Canada.
- 15.8 The Grand Council Treaty #3 will appoint negotiators to seek equitable contracts, agreements, and comprehensive long term funding.

Budget Preparation:

- 16.0 The Treaty #3 Education Commission will prepare its own budget and ensure that the Grand Council Treaty #3 has approved it in due process.

- 16.1 Guidelines for the preparation of budgets regarding format, dates and procedures will be published by the Treaty #3 Education Commission.
- 16.2 Costs will include community capacity building to strengthen jurisdiction and develop resources for implementation.
- 16.3 Funding includes the costs of regional and community-based infrastructure for second and third level services.
- 16.4 Compensatory funding to address long term disadvantage, emergencies and underfunding, remote geographical locations and increased costs due to shifting weather patterns of floods, winds, and so on.
- 16.5 Funds remaining at the end of the fiscal year may be retained or spent by the Treaty #3 Education Commission at its discretion on educational priorities providing that the terms of the Agreement for the funds are met.
- 16.6 Surplus funds may be placed in a trust fund account if not used immediately at the end of the school year.
- 16.7 Financial due diligence is followed to avoid a deficit.
- 16.8 A deficit must be planned and approved by the Grand Council Treaty #3.
- 16.9 Any lobbying campaign required to meet the budgetary needs of the Treaty #3 Education Commission will be recommended to the Grand Council Treaty #3 for action.

Regulations and Amendments to Kinamaadiwin Inaakonigewin:

- 17.0 Regulations drafted by the Treaty #3 Education Commission will be brought to the Grand Council Treaty #3 for approval.
- 17.1 Every regulation has the force of Law.
- 17.2 Regulations further describe sections of this Law and define the sections clearly.
- 17.3 For duties of the Director of Education.
- 17.4 For professional development of teachers.
- 17.5 For establishing professional staff qualifications, training, competency guidelines, certification.
- 17.6 For organizing, administering and supervising all schools under the Law.
- 17.7 For the classification of students and programs of study from early learning to Grade 12 and post-secondary.

- 17.8 For establishing Curriculum and Instruction Standards.
- 17.9 For counselling services for students and their families.
- 17.10 For acquisition, financing, maintenance of school buildings, construction.
- 17.11 For school administration guidelines including attendance policy, truancy, social programming for students and their families, calendar year, special needs students policy, home schooling, student code of conduct.
- 17.12 For fiscal management policies and funding formulas.
- 17.13 For establishing procedures to guide actions or goals of Kinamaadiwin Inaakonigewin when the Law is insufficient.

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