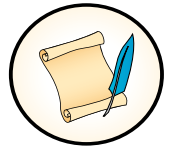


TREATY-MAKING



Treaty-Making 101

The Peace and Friendship treaties made between the Mi'kmaq and the British are often referred to as a Chain of Treaties. They are called this because the Peace and Friendship Treaties all share a common core that links them together. All the treaties include a few key promises: the Mi'kmaq would allow British settlements that were already made to remain; they would also allow trade within their territory (Mi'kma'ki). When conflict arose between Mi'kmaq and the settlers, it would be resolved by both Mi'kmaw law and British law, depending on the situation. For example, if Mi'kmaq caused the harm to the British, Mi'kmaw law applied. If the British caused any harm to the Mi'kmaq, British law would apply.

The covenant chain of treaties began with the 1725 treaty, and each one that followed would build off of the last. The 1726 treaty incorporated the terms of the 1725 Treaty, and the rest of the Peace and Friendship treaties renewed the 1726 Treaty--albeit sometimes with additional elements. Some treaties freed prisoners (1725-28); some established Treaty Day (1752); some had few signatories (1749) and others had many (1761). Can you see how the links come together?

A Few Essentials

In teaching about treaties, it's important to remember a few essentials:

- The treaties are between two or more sovereign nations. They acknowledge the operation of two or more distinct legal systems. The Mi'kmaw treaties are part of *both* Mi'kmaw law and British imperial law.
- The Mi'kmaq delegated to the British Crown certain rights in their territory that benefitted the British subjects.
- The Mi'kmaq never ceded any resources or territory to the British Crown. They permitted lawful British settlements under Mi'kmaw law.
- Under Mi'kmaw law, the chiefs (saqmaq) of each district (saqamawti) had authority to enter into treaties. The renewal and ratification of the 1726 Treaty occurred through the eighteenth century until 1779. The more signatories a treaty had, the greater its geographic and political scope.

- The motivations to sign treaties were different. The British Crown needed the consent of the Mi'kmaq to create settlements and to trade with the Mi'kmaq. The Mi'kmaq worked to protect their authority and laws in their territory and to adjust to the presence of the British settlers. The British sought to enhance their existing relationship with the Mi'kmaq and to neutralize the Mi'kmaw alliance with the French, which was a powerful force in the eighteenth century.
- The treaties between the Mi'kmaq and the British are living documents signed without end dates. The phrase they use to describe the timeframe of the written agreement is "their heirs and the heirs of their heirs forever."
- The treaties are not just "Mi'kmaw" treaties. They bring the British into the Mi'kmaw law of relationships. Mi'kmaw treaties are treaties that establish rights and responsibilities for all Canadians in Mi'kma'ki. This is why people say "We are all treaty people."
- European conflicts generated hostilities between the Mi'kmaq and the British. In particular, the endless wars and smaller conflicts between Britain and France were extended to Mi'kma'ki. Individual Mi'kmaw communities had to decide whether to remain neutral or to engage in the European conflicts. The urgency of these decisions were heightened in the 1720s (leading to the 1725-26 Treaty), in the late 1740s (leading to the renewal of the 1725-26 Treaties with the 1752 Treaty) and again in the

WHICH TREATY? 1725? 1726?

While the treaties are generally referred to by one year or another, most of them are signed over a number of years. Because individual saqmaq were the sole authority for their community, no one saqmaq could sign a treaty for another. This meant treaties had multiple signatories and took a number of years to ratify.

For example, the "1726" Treaty is actually a treaty signed in Boston in 1725 with Indigenous leaders there, and then by various saqmaq across Mi'kma'ki in 1726, and 1727, and 1728. The same is true for the 1761 Treaty, where the ratification continued until 1763. The naming conventions often create confusion for modern learners.

Seven Years' War (leading to the 1760-61 Treaties).

- After the last treaty of 1779, the British ignored these existing treaties and their responsibilities. This was very much unlike the Acadians who managed a (mostly) respectful and complementary way of life in Mi'kma'ki. To a large extent, the Acadians honoured the reciprocal practices at the heart of netukulimk. The Mi'kmaq experienced the British removing large quantities of resources (fish and wood primarily) without ever returning resources to Mi'kma'ki. In eighteenth century Mi'kmaw culture, raiding another's hunting ground was grounds for war. So, while the British simply saw their fishing and lumbering practices as economic activity, for the Mi'kmaq, this British activity was unauthorized, hostile and destructive. Keeping promises and honouring the Mi'kmaw law of relationships were essential for maintaining peace and friendship.
- The Supreme Court of Canada has affirmed that the Peace and Friendship treaties are valid multiple times since 1985. It is legally very clear that each party must keep their promises.
- Mi'kmaw keep the promises of the Peace and Friendship treaties alive during the Treaty Denial period. Without these oral histories, which persisted through two centuries, there would be no treaty rights today.
- The repatriation of the Constitution to Canada from Great Britain in 1982 marked an important moment in which the promises made in the 18th century were explicitly transferred to the Government of Canada.
- Since 1985, the Supreme Court of Canada has repeatedly affirmed the 18th century treaties as enforceable and binding. It is these cases that mandate the contemporary treaty rights process and decisions.

A Treaty-Making Timeline: 1720 to 1780

The Treaty-Making period is characterized by repeated attempts to reach peaceful agreements and to re-establish the relationship between the Mi'kmaq and the British. If the 1726 Treaty sets the groundwork for the relationship, new treaties became required as events changed the conditions of the original agreements. For example, the arrival of 2500 British colonists and hundreds of troops to Kijipuktuk (Halifax) in 1749 signaled a change in British intentions and exacerbated tensions that had grown through the 1740s. The establishment of Halifax paralleled a shift to a much more aggressive British colonial policy resulting in the Acadian Expulsion, among other events. Despite the Treaty of 1752, these developments put the treaty relationship

in jeopardy for more than a decade; the relationship was reaffirmed by the 1760-61 Treaty. Brief descriptions of key treaties follow below:

1726

This was the first Peace and Friendship treaty between Mi'kmaq and the British Crown. It incorporated the proposed Wabanaki compact that was negotiated in Boston, Massachusetts in the fall of 1725, which was then renewed, ratified and confirmed over a number of years across the districts of Mi'kma'ki. These treaties meant that the British sovereign acknowledged the hunting, planting and fishing rights of the Mi'kmaq. The 1726 Treaty is the subject of a great readers' theatre in this resource (see T4). It is this treaty that anchors future negotiations, and it is notable for its large number of signatories (at least 77 during the ratifications).

Treaty of 1752-1753

This treaty was a renewal of the 1726 Treaty, and was signed by a small number of saqmaq, including Saqmaq John Baptiste Cope, and Governor Hopson of Nova Scotia. The Treaty of 1752 was made as a response to growing hostilities between the Mi'kmaq and the British in the wake of British settlement in Halifax and greater British ambitions in Mi'kma'ki. The saqmaq who signed the 1752 Treaty lacked broader support from many other saqmaq due to the ongoing conflict with the British and growing mistrust across Mi'kma'ki. As with other Peace and Friendship treaties, the 1752 Treaty promised "(F)ree liberty of hunting and fishing as usual" as well as protected trade with the British. The Treaty of 1752 establishes October 1st as Treaty Day and provides instruction on the annual renewal of promises between the British and the Mi'kmaq. Saqmaq from Le Have and Cape Sable joined in 1753, an important development at the time.

Treaty of 1760-1761

This Mi'kmaw treaty is a renewal of the terms of the 1726 Treaty. It was significant and marked the end of more than a decade of hostilities with the British. It had a large number of signatories. The British promised not to hinder Mi'kmaw hunting, fishing and gathering and the Mi'kmaq promised not to bother the British in their settlements. It was signed by a large group of saqmaq over multiple years. The Mi'kmaq did not cede land or give up other rights. This is also the treaty upheld by the Supreme Court of Canada during the 1999 Donald Marshall Jr. fishing case.

1763

The Ktaqmuk District in Newfoundland renewed the 1760-61 Treaty.

1763 Royal Proclamation

The Royal Proclamation of 1763 is an important document in treaty history. In it, King George III claims the areas of North America won by Britain during the Seven Years War (1754-1763), but states explicitly that Indigenous lands would remain Indigenous lands until ceded by treaty. The Proclamation is often used to support Aboriginal Title—the assumed title for Indigenous homelands by Indigenous people at the time of contact regardless of land use practices.

The Watertown Treaty (1776)

The Mi'kmaq made one treaty with the United States in 1776, called the Watertown Treaty. The Watertown Treaty established relationships between saqmaq and the new government of the United States. In it the United States promised to approach their relationship with the Mi'kmaq more as the Acadians did rather than as the British had at the time.

1779

This is the last treaty signed with the British. It affirms the previous treaties and includes the Siknikt and Kespe'k districts in New Brunswick and Quebec. It marks the end of open hostilities between the British and the Mi'kmaq during the American Revolution.

We Are All Treaty People

The treaties that were made in the eighteenth century have been reaffirmed repeatedly by the Supreme Court of Canada since 1985. The court cases arising from Mi'kma'ki have become an established part of Canadian law, and have affected aboriginal treaty rights for indigenous nations across the country.

The phrase “We Are All Treaty People” has become widespread. It reflects simply that both Mi'kmaq and Canadians are part of the treaty relationship. Both groups have rights, and both groups have responsibilities. These rights and responsibilities continue to the present day and will continue into the future.

Because the treaty relationship was disrupted for two centuries, there is now work to be done to determine what that relationship means. The modern treaties rights process is focused on this work; it involves the Mi'kmaw, Federal and Provincial governments.



Artist's rendering of the ratification of the 1725 Treaty at Fort Anne National Historic Site in June 1726. Image courtesy of Parks Canada.