

A BRIEF OUTLINE OF THE MI'GMAQ TREATIES
WITH THE BRITISH CROWN

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BACKGROUND

As an Indigenous People we entered into a variety of diplomatic agreements, including Treaties with one another for many, many hundreds of years before the Europeans and other newcomers arrived. The Wabanaki Confederacy is an example of a Treaty relationship that continues to have life and meaning today. It is an inter-tribal Treaty of the Mi'gmaq, Wolastoqiyik, Passamaquoddy, Penobscot, and Abenaki. The diplomatic relationship of the the Mi'gmaq and the Wolastoqiyik Peoples predates the Wabanaki Confederacy

We later had relationships with the Norse, the Basque and then with the French and English.

Because we were an independent People with international legal rights, oral Treaties were made with the French, including one that allowed Champlain to establish the citadel and colony of Québec. Our rights under international law continue to develop as was demonstrated by the recent UN Declaration on the Rights of Indigenous Peoples.

Treaties with the French followed Mi'gmaq protocols and traditions. The strength of our relationship with French enabled Acadian society to flourish because we were willing to share some of our Lands and Waters.

France eventually lost the series of its wars with the British and was forced out of the continent, leaving behind settlers and their forms of local government in several of their former colonies.

Despite the loss by France, it is clear that the Mi'gmaq had not been militarily defeated by the British. We had no intention of surrendering and never ceded any of our lands or waters. The Mi'gmaq were seeking to create a relationship of peace, friendship and trade

with Britain and maintain control over our own lives and communities. Our ancestors were prepared to share the bounty and richness of our Territory but did not relinquish them.

THE PEACE AND FRIENDSHIP TREATIES

The written Treaties were entered into with the British and once again they followed our protocols:

- All treaties are Sacred as the Creator was deemed to be present at the negotiations and the Treaty execution;
- Consequently promises made are solemn and Treaties are living documents that define a relationship;
- Treaty language is one of kinship and mutual respect;
- Each new Treaty included all the terms of earlier Treaties; older Treaties were not replaced by newer ones.

The conclusion of the earliest Treaties was often followed by frustration. Many of the oral promises made by the British in the negotiations never appeared completely in the written versions of Treaties. The British wrote the documents and often their language did not always fully reflect what the Parties had actually promised to each other. Of course there were translation difficulties when the written form was explained after the oral agreements had been reached.

Hostilities broke out periodically between 1725 and 1779 but at the end of each round of fighting the Treaty relationship was renewed and re-affirmed. No Treaties were cancelled or otherwise diminished. In fact all were reaffirmed by the Parties at Listuguj in 1786.

It must be remembered that the Mi'gmaq were very effective warriors during hostilities:

- The Mi'gmaq took over 100 British ships on the open seas, often using French vessels but no French sailors or military forces were involved; and
- On land the British could not venture more than a mile or so from their forts or small settlements without fear of attack.

Both sides wanted better relations, peace, friendship and trade. The Treaties are more than just the written documents and establish a permanent Treaty relationship. The Treaties consist of:

- Oral statements and promises made by the Parties during Treaty negotiations or conferences;
- Express or implied terms, conditions and representations of the Treaty documents themselves; and
- The mutual understandings of the Parties at the time they executed the Treaty.

Together these can be deemed to be the Treaty representations and warranties, covenants, and implied terms.

Representations and warranties made by the British include that:

- A special relationship was to be maintained between the Mi'gmaq and the British Crown. The British Crown would treat the Mi'gmaq with "favour, protection and friendship";
- The British Crown would have the same kind of relationship with the Mi'gmaq as the King of France had with us;
- The Treaties were a covenant chain that might rust but could never be broken; British law would be a protection of Mi'gmaq rights.

Express promises made by the British include that:

- The Parties would live in "peace and friendship" with each other;
- The relationship is based on Dummer's Treaty of 1725, with minor modifications as negotiated;
- The Mi'gmaq would not be bothered or disturbed by the British in their persons or in their hunting, fishing and planting grounds;
- The Mi'gmaq would have freedom of religion;
- If any Indigenous person was injured by a British subject, he or she would have satisfaction and compensation according to British law;

- If the British breached the treaty, the Indigenous Nation would be paid compensation;
- The Mi'gmaq would have equal rights under British law in the event of any dispute with a settler;
- The Mi'gmaq and the British would meet periodically to renew the Treaty relationship; and
- The Mi'gmaq had rights of trade.

The implied terms of the Treaty relationship include that:

- The Mi'gmaq would be internally self-governing;
- Disputes between Mi'gmaq people would be settled according to Mi'gmaq law and British law would not apply;
- Allocation of resources would continue to be dealt with under Indigenous law, not British law; and
- Taking up of land would be by negotiation with fair compensation.

Conclusion

Treaties are an exchange of sacred and solemn promises between the Crown and Indigenous Peoples.

The courts affirm that there are two versions of each Treaty: the written and the oral version.

Treaties bind the Crown.

Treaties are the foundation of Canada.

The court decisions reaffirm our Treaty rights; they do not create new rights. The courts recognize the wisdom of our ancestors and instruct all of us that we are bound by the Treaty promises.

WHAT NEXT?

The provincial and federal governments must work with us to change the socio-economic conditions that our people face on a daily basis. We must all return to the fundamental and central point of the Treaties that the lands and resources must be shared. That means sharing in the decision making as to how lands and resources are to be:

1. Conserved for future generations;
2. Rationally and sustainably developed;
3. Used wisely to provide benefits to all and not just to a handful of corporations.

It means coming to agreement on the jurisdiction and powers of each of the federal, provincial and indigenous governments.

It means adhering to law and the rights of Indigenous Peoples.

It means educating New Brunswickers and Canadians about the true meaning, spirit and intent of the Treaties and about the real history of this country – the good and the bad.

It means re-affirming our sacred bonds of Peace and Friendship.

It means caring for the environment and future generations while caring about and honouring the past and honouring our ancestors. .

Today we remain Treaty partners and we are all Treaty beneficiaries.