

TREATY RESEARCH REPORT  
TREATY No. 9  
(1905-1906)

by  
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for  
**Treaties and Historical Research Centre**  
**Indian and Northern Affairs Canada**  
**1986**

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## “WE ASK YOU TO HELP US”

Chief Louis Espagnol was worried. “All of my old people who used to hunt near here are in great need,” he wrote from Lake Pogamasing in December of 1884. “The trappers have stolen all our beaver, so there is nothing left for them to hunt and they are too old to go anywhere else... there are also about twenty old sick women, invalids and orphans who are very badly off and they all join me in asking you to help us.”<sup>1</sup> The chief’s plea was addressed to James Phipps, visiting superintendent of Indian Affairs for Manitoulin Island and Lake Huron. In forwarding the request to his departmental superiors, Phipps explained that only some of these people fell within his jurisdiction. “About half the Indians in the Band of Louis Espagnol,” he noted; “have no Reserve nor any Treaty relations with the Crown.”<sup>2</sup>

Sahquakegick, alias Louis Espagnol, was chief of one of the divisions of the Eshkemanetigon or Spanish River Band on Lake Huron. In September of 1850 his older brothers had signed, on behalf of the band, one of the two agreements the Honourable W.B. Robinson had negotiated with the Indian people of northern Lakes Huron and Superior.<sup>3</sup> Under the terms of what came to be called the Robinson-Huron and Robinson-Superior Treaties, various bands of Ojibwa had surrendered to the Crown an immense territory between the lake front and the height of land dividing the Great Lakes and Hudson Bay watersheds in exchange for an annuity, a reserve for each band, and the promise of continued hunting and fishing rights over unoccupied Crown lands.<sup>4</sup> In 1850 the surrendered lands had been part of the province of Canada (West) - which at Confederation became the province of Ontario. Beyond the height of land, within territories covered, until 1870, by the Hudson’s Bay Company’s Rupert’s Land Charter of 1670, lived several thousand more Ojibwa and Cree people.<sup>5</sup> As with Louis Espagnol’s band, some of those who lived near the northern divide belonged to groups which had taken part in the Robinson treaties. In the course of making those agreements, for example, W.B. Robinson reported that Long Lake, which lies about one hundred and fifty kilometres inland from Lake Superior, was the headquarters for 216 Indians, only 80 of whom actually inhabited the ceded tract, with the rest living “beyond

the Height of Land in the Hudson's Bay Territory".<sup>6</sup> To people such as these, it seemed inexplicable that an artificial boundary prevented all band members from sharing equally in treaty benefits. "I frequently meet with Indians from the height of land at Missaisagua & Serpent River," Superintendent Phipps had commented in early 1880, "and have often been applied to by them to be placed on the Pay list of the Robinson Treaty, which of course could not be done."<sup>7</sup>

But Chief Espagnol's urgent petition in December of 1884 was qualitatively different from earlier requests - and Mr. Phipps knew the reason why. As he informed the superintendent general of Indian Affairs, the "construction of the Canadian Pacific Railway has opened up the country in the neighbourhood of Lake Pogamasing to White Trappers who deprive the Indians of the Beaver (which they carefully preserved, never taking all, but leaving some to increase) and as the Whites kill and destroy all they can, the consequence will be that no Beaver will be left in that section of country."<sup>8</sup> At first, the northern Cree and Ojibwa had welcomed the railroad - for Indian people had never hesitated to adopt the white man's technologies if they could be put to Indian use. This was as true of transportation as it was of more obvious material goods such as the gun, the iron pot and the canvas tent. Within a year of the advent of steam vessels on Lake Huron in the 1840s, Ojibwa people - if they could afford the fare - were travelling to and from their lakeshore village sites to Sault Ste Marie, to Manitoulin Island, or to Penetanguishene and Owen Sound to trade, visit relatives and receive their annual presents from the British government.<sup>9</sup> When the railhead had arrived north of Lakes Huron and Superior, many people drew on traditional skills as they guided exploration parties, helped to cut the right of way, and provided construction camps with country food.<sup>10</sup> For those who lived near the line of track, the railway greatly simplified transportation of supplies to their winter hunting grounds. And for all of the northern inlanders, it meant cheaper goods and higher prices for furs, thanks to itinerant merchants who followed the railhead westward - just as, a generation earlier, fur traders had plied their wares on the steamer route along the northern and eastern coast of Lake Huron.<sup>11</sup>

“Until two years ago we had almost a monopoly of the fur trade, not losing many skins to the weak opposition who were against us,” wrote Chief Trader T.C. Rae of the Hudson’s Bay Company, whose district in 1885 covered much of northeastern Ontario. Rae’s analysis was typical of Company employees:

Now however the best part of the district is intersected by the Nippissing & Superior Branch of the Canadian Pacific Railway & the country is liable, at any time, to be raided by free traders who can transport goods without much trouble within any easy distance of Flying Post & Matawagamingue from which places the Railroad is distant only 50 or 60 miles in a straight line.<sup>12</sup>

For the first time since its merger with the Northwest Company in 1821, the Hudson’s Bay Company faced serious competition in the near north. Its officials were furious with the “sharks who do business along the line” - as Chief Trader Alex Matheson of Red Rock called them - especially since their number included station agents and other C.P.R. employees who “trade with every Indian they come across.”<sup>13</sup> By 1890, the Hudson’s Bay Company had been forced to downgrade inland posts such as Mattawagamingue and Brunswick House and to move much of their business to railway hamlets like Biscotasing and Chapleau, Missanable and Dinorwic.<sup>14</sup>

Throughout the north, Company employees were ordered to watch the opposition closely and to keep inlanders away from the railway line.<sup>15</sup> “Several Albany Indians were coming over to meet the opposition to trade their furs,” reported the officer in charge of the Lake Nipigon post in 1892, when one of the Company’s men “intercepted them & brought them to him securing all the fur they had & as they were still short of some necessaries gave them the above amount in debt on condition that they would immediately return to their own posts in Albany district, which they did.”<sup>16</sup> But the Hudson’s Bay Company was not always so successful. According to the chief factor at Moose Factory in 1891, some enterprising Cree had already taken their furs out to the railway, where “their eyes were thus opened to the fact that much higher prices would be paid them along the line ... than they could get at Moose.”<sup>17</sup> The refrain was always the same. The Indian people were becoming “very much more troublesome to deal with,” even refusing to repay the goods advanced them on account in the fall.<sup>18</sup> There

was, of course, more than a little special pleading in all of this. Chief Trader Matheson revealed all when he explained to the Company commissioner in 1892 that there "is an inevitable loss on Indian Advances, but it is more apparent than real, as the goods debted out to Indians are always priced higher than general customers."<sup>19</sup> At Chapleau, goods advanced to Indian people were marked up 35 per cent over the same merchandise sold to "general" customers.<sup>20</sup>

With a mixture of anger and genuine regret, Hudson's Bay Company traders mourned the passing of their paternalistic sway over the northern Ojibwa and Cree. "The Indians are becoming more corrupted according to their intercourse with the whites and roving Missionaries," wrote Peter Warren Bell from Michipicoten. "The only true Indian is the simon pure ... Hudson Bay infidel who has intercourse with the Company alone & only at stated periods."<sup>21</sup> Like all such generalizations, Bell's complaint contained a kernel of truth - for the railway was not an unalloyed blessing to the Indian people. Observers like Bell repeated a litany already familiar from the history of Indian-white relations throughout the Americas.<sup>22</sup> "I sent James Saunders to drive Ashanoquet further inland," remarked John Black, the Chapleau trader, in December of 1885, "the old fellow is reported to me as sponging along the line of the C.P.R. in pursuit of liquor." Chapleau, like any other frontier town, was a rough and tumble sort of place. "The C.P.R. officials are determined to clear their division points," added Black, "but I am afraid whiskey shall be sold in injurious quantities in spite of all their efforts. Section gangs to a man refuse to give any assistance in pulling down grog shacks saying, reasonably enough, they were not hired to endanger their lives doing police work."<sup>23</sup> In fact, there was little police work of any kind along the railway. Independent traders found it lucrative business to exchange "ascuty wabo" for furs. Though the Hudson's Bay Company had virtually eliminated the sale of fire water within Rupert's Land after 1821 (after freely distributing it for a century and a half), Company men began offering liquor covertly to their Indian customers in railway towns. It took the threat of legal sanctions from the Sault Ste Marie Indian agent to persuade both the Company and its competition to stop supplying the Robinson Treaty Indians of Chapleau and Missanabie with liquor.<sup>24</sup> To a missionary like the Jesuit Father Joseph Specht, who travelled widely throughout the hinterland

from his base at Thunder Bay, white contact was an unmitigated disaster for his Indian charges. He complained bitterly about the “intemperance” and family violence he saw, and he particularly deplored the presence of so many isolated single men - construction gangs or section crews - among the Indian women.<sup>25</sup>

And with increased contact came the usual complement of unfamiliar diseases. When combined with the cyclical downturn in animal populations - a regular occurrence at seven to ten-year intervals - the consequences could be devastating. An outbreak of measles at Chapleau and Missanabie in 1889 caused several deaths among the treaty Indians of those localities and then spread to the non-treaty people who lived inland from the railway line near Micabanish (Brunswick) and Missinaibi Lakes. These same people had barely recovered when the rabbit population - a traditional winter food - hit bottom, causing more hardship.<sup>26</sup> Country food was again scarce a decade later, when an epidemic of influenza struck the same groups, decimating their populations.<sup>27</sup> According to the Hudson's Bay Company trader on Missinaibi Lake, several people died of starvation during the winter of 1898-99 alone.<sup>28</sup> But it was not just within reach of the railway line that suffering occurred. Several hundred kilometres away, at Moose Factory on the James Bay coast, measles and pneumonia combined during the winter and spring of 1900-01 to carry off more than 60 of the 600 or so people who traded at that post.<sup>29</sup>

Traditional healers were little match for the white man's diseases; yet access to the white man's healers - who if seldom more successful at providing a cure, were better at preventing a given disease from spreading - was very much a random affair. At a large Hudson's Bay Company establishment like Moose Factory, there was usually a doctor in residence, and that particular locale also had an Anglican Mission hospital with a nurse in charge. At Fort Albany, further up the James Bay coast, the Oblate Fathers had opened a small hospital staffed by Grey Nuns from Ottawa.<sup>30</sup> But for most of the inland Cree and Ojibwa, this type of medical care was something available only to treaty Indians. From the 1850s on, physicians like David Layton and Thomas Simpson travelled widely on the upper Great Lakes as employees of the Indian Department's

northern superintendency on Manitoulin Island, vaccinating against disease, performing minor surgery and dispensing medicine - "the Indians appearing to appreciate greatly the advantage."<sup>31</sup> North and west of Lake Superior, doctors frequently accompanied the Indian agent from Port Arthur on his annual visits in the 1880s and 1890s to the people belonging to the Robinson-Superior Treaty of 1850 or Treaty No. 3 of 1873.<sup>32</sup> This is not to say that departmental personnel refused treatment to ineligible persons who came their way. In August of 1903, for instance, Jabez Williams, the clerk in charge of Osnaburgh House at the head of the Albany River, sent down a number of non-treaty Indians to Dinorwic on the C.P.R. to see the visiting doctor.<sup>33</sup> But the question, typically, was one of cost. During the measles epidemic of 1889-92, the treaty Indians at Chapleau and Missanabie were given medical help, which was paid for out of interest money from the sale of land and timber on their reserve at Michipicoten. Their non-treaty relatives from beyond the railway line received no such assistance.<sup>34</sup>

By the first decade of the twentieth century, the death rate for Indian people north and west of Lake Superior was between 42 and 53 per thousand population - compared with a rate of 18.2 per thousand for the Six Nations Iroquois in southern Ontario and 13 to 16 per thousand for the Canadian population as a whole.<sup>35</sup> Yet if the northern Ojibwa and Cree were noticeably less healthy than they had been a century before, social stress alone does not explain their appeals for treaty relations with the government. Previous generations had also experienced epidemic disease and alcohol-related violence and still managed to survive.<sup>36</sup> It was the scale of white contact which was different. Though the number of individuals who followed the Canadian Pacific Railway into the near north was never large - especially compared to the Canadian west - these new arrivals directly threatened the Indian way of life. As Chief Louis Espagnol had protested in 1884, white trappers were the shock troops of the new economic order.

"Fur bearing animals are decreasing very rapidly," was the laconic note of a Lake Huron trader in 1886; "white trappers are killing all the Beaver etc."<sup>37</sup> Two years later, one of his colleagues was accusing these newcomers of using poison - something totally alien to Indian hunting technique.<sup>38</sup> In 1889, T.C. Rae at Mattawagamingue Post,

considerably north of the railway line, blamed the failure of the beaver hunt at least in part on "the poaching of white trappers and freemen who take their furs out to the Frontier."<sup>39</sup> Not that the Company was averse to taking these pelts. Most of the furs received in 1888 at Red Rock Post, at the mouth of the Nipigon River on Lake Superior, were purchased from whites - though the trader complained that the skins were "depreciated in value from being badly dressed."<sup>40</sup>

These white inroads set up a vicious downward spiral in the subsistence round. It was the Indian tradition that, in case of illness, the next-of-kin would not hunt until the sick person had recovered. If that person died, his relatives went into mourning for up to a year, blackening their faces, tearing their clothes and refusing to hunt on that individual's lands.<sup>41</sup> With the increasingly frequent epidemics of the last two decades of the nineteenth century, outsiders - against whom traditional conjuring sanctions did not work<sup>42</sup> - found it that much easier to clean out a given area of its furs. This in turn led Indian people, like the members of Louis Espagnol's band, to petition for government support. "The Indians have been suffering more or less for a long time back for want of Medical attendance," the White Fish Lake trader wrote the government in May 1885, in reference to Chief Espagnol's people:

their children especially are continually dying. And may be something more will have to be done for them so that they can get medical attendance at Sudbury when absolutely necessary and you know the Indian way the Head of the family will neither work nor hunt while any of his are laid up. Had not their Corn & potato crops been a failure last season, and this winter their hunting grounds over run by White Trappers killing out their Beaver etc the ac[count] now forwarded to you for provisions supplied them would not have been so much...<sup>43</sup>

Only towards the Albany river were the Indian people still relatively undisturbed. J.P. Donnelly, Indian agent at Port Arthur, reported in 1893 that the fur hunts of the Long Lake Band were more profitable than the other bands in his agency because no white trappers had yet reached them. He went on to recommend a law against whites trapping "as it is not their natural vocation and as they have many other ways of living, while the Indians have no other means of support but fur-trading and fishing."<sup>44</sup>



Donnelly`s opinion was shared by E.B. Borron, an Ontario magistrate with responsibility for the remote parts of the province. Borron had been met at Missanabie Station in the summer of 1886 by members of the Brunswick Lake Indian Band who were, he reported, “exceedingly anxious that a treaty should be made with them”:

... No treaties have yet been concluded with the Indians in this territory for the surrender of their claims. To do so with the natives on or near the coast of James Bay may perhaps be premature and uncalled for by circumstances. But as regards the Missinaibi and other Indians whose case I have promised the chiefs of the former band to represent there can be no reasonable doubt on this subject. The Canadian Pacific Railway for upwards of a hundred miles passes through their hunting grounds, and will unquestionably lead, sooner or later, to the destruction of the larger game, the fur-bearing animals, and to some extent also of the fish, on which they are solely and entirely dependent for a living. These Indians are simply hunters and trappers, and not one in twenty grows even so much as a potato [sic]. Thus they have no other resource to fall back upon. The completion of the railway renders their hunting grounds easily accessible at all seasons of the year...

The claims of this particular band, the magistrate went on, as well as of nearby bands at Flying Post and Mattawagamingue, had been either overlooked or “entirely and unaccountably neglected by the Indian Department at Ottawa.”<sup>45</sup>

Mr. Borron was considerably more sympathetic to native aspirations than was the Ontario government to which he was reporting. While he was correct in noting where jurisdiction over Indians lay, he was naive to believe that his own government would make any representations on the Indians' behalf. Ontario had just been awarded that territory by the British Privy Council after a boundary dispute with the Dominion; as we will see later, the Indian Department had no wish to further antagonize an aggressive provincial government which was also objecting, both politically and legally, to the terms and conditions of the 1850 Robinson Treaties and Treaty No. 3 of 1873.

In this regard, it is interesting to note exactly why E.B. Borron - who was a retired mining executive from Sault Ste Marie - had come to Missanabie in the summer of 1886. Only secondarily concerned with dispensing the white man's justice, the Ontario magistrate's

annual northern trips were designed to provide his government with information on the industrial potential of the vast region beyond the railway.<sup>46</sup> His reports, like those of the Geological Survey of Canada, which was also sending exploratory parties north of the Great Lakes, provided a spur to development. For though extensive mining claims had been staked and developed along the north shore of Lakes Huron and Superior beginning in the 1840s, culminating in a gold and silver boom near Thunder Bay in the 1870s, the difficulties of interior transportation had hampered exploration work further inland.<sup>47</sup> Again, the C.P.R. changed the rules of the game. By the summer of 1899, the Indian people of Missinaibi Lake and adjoining bands had yet another reason to petition the government.

Their audience on this occasion consisted of two senior Indian Department officials, J.A. Macrae and Duncan Campbell Scott, who had come to the headwaters of the Moose river to pay annuities to the nearby Robinson Treaty Indians. These people, Macrae advised the superintendent general of Indian Affairs, had travelled considerable distances to see him, asking what the government proposed to do about the rights of Indian people living between James Bay and the Great Lakes who were not covered by the Robinson Treaties:

saying that they heard that railroads were projected through their country and that already miners, prospectors and surveyors were beginning to pass through it in such largely increased numbers that the game was disturbed, interference with their livelihood had commenced and their rights were being trespassed upon...

Fortunately, added Macrae, he was able to mollify them by promising that “when the Government permitted projects to proceed which might affect their interests it would certainly not fail to properly consider their claims.”<sup>48</sup>

These petitions were now too frequent to be ignored. At Biscotasing in the summer of 1901, Chief Louis Espagnol delivered another eloquent speech - this time to Samuel Stewart of the Indian Department - reiterating that the people near to the height of land still wanted treaty and claiming that government inaction was breaching a promise

originally made by the Honourable W.B. Robinson in 1850.<sup>49</sup> And for the first time, government officials began hearing from the remoter parts of the hinterland north of Lake Superior. In December of 1901, Jabez Williams of the Hudson's Bay Company's Osnaburgh House forwarded a petition from the people who lived on or near Lake St. Joseph at the head of the Albany river, which then formed the boundary between the Northwest Territories and the province of Ontario.<sup>50</sup> "For the past two or three years exploration for minerals has been carried on in the country contiguous to Lake St. Joseph," they wrote, "and an occasional party had penetrated to the Lake itself and the waters of the Albany River have been descended as far as Eabemet Lake in the prosecution of the search." They asked to meet "His Majesty's officials" at any time the following summer in order to release their rights in their lands and have "the benefits of the Annuity Grant extended to us." They also wished to discuss the location of lands they wanted to reserve for themselves and their descendants "as white men are already building upon land which we desire to retain."<sup>51</sup>

That the Osnaburgh people were already familiar with the general provisions of Indian treaties is not particularly surprising, since they were linked by trade and marriage ties to the nearby Nipigon, Lac Seul and Sturgeon Lake Bands which had participated in the Robinson-Superior Treaty and in an adhesion to Treaty No. 3 in 1874 - as well as to the people of the upper Berens River who had taken part in Treaty No. 5 of 1875.<sup>52</sup> One of the spokesmen identified in their 1901 petition was Isaish Poo-yah-way who, though he lived on Lake St. Joseph, was stated to be a "Treaty Indian belonging to Lac Seul Band."<sup>53</sup> But it is also clear that, in this particular instance, a Hudson's Bay Company employee was doing his best to promote the idea of a treaty. As Jabez Williams informed the superintendent general in his covering letter, he had himself written out the petition at the request of the Indians after a council meeting in the fall.<sup>54</sup> And four years earlier, he had already shown a definite interest in the subject. Writing to the acting director of the Geological Survey in January of 1897 about the prospects for mineral exploration near his post, Williams had reminded him that the Indian title was not yet extinguished in that part of the Northwest Territories:

Would it not be a wise move on the part of the Government to close this matter with our Northern Indians now? I am merely suggesting these matters to you knowing that a settlement of matters of this kind can often be made much easier and to better advantage before civilization has set its foot on the country than afterwards and as they more or less affect your department.<sup>55</sup>

Williams' motives seem to have involved the usual mix of altruism and self-interest. Along with his immediate superior, Chief Factor Alex Matheson, and other Company employees such as T.C. Rae of Mattawagamingue Post, Williams had been investing in mining developments near Pic and Michipicoten,<sup>56</sup> and his enthusiasm for his "private affairs" was such that the Hudson's Bay Company considered him unreliable and indiscreet.<sup>57</sup> Shortly after forwarding to Ottawa the petition from the Osnaburgh Band, Jabez Williams was asking the new director of the Geological Survey - the famous explorer-geologist Robert Bell - for copies of all maps and reports on the Lake St. Joseph area. "The Indians here have applied for Treaty," he advised Bell in March of 1902, "I think from what I learned last fall that prospectors are about to reach in this direction. In fact they have done so slightly of late. The Crane Indians who lies [sic] beyond Cat Lake wish to come in and the Eabemet Band as well. The Government should seize the opportunity now."<sup>58</sup> By June 1902, Williams and Chief Factor Matheson were actively discussing the boundaries of a new treaty, which they felt should extend from the intersection of the existing agreements further south, up across the hunting grounds of the "Crane Indians"<sup>59</sup> to the headwaters of the Severn River. Yet their discussion also contains the first suggestion that not all of the Indian people were equally eager to be taken into treaty. "Your notes re the proposed treaty are as I have for some time thought best," wrote Williams:

Whatever is done in the matter by the Department the sooner the better. The Osnaburg Indians are anxious for it. There may be some little difficulty with the Fort Hope Indians now but it may not be insurmountable. They were alright last year. Unless they have changed their minds the Indians as far as the Attawapiskat River northward from the Albany were inclined to accept it. The R[oman] C[atholic] Attawapiskat Indians are led by Kachang who is not anxious for government control for reasons you know of...<sup>60</sup>

If the meaning of this cryptic reference to the Attawapiskat people is not entirely clear, it

is still safe to say that a band's interest in treaty relations with the government was, by 1901, generally proportional to its proximity to the railway line and the newcomers who were arriving with it. If the white man were to move in, then what the northern Cree and Ojibwa wanted above all else was a form of influx control - and they looked to the government, represented by the Indian Department, to provide it. Should the government not be willing to get involved, it was also clear that some groups were prepared to take matters into their own hands. In 1903, an expedition mounted by the Geological Survey of Canada was turned back by the Crane chief when they tried to head north from Osnaburgh House - putting the lie, it would seem, to Jabez Williams' earlier claim that the Cranes were anxious for treaty. When the survey party returned the following year, some Cranes stopped them just north of Cat Lake. "The Chief invited us to camp with him," Charles Camsell remembered many years later, "and as his invitation was the equivalent of a command I thought it wise to accept." The chief made it clear to Camsell "that as long as he was Chief of his band he would not permit any white man in his country, and we would have to go back south in the morning." When the surveyors decided to press on anyway, they were given a Crane guide, warned of the dire perils ahead of them and informed that the chief would meet them on their way out and search their luggage.<sup>61</sup>

This was exactly the type of situation the federal government wanted to avoid. It had happened before, in 1872, when gold mining operations in the vicinity of Jackfish Lake west of Lake Superior had been stopped by Chief Blackstone and his Ojibwa band until a treaty was made with them - which was done the following year.<sup>62</sup> And it had happened in late 1849, when Chiefs Shingwakonce and Nubenaigoching had led a war party to Mica Bay, just north of Sault Ste Marie, to oust miners who had begun operations before any agreement had been made with the Ojibwa inhabitants of the area.<sup>63</sup> The inspector of Indian agencies, J.A. Macrae, had already warned in 1901 that this could happen again; in his memorandum to the Superintendent General of Indian Affairs detailing the request of the Missinaibi Lake people to be taken into treaty, he had suggested that someone be employed to spend several weeks collecting information on the Indian people who lived beyond the railway line. Not only would this provide a

reliable estimate of the numbers and “disposition” of the people involved, but it would “prevent any possible complications arising between the Indians and any persons who may have business within the territory.” Just such “complications,” he reminded his superior, had led to the making of the Robinson Treaties.<sup>64</sup> There is a certain irony in this particular government official’s stated fear of an untoward incident, because if anything could have been deliberately calculated to antagonize the northern Ojibwa and Cree it would have been further delays in dealing with the substance of their complaints about white incursions. Yet it took Mr. Macrae a full two years to brief the superintendent general on the 1899 meeting he and D.C. Scott had held with non-treaty Indians at Missinaibi Lake. In the meantime, as he informed Clifford Sifton, survey and exploration in advance of new railway and settlement proposals for northern Ontario were already under way.<sup>65</sup> Had the Indian people known more about the workings of government, they would have been well advised to frighten a few more survey parties.

Almost twenty years, then, after the Canadian Pacific Railway had passed through northern Ontario, the federal government began to seriously consider dealing with the rights of the northern Cree and Ojibwa because one middle-level civil servant - Macrae - decided that the issue could no longer be avoided. “Recent developments seem to have brought about the time when it becomes proper to inform you of the aforementioned facts,” the inspector of Indian agencies told his political master, Sifton, explaining why he had not previously forwarded Indian requests for a treaty, “...already, country to which the Indians have recognized and unextinguished rights is being settled and used.”<sup>66</sup> But what was the exact extent of that Indian country? To help the superintendent general understand this question, Macrae had attached to his memorandum of 3 June 1901 a map showing a huge area of present-day Quebec and Ontario as unceded land.<sup>67</sup> Here was the crucial fact which was to distinguish the eventual James Bay Treaty from its predecessors - including Treaty No. 8, which had been negotiated two years earlier with native inhabitants of the Northwest Territories.<sup>68</sup> The Ojibwa and Cree of the near north were about to founder on the rock of federal-provincial relations.

### Notes

1. Louis Espagnol to James Phipps (in French), 15 December 1884. Public Archives of Canada (PAC), Record Group 10 (RG10), Vol. 2289, file 57,641.
2. James Phipps to the Superintendent General of Indian Affairs, 5 February 1885. *Ibid.*
3. In 1885, Louis Espagnol was chief of the inland or #2 division of the band. PAC, RG10, Vol. 9499 Robinson Treaty Annuities, Spanish River, Nowquaigabo alias Green Feather, Onomsin, Pinense and Louis Espagnol were the four sons of Frisé or the Spaniard - who was chief at Spanish River at the time of the War of 1812. The first two sons signed the Robinson-Huron Treaty of 1850. Hudson's Bay Company Archives (HBC Arch.) B109/a/2, entry 12 January 1829; B109/a/8, entry 25 January 1835. Letter of T.G. Anderson to S.P. Jarvis, 6 August 1837. PAC, RG10, Vol. 66, p. 63794. Letter of Louis Espagnol to Charles Dupont, 1 July 1867. PAC, RG10, Vol. 620, p.154.
4. For printed copies of both Robinson Treaties, plus Commissioner Robinson's official report, see Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories* (Toronto: 1880; reprinted 1971, Coles Canadiana Co.), pp. 16-21; 302-309.
5. It would be impossible to reconstitute the exact populations involved from fur trade records alone. In 1905-06, the Treaty Nine commissioners paid annuities to some 3,000 Indian people living between the height of land and the Albany River and immediate vicinity; adhesions to the Treaty in 1929-30 added at least 2,000. By the terms "Ojibwa" and "Cree", I mean groups speaking dialects identified by contemporary linguists as Ojibwa or Cree - this is not how the Indian people in question identified themselves. See Adolph Greenberg and James Morrison, "Group Identities in the Boreal Forest: The Origin of the Northern Ojibwa," *Ethnohistory* Vol. 28, No. 2 (1982), pp. 75-102.
6. In letter of Robert Bruce to George Ironside, 25 June 1851. PAC, RG10, Vol. 613.
7. James Phipps to Charles Skene, 20 January 1880. PAC, RG10, Vol. 7757, File 27043-9.
8. James Phipps to S.G.I.A., 5 February 1885. PAC, RG10, Vol. 2289, File 57,641.
9. In December of 1850, Indian Agent George Ironside wrote that he had had to leave Manitoulin Island in late August in accordance with the wishes of the Hon. W.B. Robinson and the Indians generally "on board the steamer "Gore" to accompany to the place of Council, the Chiefs and Principal Men from the North Shore." PAC, RG10, Vol. 572.
10. "James H. Rowan's Report on the Progress of Railway Surveys, 1872," in Elizabeth Arthur (ed.), *Thunder Bay District 1821-1892* (Toronto: The Champlain Society, 1973), pp. 121-24.
11. This is not to imply that there was no competition in the Lake Huron fur trade until the steamers came along, only that the absolute numbers of traders went up.
12. Mattawagamingue Report 1885, HBC Arch., B124/e/8 (1).
13. Alex Matheson to P. MacDougall, 5 January 1893. Alexander Matheson Papers, Letterbook, pp. 96-97. Metropolitan Toronto Library (MTL), Baldwin Room (BR) S22.
14. HBC Arch., B216/e/1(G); B261/e/6b; B355/e/5b.
15. HBC Arch., B261/e/9; B149/e/3; B117/e/6.
16. HBC Arch., B149/e/4.
17. HBC Arch., B135/e/29.

18. HBC Arch., B124/e/8(9); B314/e/4, p. 7.
19. Matheson to HBC Commissioner, 11 June 1982. Matheson Papers, Folder 1890-92. MTL, BR S22.
20. HBC Arch., B261/e/8, C(2).
21. HBC Arch., B129/e/2.
22. The references are for too numerous to list here. In 1840, to give just one example, Indian Agent T.G. Anderson reported that English and American traders used to wait at Drummond Island on Lake Huron with supplies of whisky "to intoxicate the passing Indians and deprive them of their presents." "Report on the Affairs of the Indians in Canada," Canada (Province of), Legislative Assembly, *Journals*, 11 Vic. (1847) Appendix T.
23. John Black to P.W. Bell, 29 December 1885. Lake Superior District Accounts 1885, Archives of Ontario (AO), HBCo Records Box 5.
24. PAC. RG10, Vol. 2849, File 175,824-2.
25. *The Woodstock Letters*, a record of current events and historical notes connected with the colleges and missions of the Society of Jesus in North and South America.
26. HBC Arch., B261/e/8, G(7).
27. HBC Arch., B313/e/3, C and G.
28. HBC Arch., B314/e/4.
29. HBC Arch., B135/e/33.
30. *The James Bay Treaty: Treaty Number Nine* (Ottawa: Queen's Printer, 1964), pp. 8-9.
31. Charles Dupont to William Spragge, 19 July 1867, in Arthur (ed.), *Thunder Bay District*, pp. 108.
32. T. Kue-Hing Young, *Indian Health Care in Northwestern Ontario: Health Status, Medical Care and Social Policy* (MSc. Thesis, University of Toronto, 1979), pp. 58-60.
33. Simon Ross to Alex Matheson, 22 August 1903. HBC Arch., B273/b/6.
34. Canada, Parliament, House of Commons, *Sessional Papers* 60 Vic. (1897), No. 14, p. 19.
35. Young, *Indian Health Care*, pp. 68-69.
36. For references to eighteenth and nineteenth century epidemics, see Young, pp. 50-57.
37. HBC Arch., B109/e/9.
38. HBC Arch., B355/e/26, letter from T.C. Rae.
39. HBC Arch., B336/e/1.
40. HBC Arch., B336/e/1.
41. "Re Indian Superstitions," Robert Bell Papers, PAC, MG53 B199 (notes of conversation with T.C. Rae, 19 September 1890).



42. In September of 1829, the trader at La Cloche on Lake Huron reported that the local Indians were making "the Grand Medicine" to ward off "canabal" Indians from Mattawagamingue. HBC Arch., B109/a/3, 10 September 1829.
43. T.B. Ross to James Phipps, 7 May 1885. PAC, RG10, Vol. 2289, File 57641.
44. Canada, Parliament, House of Commons, *Sessional Papers* 57 Vic. (1894), No. 14, p. 12.
45. Ontario, Legislative Assembly, *Sessional Papers* 53 Vic. (1890), No. 87, p. 85; *Northerly and Westerly Ontario: Borron's Reports 1880-92* (Toronto: Queen's Printer, 1892), p.15.
46. *Ibid.*
47. "Thomas Keefer on Mining in Thunder Bay", in Arthur (ed.), *Thunder Bay District*, pp. 159-162; A.W. Roland to H. de la Ronde, 5 September 1875, Matheson Papers, Folder 1899. MTL, BR, S22.
48. Memorandum, 3 June 1901. PAC, RG10, Vol. 3033, File 235-225(1) (Treaty File).
49. Memorandum, 22 August 1901. Treaty File.
50. Jabez Williams to S.G.I.A., 12 December 1901. Treaty File.
51. Petition of Osnaburgh Indians, Treaty File.
52. Charles A. Bishop, *The Northern Ojibwa and the Fur Trade* (Toronto: Holt, Rinehart and Winston, 1974), pp. 134-36.
53. Petition of Osnaburgh Indians, Treaty File.
54. Jabez Williams to S.G.I.A., 12 December 1901. Treaty File.
55. Jabez Williams to J.F. Whiteaves, 16 January 1897, enclosed in letter of Whiteaves to A.M. Burgess, deputy minister of the Interior, 3 February 1897, PAC, RG10, Vol. 3722 File 25161.
56. Alex Matheson to T.C. Rae, 20 July 1898; W. Broughton to Matheson, 10 September 1899; D.C. McTavish to Matheson, 10 September 1899; A.W. Patterson to Matheson, 9 March 1901. MTL, BR, S22, Matheson Papers.
57. HBC Arch., B129/e/18.
58. Jabez Williams to Robert Bell, 1 March 1902. PAC, MG53 B204.
59. Though the term was occasionally more widely used, the Crane Indians - named after an eighteenth-century ancestor - generally consisted of the traditional bands who occupied the area between Cat Lake and Big Trout Lake, north of the Albany River. See Edward S. and Mary Black Rogers, "Who were the Cranes? Groups and Group Identity Names in Northern Ontario," paper presented to the conference on Algonquin Archaeology, Calgary, 1980.
60. Jabez Williams to Alex Matheson, 12 June 1902. HBC Arch., B155/b/2.
61. Charles Camsell, *Son of the North* (Toronto: Ryerson Press, 1954), pp. 169, 172-74. I am indebted to Ed and Mary Black Rogers for this reference.
62. W.B. Frue to A.H. Sibley, 4 April 1892, in Arthur (ed.) *Thunder Bay District*, pp. 148-149.

- <sup>63.</sup> Memorandum of 5 September 1872, in Privy Council Minute, 16 October 1872. PAC, RG2, Vol. 49, File 726A, No. 821.
- <sup>64.</sup> Memorandum, 3 June 1901. Treaty File.
- <sup>65.</sup> *Ibid.*
- <sup>66.</sup> *Ibid.*
- <sup>67.</sup> *Ibid.*
- <sup>68.</sup> René Fumoleau, *As Long as This Land Shall Last* (Toronto: McClelland and Stewart, 1975), pp. 70-73.

## A DIVIDED JURISDICTION

Clifford Sifton seems to have anticipated the legal difficulties which would be posed by any Indian treaty within Ontario or Quebec, because he immediately referred J.A. Macrae's report to the departmental law clerk for his opinion. Reginald Rimmer's advice to the superintendent general was simple: avoid the mistake which the federal government had already made with Treaty No. 3 of 1873 of doing without the provinces. "Unless the Dominion is willing to incur the risk of being held liable for all covenants while the Province receives all benefits therefrom," Rimmer wrote on 24 June 1901, "I think the consent of each Province should certainly be obtained."<sup>1</sup> This was, to coin a cliché, easier said than done. Since Confederation, the Dominion government had been embroiled in a series of disputes with Ontario and Quebec over provincial boundaries, as well as over the financial obligations each province was to bear for - among other matters - Indian treaty annuities.

The first to be raised was the boundary question. Though its true western limit had never been clearly defined, the northern boundary of the old province of Canada West (and of its predecessor, Upper Canada) had been considered to be the height of land north of Lakes Huron and Superior. On pre-Confederation maps, the area beyond that divide was generally conceded to the Hudson's Bay Company and to the Indian people themselves.<sup>2</sup> This was not good enough, however, for Oliver Mowat's Ontario administration, which began insisting that the province's true western boundary extended to the Lake of the Woods and its northern limit to James Bay and the Albany River. As proof that history and law are often two different matters, the disputed territory was awarded to Ontario in 1884 by the Judicial Committee of the Imperial Privy Council - then the highest court in the land.<sup>3</sup> The Canadian government particularly objected to the northern boundary award because, as John A. Macdonald so prophetically explained to Ontario's lieutenant-governor in 1887, it meant that the province of Quebec would also have to extend to James Bay:

Now if you will look at the map and see the enormous extent of country proposed

to be added to the two Provinces you will see what a vast preponderance it gives to them over the other Provinces of the Dominion. History will repeat itself and posterity will find out that the evils that exist in other federations from the preponderance of one or more members will again happen.<sup>4</sup>

For its own political reasons, the Dominion continued to claim the natural resources of the disputed lands north and west of Lake Superior by virtue of the 1873 Treaty (No. 3) with the Indian people of that region. However, when the Dominion issued a timber license for the Lake of the Woods area to the St. Catherines Milling and Lumber Company in 1883, the province of Ontario sued, and the case made its way through to the highest court. In July of 1888 the Judicial Committee of the Privy Council ruled that although the federal government alone had constitutional responsibility for “Indians and lands reserved for the Indians,” once a given area had been freed by treaty from the burden of the Indian title the complete beneficial interest in those lands passed to the province. The dominion timber license was invalid.<sup>5</sup>

There was a great deal of fallout from the *St. Catherines Milling* case. Forced to abandon its jurisdictional argument, the federal government agreed to the passing of the Imperial Canada-Ontario Boundary Act of 1889, which confirmed the 1884 Privy Council award to Ontario.<sup>6</sup> For its part, armed with what it considered a vindication of provincial rights, the Ontario government went on to dispute the status of reserve lands set apart by the Treaty No. 3 commissioners for the Indian people of northwestern Ontario before the boundary question had been definitively settled. On 6 April 1894, the two governments signed a formal agreement on the subject of Treaty Three reserves, in accordance with statutes passed by their respective legislatures in 1891.<sup>7</sup> The sixth clause of that agreement provided “that any future treaties with the Indians in respect of territory in Ontario to which they have not before the passing of the said statutes surrendered their claim aforesaid, shall be deemed to require the concurrence of the government of Ontario.”<sup>8</sup> Since there was little other land in the province not covered by treaty<sup>9</sup>, that clause was primarily aimed at those northern lands so recently included within Ontario’s boundaries. There can be no question that the provincial government knew there were unextinguished Indian rights within the disputed territory, because their

own representative - the stipendiary magistrate, E.B. Borron - had told them so as far back as 1886.

In Ontario's view, the 1894 agreement was designed not only to affect the location of future Indian reserves within the province, it was to apply to all aspects of any new treaty - including its cost. Since the 1870s both Ontario and Quebec had been fighting a rearguard action against the Dominion - and each other - over the question of which government was liable for increased annuities payable to the Lakes Huron and Superior people because of an "escalator" clause in the 1850 Robinson Treaties, negotiated on behalf of the old province of Canada West.<sup>10</sup> Once again, the matter went from arbitration proceedings right up to the Judicial Committee of the Privy Council, and again the Dominion lost.<sup>11</sup> But Ontario was objecting to more than a simple rise in its financial liability. The province's counsel, Aemilius Irving - the man who drafted the 1894 agreement - devoted a great deal of time to attacking the Robinson Treaty annuity lists themselves. Using the services of, among others, Magistrate E.B. Borron, Irving argued that all sorts of ineligible persons - "half-breeds," Indian people from Manitoulin Island, and Indian people from beyond the height of land - were in receipt of treaty monies, and he threatened to put this matter as well before the arbitrators.<sup>12</sup>

Anticipating an adverse decision, the superintendent general had assigned the inspector of Indian agencies, J.A. Macrae, and the department's accountant, D.C. Scott, to clean up the payment lists. The trip Macrae and Scott made to the headwaters of the Moose River in 1899 - at which time they received the petition from non-treaty people living nearby - was part of that investigation.<sup>13</sup>

Given this background, it is not surprising that the Indian Department ignored earlier requests for treaty - or that Mr. Macrae, for example, waited two years before submitting the petition of the Missinaibi Lake people to the superintendent general. Even if this position was eminently unfair to the Indian petitioners, there was nothing to be gained by needlessly antagonizing the provincial government. The law clerk Reginald Rimmer expressed a prevailing fear in his 1901 memorandum to Clifford Sifton, when he warned that Ontario might "ignore entirely any Treaty made without her consent" and might

proceed to grant lands to which the Indian title was still unextinguished.<sup>14</sup> Whether the latter action would have been legal is another question altogether; that particular issue was left unanswered by the courts in the *St. Catherines Milling* case because the area in dispute was already covered by a valid treaty (No. 3).<sup>15</sup> But Ontario was certainly in the habit of ignoring Indian title. Just before that particular treaty, in 1872, Deputy Superintendent General William Spragge had reported to Cabinet that negotiations for the surrender of the tract lying between the Robinson-Superior Treaty of 1850 and Treaties One and Two of 1871 had broken down because the Indian people had “taken serious umbrage at lands being sold and Patented by the Government of the Province of Ontario while as yet the Indian title thereto remains unextinguished and the Indians unremunerated.” He reminded the government that after mining licenses had been issued in similar circumstances during the 1840s, the Sault Ste Marie Indian people had forced the miners to leave. In Spragge’s view, Ontario actions contravened the 1860 Indian Act.<sup>16</sup> The Dominion government, which had inherited the imperial Crown’s responsibility for Indian Affairs, was obviously much less successful than its predecessors at curbing the actions of settler governments. Until that particular incident in the 1840s, the Crown’s representatives in what is now Ontario had strictly enforced the Royal Proclamation of 1763. No lands were surveyed or granted until they had first been purchased from their Indian inhabitants.<sup>17</sup> Individuals could not even hope to gain prescriptive title by occupying Indian lands- “squatters’ rights” were a legal impossibility.<sup>18</sup>

What is most curious about Reginald Rimmer’s fear, in 1901, that the province might contravene or disregard any new treaty made without its consent is that, true to form, Ontario was ignoring Indian title in the territory being considered for surrender anyway. It was Ontario, after all, which had jurisdiction over the white trappers who were harassing Chief Espagnol’s people and the others who lived north of Lakes Huron and Superior. It was Ontario which had licensed the surveyors and mining exploration parties the Indian people were complaining about to federal officials. And, as the Cree and Ojibwa were later to discover, it was Ontario which had already given out timber licenses to lands they wished to reserve for themselves. If the incursion of whites was

the gun pointed at the head of the Indian people, Ontario's finger was on the trigger.

While federal officials such as Mr. Rimmer could argue that any new treaty would need provincial consent, there were differing views as to the form that both "concurrence" and the treaty itself might take. When the request of the Osnaburgh Indian people to be taken into treaty arrived in early 1902, the superintendent general passed it along for comment to Indian Commissioner J.A.J. McKenna. The commissioner reminded Clifford Sifton that Indian Affairs were a federal not a provincial responsibility, and that therefore "the Provinces should not be parties to the treaties." He suggested instead some sort of "understanding" which would not run contrary to general Indian policy. As befits the man who had just negotiated Treaty No. 8 in the Northwest Territories - which had a large Métis population - McKenna proposed settling "half-breed" claims first. Then, to avoid "inconsistency," he said extinguishment of Indian title should be confined to Ontario and Quebec and should take the form of an adhesion to the Robinson-Huron Treaty of 1850.<sup>19</sup> For the Osnaburgh people, who straddled the boundary between Ontario and the district of Keewatin, this meant that more than half of their number would be left out of any potential treaty.

By the time a final package was ready for the superintendent general's consideration in August of 1903, departmental officials had made several important changes. The idea of securing an adhesion to the Robinson Treaty was dropped, mainly because of Ontario's well-known opposition to the clause in that treaty which had provided for an increase in annuities. A new treaty, which "might be called Treaty No. 9 or the James Bay Treaty," would be made with the Indian people of Ontario alone, because "Indian title in the Province of Quebec has never been recognized or surrendered as in the Province of Ontario" - although an understanding would be obtained from Quebec that suitable Indian reserves would be set apart "at proper times." The memorandum stressed once again that neither province would be an actual party to the new agreement, which would follow the form of the numbered treaties made since the 1870s (with "necessary restrictions") rather than fall back upon the "forms and terms" of much earlier treaties.<sup>20</sup>

The Dominion waited almost a full year before advising Ontario of these intentions. What seems to have precipitated matters was a letter Prime Minister Wilfrid Laurier had received in late April of 1904, announcing the discovery of minerals along the route of the new Grand Trunk Pacific Railway through northwestern Ontario and reminding him that Indian rights in the area had still not been ceded.<sup>21</sup> On April 30, the deputy superintendent general wrote the Ontario commissioner of Crown lands outlining the “main stipulations upon which the treaty would be based”:

It is proposed to offer the Indians a maximum annuity of \$4.00 a head and a gratuity at the first payment of the same amount once and for all. It is further proposed to set apart reserves of sufficient area in localities chosen by the Indians with special regard for their needs, which reserves should be held in trust by the Department, free of any claims of the Province for timber upon, or base or precious metals in, upon or under the soil. These Reserves should be surveyed and confirmed by the Ontario Government within one year after selection by the Indians or at any time after the expiry of one year upon the request of this Department. It is proposed to provide the ordinary educational facilities afforded by day schools to be established upon Reserves. It is contended that as the entire area of the land will, by this treaty, remain with the Province free for all Indian claims, the financial responsibility, as well as the provision of reserves, should rest with the Province of Ontario.<sup>22</sup>

The federal government should not have been surprised by Ontario’s response. Drafted, as usual, by the province’s octogenarian lawyer, Aemilius Irving, the letter testily referred to the agreement of 16 April 1894 and to a new agreement made in 1902 between counsel for both governments on the appeal involving the *Ontario Mining Company v. Seybold* - yet another legal dispute over the status of Indian reserves in northwestern Ontario. “The Government of Ontario does not concede that without its concurrence,” it stated, “the Department of Indian Affairs can promote a treaty with the Indians placing the financial responsibility as well as the providing of reserves upon the Province.”<sup>23</sup>

The department’s reply was that of an injured suitor. The agreements referred to had not been overlooked, Deputy Superintendent General Frank Pedley wrote on June 23; the Dominion was properly seeking provincial “concurrence,” in keeping with its policy of



paving the way for railway lines “by the extinction of all aboriginal rights in the territory to be exploited.” Ontario, he pointed out, was about to receive an incredible bargain:

The terms laid down upon which the treaty might be based are the maximum terms which would, in any event, be offered to the Indians. They are in effect the same as those fixed by the Robinson treaty, and the Government interested might be considered fortunate to cancel the Indian title at this time by considerations which were thought adequate in the year 1850.<sup>24</sup>

The province delayed the matter for almost a year, despite frantic pleas from the department - which had planned negotiations for the summer of 1904 - to discuss the “New Indian Treaty.”<sup>25</sup> Finally, Pedley sent the commissioner of Crown lands a draft order-in-council on 8 May 1905, outlining the proposed treaty terms and again urging the province to agree to it “before the Indians come into closer contact with white people, as they are apt to be easily influenced to make extra demands.”<sup>26</sup>

This argument seems to have been decisive. The Ontario provincial treasurer wrote back on June 1 agreeing, on his government’s behalf, to the treaty terms, but making two important changes. Instead of allowing the Indian people to choose their own reserves, those sites were to be chosen by the commissioners - and one of the commissioners would be a provincial appointee.<sup>27</sup> The Dominion accepted the latter point but altered the wording of the former so that the views of the commissioners and the Indian people were more likely to “harmonize”,<sup>28</sup> the draft of the “proposed James Bay Treaty” which Pedley sent Matheson on June 12 - identical in all respects to the final treaty - stated that the reserve locations would be “arranged between His Majesty’s Commissioners and the Chiefs and Headmen.” The rest of the document followed the format of the other “numbered” treaties. The clause on hunting and fishing rights had been copied, word for word, from Treaty No. 8 of 1899.<sup>29</sup>

Still Ontario wanted changes. The provincial treasurer advised Pedley on June 23 that acting on the advice of counsel (Aemilius Irving again) Ontario wanted an agreement “defining the liability of the Province in respect to the Treaty.” Matheson enclosed an amended order-in-council and the draft of an agreement which stated that the province

would pay over to the Dominion the amount of annuities and would agree to the setting aside of reserves, but that all further payments and expenditures would be at federal expense. In addition, no site suitable for development of water power exceeding 500 H.P. was to be included within the boundaries of any reserve. And the Dominion was to bear the cost of the treaty, and pay the Ontario commissioner.<sup>30</sup> On June 26, the federal government agreed to the provincial stipulations - it was "not desirable to have Indians located near large centers of population which usually grow up around large falls where water power can be readily utilized for commercial purposes"<sup>31</sup>--and settled on a per diem of \$10.00 for the Ontario commissioner.<sup>32</sup> The agreement between Ontario and the Dominion was formally signed on July 3. By "Order of His Excellency in Council" dated 29 June 1905, the two federal commissioners - Duncan Campbell Scott and Samuel Stewart, both departmental employees - and the Ontario commissioner - Daniel McMartin, a Perth, Ontario lawyer - were appointed "to negotiate a treaty with the Indians."<sup>33</sup>

But what, one might ask, was there left to negotiate? If treaties such as this were contracts - and the Judicial Committee of the Privy Council had recently held that they were<sup>34</sup> - then presumably both parties were to consent to the arrangement, after some sort of bargaining process over terms. There had been actual negotiations with at least some of the earlier treaties - the obvious example being Treaty No. 3. The Indian people of Lake of the Woods and vicinity had refused the Dominion's original surrender proposals in the period 1869-72, forcing the government to sweeten its offer.<sup>35</sup> The order-in-council of 3 July 1905 which approved the proposed James Bay Treaty certainly implied that there were to be negotiations, by referring to the monetary consideration to be paid the Indian people "in the event of a treaty being signed," but then it stated that those terms were the maximum which would be offered.<sup>36</sup> Compared with Treaty No. 3., the annuity payable under the new agreement would be one dollar less (four dollars as opposed to five), there would be no distribution of ammunition or net twine, no farm implements or carpentry tools, and no salaries or clothing for the chiefs and councillors.<sup>37</sup> Given the petitions being received, particularly from those bands living closest to the railway line, the department undoubtedly assumed that the

northern Ojibwa and Cree would accept any proposals the government put forward. But let us suppose that some of the Indian people had refused. What then? Ontario, it is clear, would have continued with the settlement and development of the lands anyway. That fact, coupled with the province's claim to veto power over the treaty terms, had effectively removed any negotiating power the Indian people might have had. The treaty commissioners themselves were perfectly aware of this. As Duncan Campbell Scott explained in an article he wrote a year later for the American magazine *Scribners*, the Indian people were to make certain promises "and we were to make certain promises, but our purpose and our reasons were alike unknowable":

What could they grasp of the pronouncement on the Indian tenure which had been delivered by the law lords of the Crown, what of the elaborate negotiations between a dominion and a province which had made a treaty possible, what of the sense of traditional policy which brooded over the whole? Nothing. So there was no basis for argument. The simple facts had to be stated and the parental idea developed that the King is the great father of the Indians, watchful over their interests, and ever compassionate.<sup>38</sup>

To see how this potentially unpalatable reality was presented to the Indian people, we should join Duncan Campbell Scott and his fellow commissioners on their canoe trips through the northern wilds in the summers of 1905 and 1906.

## Notes

1. Legal Memorandum, 24 June 1901. Treaty File.
2. The description of the lands ceded by the Robinson-Huron Treaty of 1850 has them extending "inland to the height of land which separates the territory covered by the charter of the Honourable Hudson's Bay Company from Canada." Morris, *Treaties*, p. 305.
3. Ontario, Parliament, Legislative Assembly, *Sessional Papers* 1889, no. 60.
4. Quoted in J.C. Morrison, *Oliver Mowat and the Development of Provincial Rights in Ontario* (Toronto: Ontario Department of Public Records and Archives, 1961), pp. 170-171.
5. *St. Catherines Milling and Lumber Company v. The Queen* (1889) 14 App. Cas. 46 (P.C.).
6. 52-53 Vic. Cap. 28 (U.K.).
7. 54-55 Vic. Cap. 5 (Canada); 54-55 Vic. Cap 3 (Ontario).
8. *The James Bay Treaty*, p. 26.

9. A number of Indian claims had been referred to the arbitrators dealing with accounts outstanding from the old province of Canada - among them a claim from certain Lake Simcoe and Lake Huron people to a tract of land near Georgian Bay, and another from the people of Lake Temagami, who were arguing that they had not participated in the 1850 Robinson Treaty. AO, Irving Papers.
10. Ontario, Legislative Assembly, *Sessional Papers* 1884, No. 81.
11. *In Re: Indian Claims* (1897) App. Cas. 199 (P.C.).
12. The amount of material on this subject in the Irving Papers at the Archives of Ontario is too voluminous to list in its entirety. See, however, Mr. Borron's report of 31 December 1891.
13. PAC. RG10, Vol. 2832, File 170-073 (1), especially Mr. Macrae's report of 18 February 1899.
14. Legal Memorandum, Treaty File.
15. *St. Catherines Milling and Lumber Company and the Queen* (1887) Ontario Court of Appeal, per Haggerty C.J.O.
16. Memorandum of 5 September 1872, in Privy Council Minute of 16 October 1872. PAC, RG2, Vol. 49, File 726A, No. 821.
17. In December of 1792, the surveyor-general of Upper Canada informed the famous Mohawk leader Joseph Brant, who had applied for a grant of lands on Burlington Bay in his capacity as an officer of the Indian Department, that "those lands are not purchased from the Mississauga Nation and that the King's Proclamation in 1763 totally prohibits any of His Majesty's subjects from settling on Indian lands, or his Governors in this country from granting therein warrants of survey ..." AO, RG1, Series A-1-2 Vol. 1.
18. The leading case in this regard is *R. v. McCormick* (1859) U.C.Q.B. per Robinsion C.J.U.C.
19. Memorandum of 22 February 1902. Treaty File.
20. Draft Memorandum of 17 August 1903. Treaty File.
21. Thos. B. Irving to Laurier, 17 April 1904. Treaty File.
22. Pedley to E.J. Davis, 30 April 1901. Treaty File.
23. Aubrey White to Pedley, 30 May 1904, in Ontario, Legislative Assembly, *Sessional Papers* 1908, No. 71.
24. Pedley to White, 23 June 1901. Treaty File.
25. Letters of 27 February 1905; 18 March 1905. Treaty File.
26. Pedley to J.J. Foy, 8 May 1905. Treaty File.
27. A.J. Matheson to Pedley, 1 June 1905. Treaty File.
28. Matheson to Pedley, 1 June 1905. Treaty File.
29. Pedley to Matheson, 1 June 1905. Treaty File.
30. Matheson to Pedley, 23 June 1905. Treaty File.

31. Pedley to Superintendent General, 26 June 1905. Treaty File.
32. *Ibid.*
33. PAC, RG2, file 1231D, no. 1222.
34. In the Robinson Treaty Annuities case (1897) A.C. 199 at 204 per Lord Watson.
35. Demands of the Indians, 22 January 1869. RG10, Vol. 1918, File 2790B.
36. PAC, RG2, File 1236D, No. 1262.
37. *Treaty Number Three*; with adhesions made in 1874 and 1875 (Ottawa: Queen's Printer, 1966).
38. Duncan Campbell Scott, "The Last of the Indian Treaties," *Scribners* (November 1906).

## DUNCAN COMES DOWN THE RIVER

The Treaty Nine commissioners arrived by train at Dinorwic in northwestern Ontario on 2 July 1905, accompanied by a physician, A.G. Meindl, and two Dominion police constables, James Parkinson and J.L. Vanasse. They were met by Chief Trader T.C. Rae, who had been delegated by the Hudson's Bay Company to accompany the expedition. With the help of Rae and his crew of Albany River guides, they set off the following day for Osnaburgh House with their canoes and luggage, which included several thousand dollars in small bills, flags and medals for the chiefs, medical supplies and a large, unwieldy camera. If for nothing else, the James Bay Treaty deserves to be remembered for those wonderful glass slides which Duncan Campbell Scott took of the Indian people of northern Ontario-as evocative as the more famous Indian portraits of Edward Curtis, though much less romantically posed.<sup>1</sup> Here is a group of Fort Hope men awaiting the treaty, some with traditional clothing and long hair, some in western dress with cropped locks. Here is an Indian family in its tent at Abitibi Post, a brand new sewing machine clearly visible in the background. And here is our old friend Chief Louis Espagnol, looking "quite the heavy swell" in all his finery in front of the Company store in Biscotasing. What could better express the message the government was trying to convey to its Indian charges than the sight of the treaty fleet arriving at Long Lake with flags flying? Or the commissioners lounging in front of their official tent in proper suit and tie, flanked by the policemen in full dress uniform? Yet in their unofficial moments, the official party seem, to a modern observer, ever so slightly ridiculous-Commissioner Scott on the portage trail, looking like a fastidious beekeeper in pith helmet and mosquito net; the members of a trader's family in front of a Hudson's Bay Company canoe, maintaining Victorian standards of dress and decorum in the midst of the wilderness. All of them could just as easily have been travelling to a native village in Mashonaland or to a Himalayan hill station of the British Raj.

The members of the treaty party seem to have enjoyed themselves immensely. Who wouldn't have preferred exotic northern travel to stuffy Ottawa in the summertime? Duncan Campbell Scott, of course, was a literary figure of some note (though he's no

longer read) and he understandably favoured his artistic pursuits over his regular work. "Indian Affairs was not one of the Government's most exacting departments," his friend Madage Macbeth later remembered, so "Duncan had quite a little leisure during office hours. He did not suppress his artistic impulses at these times, but worked zealously on his practice piano."<sup>2</sup> The northern air definitely stimulated Scott's creative muse. His good friend Pelham Edgar-an English professor at Toronto's Victoria College who was hired as secretary on the 1906 expedition-was visibly impressed. "We have the Oxford Book of Poetry always handy," he wrote from Abitibi in June of 1906, "and when I paddle Duncan often reads... Duncan caught a poem as we were going through Island Lake and is still reeling it in. I have not yet seen it. This morning he read two splendid stories to me that he has written lately."<sup>3</sup> The poet's eyes, though, were still in the English Lake District, not in the bush country that painters like Tom Thomson had already seen so well:

Then a leaf-comment died away in murmurs.  
The smoke of our camp-fire amid the firs  
Like a tall ghost rose up below the moon.  
The enchanted water joined an antiphonal rune  
In labials and liquids with the rocky shoal  
Where we were moored by pressure of the breeze  
That barely chafed our bark canoe, and stole  
Like a sing-flutter through the hazel trees.  
Hidden above there, half asleep, a thrush  
Spoke a few silver words upon the hush -  
Then paused self- charmed in silence.<sup>4</sup>

All in all, it was quite a literary expedition. Both Commissioners Scott and Stewart kept diaries,<sup>5</sup> and the former reported on his travels in *Scribners* magazine. Pelham Edgar, who spent a great deal of time fishing - "the Indians had two long names for me, one of which translated means 'The man who always asks where the trout are' and the other 'The man who always fishes and never catches anything'" - contributed several articles about the treaty tour to a long-defunct periodical called *Canada*.<sup>6</sup> Even Police Constable Joseph Vanasse wrote, at Professor Edgar's urging, about the Indian customs he witnessed at Lac Seul in 1905.<sup>7</sup> The commissioners were also joined for

the last part of their 1906 journey by the painter Edmond Morris, son of the Manitoba lieutenant-governor who had negotiated several of the earlier "numbered" treaties, whose charcoal pastels of the Indian people of Chapleau, Missinaibi and Long Lake are now at the Royal Ontario Museum in Toronto.<sup>8</sup>

As proper Victorians, the commissioners always noticed when particular bands could be distinguished for their cleanliness or godliness. "At Osnaburg," wrote Scott, "the civilizing work of the Church Missionary Society was noticeable. A commodious church was one of the most conspicuous buildings at the post and the Indians held services in it every evening".<sup>9</sup> At Mattagami the Indian people treated with "were well dressed and appeared to be living comfortably. A degree of unusual cleanliness was to be observed in their surroundings and habits."<sup>10</sup> At Fort Albany, both the Roman Catholic and Anglican clergy were given unstinting praise. The Catholic Mission, noted Scott, "has an air of prosperity and comfort":

The celebration of mass was well attended on Sunday. The Church of England mission is also in a flourishing condition. The large church was filled for all Sunday services conducted by Bishop Holmes, and the Indians took an intelligent part in the services."<sup>11</sup>

On other subjects, the treaty party was not so sanguine. Samuel Stewart remarked that, despite the absence of a hotel or saloon, at Missanabie "the Indians experience no difficulty in getting intoxicants. A favourite drink with them is one known as 'John Bull Bitters', which purports to cure almost every known disease." Here, they gave the Indians a lecture on sobriety.<sup>12</sup> At Lac Seul Post, which the commissioners passed on their way to Osnaburgh in July of 1905, they found out that a "Dog Feast" was underway. Since these ceremonies were illegal, they summoned the chief, who told them that the majority of the band refused to let him halt the activities. The conjurer Neotanaqueb, on the other hand, who "was considered to have great skill in driving out the evil spirits from those afflicted with any kind of disease," was absolutely unrepentant-though the commissioners couldn't help but be surprised "at the wisdom shown by him in the replies given to certain questions and the manner in which he avoided to answer others." The government party went on its way after giving the



Indians "a lecture on the folly of their conduct" and warning them that their future actions would be carefully watched.<sup>13</sup>

Osnaburgh was the first official stop on the treaty tour. Because of its close water connection to the Treaty No. 3 reserve at Lac Seul, the commissioners were afraid that the Indian people here would offer the most "difficulty" over the difference between the terms of the proposed James Bay agreement and the more favourable provisions of the older treaty. They therefore asked the Indian people to select "representative men" to whom the treaty could be interpreted, and when that was done, told the representatives to ask any questions "they desired to have answered:"

Missabay, the recognized chief of the band, then spoke, expressing the fear of the Indians that, if they signed the treaty, they would be compelled to reside upon the reserve to be set apart for them, and would be deprived of the fishing and hunting privileges which they now enjoy.

On being informed that their fears in regard to both these matters were groundless, as their present manner of making their livelihood would in no way be interfered with, the Indians talked the matter over among themselves, and then asked to be given till the following day to prepare their reply.<sup>14</sup>

This request was immediately granted and when the meeting was convened again the following morning the chief said they were prepared to sign the treaty with His Majesty, "as they believed that nothing but good was intended. The money they would receive would be of great benefit to them and the Indians were all very thankful for the advantages they would receive from the treaty."<sup>15</sup> The chiefs and principal men then signed the agreement with all due formality and the commissioners paid out the gratuity of \$8.00 to nearly 350 people - which number, Samuel Stewart observed with some astonishment, included one particular Indian "his three wives and seventeen children."<sup>16</sup> Just before the official feast - of bannock, bacon, pork and tea, followed by a plentiful supply of pipes and tobacco - the old blind Chief Missabay made an eloquent speech in which he praised the government for the way it had treated the Indians and "advised the young men to listen well to what the white men had to say and to follow their advice and not to exalt their own opinions above those of men who knew the world and had brought

them such benefits."<sup>17</sup> The Osnaburgh people had been told that they could elect a chief and two councillors. Missabay was at once nominated for the first position but he declined, saying that his affliction would prevent him from carrying out his duties. The old man's son, however, urged him to accept "as his wisdom would be of great value in directing the affairs of the band" and finally Missabay relented. Following the election of the two councillors, Missabay was presented with a twelve-foot Union Jack "much to the delight of all the Indians."<sup>18</sup> On the morning of July 13, after the Osnaburgh people had described the location of the lands they wanted as a reserve, the treaty party set off for Fort Hope, 200 kilometres further down the Albany River on Eabemet Lake.

At Fort Hope - as, indeed, at all the other stops on their tour - the commissioners followed the same procedures as at Osnaburgh. The treaty was interpreted to the Indian representatives, following which the document was signed and the Indians were paid their gratuity. In conjunction with the feast, there were elections for chief and councillors, and the new chief was presented with the flag. The final item of business was selection of a reserve.<sup>19</sup> One important difference from Osnaburgh, however, was that the Fort Hope people wanted much fuller explanations of the treaty terms - which would be consistent with the statement we noted earlier from the trader Jabez Williams that these people were less anxious for treaty than surrounding groups. It took the commissioners quite some time to convince them that there was not something behind the provisions of the agreement, for as Moonias, one of the principal men of the band argued, "they were not giving up very much for what they were to receive, and it had never been his experience to receive something for nothing." Father F.X. Fafard of the Roman Catholic Mission at Albany, a man fluent in both Cree and Ojibwa languages, helped the commissioners greatly by explaining to the Indian people the government's reasons "for asking them to surrender their title to their unused lands."<sup>20</sup> At this point, an individual names Yesno (so called because his knowledge of English consisted only of the words "yes" and "no") made "an excited speech, in which he told the Indians that they were to receive cattle and implements, seed-grain and tools":

Yesno had evidently travelled, and had gathered an erroneous and exaggerated

idea of what the government was doing for Indians in other parts of the country, but, as the undersigned wished to guard carefully against any misconception or against making any promises that were not written in the treaty itself, it was explained that none of these issues were to be made, as the band could not hope to depend upon agriculture as a means of subsistence; that hunting and fishing, in which occupations they were not to be interfered with, should for very many years prove lucrative sources of revenue. The Indians were informed that by signing the treaty they pledged themselves not to interfere with white men who might come into the country surveying, prospecting, hunting, or in other occupations; that they must respect the laws of the land in every particular, and that their reserves were set apart for them in order that they might have a tract in which they could not be molested, and where no white man would have any claims without the consent of their tribe and of the government.<sup>21</sup>

At Marten's Falls, rather an unimportant HBC post which the treaty party reached on July 25, the Indian people were again suspicious of the government's motives, as it "seemed to them that an offer was being made to give them something for which they were not expected to make any return." But again the commissioners' explanations set such fears at rest "and the money paid to them was accepted with gratitude." At the feast, during which the flag was presented, the new chief, William Whitehead, made a "very sensible speech thanking the King and the government for the benefits conferred on his people."<sup>22</sup>

The first three stops on the treaty tour certainly convey the flavour of the discussions the commissioners were to have with all the Indian people they met during their two summers in the north, although the further they travelled down river the more warmly the message Duncan Scott said they were trying to convey - one of governmental paternalism - seems to have been received. At Fort Albany on August 6, the commissioners were presented with an address in Cree syllabic expressing the people's pleasure at being brought into treaty:

From our hearts we thank thee, O Great Chief, as thou hast pitied us and given us temporal help. We are very poor and weak. He [the Great Chief] has taken us over, here in our own country, through you [his servants]...<sup>23</sup>

At Moose Factory three days later, the Indian spokesman said they had all been looking

forward to treaty for a long time and thanked the government men for promising law and order, schools and money, which would greatly help the poor and needy among them.<sup>24</sup> The people of New Post on the Abitibi River, with whom the commissioners met on August 21, again expressed the prevailing concern about the effect the treaty might have on their hunting and fishing rights, but when "assured that these would not be taken from them they expressed much pleasure and their willingness to sign treaty."<sup>25</sup>

The treaty party was showered with the same expressions of gratitude the following summer. On arriving at the Montreal River post of Matachewan on 19 June 1906, wrote Samuel Stewart, "we were welcomed by Mr. Lafrican, HBCo Agent, while the Indians old and young, male and female, formed in two lines through which we had to pass and shake each one by the hand."<sup>26</sup> After the usual explanations and question period, the Indian spokesman Michel Baptiste said the treaty terms "were very satisfactory to them."<sup>27</sup> From the commissioners' report, it would seem that the discussion period was becoming increasingly unnecessary. On July 7 at Mattawagamingue (Mattagami) Post, the Indian people were again given the opportunity to ask questions and after "a short conversation among themselves," stated that they were fully content.<sup>28</sup> And at New Brunswick House near the end of July, when the people were asked "whether they had any questions to ask or any remarks to make," they replied, through Mr. J.G. Christie, Hudson's Bay Company officer, that they were perfectly satisfied with what they were to receive under the treaty and were willing to sign at once."<sup>29</sup> The Indian people of the latter two places were, of course, among those whose claims Ontario Magistrate E.B. Borron had promised to represent in the summer of 1886, so it should not be surprising that they and the other groups from near the height of land were even more grateful for the commissioners' visit than those along the Albany River. In fact, one of the unanswered questions about Treaty No. 9 is why the government representatives chose to deal first with the people who lived furthest away from the frontier of settlement - it was only as they were nearing Lake Abitibi at the end of their 1905 mission that the official party had begun to see the signs of "approaching civilization and of the activity in railway construction and surveying which had rendered the making of the treaty necessary."<sup>30</sup>

Taking the commissioners' diaries and report alone, it would be difficult to argue that the treaty had not been negotiated. After all, the Indian people were given the chance for questions and discussion, even if they didn't always take advantage of it. The commissioners themselves, on their return to Ottawa at the end of August 1906, certainly had no doubts about what they'd accomplished. They reported that they had taken a cession of that part of Ontario described in the treaty (about 90,000 square miles) as well as of another 40,000 or so square miles in the Northwest Territories; and it gave them great pleasure to refer to the "evident desire of the Indians at all points visited to display their loyalty to the government by the reception given to the commissioners and also by the recognition of the benefits conferred upon them by the treaty."<sup>31</sup> But is this how the Indian people themselves actually perceived what they had done? Despite Duncan Campbell Scott's pessimistic conclusion that the motives of both parties to the agreement "were alike unknowable," the treaty had been an important exercise in cross-cultural communication. Some sort of message had obviously been communicated to the Indian people to create such a favourable response.

One possible explanation is that the Indian people had no sense of land ownership and that, therefore, as Father Fafard had explained to the people of Fort Hope, they were simply giving up their title to a large area of land "of which they could make no use."<sup>32</sup> But the question is not that simple. In its most basic sense, property involves rights, not things<sup>33</sup> - and the Indian people seem to have viewed the treaty process as a discussion as to which party to the agreement would have which rights to which things. At Fort Hope, the sceptical band members had been told that by signing the treaty they were agreeing not to interfere with the whites who were coming into their country for a variety of reasons. They do not seem to have been told that they were giving up all of their own rights to their traditional lands, with the exception of certain small "reserves"; that thenceforth they would have no say whatsoever in the management or development of those lands; that they would be prevented from hunting, fishing and trapping on any particular areas occupied by whites; or that their hunting, fishing and trapping could be regulated by government as it saw fit. Yet the text of the treaty states that the Indian

people had thereby ceded "all their rights, titles and privileges whatsoever" to the lands in question. With respect to hunting and fishing, the document reads:

And His Majesty the King hereby agrees with the said Indian that they shall have the right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the government of the country, acting under authority of His Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.<sup>34</sup>

At Osnaburgh the blind chief, Missabay, had voiced the Indians' fear that if they signed the treaty they would be forced to live on the reserve set apart for them and would be deprived of their hunting and fishing rights. The commissioners replied that such fears were groundless "as their present manner of making their livelihood would in no way be interfered with." No wonder the various bands along the Albany River felt they were getting something for nothing. As we saw from the commissioners' notes on their travels, this same question was invariably given the same answer - that Indian hunting and fishing rights "would not to be taken from them," as they told the people of New Post. Even at those stops where the people immediately welcomed the treaty, the issue came up. Nearly seventy years after the treaty, an elderly gentleman who had been an apprentice clerk at Mattagami Post remembered the commissioners telling the local people they could hunt over the surrendered lands "just the same" as before the agreement. "If there was any clause in the Treaty that was put in their against that," Robert Laurence added emphatically, "the Indians didn't understand it, and I know that quite well, because they didn't understand half of what was going on anyway."<sup>35</sup> James Wesley, who attended the official ceremonies at Fort Albany as a young boy, was equally insistent on this point when interviewed in 1972. The British government told the, he said, they should not be afraid "because there will not be any legislation governing trapping, hunting animals and hunting birds and fishing if you are in favour of the Treaty."<sup>36</sup>

It could be said in the commissioners' defence that it wasn't their fault the Indian people

didn't understand the basic incompatibility between Indian and white land use practices - such misunderstandings had always accompanied the land surrender process. As far back as 1805, for example, the Credit River Mississauga, who had ceded large tracts along Lake Ontario to the Crown in the preceding quarter century, were complaining bitterly to the lieutenant-governor of Upper Canada that white farmers were setting their dogs on them every time they tried to cross planted fields to hunt.<sup>37</sup> But unlike these early Ontario land cessions or most of the preceding "numbered" treaties, the government was not in this case trying to pave the way for agricultural settlement; nor did the government expect the Indian people themselves to settle down and take up farming on their reserves. As the Treaty Nine delegations had explained at Fort Hope, "the band could not hope to depend upon agriculture as a means of subsistence"; hunting and fishing, "in which occupations they were not to be interfered with" would provide them with a lucrative source of revenue for many years to come.<sup>38</sup> Why did the commissioners say this? They must have known that the level of government represented by the Ontario envoy, Daniel McMartin, would not only be allowing whites to exploit the timber and mineral resources of the surrendered lands, but would also be assuming control of the game, the fish and the fur-bearing animals that the Indian people thought were being reserved for their own exclusive use. During the very summer that the Treaty Nine commissioners were making their way down the Albany River to James Bay, provincial constables and game wardens were raiding fur trade posts along the line of the Canadian Pacific Railway and seizing beaver and otter pelts trapped in violation of provincial government regulations.<sup>39</sup> By confining themselves, as Duncan Campbell Scott had put it, to the "simple facts" of their mission, the commissioners were seriously misleading the Indian people as to the exact nature of the agreement they were being asked to sign.

But would a more honest explanation of the treaty terms have changed the outcome of the negotiations? Though retrospective questions are never good historical practice, it seems safe to say that most of the Albany River bands would probably have refused to participate. On the other hand, the bands on James Bay, as well as those closest to the railway line, might well have signed the treaty anyway - both because they would have

felt they had no real alternative, and because, as we noted earlier, the commissioners were very successful at promoting the tangible benefits of adherence to the treaty.

The most obvious treaty benefit was money. At \$40.00 for an average family, the gratuity had significant cash value. It was also a source of income entirely independent from the fur trade. This had particular meaning in the more remote parts of northern Ontario, where the Hudson's Bay Company was still more or less unopposed. For one thing, the Company was trying to maintain its two hundred year-old system of bartering goods for furs - which, as we saw above, was highly profitable.<sup>40</sup> This system changed quickly with the treaty, however, and not entirely to the Company's disadvantage. The trader at Fort Albany, for example, after entering in his journal the main aspects of the treaty meeting on 3 August 1905 and highlighting the distribution of the \$8.00 gratuity, noted that he had been "busy in store selling for cash, sold \$1,072.00 worth of goods."<sup>41</sup> But the Hudson's Bay Company seems to have been even more worried about the effect the treaty payments might have on the Company's own paternalistic relationship with many of the northern Cree and Ojibwa. H.B.C. traders were accustomed to giving out relief supplies in times of hardship - partly for humanitarian reasons, though mainly for the sound economic motive that destitute Indian people didn't trap - but they fully expected the Indian people to repay these advances as soon as they were able. What they didn't want was a system that would provide the Indian people with the necessities of life without their having to sustain the flow of furs. During the terrible winters of 1899-1901, the Company had asked the Department of Indian Affairs for permission to distribute flour, at government expense, to needy Métis and non-treaty people in much of northern Ontario. When that permission was granted, the Company carefully instructed its traders not to tell the recipients where the supplies were coming from "as should the Indians get the smallest hint that there is flour to be had at any of our posts gratis they would not try to help themselves."<sup>42</sup> It is not that the Indian people were inherently "indolent" - a favourite complaint among traders - just that they did not consider themselves employees of the fur companies. Their main aim in life, as one of the more perceptive H.B.C. traders put it, was "not to make us rich but themselves comfortable."<sup>43</sup>



There is no reason, therefore, to distrust the treaty commissioners' many citations of the warm thanks they received for the monetary provision of the agreement. Indeed, most of the Indian people seem to have perceived the whole of the proposed arrangement with the government as a chance to make themselves more comfortable. On 9 August 1906, at Long Lake Post, Chief Newatchkigigswabe thanked the government for what had been done for his people, particularly by way of annuity, and "hoped that provision would be made for their sick and destitute, as even in the best seasons the Indians found it very difficult to do more than make a living, and were able to do very little towards assisting one another." The commissioners, it is true, tried to guard against such unrealistic expectations, telling the chief that "the government was always ready to assist those actually requiring help, but that the Indians must rely as much as possible on their own exertions for their support."<sup>44</sup> This was in keeping with their intention - stated at several points in their report - to avoid the type of "outside promises" which had plague several of the earlier treaties.<sup>45</sup> The "Indians cannot," they informed the superintendent general at the end of their mission, "and we confidently believe do not, expect any other concessions than those set forth in the documents to which they gave their adherence."<sup>46</sup> But there is such a thing as non-verbal communication, and the way in which the government party presented itself to the Indian people created several unforeseen consequences. Robert Laurence was somewhat cynical as, in 1974, he remembered this aspect of the treaty ceremonies at Mattagami:

It was certainly, to my way, a one-sided agreement, you see. One-sided. And the poor Indians - they came in there with the big canoes, flags flying, and Mounted Police, and all this kind of stuff, and made a great thing about the Great White Father and how they were going to look after them and protect them. All bunkum - to my way of thinking anyway.<sup>47</sup>

For years afterwards, the government would hear complaints about unfulfilled provisions of the treaty. The Indian people expected relief supplies<sup>48</sup>; they thought the chiefs and councillors were to be paid salaries<sup>49</sup>; they asked about the feast that had been promised them at annuity time<sup>50</sup>; and they insisted that a "medical officer was granted them to appear once a year."<sup>51</sup> The last point can be taken as typical. Nowhere in their

official report did the Treaty Nine commissioners mention anything about providing medical assistance to Indian people, and the treaty document itself is silent on the subject. On the other hand, the commissioners were accompanied throughout their northern tour by Dr. A.G. Meindl, who gave physical examinations and inoculations, extracted teeth and dispensed medicine.<sup>52</sup> Is it any wonder the northern Cree and Ojibwa assumed that medical services were a provision of the treaty? For the last word on at least one band's perception of the James Bay Treaty, we should turn to James Wesley, the Cree historian of the Fort Albany reserve:

August 3<sup>rd</sup>, 1905. Duncan came down from the Albany River and the people were told one day ahead of time that there would be a meeting...(He said) "I am here under the British Government to tell you people if you are interested in a proposal from the British Government for you to give up your land for the government to look after. And if you are in favour of the idea give us your land. You will be given \$8.00 a year when you have given us your land. We will also give \$8.00 to all the people that are born from you. And also you will be visited by the doctor yearly and he will administer medicine and without charge to you people. Do not be afraid because there will not be any legislation governing trapping, hunting animals and hunting birds and fishing if you are in favour of the Treaty. If something happens to you as to sickness or need of help the Government will help you, all the people from Albany, Attawapiskat, Winisk, Fort Severn will have this help. This will be all for now; I will give you one hour to think it over. If you do not accept this treaty, the government will do whatever it wants with you. Where we have come from, all the Indians have agreed to sign treaty; if you don't you will find it hard for yourselves..."<sup>53</sup>

## Notes

<sup>1</sup>. These slides and prints are now part of the photographic collection at the Public Archives of Canada. There are also contemporary copies at the Archives of Ontario.

<sup>2</sup>. Madge Macbeth, *Over My Shoulder* (Toronto: The Ryerson Press, 1953), p. 143.

<sup>3</sup>. Pelham Edgar, "Travelling with a Poet," *Across My Path* (Toronto: Ryerson, 1952), p. 60.

<sup>4</sup>. Scott, "The Fragment of a Letter," quoted in Edgar, p. 61.

<sup>5</sup>. Scott's Diary (and Edgar's for 1906) is in RG10, Vol. 1028; Stewart's is in RG10, Vol. 11, 399.

<sup>6</sup>. Edgar, p. 63; Pelham Edgar, "Twelve Hundred Miles by Canoe," *Canada* (24 November 1906 through 16 March 1907).

<sup>7</sup>. Joseph Vanasse, "The White Dog Feast," *The Canadian Magazine* Vol. 30 #1 (Nov. 1907): 62-64.

- <sup>8</sup>. Edmond Morris. *The Indian Tribes of Canada* (Toronto, 1909), pp. 7-8.
- <sup>9</sup>. *The James Bay Treaty*, p. 5.
- <sup>10</sup>. *Ibid.*, p. 15.
- <sup>11</sup>. *Ibid.*, p. 8.
- <sup>12</sup>. 1906 Diary, p. 95. RG10, Vol. 11,399, File 2.
- <sup>13</sup>. 1905 Diary, pp. 24-26; see also Vanasse, "The White Dog Feast."
- <sup>14</sup>. *The James Bay Treaty*, pp. 4-5.
- <sup>15</sup>. *Ibid.*
- <sup>16</sup>. 1905 Diary, p. 39.
- <sup>17</sup>. *Ibid.*, p. 39; *The James Bay Treaty*, p. 5.
- <sup>18</sup>. 1905 Diary, pp.40-41.
- <sup>19</sup>. *The James Bay Treaty*, pp. 6-7.
- <sup>20</sup>. 1905 Diary, pp. 55-56.
- <sup>21</sup>. *The James Bay Treaty*, p. 6.
- <sup>22</sup>. 1905 Diary, pp. 67-69.
- <sup>23</sup>. *The James Bay Treaty*, p. 8.
- <sup>24</sup>. *Ibid.*, p. 9.
- <sup>25</sup>. 1905 Diary, p. 126.
- <sup>26</sup>. 1906 Diary, pp. 40-41.
- <sup>27</sup>. *The James Bay Treaty*, p. 14.
- <sup>28</sup>. *Ibid.*, p. 15.
- <sup>29</sup>. *Ibid.*, p. 16.
- <sup>30</sup>. *Ibid.*, p. 10.
- <sup>31</sup>. *Ibid.*, p. 10-11, 17.
- <sup>32</sup>. *Ibid.*, p. 6.
- <sup>33</sup>. C.B. Macpherson, *Property* (Toronto: University of Toronto Press, 1978), pp. 3-4.
- <sup>34</sup>. *The James Bay Treaty*, p. 20.

- <sup>35</sup>. Interview taped by James Morrison in Sault Ste Marie, Ontario, 17 March 1974. Mr. Laurence died in 1975.
- <sup>36</sup>. Interview with James Wesley, Kashechewan, October 1972. Taped and transcribed by Arthur Cheechoo.
- <sup>37</sup>. Meeting with the Mississaugas, PAC C.O. 42/240 Folio 51, 1 August 1805.
- <sup>38</sup>. *The James Bay Treaty*, p.6.
- <sup>39</sup>. HBC Arch., B273/b/7, letter from King, Dinorwic, 2 November 1904; B312/b/, letter from Taylor, Matawa, to Drever, Abitibi, 30 March 1905; B312/b/4, letter of Taylor to HBC Commissioner, 22 September 1905.
- <sup>40</sup>. HBC Arch., B3/b/102, David Armit to Samuel Iserhoff, 3 February 1902.
- <sup>41</sup>. HBC Arch. B3/a/205, entry 3 August 1905.
- <sup>42</sup>. HBC Arch., B218/b/1, letter of Goerge McKenzie to Robert Skene, 22 November 1899; McKenzie to district posts, 20 December 1900; McKenzie to HBC Commissioner, 18 January 1901.
- <sup>43</sup>. HBC Arch., B145/e/11.
- <sup>44</sup>. *The James Bay Treaty*, p. 17.
- <sup>45</sup>. *Ibid.*, pp. 6, 11; for the problem of "outside promises" see W.E. Daugherty, "Treaty Research Report: Treaty One and Treaty Two" (Treaties and Historical Research Centre, Indian and Northern Affairs Canada, 1983), pp.14-19.
- <sup>46</sup>. *The James Bay Treaty*, p. 11.
- <sup>47</sup>. Laurence interview.
- <sup>48</sup>. William Goodwin to Indian Department (in syllabic with English translation) 21 July 1922. RG10, Vol. 6888, File 488/29-3 Vol. 5.
- <sup>49</sup>. Memo of David Laird, 27 October 1910. RG10, Vol. 6887, File 488/28-3 Vol. 2.
- <sup>50</sup>. H.A. West to J.D. McLean (with enclosures), 10 June 1911. RG10, Vol. 6882, File 411/28-3 Vol. 1.
- <sup>51</sup>. HBC Arch., B155/b/5, letter of 12 June 1911; Memo of 3 November 1913, RG10, Vol. 6897, File 492/28-3 Vol. 5.
- <sup>52</sup>. Dr. Meindl's reports are attached to the Commissioners' Report in Canada, Parliament, House of Commons, *Sessional Papers* 1907, I: 293-296.
- <sup>53</sup>. James Wesley interview.

## THE ADHESION PERIOD, 1907-1930

It would be misleading to say that the Indian people did nothing but complain about the unfulfilled provisions of the agreement that they had signed. In the years immediately following the treaty, they frequently thanked the government for the benefits bestowed on them, asking that the promised schools be built quickly and that constables and magistrates be stationed among them to enforce the law.<sup>1</sup> If they objected to the declining value of their annuity - because the Hudson's Bay Company had raised its prices at inland posts - this was clearly not the government's fault.<sup>2</sup> They petitioned the government for fishing nets and carpentry tools and - undoubtedly influenced by their missionaries - even asked for seeds and farming implements, though as the Treaty Nine commissioners themselves had observed, the whole area was not exactly suited to agriculture.<sup>3</sup>

This latter request does raise the interesting question of what, exactly, the Indian people were to do with the reserves set apart for them. The commissioners seem to have expected the various bands to choose sites close to the trading posts and missions where, at some future date, they would eventually settle; and many of them, as at Fort Hope, Fort Albany and New Brunswick House, did in fact choose locations in the immediate vicinity of the posts the treaty party visited. Other bands, however, seem to have taken literally the commissioners' explanation that reserves were to be places of refuge from the white man - the Moose Factory people picked a site a considerable distance up river from their usual gathering centre on the shores of James Bay. And according to Art McLeod, son of the trader at Flying Post, Chief Albert Black Ice selected his own hunting ground near Bromley Lake as his band's reserve.<sup>4</sup> As priorities changed, or as people began to realize an area's potential (or lack of it), many bands asked that their reserve sites be altered. In 1908, the Osnaburgh Band petitioned for new lands to the southwest of Lake St. Joseph because, they said, their original reserve was valueless for farming, mining or lumbering.<sup>5</sup> The Martens Falls Band further down the Albany River had already made the same request in 1907.<sup>6</sup>

In their official report, the Treaty Nine commissioners say next to nothing about the way in which reserves were selected, but one can assume that because of Ontario's effective veto on the matter, they didn't go out of their way to help the Indian people come to a decision. Robert Laurence later remembered that the Mattagami Band had originally wanted a site east of the post that was good deer-hunting country, but James Miller, the local Company manager, persuaded them that Kenogamissi Falls down river was a better choice because of its power potential. Since the commissioners "wouldn't allow that," he added, Mr. Miller "got them the only place - where [sic] they eventually got" because "he knew there was some good pine there."<sup>7</sup> This choice, it turned out, was particularly ironic because in the order-in-council of 13 February 1907 confirming that location, the Ontario government kept all the red, white and jack pine timber for itself for a period of ten years.<sup>8</sup> In 1921, Ontario allowed a power company to dam Kenogamissi Falls as a source of electricity for the mining town of Timmins, thereby flooding out portions of the Mattagami Indian Reserve.<sup>9</sup> The province was nothing if not consistent. In 1919, Ontario refused to confirm the Matachewan Reserve, about one hundred kilometres east of Mattagami, because it was already covered by a pulp license given to the J.R. Booth Company in 1906.<sup>10</sup> And the province had a simple negative answer for bands that wished to alter their reserve sites. When the Moose Factory people requested a change in 1913, on the grounds that they had chosen their reserve too hurriedly - it was suitable for neither farming nor lumbering - the Ontario government replied that it saw no reason why any reserve should be changed from the location in which the commissioners had fixed it. The Moose Band received the same negative response when they again proposed a change in 1920.<sup>11</sup>

In some instances, problems with reserve locations arose because of the very structure of the bands created by the treaty. The non-treaty Indian people of Biscotasing, most of them members of Chief Louis Espagnol's band, had been attached by the Treaty Nine commissioners to the Mattagami and Flying Post Bands. In 1914, they petitioned the department to have a joint reserve set up with their Robinson Treaty relatives, preferably at Biscotasing, but they were refused on the grounds that they should "reside on the reserves ... set aside for them."<sup>12</sup> Most of the Treaty Nine bands, in truth, were

aggregations of a number of overlapping traditional bands which the commissioners had grouped for convenience under the name of a particular Hudson's Bay Company trading post. In the case of the Albany River bands, the government's good intentions created some unintended consequences.

A federal order-in-council of 3 July 1905, we will remember, had instructed the Treaty Nine commissioners to take a surrender of lands in Ontario only.<sup>13</sup> A year earlier, in fact, the Department of Indian Affairs specifically told C.C. Chipman of the Hudson's Bay Company that no people living beyond the Albany River in the Northwest Territories would be included in the treaty, even if this appeared arbitrary to the Indians concerned.<sup>14</sup> At the last minute, the Company seems to have persuaded the federal government to reconsider, for another order-in-council, issued on 6 July 1905 (while the commissioners were already in the field), empowered them to set aside reserves in "that part of the North West Territories lying between the Albany River, the District of Keewatin and Hudson Bay," and to admit to treaty any Indian living in that region.<sup>15</sup> On the one hand, this was a sensible decision, because it would obviously prevent the type of misunderstandings which had occurred with the Robinson Treaties, when band members living on the wrong side of the height of land had been excluded from participation. In the commissioners' view, it would also "add to the community of interest which for trade purposes exists among these Indians a like responsibility for Treaty obligations."<sup>16</sup> But there wasn't really that much "community of interest" among such large numbers of people. Many families from the more remote parts of the hinterland only came out to the Albany River posts once or twice a year, and they very clearly belonged to traditional bands whose gathering centres were elsewhere. The treaty band created at Fort Albany, for instance, included people whose hunting grounds lay north of the Attawapiskat River, well up the west side of James Bay. And, as the commissioners themselves noted, Fort Hope Post was the meeting point for some 700 people "who have their hunting grounds on both sides of the Albany and as far as the headwaters of the Winisk River."<sup>17</sup> Once they began to understand what the government intended the reserves to be used for, these more remote groups began to press the government for separate band and reserve status. Thus, as part of the

adhesions to Treaty Nine in 1930, the Attawapiskat Band was recognized and given a separate reserve on the Ekwan River - without the Fort Albany Treaty Band, to which these people had originally belonged, being forced to surrender part of its own reserve.<sup>18</sup> Other groups were not so fortunate. It took the Cat Lakes people, who were attached to the treaty as part of the Osnaburgh Band, until 1970 to get separate recognition.<sup>19</sup> And the people of Webequie (at the head of the Winisk River), Lansdowne and Summer Beaver - all constituent parts of the Fort Hope Treaty Band - were still trying, sixty years after the treaty.<sup>20</sup> These people were, in a sense, unlucky that the government changed its mind in July of 1905. Had they waited until the adhesion process to participate in the treaty, they would have received their own independent status at that time.

At least, however, the people living in the Northwest Territories were given the opportunity to enter treaty; the closely related Ojibwa and Cree of the province of Quebec, with one peculiar exception, were not. On their arrival at Abitibi Post in 1906, the commissioners had anticipated difficulty as the post was situated "a few miles within the province of Quebec and the majority of the Indians who trade there belong to that province." The government representatives were forced to tell the Abitibi people that they could only treat with those whose hunting grounds were in Ontario, but that if those from Quebec would choose a reserve site, the Dominion would try to have the provincial government set it apart for them later.<sup>21</sup> After separate discussions with the Ontario group, which agreed to treaty terms, both the Ontario and Quebec bands chose their own chiefs and councillors. The Ontario chief was presented with a flag and a copy of the treaty; the Quebec Chief received a flag and pipe of tobacco.<sup>22</sup> Unfortunately, the Quebec government refused to provide a reserve, so the Department of Indian Affairs was forced to find a compromise solution. In June of 1908, Samuel Stewart was dispatched to Abitibi Post, where he proposed to the members of both bands that the Dominion would pay Treaty Nine annuities to the Quebec people if their brethren would allow them to share their reserve in Ontario. According to the terms of the agreement they signed, the Quebec people gave their adherence to Treaty Nine and relinquished to the Crown all their rights to the territory described in the treaty - as well as in the



province of Quebec.<sup>23</sup>

The federal government must have intended that Quebec enter the treaty-making process at some point, because in 1912 it extended the boundaries of both Quebec and Ontario to Hudson Bay. The second clause of each statute provided that the respective provinces would recognize Indian rights in the newly acquired territories "to the same extent" as the government of Canada had previously recognized such rights.<sup>24</sup> Indian Department officials, however, seem to have had only Ontario in mind.

Duncan Campbell Scott had already recommended in 1908 that when the northern Ontario boundary was settled, "all the Indians within that Province should be allotted to Treaty No. 9;" he felt that this would probably happen "before long."<sup>25</sup> There were differing views as to the length of this time interval. Two years earlier, when the "Cranes" north of Osnaburgh (their hostile chief being dead) had expressed a desire to enter treaty, they were told that it was not the government's intention "at present" to add to the numbers taken into treaty.<sup>26</sup> In reality, most of the momentum for the adhesions, as with the original agreement, was to come from the Indian people. And not surprisingly, their stated reasons were the same as those which had been voiced a generation earlier.

"We would like to join in a Treaty as the other Indians at York Factory on the west of us or Albany, Fort Hope, Osnaburg, Attawapiskat on the south of us," wrote James Stoney in July of 1915, on behalf of the people far up the Hudson Bay coast at Winisk and Fort Severn. "We have never been asked to get into any of these Treaties. We are practically surrounded by these Indians who get help from the Government and our hunting grounds in this cold northern climate are very poor and we would be very pleased to be able to join in any of these Treaties. Now that the Hudson's Bay is being approached by railways and white men are coming into this northern country we will be driven from our land."<sup>27</sup> With the building of two new transcontinental railways through northern Ontario, the Indian Department was deluged, as usual, with complaints about the whites who had been attracted to the north country by the high prices paid for furs. An independent trader on the railway line just east of Savant Lake relayed, in the fall of

1919, a typical statement of grievance from two Treaty Nine people of the Osnaburgh Band. "J. Bish of Allan Water had come to their camp," reported Ed Troke, "had taken them by the neck and threatened them saying if they were there when he came back in three days he would beat them up and burn their camp. This has caused them to move their camp and families away from a vicinity where Wabageshick has trapped for four years and Wanabetonge on and off for twenty years." Troke added that the injured parties were "good law-abiding natives" and claimed that Bish should not be allowed to drive them from a place where he himself wanted to trap. "This man has been boasting of catching 150 beaver in one season two years ago, a time when he should be in military service."<sup>28</sup> As in the 1880s, the Indian people were accusing these white trappers of using poison to speed their catch.<sup>29</sup> Throughout the north, treaty and non-treaty people alike expressed their contempt for provincial constables and game overseers, who they felt were favouring whites and depriving them of their traditional rights. "From what I know and have heard," wrote the Port Arthur Indian agent in 1917 about one such individual, "the Indians fear and despise the constable and the only way any of them might assist him without payment would be to dig his grave."<sup>30</sup> The Ontario government was following what it considered to be "scientific" principles of wildlife management, enforcing compliance with its regulations on seasons and on the species of game, fish and fur-bearing animals which could be caught. Officials of the provincial Game and Fisheries Department regarded Indian treaty rights as at best a privilege and at worst a nuisance, to be respected only if absolutely necessary. Thus Indian people were to be allowed to hunt "out of season" for food, but not for profit, despite a two hundred year-old tradition of bartering country food - first to fur traders, then to mining, lumbering and railway camps - in exchange for certain necessities.<sup>31</sup>

The Indian people, of course, protested. The annuity payment officer who travelled the Albany River in 1913 was told that all the Treaty Nine people were "alarmed" at hearing that the government was preventing traders from buying or possessing certain furs. At Osnaburgh, the chief said "that his people were beginning to fear that the Government did not intend to keep faith with them, in accordance with the understanding upon which they surrendered their country to the government." To prevent the traders from buying

their furs, said the chief, was tantamount to preventing them "from hunting or trapping fur-bearing animals, a privilege which the Government assured them they were to have for all time, when the Treaty was made." The payment officer told these people that it was not the government which made the treaty with them which was enforcing these regulations, but that these rules had nonetheless been made for their benefit, and that so long as they kept to the proper seasons, they would be free from prosecution.<sup>32</sup> The Indian Department, however, took a very dim view of people like old Peter Taylor, a member of the Treaty Nine band at English River, who in 1924 was stated to be openly defying the law "by declaring that the Dominion Government, nor any other Government, cannot and will not stop him from killing beaver, otter and moose whenever he feels disposed to do so"; Taylor was to be told that he could be prosecuted "as he was a very bad example to the Indians."<sup>33</sup> Between the treaty and the adhesions, however, officials of the Indian Department - along with some of the northern traders - did urge the Ontario government to refuse "to grant licenses to the white man to hunt in the northern districts," or at the very least to set aside areas where only Indian people might hunt or trap.<sup>34</sup> Though the Quebec government had already done so, Ontario considered such a policy politically unacceptable.<sup>35</sup> Instead, the province was in the process of setting aside wildlife preserves across the north, to which no one at all would have access. One of these was the 1925 Chapleau Game Preserve, which not only included the Treaty Nine reserve of the New Brunswick House Band within its boundaries, but excluded those people and their Robinson Treaty relations from 6000 square miles of their traditional hunting grounds.<sup>36</sup>

Poor fur hunts, high food prices and provincial government regulations were behind all of the petitions the Indian Department received after 1915 from the Indian people of Fort Severn, Winisk and Big Trout Lake in far northern Ontario.<sup>37</sup> A "sack of flour was \$45 to \$50 (or 40 cents per pound) and tea \$2.50 a pound," wrote one of the Trout Lake band members in 1927.<sup>38</sup> "We are receiving no Treaty and only a very little help from the Government, which does not go very far amongst so large a band of Indians," said Sampson Beardy, the Trout Lake chief in April of 1928. "Four years ago we were given the Game Laws and told to keep them." Chief Beardy asked that his people be allowed

to obtain fur with their firearms and that they have the trapping season extended beyond the end of March, for "since these laws have been laid upon our people their circumstances have become worse, until now it seems some will hardly survive the winter."<sup>39</sup> Discussions between Ontario and the Dominion had been underway since 1923 on the subject of adhesions to Treaty Nine, and had the province not backed out at the last minute, the expedition would have set out in the summer of 1927.<sup>40</sup> By 1928, the Indian Department had found out the details of the groups living in the area proposed for surrender, and the tour was officially set for the following summer.<sup>41</sup> To Walter Cain, the Ontario deputy minister of Lands and Forests who was appointed provincial commissioner, Deputy Superintendent General Duncan Campbell Scott addressed a final appeal. The "Indians residing in the District of Patricia," he wrote in May of 1929, "are much exercised over the rapid disappearance of the furbearing animals," which they attribute "to the inroads of white trappers." Since Cain would be receiving first-hand information, Scott added, he hoped the former would suggest to his government "the justice of setting apart various tracts in which the Indians shall have the sole right to take game, or that the game laws may be so modified as will preserve to the Indians a continuance of living."<sup>42</sup>

If the original treaty expedition through northern Ontario had been organized by the federal government and hosted by the Hudson's Bay Company - with one provincial representative along for the ride - the two adhesion commissioners were very mindful of their separate status. Walter Cain arrived at Big Trout Lake on 3 July 1929 in a Moth aircraft captained by Roy Maxwell of the provincial air service, while federal Commissioner H.N. Awrey ( a departmental employee) and the physician, Dr. Bell, arrived a day later on board an R.C.A.F. plane. When the province issued a press statement the following year claiming that their representative's aircraft was the "pilot plane of the flight," Awrey issued an immediate denial.<sup>43</sup> When the commissioners arrived at Trout Lake, reported the federal representative, "great enthusiasm was manifested by the Indians who had assembled there to meet the two commissioners who had been sent by the King to look into their complaints and if possible, to make a treaty for the amelioration of their condition." These people were "greatly excited by the

sight of the aeroplane." On July 5, the commissioners explained the treaty terms of gratuity and annuity (at \$8 and \$4 respectively, the same as in 1905), reserves and schools, and stated that the Indian people "would still have the privilege to hunt and fish as usual in return for the land which they were ceding." The people of Trout Lake accepted the full terms of the agreement and a number of leading men signed the document. Sampson Beardy, the traditional chief, was elected chief of the new Trout Lake Indian Band.<sup>44</sup>

The commissioners had also expected the famous "Cranes" to show up at Big Trout Lake for treaty - they had been advised by letter to do so - but none of them actually arrived. By a strange coincidence, Walter Cain's return flight was forced down by bad weather on an uncharted lake miles off course, where he "quite unexpectedly" came upon some of the Cranes - whose Chief still had Dr. Scott's letter in his pocket. Cain told them that he expected their attendance the following year at Big Trout Lake, but - independent as always - they remained noncommittal.<sup>45</sup> Six months later, they asked through their missionary to have the commissioners come to see them on their own grounds, as their canoes were "too old and weak" for the trip north and as the three groups of them had decided to unite as one.<sup>46</sup> Walther Cain found their excuses spurious at best, but because it looked "as if they were fully determined to be aggregated as a separate band whether they be admitted to treaty or not," he agreed to the commissioners visiting them the following year.<sup>47</sup> On 17 July 1930, Cain and Awrey flew onto the Windigo River at Nikip, where they found 176 people who "presented a picture, in comparison with other bands, of unkempt, ill-clothed, rather penurious and distressed people." However, notwithstanding their "seemingly underprivileged condition," the doctor found them in above-average health with not a tooth cavity among them, "thanks presumably to the lack of sugar and sweetmeats." After a "thorough explanation of the Treaty," the leaders "submitted many questions which were fully answered, after which they indicated readiness to sign the Adhesion."<sup>48</sup>

The last two groups admitted to treaty in 1930 were those of Fort Severn and Winisk on the Hudson Bay coast. The group at Fort Severn was at first hesitant "under their

natural restraint or childish reserve in the presence of white men" but eventually they began an exchange of "ideas and opinions" which led them to declare their full satisfaction with the treaty.<sup>49</sup> At Winisk, the "Indians possessed more knowledge of the terms and conditions of Treaty No. 9 than many members of other bands who had been admitted twenty-five years ago" and, through their interpreters, Father Martel and William Owen, frequently stated that they knew "perfectly all about the Treaty."<sup>50</sup> In this regard, the commissioners' report does seem somewhat at variance with the memories of Michael Patrick, a Winisk band member whose brother signed the treaty, who in 1983 claimed that the Indian people did not really understand that much about the arrangements. Mr. Patrick's reminiscences also suggest that the presence of a provincial commissioner, at Winisk at least, went entirely unnoticed:

Then came another story of another boss who would arrive soon and he would called the "shonia ogima" ("money boss," i.e. Indian Affairs), This would be a government boss. The mail came through these trading companies, announcing the upcoming arrival of these men and contained within the announcement was a notice to decide about the state of land and payment of four dollars or eight dollars for the land. The person who took the money would in turn receive the laws. That's what the notice said even though nobody really understood what the notice meant. That letter came to my brother Xavier Patrick who understood some English because he had gone to school... These people finally arrived, the Indian Affairs man, one doctor and R.C.M.P. There were no Lands and Forests representative yet. When they arrived, they gave word that three candidates should be selected for the position of chief. One was my brother Xavier, another David Sutherland and John Bird. Xavier was selected over the others because of his knowledge of English. We did not understand English nor did the visitors understand us. Our interpreter also did not speak our dialect. He was brought in from Stranger River. He was a halfbreed ... In our discussions, it was stated that anyone who wanted the laws would receive money ... With the agreement, the government's representative stated that no one wanted to control the lifestyle of the people. The people who relied on the birds would be left in their care and no one else would take them away. The animals who walked also were left in their care and no one else could hunt them. No one could dictate terms which would affect their traditional lifestyle. Food, in the form of birds, animals and fish, could still be used by the people. The white man had cattle, gardens and would continue to live this way. The people would also control the trees and use them as in the past. Laws were applied to the land however, in order to take care of it, and to avoid destroying it by fire. It was also stated that anyone not interested in making his own living, who was lazy, could not be helped but those who were skillful and had the ambition to run their lives, would be assisted by the

government...<sup>51</sup>

The district involved in the adhesions consisted of some 128,000 square miles and represented - to quote one contemporary press report - "the last unceded Indian territory in the whole Dominion."<sup>52</sup> Together with the territory acquired in 1905-06, Treaty Nine took in more than two-thirds of what is now the province of Ontario and paved the way for the development of untold resource wealth. The government of the province and the rest of its people undoubtedly benefited from the treaty, and many of the Indian people claim that they did too. Michael Patrick, at the end of his long life, felt that the Indian people had kept their side of the agreement, though, like any elder, he worried about what the future had in store:

We, in our native world, are beginning to lose too much. Not many people can take care of their own. We should ensure that all people possess the necessary skills to survive on their own. I have heard that what the government promised in benefits to native people, money is running out ... Before it's too late, we must begin to talk to our people to encourage self sufficiency for the future...<sup>53</sup>

Whether, given the political realities of the treaty period, the northern Cree and Ojibwa could have expected different treatment is a matter for historical argument. But one thing does seem clear. Though Treaty Nine did not really cover "the last unceded territory" in all of Canada - as the people of northern Quebec, British Columbia and the Northwest Territories will readily testify - it represented the end of a policy leading back to the British Indian Department of the eighteenth century. No future agreement with the Indian people of Canada will ever look this way again.

## Notes

1. Report of 18 August 1906; report of 22 September 1910, RG10, Vol. 6887, File 486/28-3 Vol. 2.

2. Report of 18 August 1906, *Ibid.*

3. Report of 22 September 1910, *Ibid.*

4. Interviewed by James Morrison, 15 October 1977. Mr. McLeod, a "half breed," as he calls himself, was married to a woman from the New Brunswick House Band.

5. HBC Arch., B155/b/5, letter of 12 June 1911.
6. Report of September 1907, RG10, Vol. 6887, File 486/28-3 Vol. 1.
7. Interview with Robert Laurence.
8. Letters of 8 October 1910; 3 November 1910, RG10, Vol. 7835, File 30065-3 Vol. 1.
9. Letters of 4 June and 5 August 1921. *Ibid.*
10. Letter of 1 October 1919, RG10, Vol. 7757, File 27044-1.
11. Memo of S. Bray, 12 November 1913; letters of 5 March and 12 March 1930. *Ibid.*
12. Letters of 31 July 1914; 13 August 1914; 27 July 1915; RG10, Vol. 3180, File 452,054.
13. PAC, RG2, file 1236D, No. 1262.
14. Letters of 11 May and 18 May 1904. Treaty File.
15. PAC, RG2, file 1238D, No. 1275.
16. *The James Bay Treaty*, p. 3.
17. *Ibid.*, p. 6.
18. *Ibid.*, p. 35; report of 17 July 1928, RG10, Vol. 6889, File 486/28-3 Vol. 8.
19. Bishop, *The Northern Ojibwa*, pp. 66, 67, 76.
20. Letter of 29 December 1932. RG10, Vol. 6889, File 486/28-3 Vol. 10.
21. *The James Bay Treaty*, pp.13-14.
22. 1906 Diary, pp. 24-25.
23. 1908 Diary, p.165; PAC, RG2, Vol. 514, PC 1593 9 July 1908.
24. *Statutes of Canada 2* George V. Chapters 40 and 41.
25. Memo of 14 May 1908. RG10 Vol. 4009, File 249,462-1.
26. Letters of 15 October and 15 November 1906. Treaty File.
27. Letter of 29 July 1915. Treaty File.
28. Letter of 19 October 1919, RG10, Vol. 2406. File 84,041 Pt. 2.
29. Letter of 24 February 1917. *Ibid.*
30. Various letters *ibid.*, esp. 5 January 1917.
31. Various letters *ibid.*
32. Report of W.J. McLean, 3 November 1913. RG10, Vol. 6897, File 492/28-3 Vol. 5



33. Report of H.N. Awrey, 14 August 1924. RG10, Vol. 6888, file 486/28-3 Vol. 6
34. Report of H.N. Awrey, 15 August 1929, RG10, Vol. 6889, File 486/28-3 Vol. 8; Report of 31 July 1931. RG10, Vol. 6889, File 486/28-3 Vol 9; Superintendent General to Howard Ferguson, 2 February 1929. AO, RG3 Ferguson Papers Box 102; "Report of the Special Committee on the Game Situation" 1933, AO, RG8 I-7-B-2, p. 140.
35. Ontario, Legislative Assembly, *Sessional Papers*, 1933 No. 32, p. 70.
36. Vince Crichton, *The Chapleau Game Preserve* (Ontario Department of Lands and Forests, 1947); RG10, Vol. 7763.
37. Letters of 22 March 1922; 27 November 1923; various R.C.M.P. dispatches, Treaty File.
38. Letter of David Banty, 20 April 1927, Treaty File.
39. Petition enclosed in letter of Leslie Garrett, 9 April 1928. RG10, Vol. 6819, File 490/2-17.
40. *Ibid.*
41. *Ibid.*
42. *Ibid.*, clipping from *Star Weekly*, 3 August 1929.
43. *Ibid.*, and Commissioners Report 1929, RG10, Vol. 3034, File 235-225 Vol. 3.
44. Letter of 23 July 1929, Vol. 6819, File 490/2-17.
45. Letter of 12 October 1929, *ibid.*
46. Letter of 18 November 1929, *ibid.*
47. Commissioners' Report 1930. RG10, Vol. 3034, File 235-225 Vol. 3.
48. *Ibid.*, p. 14
49. *Ibid.*, p. 17.
50. Interviewed by Greg Spence, 18 January 1983. Tape in possession of Ojibway-Cree Cultural Centre. Timmins, Ontario.
51. Toronto *Mail and Empire*, 8 January 1929.
52. Michael Patrick Interview.
53. Toronto *Mail and Empire*.

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