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# MARITIME INDIAN TREATIES

## THE HISTORIC/LEGAL BACKGROUND CONCERNING NATIVE FISHING RIGHTS

by Brendan O'Donnell

Native Affairs Division Issue 12  
Policy and Program Planning

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Fisheries  
and Oceans

Pêches  
et Océans

Canada



MEMORANDUM

NOTE DE SERVICE

TO  
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Distribution

FROM  
DE

Member  
National Aboriginal  
Fisheries Task Group

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE/NOTRE RÉFÉRENCE
YOUR FILE/VOTRE RÉFÉRENCE
DATE October 26, 1989

SUBJECT  
OBJET

Maritime Indian Treaties - Historic/Legal Background

In September you received a report entitled MARITIME INDIAN TREATIES - THE HISTORIC/LEGAL BACKGROUND CONCERNING NATIVE FISHING RIGHTS by Brendan O'Donnell.

I recently had a call from a Maritime Indian chief who felt that the document was not a balanced account of Maritime history, having been drawn mainly from British archival documents; nor, in his view, did it take into account recent legal decisions affecting aboriginal and treaty rights. He was also concerned that the document was giving legal interpretation to treaties and legal advice to departmental staff. He asked that, for these reasons, the report be withdrawn.

I was unable to agree that the report should be withdrawn but I did suggest that recipients of the report would be contacted and the intent of the report clarified.

The report resulted from the department's perception that Indian fishing issues are becoming increasingly important and it is necessary to better understand the history of Indian involvement in the Maritime fisheries. This included identifying the treaties that were signed with Indian people, what those treaties said regarding fishing and how the courts in the past have dealt with them. The intended audience was departmental staff in HQ and in the regions and copies were also provided to DIAND and the DOJ for their information.

This report is not intended to be a definitive study of the history of Maritime Indian fishing, of Maritime treaties or of case law relating to either issue. Neither does it purport to give legal advice. Its sole function is to provide staff with a working knowledge of Maritime Indian treaties in regards to the fishery. It should be understood by all who read the report that issues identified therein are subjects of present and future court cases whose decisions will determine what the law is regarding Indian treaty fishing rights.

It would be appreciated if you would bear this in mind now and in the future when the report is being read. Further, you should make others who read your report similarly aware.



Obert D. Sweitzer

att. (1)

Distribution

D.A. Good  
P. Asselin  
P.H. MacNeil  
**C. Boyle**  
K. MacCormick  
NAFTAG Members



MEMORANDUM

NOTE DE SERVICE

TO  
A

Distribution

FROM  
DE

Member  
National Aboriginal  
Fisheries Task Group

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE/NOTRE RÉFÉRENCE
YOUR FILE/VOTRE RÉFÉRENCE
DATE September 27, 1989

SUBJECT  
OBJET

Maritime Indian Treaties - the Historic/Legal Background

Attached please find a report entitled MARITIME INDIAN TREATIES - THE HISTORIC/LEGAL BACKGROUND CONCERNING NATIVE FISHING RIGHTS by Brendan O'Donnell.

This project was undertaken to assist the Department of Fisheries and Oceans in identifying the various treaties, commonly called the "Peace and Friendship Treaties", signed in Eastern Canada between 1693 and 1779. In addition, the paper studies how the wording of any fisheries provisions found within those treaties have been interpreted by the courts.

It is hoped that this paper will be useful in your work and/or will be valuable resource material for your library.

Obert D. Sweitzer

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# MARITIME INDIAN TREATIES

## THE HISTORIC/LEGAL BACKGROUND CONCERNING NATIVE FISHING RIGHTS

by Brendan O'Donnell

August 25, 1989

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### Introduction:

There are thirteen known agreements negotiated between the Indians of the Northeast Coast of North America and British authorities between 1693 and 1779. These agreements [see Appendix I for the full text of these documents<sup>1</sup>] are usually referred to as the "Peace and Friendship Treaties," although there is a good argument that they are simply surrender treaties. Of the thirteen, several are ratification or renewals of earlier accords.

Five of the thirteen agreements contain clauses that deal specifically with native fishing rights. Of these five, three are simply ratification or renewals of earlier accords.

There were also three government proclamations dealing with native rights during this period. Although concerned primarily with land rights, these proclamations [see Appendix II for the full text of these documents<sup>2</sup>] also touch on fishing and hunting rights.

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<sup>1</sup> These documents are copied verbatim from: W.E. Daugherty, Maritime Indian Treaties in Historical Perspective. Ottawa: Treaties and Historical Research Centre, Research Branch, Corporate Policy, Department of Indian and Northern Affairs Canada, January 1983. Pages 68-93.

<sup>2</sup> The Proclamation of 1761 and related documents, and the Proclamation of 1762, are copied verbatim from: Peter A. Cumming and Neil H. Mickenberg, eds., Native Rights in Canada. Toronto: The Indian-Eskimo Association of Canada in association with General Publishing Co., 1972. Pages 285-288. The Royal Proclamation of 1763 (continued...)

## Historical Background:

Great Britain acquired most of what is known today as Atlantic Canada from the French under the terms of the Treaty of Utrecht.<sup>3</sup> Signed on 11 April 1713 as part of a series of treaties ending the War of the Spanish Succession, the Treaty of Utrecht ceded most of a largely undefined area known as Acadia to the British. [France retained part of Acadia that included most of the territory we know today as New Brunswick, plus Ile Royale (Cape Breton), Ile St-Jean (Prince Edward Island) and other islands in the Gulf of St. Lawrence. However, France agreed to restore the entire drainage basin of Hudson Bay to Britain and to cede all claims to Newfoundland.]

The Treaty of Utrecht was supposed to include provisions to end hostilities between the French and English in North America that dated back to the 1680s. During the twenty-five years of skirmishes and frontier clashes between the two European powers, both sides used Indians allies in these battles. The 1713 European accord ended the formal hostilities, but the French encouraged their Indian allies to maintain guerrilla attacks against the English settlements along the eastern seaboard.

There were three distinct Indian groups, allied to the French, whose homelands were on the Northeast Coast of North America. The Abenaki Confederacy, or "Eastern Indians" as the English called them, lived in Maine and northern New England. To their Northeast, in the valley of the St. John River, were the Malecites [or Maliseets], a tribe allied to, but

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<sup>2</sup>(...continued)

was taken from: Shortt and Doughty, Documents Relating to the Constitutional History of Canada 1759-1791. Ottawa: 1907 and supplied by the Treaties and Historical Research Branch, DIAND, Ottawa.

<sup>3</sup> The actual name of the Treaty of Utrecht is: "Treaty of Peace and Friendship between the Most Serene and Most Potent Princess Anne, by the Grace of God, Queen of Great Britain, France, and Ireland, and the Most Serene and Most Potent Prince Lewis XIV, the Most Christian King."

not formally a part of, the Abenaki Confederacy. Northeast and East of the Malecites were the Micmacs, whose territory consisted of the peninsula of Nova Scotia, the isthmus of Chignecto, and Cape Breton Island.

In 1713, following the signing of the Treaty of Utrecht, the Abenakis also signed an agreement with the British. This was their second accord with this European power. In 1693 the Abenakis, demoralized by years of fighting and disillusioned by the corruption within the French colonial government, sued for peace with the English. The treaty that resulted reads like a document of surrender more than one of "peace and friendship" as it is sometimes styled. Although this 1693 treaty did not include any Indian groups in what is today known as Maritime Canada, it set the tone for subsequent accords that would eventually include Malecite and Micmac natives. The first paragraph of the 1693 document reads as follows:

We, whose names are hereunto subscribed, being Sagamores and Chief Captains of all the Indians belonging to the several rivers of Penobscote and Kennebeck, Amarascogin and Saco, parts of the said province of the Massachusetts Bay, within their said Majesties' soveignty, having made application unto his Excellency Sir William Phips, Captain General and Governor in Chief in and over the said province, that the war may be put to an end, do lay down our arms, and cast ourselves, and in the name and with the free consent of all other Indians belonging unto the several rivers aforesaid, and of all other Indians within the said province, of and from Merrimack river unto the most easterly bounds of the said province; hereby acknowledge our hearty subjection and obedience unto the Crown of England...

This treaty was short-lived. The French soon persuaded the Abenakis to abandon the accord and the raids against the British continued.

The 1713 Abenaki-British accord included the Malecites of the St. John River Valley. Like the 1693 agreement, the first paragraph of this document reads like a surrender on the part of the Indians. This paragraph reads in part:

Whereas for some years last past We have made a breach of our Fidelity and Loyalty to the Crowns of Great Britain, and have made open Rebellion against her Majesty's Subjects, the English inhabitants in the Massachusets, New Hampshire, and other of her Majesty's Territories in New England, and being now sensible of the miseryes which We & our people are reduced

thereunto thereby, We whose names are here subscribed, being Delegates of all the Indians belonging to Norrigawake, Narrakamegoek, Amasacontoog, Pigwocket, Penecook, & to all other Indian Plantations situated on the Rivers of St. Johns, Penobscot, Kenybeck, Amascogon, Saco & Merrimack, & all other Indian Plantations lying between the said Rivers of St. Johns and Merrimack, Parts of her Majesty's Provinces of Massachusetts Bay and New Hampshire, within her Majesty's Sovereignty, having made application to his Excellency, Joseph Dudley, Esquire, Captain General & Governor in Chief in and over the said Provinces, That the Troubles which we have unhappily raised or occasioned against her Majesty's subjects, the English, & ourselves, may cease & have an end, & that we may enjoy her Majesty's Grace & Favour, and each of us Respectively, for ourselves & in the name & with the free consent of all the Indians belonging to the several rivers and places aforesaid, & all other Indians within the said Provinces of the Massachusetts Bay and New Hampshire, hereby acknowledging ourselves the lawful subjects of our Sovereign Lady, Queen Anne, and promising our hearty Subjection & Obedience unto the Crown of Great Britain...

This treaty contained a clause dealing with land-right concessions on the part of the natives. In return for these concessions, the Abenakis were to have the liberty of their own grounds, though these geographical areas were not defined. They were also given liberty to hunt, fish and fowl. This clause reads:

That her Majesty's Subjects, the English, shall & may peacefully & quietly enter upon, improve, & forever enjoy, all and singular their Rights of Land & former Settlements, Properties, & possessions, within the Eastern Parts of the said Provinces of the Massachusetts Bay and New Hampshire, together with all the Islands, Islets, Shoars, Beaches, & Fisheries within the same, without any molestation or claims by us or any other Indians, And be in no wais molested, interrupted, or disturbed therein. Saving unto the said Indians their own Grounds, and free liberty for Hunting, Fishing, Fowling, and all other their Lawful Liberties & Privileges, as on the Eleventh day of August, in the year of our Lord God, one thousand six hundred & ninety-three.

Although the French wished the natives to continue their guerrilla warfare against the English, the southern Abenakis were war-weary. They also realized it would be they who would have to bear most of the brunt of a continuing war because of their closer proximity to the New England colonies. A division developed within the Abenakis Confederacy, and in 1717 four tribes signed a treaty [in reality a ratification of the 1713 document] with the Province of Massachusetts Bay. The primary, and one-sided feature of this accord was the third paragraph. It reads:

And whereas, some rash and inconsiderate Persons amongst us, have molested some of our good fellow Subjects, the English, in Possession of their Lands, and otherwise illtreated them; -We do disapprove and condemn the same, - and freely consent that our English friends shall possess, enjoy and improve all the land which they have formerly possessed, and all which they have obtained a right and title unto. Hoping it will prove of mutual and reciprocal benefit and advantage to them and us, that they can Cohabit with us.

As one historian later remarked, "[t]he benefit to the Abenakis for this exercise in self-abasement written on their behalf by the English was, of course, increased trade."<sup>4</sup>

With peace, New Englanders began moving into Abenakis territory, establishing farms and setting up lumber mills. Soon, conflicts between the whites and the natives broke out, and the French, encouraged by these disputes, began offering presents of arms and ammunition to the Indians. In 1721, war again broke out between the Abenakis [aided by Micmacs and Malecites] and the English.

This war, known as Dummer's War, lasted until 1725. It took on the familiar pattern of raid and counter-raid. Ultimately, it was the British who inflicted the most damage on their adversaries and the Indians sued for peace. On 15 December 1725, a treaty was signed in Boston. Supposedly, on the same day, the treaty was ratified and confirmed at Annapolis Royal.

The Treaty of 1725<sup>5</sup> is unique in that it eventually encompassed Indians in Maine, New Hampshire, New Brunswick and Nova Scotia. Under its terms, the Indians once again agreed to "forbear all Acts of Hostility, Injuries and discords towards all the Subjects of the Crown of Great Britain and not offer the least hurt, violence, or molestation of them or any of them in their persons or Estates." They also promised:

That His Majesty's Subjects the English shall and may peaceably and quietly enter upon and Improve and forever enjoy all and singular their rights of God and former Settlements properties and possessions within the Eastern parts

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<sup>4</sup> W.E. Daugherty, Maritime Indian Treaties in Historical Perspective. Page 26.

<sup>5</sup> The treaty is formally known as "The Submission and Agreement of the Delegates of the Eastern Indians."

of the said province of the Massachusetts Bay Together with all Islands, inlets Shoars Beaches and Fishery within the same without any molestation or claims by us or any other Indian and be in no way molested interrupted or disturbed therein.

In return the Abenakis, along with the Indians of "St. John, Cape Sables and other tribes Inhabiting within His Majesty's Territories of New England and Nova Scotia," were granted the following rights:

Saving unto the Penobscot, Naridgwalk [Kennebecs] and other tribes within His Majesty's province aforesaid and their natural Descendents respectively all their lands, Liberties and properties not by them convey'd or sold to or possessed by any of the English Subjects as aforesaid. As also the privilege of fishing, hunting and fowling as formerly.

Following the signing in Boston [and Annapolis Royal], the treaty was carried about the country gathering Indian Band adherents. On 9 June 1726 the Treaty was reconfirmed at Annapolis Royal. On 5 August 1726, Micmac Indians ratified the agreement at Falmouth in Canso Bay. In May 1728, Malecite Indians from the St. John River [may have] adhered to the treaty.<sup>6</sup> One source has suggested that there may have been two separate treaties signed at Boston in 1725. Treaty No. 239 was also signed that year and may also be referred to in later documents simply as the 1725 agreement. It was this treaty that the Malecites may have adhered to.<sup>7</sup> This latter treaty was ratified in 1728. However, another source suggests that Treaty No. 239 is merely a sub-treaty of the Treaty of 1725.<sup>8</sup> In the Treaty of 1725 is a clause that states:

And further we the aforesaid Delegates do promise and ingage with the Honourable Lawrence Armstrong; Lieutenant Governour and Commander in Chief of His Majesty's Province of Nova Scotia or Acadia to live in peace with His Majesty's Good Subjects and their Dependents in the Government

<sup>6</sup> Marie W. Laforest, "Indian Land Administration and Policy in the Maritime Provinces (Nova Scotia and New Brunswick) to 1867." Draft copy, submitted to the Office of Native Claims, DIAND, September 1978. Copy on file at the DIAND library, Ottawa. See also: Daniel M. Hurley, "Report on Indian Land rights in the Atlantic Provinces." Submitted to "The Department of Northern Affairs and National Resources, National Museum of Canada," 1962. Page 10 and Appendix A1. Copy on file at the DIAND library, Ottawa.

<sup>7</sup> Daniel Hurley, "Report on Indian Land Rights in the Atlantic Provinces." Page 11.

<sup>8</sup> W.E. Daugherty, "Maritime Indian Treaties in Historical Perspective," Page 63.

according to the Articles agreed on with Major Paul Mascarene [sic] commissioned for that purpose and further to be Ratified as mentioned in the said Articles.

The agreement worked out with Paul Mascarene referred to in this clause is probably Treaty No. 239. There are no references to hunting and fishing rights in Treaty No. 239.

The native version of the historical events of these years is that "...when the British gained control of the area [Acadia] it took several years before the militant tribes actually submitted and signed peace treaties with them."<sup>9</sup> The implication of this statement is that the treaties were not surrenders but pacts based on mutual agreement. The wording of the treaties, however, belies this implication.

Peace reigned in Maritime Canada for some sixteen years until, once again, the inhabitants of the territory were plunged into war as a result of another succession crisis in Europe. The War of the Austrian Succession, known in North America as King George's War, began in Canada on 24 May 1744. Most members of the Abenaki Confederacy, as a result of a policy of conciliation and intimidation by the British, remained neutral in the conflict. The Malecites and the Micmacs sided with the French in the war.

In 1745, however, the Malecites from the St. John River apparently wished to sue for peace, but negotiations ended abruptly before terms could be reached. A number of years later, Paul Mascarene, the administrator of Nova Scotia, recalled:<sup>10</sup>

[The Malecites] sent a deputation to me about five years ago to desire to live in peace with the subjects of Great Britain tho' the two Crowns should be at war, which I assured them they might if they would and send them honourably

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<sup>9</sup> Gary P. Gould and Alan J. Semple, eds. Our Land: The Maritimes. The Basis of the Indian Claim in the Maritime Provinces of Canada. Fredericton: Saint Annes Point Press, 1980. Page 5.

<sup>10</sup> Thomas Akins, Selections from the Public Documents of the Province of Nova Scotia. Halifax: Charles Annand, 1869. Page 367. Mascarene to Count De La Galissonière, 25 April 1749; quoted in W.E. Daugherty, Maritime Indian Treaties in Historical Perspective. Page 43.

back again but they soon altered their opinion tho' no reason was given on our side for it.

The North American war ended in 1748 with the signing in Europe of the Treaty of Aix-la-Chapelle. Although the Treaty restored the pre-war status quo between the two European powers in terms of land, the war itself indicated the growing military power of the New England colonies, led by Massachusetts, over the French in New France.

As a result of the war, the British decided to put an extra effort into colonizing Nova Scotia as a buffer between the French and the New England colonies. In 1749 a colonizing expedition arrived at Chebucto harbour and immediately began the construction of a town they would christen Halifax.

At the same time Captain Edward How was dispatched to the St. John River to investigate French activities there. During this mission, Captain How met some Malecite Chiefs and suggested that they return with him to Chebucto. They agreed, and twelve Indians, including three Chiefs of the Chignecto or "Chinecto" [Micmac] Band, returned with How to Halifax. The Indian delegation met with Governor Edward Cornwallis and on 15 August 1749 signed a renewal agreement of the Treaty of 1725 that had been signed in Boston. [It is uncertain if this renewal agreement of 1725 was for "The Submission and Agreement of the Delegates of the Eastern Indians" or for Treaty No. 239<sup>11</sup>, although it was probably for the former.] The Indians then returned with Captain How to the St. John River where the treaty was ratified by the other Chiefs and Captains of the Malecite Tribe on 4 September 1749.

A lawyer who has studied the 1749 ratifications states that the "Chinecto" Indians ratified the 1725 agreement on their behalf only, whereas the St. John Indians purported to ratify the 1725 agreement on behalf of all the Malecite Indians on the St. John River.<sup>12</sup>

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<sup>11</sup> Daniel Hurley, "Report on Indian Land Rights in the Atlantic Provinces." Page 11.

<sup>12</sup> Daniel Hurley, "Report on Indian Land Rights in the Atlantic Provinces," Page 11.

Though the Malecites had apparently decided to suspend their hostilities against the British, most of the Micmacs had not. They continued to wage a sporadic war. This action was unofficially encouraged by the French, who sent the missionary-provocateur, Abbé Le Loutre, to organize and direct the guerilla campaign.

Rather than declare war on these Micmacs, and thus imply that they were an independent people, the British branded the Indians as bandits and rebels. A bounty was put on these Micmac Indian, dead or alive.

Several skirmishes took place between the British and Micmacs until the Indians, or at least a faction within the Tribe, asked for peace terms. Lead by Major Jean-Baptiste Cope, who claimed to be the Chief of the Shubenacadie Band, they met with the Nova Scotia Executive Council on 14 September 1752. Cope asked that the Treaty of 1725 be renewed. The Council agreed, and sent Cope back to entice the rest of the Tribe to accept the terms. Cope was told by the Council, among other things, that he could promise the Micmacs that the government agreed to the following conditions:<sup>13</sup>

We will not suffer that you be hindered from Hunting, or Fishing in this Country, as you have been used to do, and if you shall think fit to settle your Wives & Children upon the River Shibenaccadie, no person shall hinder it, nor shall meddle with the lands where you are...

Cope returned a month later, apparently [only] with the approval of the Indians of the eastern Coast of Nova Scotia to negotiate terms, and on 24 November 1752 entered into a formal treaty with the Nova Scotia government. The Indians agreed to renew, confirm and observe the terms of the Treaty of 1725. They were to try and entice other Micmac Bands to sign the treaty or to inform the British of any hostile plans by other Bands. Article four of the treaty confirmed that "the said Tribe of Indians shall not be hindered from, but have free liberty of Hunting and Fishing as usual..." The British agreed to build a

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<sup>13</sup> Thomas Akins, Selections from the Public Documents of the Province of Nova Scotia. Council Minutes, Halifax, 16 September 1752, page 673; quoted in W.E. Daugherty, Maritime Indian Treaties in Historical Perspective. Pages 49-50.

"Truckhouse...at the River Chibenaccadie or any other place of their resort" to trade with the Indians, but in the meantime

the said Indians shall have free liberty to bring for Sale to Halifax or any other settlement within this province, Skins, feathers, fowl, fish or any other thing they shall have to sell, where they shall have liberty to dispose thereof to the best Advantage.

No specific territory was mentioned in the treaty over which the Band was given the "free liberty of Hunting and Fishing as usual." It has been stated that this vagueness might have been because the territory was well known to and recognized by both sides.<sup>14</sup>

The treaty was in existence barely five months before it was broken. In early April 1753, two British sailors arrived at Halifax carrying scalps from six Shubenacadie Band members. The sailors claimed they were the survivors of a ship's crew that had been seized by the Indians. Cope and his Band sought revenge for the deaths of the Indians and, in retaliation, lured the crew of a government supply ship on shore and killed all but an Acadian interpreter.

The following summer, on 26 August 1754, Abbé Le Loutre wrote the Governor of Nova Scotia to inform him the Micmac and Malecite Indians had met in council and wished to propose terms to the British. The terms were aggressive in tone and were meant ultimately to embarrass the British. The terms called for the British to surrender to the Indians the eastern half of Nova Scotia. The Indians supposedly also demanded:<sup>15</sup>

That in order to arrive at a solid and durable peace, there shall be ceded to them a certain space of territory which they only shall enjoy, suitable for hunting and fishing, and for the establishment of a village and a mission as a parish.

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<sup>14</sup> W.E. Daugherty, Maritime Indian Treaties in Historical Perspective. Page 51.

<sup>15</sup> Thomas Akins, Selections from the Public Documents of the Province of Nova Scotia. Abbé Le Loutre to Governor Lawrence, read at Council 9 September 1754. Page 217; quoted in W.E. Daugherty, Maritime Indian Treaties in Historical Perspective. Pages 51-52.

It is not known whether the Indians made the terms in good faith or were put up to it by the French to embarrass the British. Whatever the intention, the Nova Scotia government rejected the terms as "extravagant" and "insolent and absurd."

The British, by this point, were becoming impatient with the events that were transpiring in Nova Scotia. The French-speaking Catholic Acadians had, since the Treaty of Utrecht, refused to swear an oath of allegiance to the [Protestant] British Crown. The French still controlled part of the territory from their Fort Beauséjour on the isthmus of Chignecto. And the Indians were still being swayed by Abbé Le Loutre, who was receiving his orders from the French. Therefore, in 1755, the British decided a military solution was the logical answer to their problems.

An army of New England militia and British regulars laid siege to Fort Beauséjour on 12 June 1755 and the French capitulated four days later. This action effectively removed French influence from Nova Scotia [New Brunswick]. A month later, the British began the deportation of the Acadians from their homeland.

The Malecite Indians, faced with the French withdrawal, were quick to assure the British of their desire for peace, though no treaty was signed with them at the time. The Micmac Indians, on the other hand, refused to capitulate, and sided with New France in the final French-British struggle over North America known as the Seven Years' War. Their fighting tactic was the traditional one of guerilla raids against British settlements. With the capture of the French fort at Louisbourg, and the British command of the sea, supplies and weapons were cut off from the Micmacs and they were unable to maintain their resistance. A raid on Lunenburg in December 1758 was the last military action by these Indians.

In early 1760, following the British capture of Quebec, the Malecites went to Halifax to sue for peace. On 23 February, they, along with the Passamaquoddy Tribe, signed a treaty

for the renewal & future firm Establishment of Peace and Amity...and to renew the Acknowledgement of the allegiance of the said Tribes and their engagements to a perfect and constant Submission and Obedience to His Majesty King George the Second his Heirs and Successors.

There is no concession in the treaty for fishing or hunting rights.

The Micmacs, too, came to terms with the British over the next few years<sup>16</sup>. Typical of the treaties they adhered to were the ones signed by the Richebuctou Tribe and by the Micmacs living on the Miramichi River. These natives conceded their subjugation to the British Crown and agreed to British hegemony over their territory. No concessions were made by the British, save that they would establish trading posts [called truckhouses]. There was no recognition of Micmac rights by the British. As one historian for the Department of Indian Affairs and Northern Development has written:<sup>17</sup>

...it was never a consideration that the Indians had any rights. The treaty, actually a misnomer, was nothing more than a document of unconditional surrender for the defeated Indians to ratify.

Following the defeat of the French, Britain set about the task of consolidating her expanded North American empire. One task was to maintain peace between the Indians and the various colonies. To ensure this, the Proclamation of 1761 was issued by the British government instructing colonial governors in North America to respect Indian land rights. No specific mention is made in this Proclamation of native fishing rights, but colonial officials were instructed "to keep inviolable the Treaties and Compacts entered into" with the Indians.

Spurred by these instructions, the Lieutenant-Governor of Nova Scotia, Jonathan Belcher, published a Proclamation in May 1762 forbidding the settlement or trespass of certain lands claimed by Indians. A clause in this Proclamation also deals with native fishing rights. It reads:

AND, WHEREAS Claims have been laid before me in behalf of the Indians for Fronsac Passage and from thence to Nartigonneich, and from

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<sup>16</sup> A number of treaties were supposedly made with various Micmac Bands during this period, but apparently only a few have been preserved. See the reference to these missing treaties in Beamish Murdoch, History of Nova Scotia, 1866, Volume 2, pages 385, 407 and 431; quoted in R. v. Isaac [1976], 13 N.S.R. (2d), paragraph 66 at page 481.

<sup>17</sup> W.E. Daugherty, Maritime Indian Treaties in Historical Perspective, Page 54.

Nartigonmeich to Piktouk, and from thence to Cape Jeanne, and from thence to Emchih, from thence to Ragi Pontouch, from thence to Tedueck, from thence to Cape Ronmentin, from thence to Miramichy, and from thence to Bay Des Chaleurs, and the environs of Canso. From thence to Mushkoodabwet, and so along the coast, as the Claims and Possessions of the said Indians, for the more special purpose of hunting, fowling and fishing, I do hereby strictly injoin and caution all persons to avoid all molestation of the said Indians in their said claims, till His Majesty's pleasure in this behalf shall be signified.

"Belcher's Proclamation," as it is now referred to, was not looked on favourably at the time by the non-native seafaring segment of the population since included in the fishing clause were the rich fishing and sealing grounds from Halifax to Canso and West to the Bay of Chaleur. Justifying the Proclamation, Belcher wrote the Lords of Trade on 2 July 1762:

Inobedience to this Royal Instruction from His Majesty, I caused a Proclamation to be published in His Majesty's name injoining all Persons against any Molestation of the Indians in the Claims. Lest any difficulties might arise, it appeared advisable, previous to the proclamation, to inquire into the Nature of the Pretensions of the Indians for any part of the Lands within this Province. A return was accordingly made to me, from a Common-right to the Sea Coast from Cape Fronsac onwards for Fishing without disturbance or Opposition by any of His Majesty's Subjects. This claim was therefore inserted in the Proclamation, that all persons might be notified of the Reasonableness of such a permission, whilst the Indians themselves should continue in Peace with Us, and that this Claim should at least be entertained by the Government, till His Majesty's pleasure should be signified. After the Proclamation was issued no Claims for any other purposes were made... Your Lordships will permit me humbly to remark that no other Claim can be made by the Indians in this Province, either by Treaties or long possession (the Rule, by which the determination of their Claims is to be made, by Virtue of this His Majesty's Instructions) since the French derived their Title from the Indians and the French ceded their Title to the English under the Treaty of Utrecht.

The Lords of Trade were not pleased with Belcher's Proclamation either, or with his general performance in office. Accordingly, they annulled the Proclamation.<sup>18</sup>

The following year, 1763, the British government issued a Royal Proclamation which dealt with, among other issues, Indian land rights in North America. The Proclamation was

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<sup>18</sup> W.E. Daugherty, "Maritime Indian Treaties in Historical Perspective." Page 55.

intended to apply to Indians West of the Appalachian Mountains, but historical and legal arguments have been put forward over the years that, because of its ambivalent wording, the Royal Proclamation of 1763 also applied to the Canadian Maritimes. No specific mention is made in the Royal Proclamation to native fishing rights, although the courts have ruled that the general reference to "hunting grounds" incorporates fishing.

One last treaty was signed with Maritime Indians. In 1779, a faction of the Micmac Indians on the Miramichi River, annoyed at the destructive commercial fishing practices of the local white settlers, were influenced by American Revolutionary instigators to attack the white settlement. Most of the whites, by the time the attack took place, had fled the area. The remainder were under the protection of another faction of Micmac Indians. However, an attack was made by the Indians on a trading post, which was looted and destroyed.

The British were quick to react and a warship was sent to the area to quell the outbreak. Some twelve Indians were taken prisoners and sent to Quebec. A deputation of ten "consequential" Micmac Chiefs from the North Shore met with the Indian Superintendent for Nova Scotia to plead for the prisoners release. Before he would do so, the Indian Superintendent insisted the Chiefs sign a peace treaty, in reality a surrender document, admitting their wrong doing and promising that in the future they would protect white settlers. The document also stated that the signatories:

hereby Review, Ratify and Confirm all former Treatys, entered into by us, or any of us or these heretofore with the late Governor Lawrence, and [any] other of His Majesty King George's Governors who have succeeded him in the command of this province.

The treaty, signed on 22 September 1779 and titled "Treaty Entered Into With -- The Indians of Nova Scotia From Cape Tormentine to the Bay de Chaleurs," contained a clause dealing with fishing rights. This clause, the last article in the treaty, reads:

In consideration of the true performance of the foregoing Articles, on the part of the Indian Affairs doth hereby Promise in behalf of government:

That the said Indians and their Constituents shall remain in the Districts before mentioned Quiet and Free from any molestation of any of His Majesty's Troops or other [of] his good Subjects in their Hunting and Fishing.



The Maritime treaties, styled "Peace and Friendship Treaties," were for the most part surrender agreements between the Indians and the British. The British gained the benefits and held the initiative at all times. They entered into these agreements to quiet native hostility and gain their allegiance. The treaties stemmed from British military and political considerations rather than any recognition of Indian rights. The Indians entered into the agreements to end hostilities, to acquire the return of prisoners, and possibly gain trade advantages.

For the most part, the terms of the treaties were similar. Prior to 1749, treaty provisions stressed Indian recognition of the British Crown's title to Acadia and sought pledges of native loyalty. After 1749, when the influence of the British Board of Trade began to increase, clauses were included encouraging trade with the Indians. Hunting and fishing guarantees were written into the treaties to both allay native fears that their way of life would not be interfered with, but especially to encourage Indian hunting and fishing so as to provide a source of pelts, fish and feathers for colonial merchants.

Only three of the known treaties have been subject to court action over the years. The Treaty of 1725, the Treaty of 1752, and the Treaty of 1779 are the principle documents that are mentioned in case law. As well, the Proclamation of 1762 [known as Belcher's Proclamation] and the Royal Proclamation of 1763 have been cited because they directly or indirectly have a bearing on native fishing rights.

## Jurisprudence:

The legal history of the Maritime treaties began over disputes of whether these documents were in fact treaties in the legal sense. The case which has been cited frequently as the leading authority on the position that they are not treaties is Rex v. Syliboy [1929] 1 D.L.R. This case dealt specifically with the Treaty of 1752 and was an appeal by the accused, the Grand Chief of the Micmacs of Nova Scotia, from his conviction by a Magistrate on a charge of unlawful possession of furs. In his summation, Patterson, Acting Co. Ct. J. of the Inverness County Court, Nova Scotia, posed two questions concerning the 1752 treaty: did the Indians of Nova Scotia have status to enter into a treaty, and did the Governor of Nova Scotia have authority to enter into one? Both questions, Mr. Justice Patterson believed, must be answered in the negative. He wrote:

(1) "Treaties are unconstrained Acts of independent powers." But the Indians were never regarded as an independent power. A civilized nation first discovering a country of uncivilized people or savages held such country as its own until such time as by treaty it was transferred to some other civilized nation. The savages' rights of sovereignty even of ownership were never recognized. Nova Scotia had passed to Great Britain not by gift or purchase from or even by conquest of the Indians but by treaty with France, which had acquired it by priority of discovery and ancient possession; and the Indians passed with it.

Indeed the very fact that certain Indians sought from the Governor the privilege or right to hunt in Nova Scotia as usual shows that they did not claim to be an independent nation owning or possessing their lands. If they were, why go to another nation asking this privilege or right and giving promise of good behaviour that they might obtain it? In my judgement the Treaty of 1752 is not a treaty at all and is not to be treated as such; it is at best a mere agreement made by the Governor and council with a handful of Indians giving them in return for good behaviour food, presents, and the right to hunt and fish as usual...

As for the authority of the Governor to make the treaty with the Indians, Mr. Justice Patterson wrote that none existed. He did concede that the Indians at the time may have been lulled by the Governor into believing they were signing "a treaty with all the

sacredness of a treaty," but on this the judge refused to comment. However, he did state that the treaty was not made with the Micmac Tribe as a whole, but with only a small group of Micmac Indians inhabiting the eastern part of what is today the Province of Nova Scotia. This did not include Cape Breton, where the defendant was charged, as Cape Breton in 1752 was not part of Nova Scotia or the British empire. Mr. Justice Patterson upheld the conviction.<sup>19</sup>

Thirty years later, Anglin, J. of the Supreme Court of New Brunswick, Queen's Bench Division, concurred with Mr. Justice Patterson's conclusion concerning the validity of the 1752 treaty. In Warman v. Francis et al [1960] 43 M.P.R., heard in 1956 and 1958, a writ was sought against the Big Cove Band of Micmac Indians by a farmer asking the court to force the Band to cease cutting timber on what he declared was his land. The Band argued that the property was rightfully theirs by virtue of the Treaty of 1752. But Justice Anglin wrote:

Following the Treaty of Utrecht the Micmacs did not remain as a foreign nation (in the international sense) dwelling on British territory, but became British subjects. If a treaty was made with the tribe it was in the nature of a special agreement based on goodwill and expediency made by the Crown with a body of inhabitants... As subjects of the Crown they came under the law of the country, and any interest they might thereafter have in land was only what the law of the new regime afforded them.

Neither Syliboy nor Warman v. Francis dealt with native fishing rights based on the Maritime treaties. The first case to consider this topic was Regina v. Simon [1959] 124 C.C.C., heard in the New Brunswick Supreme Court, Appeal Division, in 1958. The appellant, a member of the Big Cove Band of Micmac Indians, had been convicted of a violation of the New Brunswick Fishery Regulations [P.C. 1908 [1954] S.O.R. 2563] made under the Fisheries Act, R.S.C. 1952, c.119. At the appeal, the appellant claimed immunity under the Treaty of 1752, article four of which mentions "...free liberty of Hunting and Fishing as usual." He claimed the article entitled him to fish with nets in the waters of the

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<sup>19</sup> Others at the time argued that Justice Patterson's decision might not be upheld in another court, as the term "treaty" in international law has various connotations. See: N.A.M. MacKenzie, "Indians and Treaty in Law," Canadian Bar Review, Volume 7 (1929): 561.

Richibucto River irrespective of the Fisheries Act or the Department's Regulations. He also pointed out that the Treaty of 1752 stated in article one that the Treaty of 1725 was to be "...Renewed, Reiterated and forever Confirmed..." The Treaty of 1725 mentions the "...privilege of fishing, hunting, and fowling as formerly."

In the decision, delivered by McNair, C.J.N.B., the claim to immunity upon a Treaty was rejected by the court. Referring to the Syliboy decision, the court ruled that the Treaty of 1752 covered only a small group of Micmac Indians inhabiting the eastern part of Nova Scotia with their habitat in or about the Shubenacadie area. Mr. Justice McNair wrote: "The appellant made no effort to establish any connection, by descent or otherwise, with the original group of Indians with whom the 1752 Treaty was made." He made essentially the same ruling concerning the Treaty of 1725. The appeal was dismissed. However, the implication of this judgement was that the accords were treaties in the legal sense.

Ten years later, another member of the Big Cove Band of Micmac Indians challenged the Fisheries Act in the New Brunswick Supreme Court, Appeals Division, on the basis of the pre-Confederation treaties. Convicted in the County Magistrates Court of fishing for salmon with a net in the Main Richibucto River, without a license, the appellant appealed to the County Court, where the judge dismissed the appeal. It was then appealed to the New Brunswick Supreme Court on a point of law.

Known as Francis v. The Queen [1970], 2 N.B.R. (2d), the case heard the appellant argue that the Treaty of 1725, the Treaty of 1752, and the Treaty of 1779 prevailed over statutes of Canada requiring him to possess a fishing license. The judgement of the Court, delivered by Hughes, J.A., was that the case of Regina v. Simon adequately proved that the Treaty of 1725 and the Treaty of 1752 did not apply to the Big Cove Band. Mr. Justice Hughes wrote:

In my opinion the conclusions reached by the Court in that case [Simon] with reference to the application of the treaties of 1725 and 1752 were fully justified and I can find nothing in the material before us upon which I could reach a different conclusion. In consequence I must hold that these treaties provide no basis, either legal or moral, for a defence in the present case.

On the other hand, Mr. Justice Hughes continued, the Treaty of 1779 did apply to the Indians residing in the Richibucto area. But, he wrote:

...I find it impossible to construe the Treaty as conferring, either expressly or impliedly, any right of hunting and fishing. At most there was a promise on the part of the Superintendent of Indian Affairs that in consideration of the performance of the promises of the Indian delegates, the Indians might remain in their districts free from molestation by British troops or other British subjects, in their hunting or fishing, which I think we may assume provided the principal source of food supply and was their way of life. In my opinion the Indian delegates were bargaining for protection against a recurrence of such incidents as are referred to in the recital to the Treaty, and were seeking to obtain ammunition, clothing and other commodities rather than irrevocable rights for their people to hunt and fish at will to be enjoyed in perpetuity.

The appeal was dismissed. [However, as will be discussed below, in 1980 Chief Justice Hughes, as he had then become, revoked the ideas in the above quotation as being obiter dictum.<sup>20</sup> This revocation was expressed in a case known as R. v. Paul [1980], 30 N.B.R. (2d).]

In 1976, a court took a more liberal view of native rights generally, especially rights acquired under treaties. The case of R. v. Isaac [1976], 13 N.S.R. (2d) in the Nova Scotia Supreme Court, Appeal Division, did not deal specifically with native fishing rights, being more concerned with hunting rights. However, fishing was mentioned as a corollary to hunting.

Leading off in the reasons for the unanimous decision allowing the appeal and quashing the conviction of possessing a rifle contrary to the Nova Scotia Lands and Forests Act against a member of the Chapel Island Band of Micmac Indians, MacKeigan, C.J.N.S., quoted case law which stated that Indian "title" to land was a legal reality in the eighteenth century. One specific citation from case law mentioned by Chief Justice MacKeigan was: "...the tenure [of Indian title or rights to land] of the Indians was a personal and usufructuary

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<sup>20</sup> An incidental and collateral opinion uttered by a judge and therefore not material to his decision or judgement and not binding.

right, dependent upon the good will of the Sovereign."<sup>21</sup> Those rights, Chief Justice MacKeigan stated, "were rights to use and occupy the land, rights which overlay the basic Crown title but which could be extinguished by the Crown." Given this premise, he continued:

A "usufructuary right" to land is, of course, merely a right to use that land and its "fruit" or resources. It certainly must include the right to catch and use the fish and game and other products of the streams and forests of that land. For the primitive, nomadic Micmac of Nova Scotia in the 18th Century, no other use of land was important.

The original Indian rights, the Chief Justice wrote, were not modified by any treaty or ordinance during the French regime, which lasted until 1713 in most of Acadia, and until 1758 in Cape Breton. These rights "must be deemed to have been accepted by the British on their entry. Such acceptance is shown by the British *Royal Proclamation* of October 7, 1763..."<sup>22</sup> Furthermore, the Chief Justice continued, no Nova Scotia treaty has been found whereby Indians ceded land to the Crown:

whereby their rights on any land were specifically extinguished, or whereby they agreed to accept and retire to specified reserves, although thorough archival research might well disclose record of informal agreements especially in the early 1800s when reserves were established by executive order.

The Chief Justice recommended the conviction against the native for possessing a hunting rifle be quashed because, he wrote, the provincial Lands and Forests Act did not apply to Indian reserves. However, treaty "rights" did not overrule federal laws. The Chief Justice also wrote:

Both the 1725 and 1752 Treaties were found in *Regina v. Simon* (1958)...and *Regina v. Francis* (1969)...not to apply to Micmac Indians from the parts of New Brunswick involved. The Treaties were unsuccessfully invoked to avoid application of Regulations under the Federal *Fisheries Act*. The Courts properly held that valid Federal law may override any Indian "rights".

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<sup>21</sup> St. Catherines Milling and Lumber Company v. The Queen [1889], 14 App. Cas. 46 (P.C.), p. 54.

<sup>22</sup> Unlike the judge in Syliboy, Chief Justice MacKeigan stated that in his opinion the Royal Proclamation was applicable to Cape Breton.

[In his reasons for judgement in the same case, Cooper, J.A., wrote that he questioned Justice Patterson's reasoning in Syliboy that the Treaty of 1752 was not a treaty in the legal sense. However, he stated he wished to "express no opinion on it."]

Two years later, the New Brunswick Provincial Court upheld the principle that treaty rights did not overrule federal laws. In R. v. Nicholas et al [1978], 22 N.B.R. (2d), a Malecite Indian from the Tobique Indian Reserve, along with several others, was charged with illegally impeding salmon from passing through the fishway at the Tobique Narrows Hydro-Electric Power Dam, in violation of Section 25 of the Fisheries Act. The counsel for the Defence included in its argument that:

...the Indian right to fish for food was recognized by the existing law of this Country. In other words, through the operation and intent of Treaties of 1752 and 1725, and the Proclamations of 1761, 1763, the right to fish for food by Indians was recognized in law and continues today such that the accused are immune from prosecution under the *Fisheries Act* of Canada.

However, Tomlinson, J., accepted the Crown counsel argument that the Treaty of 1752 has no application to the Malecite Tribe, as they were neither a party to it nor does it geographically encompass the area known today as the Tobique Indian Reserve, in northwestern New Brunswick. Again, the Justice harked back to R. v. Syliboy, as well as Simon v. R. and Francis v. R. as justification.

As for the Royal Proclamation of 1763, Justice Tomlinson maintained that it did not extend the Treaties of 1725 and 1752 to the Tobique Reserve. He also pointed out that the Proclamation is silent with respect to fishing rights. The Proclamation mentions lands "...reserved to them [the Indians], or any of them, as their hunting grounds." Justice Tomlinson argued that "this paragraph refers explicitly to 'hunting grounds' as opposed to the right to fish and hunt."

The accused was convicted of the charge. The conviction was appealed to the New Brunswick Supreme Court, Appeal Division, on the grounds that the treaties and the Proclamation of 1763 overrode federal law. However, Hughes, C.J.N.B., [reported in [1979], 26 N.B.R. (2d)], speaking for the court, dismissed the appeal. He wrote:

It is out [sic; our] unanimous opinion that the issue raised by counsel for the appellants has been settled conclusively in favour of the Crown by the Supreme Court of Canada in a unanimous judgement in the case of *Derriksan v. R.*, [1976] 6 W.W.R. 480; 16 N.R. 231, where the Court held that the *Fisheries Act* and the Regulations made thereunder have the effect of subjecting the alleged rights of Indians to the controls imposed by the Act and Regulations.

This principle was again upheld by the New Brunswick Court of Queen's Bench, Trial Division, in April 1980 in the case known as *R. v. Sacobie* [1980], 30 N.B.R. (2d). This case was an appeal by the Attorney General of Canada from an order of a Provincial Court judge made the year previous dismissing an information against a member of the Kingsclear Indian Reserve of Malecite Indians. The defendant had been caught fishing for salmon on the North half of the St. John River immediately opposite the Kingsclear Indian Reserve, which is on the South side of the river. The area is in non-tidal water. The trial judge acquitted the defendant on several grounds, including that the Treaty of 1725 and Belcher's Proclamation of 1762 negated the application of the Fisheries Act.

However, allowing the appeal and finding the defendant guilty of the charge, Dickson, J. of the Court of Queen's Bench, Trial Division, agreed with the decision of *Francis v. The Queen* which had stated:

...legislation of the Parliament of Canada and regulations made thereunder, properly within section 91 of the *British North America Act 1867*, are not qualified or in any way made unenforceable because of the existence of rights acquired by Indians pursuant to treaty.

Justice Dickson also referred to the decision of Hughes, C.J. of the New Brunswick Court of Appeal in *R. v. Nicholas et al*, quoted above. Justice Dickson wrote:

It follows that the existence of the treaties here in evidence, assuming that they do in fact confer fishing rights on Indians among whom the accused may be included -- and I point out that I would have difficulty in so finding --, cannot avail the accused as a defence.

He also pointed out that the Kingsclear Indian Band Council did not have a fishing by-law in existence at the time the offence occurred, and even if it did, it would not apply to the North side of the river where the infraction took place.

Eleven days later, Justice Dickson ruled on a similar case, known as R. v. Saulis [1980], 30 N.B.R. (2d), where the Attorney General of Canada again appealed an order of a Provincial Court judge who had dismissed an information against a member of the Kingsclear Band. The Band member was charged with fishing with a net, without a license, at the base of the Mactaquac Dam, outside the reserve boundaries. His Defence counsel put forward, although apparently did not argue, that rights granted under the Treaties of 1725 and 1752, as well as Belcher's Proclamation of 1762 and the Royal Proclamation of 1763 superseded the Fisheries Act. Again, Justice Dickson dismissed this line of thinking, for the same reasons he stated in R. v. Sacobie.

That same year, 1980, a case involving hunting rights under the Maritime treaties was heard by the New Brunswick Court of Appeal. Like earlier cases involving hunting rights, fishing rights were not directly involved, but were very much a corollary to the subject. It was the first time in the history of court cases involving the Maritime treaties that the idea of "aboriginal rights" came into play.

Known as R. v. Paul [1980], 30 N.B.R. (2d), the case arose out of a charge against a member of the Red Bank Band of Micmac Indians for possession of an undressed beaver skin without authorization, contrary to section 72(2) of the New Brunswick Game Act, R.S.N.B. 1973, c. G-1. The accused trapped the beaver on the Red Bank Reserve and was off the reserve on his way to a fur dealer to sell the fur when he was apprehended. The accused pleaded the protection of section 88 of the Indian Act, which provides for the application of provincial laws of general application in the absence of applicable treaties. He claimed that the Treaties of 1725, 1752 and 1779 protected his right to hunt and fish, which under section 88 overrode the provincial Game Act. The Provincial Court of New Brunswick convicted him of the charge, but the New Brunswick Court of Appeal allowed his appeal and acquitted the accused.

The three judges of the Court of Appeal were unanimous that the Treaty of 1779 was applicable and preserved the accused's right to trap on the reserve. Having trapped the beaver legally on the reserve, the court ruled that the accused was entitled to be in

possession of the skin off the reserve for the purpose of sale under section 65 of the Game Act. One judge, moreover, was also of the opinion that the Treaty of 1752 was also applicable to protect the accused's right to trap on the reserve.

Hughes, C.J.N.B., speaking also for Bugold, J.A., wrote that he concurred with case law that the Treaties of 1725 and 1752 did not apply to the accused. The Treaty of 1779, he continued, did apply because it included the area of the Miramichi River where Red Bank Indian Reserve is located. Chief Justice Hughes oversimplified the historical background of the events leading up to the signing of the treaty,<sup>23</sup> but he was obviously more concerned with the exact wording of the last article of the treaty than with the circumstances surrounding the signing. The last article of the treaty states:

That the said Indians and their Constituents shall remain in the Districts beforementioned Quiet and Free from any molestation of any of His Majestys Troops or other his good Subjects in their Hunting and Fishing.

Moreover, the Chief Justice conceded that in Regina v. Francis he had stated that he had found it impossible to construe the treaty as conferring any rights of hunting and fishing but...this was obiter to the decision, which was founded on the finding that irrespective of any Indian treaties the relevant fishery regulation applied to the defendant under the authority of Sikyea v. The Queen [1964] S.C.R. 642.

He had now changed his mind, the Chief Justice continued.

It has since come to my attention, however, that it is not necessary that a treaty must *create* rights for Indians in order to render inapplicable to Indians laws of general application in the province.

This new belief was based on his reading of Regina v. White and Bob [1965], 50 D.L.R. (2d) 613 (B.C.C.A.), who were acquitted on an appeal against a charge of possession of

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<sup>23</sup> He wrote that the British negotiated the treaty to induce the Indians of eastern New Brunswick not to support the American rebel forces in their War of Independence. Historical evidence, however, shows that the document was a surrender treaty. The Indians signed the document after going to the Indian Superintendent of Nova Scotia to plead for the release of the natives captured by the British following a military action against a group of Miramichi Indians who had already supported the American rebels. These Indians had attacked a white settlement, and the British had successfully retaliated against them.

game during a closed season. This British Columbia case was based on the interpretation of section 88 of the Indian Act, which states that all provincial laws of general application are subject "to the terms of any treaty and any other Act of the Parliament of Canada."

Chief Justice Hughes then wrote, invoking the idea of aboriginal rights:

It is obvious the [last article of the Treaty of 1779] cannot be construed as a grant of the right to hunt and fish but, giving the [article] the most liberal interpretation it is possible to bear, it could and probably should, in the circumstances, be interpreted as a recognition of a pre-existing right which the Indians had exercised from time immemorial and consequently may be treated as a confirmation of that right free from molestation by British troops and subjects.

He concluded by stating that this "right of hunting and fishing...is restricted to those reserves" between Cape Tormentine and Bay De Chaleur.

The third judge who heard this appeal, Ryan, J.A., also accepted the fact that the provisions of the Treaty of 1779 applied to the appellant, contrary to what the Provincial Court judge had ruled. Justice Ryan also invoked the idea of aboriginal rights. He wrote:

I would incline to the view that at the time the Indians entered into the treaties they were seeking to obtain not only ammunition, clothing and other commodities, but also to confirm or reaffirm their ancestral rights to hunt and fish for food and clothing without molestation or interference by the white man.

But Justice Ryan went further than his two colleagues on the bench when he also ruled that the Treaty of 1752 also applied to the appellant. Pointing out that section 88 of the Indian Act provides that all provincial laws of general application are "subject to the terms of any treaty," he wrote:

By the Treaty of 1752 which was entered into by Thomas Hopson and the delegates of the Micmac Tribe of Indians "their heirs and the heirs of their heirs forever" it was agreed that the Indians should have free liberty to bring to sale to Halifax *or any other settlement within the province* skins, feathers, etc., where they should have liberty to dispose thereof to their best advantage. In my opinion, by virtue of the Treaty of 1752 the appellant was immune from prosecution for an offence against s. 72(2) of the *Game Act* of New Brunswick.

Given that the courts were now taking a more sympathetic attitude towards aboriginal rights, that defence was used in December 1980 to argue that treaty rights overrode the federal Fisheries Act. In the case of R. v. Perley [1981], 33 N.B.R. (2d), the Defence counsel asserted that his client, a member of the Tobique Indian Reserve charged with fishing with a gill net contrary to the Fisheries Act, R.S.C. 1970, c. F-14, was in reality fishing in non-tidal water on or adjacent to the reserve. As such, the Defence maintained, he was affected by the provisions of the Treaty of 1725 and by Belcher's Proclamation of 1762.

The Defence also argued that "legislative jurisdiction" over the alleged offence fell outside the Fisheries Act and its regulations. It was put forward that the "mantle of jurisdiction" of the Indian Act covered fisheries on reserves by virtue of section 73 (1)(a) and section 81(o) of that piece of legislation. The former section allows that the Governor in Council may make regulations for the protection and preservation of fur-bearing animals and other game on reserves; the latter section provides that a Band Council may pass by-laws for the preservation, protection and management of fish on reserves. However, the Tobique Band Council did not have a fishing by-law at the time of the offence.

Hearing the case in the New Brunswick Provincial Court was Tomlinson, P.C.J. He dismissed the aboriginal-rights argument by quoting case law which, he said, bound the court. These included R. v. Derricksan [1977], 16 C.R.N.S. 231, 16 N.R. 231 (S.C.C.), where it was held that "assuming the accused [an Indian] had an aboriginal right to fish, that such a right was subject to regulations imposed by validly enacted federal laws." Justice Tomlinson also made reference to the decisions of Francis v. The Queen and R. v. Nicholas et al. He concluded, before convicting the accused, that:

Such being the decided cases, I must reject the novel defence advanced on behalf of the accused and hold that the *Fisheries Act* of Canada and the regulations made thereunder apply to treaty Indians fishing in contravention thereto in waters within or adjacent to a reserve and are paramount to treaty rights (if any special treaty rights exist) and that the provisions of s. 73(1)(a) and 81(o) of the *Indian Act* (under which no regulations or bylaws have been enacted) do not negate or make nugatory the *Fisheries Act* of Canada and the regulations made thereunder.

The case was appealed to the New Brunswick Court of Queen's Bench, Trial Division, the following spring [reported as R. v. Perley [1981], 34 N.B.R. (2d).] The appeal set out that the Provincial Court judge erred in holding that sections 73(1)(a) and 81(o) of the Indian Act did not override the Fisheries Act when dealing with fisheries on reserves. But Stevenson, J., referring to the precedent set in R. v. Billy, an unreported decision of the British Columbia Court of Appeal delivered on 21 March 1977, ruled that because the Tobique Band Council did not have a fishing by-law in place, the two sections of the Indian Act did not override the Fisheries Act. He concluded by noting:

The enactment of the enabling provisions found in ss. 73 and 81 of the *Indian Act* does not create a conflict or inconsistency with the *Fisheries Act* or the Fisheries Regulations. Regulations or by-laws, when made under the *Indian Act*, will not necessarily conflict with the Fisheries legislation - indeed they might be made expressly subject to it. In the absence of any such conflicting regulation or by-law the argument of the appellant is without merit.

A different approach to the aboriginal-rights argument was taken in the case of R. v. Cope [1982], 49 N.S.R. (2d), heard in the Nova Scotia Supreme Court, Appeal Division, in December 1981. The accused, a Micmac Indian, was appealing a conviction of possession of trout over the limit permitted by the Nova Scotia Fishing Regulations under the Fisheries Act, R.S.C. 1970, c. F-14, s. 34. The offence took place off a reserve.

The Defence counsel argued that the Treaty of 1752 conferred on all Micmacs in Nova Scotia a "vested property right or franchise" to fish and hunt. Such rights, counsel contended, cannot be affected by federal legislation unless such legislation is specifically made applicable to Indians. The Nova Scotia Fishing Regulations are of general application and not specifically applicable to natives.

MacKeigan, C.J.N.S., speaking for four of the five judges who heard the case, pointed out that he had studied the Treaty of 1752 and the circumstances surrounding it for another case, specifically Isaac v. The Queen. The court held in that case that the Nova Scotia provincial game laws did not apply to an Indian hunting on a reserve. He also pointed out in Isaac that the treaty did not apply to all Micmac Indians and did not override valid federal laws.

In the present case, however, the appellant disavowed any reliance on mere aboriginal rights, but claimed immunity from the fishery regulations because of the unique and "specifically expressed negotiated rights" contained in the Treaty of 1752. The Defence counsel contended that the Treaty of 1752 was a special royal grant to all Micmacs of the privilege or franchise of hunting and fishing free of restrictions. He further claimed that this "royal grant" was a unique and immutable constitutional document in full force since 1752; it could not be modified or extinguished by the federal fishery regulations because they do not specifically mention or apply to Micmacs.

Chief Justice MacKeigan refused this argument. He wrote:

Even if the so-called treaty had conferred the special rights which counsel for the appellant claims, the reasoning of cases such as *Derriksan, Sikyea, George* and *Francis* would have compelled us to reject his argument. Review of the actual agreement shows, however, that it was in any event a mere acknowledgement of aboriginal rights indistinguishable from the many other temporary Indian peace "treaties" of that period.

Article four of the treaty, which states that "the said Tribe of Indians shall...have free liberty of hunting and fishing as usual...", was said by the Chief Justice to be no more than a general affirmation of the aboriginal right. "It falls very short in words and substance from being a grant by the Crown of a special franchise or privilege replacing the more nebulous aboriginal rights." The appeal was dismissed.

Two court cases involving hunting violations under the New Brunswick Fish and Wildlife Act, R.S.N.B. 1973, c. F-14, were heard in 1982. In both these cases [reported as R. v. Perley and Perley [1982], 37 N.B.R. (2d); and R. v. Polchies; R. v. Paul; R.v. Paul; R. v. Paul and Paul [1982], 39 N.B.R. (2d)], which involved Malecite Indians, reference to aboriginal right to hunt anywhere in New Brunswick was made. In the former case, which the accused were charged with hunting deer at night off a reserve, the Provincial Court ruled that the right to hunt or fish by Indians is restricted to the right to hunt or fish for food on reserves only, subject to legislative control by the Parliament of Canada. In the latter case, again involving Malecite Indians, the accused were charged with possessing a

loaded firearm in a vehicle and the illegal possession of dead moose or deer. The Provincial Court judge acquitted the accused and held that Indians could hunt for food at any time on all undeveloped land upon which an ordinary hunter would have the right to enter to hunt during the applicable seasons. The Crown appealed to the New Brunswick Court of Queen's Bench, Trial Division, which directed the trial judge to convict the accused on the ground that Indians were bound by the Fish and Wildlife Act off reserves.

On 17 April 1982 an important legal event in the history of Canada's aboriginal people occurred. Within the Constitution Act, 1982, Part I of which is the Canadian Charter of Rights and Freedom, were two clauses guaranteeing their aboriginal and treaty rights. The courts now had to take these clauses [sections 25 and 35] into account. Section 25, which is part of the Canadian Charter of Rights and Freedom, specifically guarantees any rights and freedoms recognized by the Royal Proclamation of 1763. Section 35 recognizes and affirms existing aboriginal and treaty rights that were in effect on the day the Constitution Act came into force.

The first legal case involving native fishing rights in Maritime Canada which made reference to the Constitution Act, 1982 was R. v. Nicholas and Bear et al. [1984], 55 N.B.R. (2d). Heard in June 1984 in the New Brunswick Provincial Court before Desjardins, J., the defendants, four Malecite Indians from the Tobique Indian Reserve, were charged with obstructing a fisheries officer in the execution of his duty. Two of the accused were also charged with unlawfully fishing with the use of a gill net in non-tidal waters contrary to section 7 of the New Brunswick Fishery Regulations, passed pursuant to section 34 of the Fisheries Act, R.S.C. 1970, c. F-14. The Defence counsel argued that the location where the alleged infraction took place was within the Tobique Indian Reserve, having never been properly surrendered in 1892. Justice Desjardins, however, rejected this line of defence.

The Defence also argued that the pre-Confederation treaties guaranteed native hunting and fishing rights, but Justice Desjardins, quoting case law, ruled that these rights were subject to federal law. As well, the defence submitted that the defendants were aboriginal people

whose aboriginal or treaty rights to fish are guaranteed under section 25(a) of the Canadian Charter of Rights and Freedom. Section 25 reads:

The guarantee of this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763

The pertinent passage of the Royal Proclamation quoted at the trial is section IX, which reads in part as follows:

And whereas it is just and reasonable, and essential to our interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, or who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominion and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their *Hunting Grounds*. [Emphasis added.]

An earlier court case [R. v. Jacques, 20 N.B.R. (2d) 576] ruled that the word "hunting" was not synonymous to fishing, and the Proclamation being silent as to fishing did not recognize fishing rights. However, Justice Desjardins ruled that:

It is my view that the term "hunting ground", in the **Royal Proclamation of 1763** should include a recognition of the right of the Indians to also use the lands reserved unto them for fishing. In this I intend to give a liberal interpretation of the passage...

Our courts in New Brunswick have been reluctant to recognize the **Royal Proclamation** to include the Maliseet Indians of New Brunswick. It is my view that the reference to Colonies and the Nations or Tribes of Indians therein include the Province of Nova Scotia which in territory, at that time, took in most of the Province of New Brunswick.

But Justice Desjardins recognized that the aboriginal right to fish was not for commercial purposes, and it had never been established at trial whether the defendants were fishing for food for their own use, or for the sport, or for commercial gain. Thus, he found, that despite section 25(a), these guarantees are subordinated to section 1 of the Charter and consequently to the regulatory enactments of the New Brunswick Fishery Regulations. Section 1 of the Charter reads as follows:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Justice Desjardins noted that the Fishery Regulations were enacted for the conservation and management of the fishery.

Finally, the Defence had argued that under section 35 of the Constitution Act, 1982, native fishing rights were entrenched and, in effect, superseded legislation and case law. Justice Desjardins rejected this interpretation, based on an option proposed in Peter W. Hogg's Canada Act 1982, Annotated.<sup>24</sup> Justice Desjardins wrote:

I find that section 35 of the **Constitution Act 1982** has not changed the said rights existing on the 17 April 1982, but has in fact 'recognized' and 'affirmed' constitutionally the Indian rights as they stood as affected by valid legislation and case law on that particular date.

It would only be aboriginal or treaty rights gained after that date that would be protected from legislation. Thus, he found the accused guilty.

This line of reasoning was concurred with the following year by Godin, J. of the New Brunswick Court of Queen's Bench, Trial Division, in the case of R. v. Martin et al. [1986], 65 N.B.R. (2d). In that proceeding the three defendants, Micmac Indians from the Restigouche Reserve in Quebec, were appealing a conviction from the Provincial Court of New Brunswick for having illegally fished with nets without a licence or permit on the Restigouche River near Campbellton, New Brunswick. Their Defence counsel had argued that sections 25 and 35 of the Constitution Act, 1982 gave their treaty and aboriginal rights precedence over the Fisheries Act, but the trial judge rejected this argument. The judge also ruled that the two sections of the Constitution Act did not add to the rights the aboriginal peoples of Canada had acquired or enjoyed prior April 17, 1982.

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<sup>24</sup> Peter W. Hogg, Canada Act 1982, Annotated. Toronto: Carswell Company, 1982. Pages 82-83.

On appeal, Justice Godin concurred with the trial judge. Although he did not mention the case of R. v. Nicholas Bear et al., Justice Godin did cite the case of R. v. Eninew [1983], 28 Sask.R. 168, heard in the Saskatchewan Court of Queen's Bench. That court held that section 35(1) limits the rights of the aboriginal peoples to those rights which were in being or which were in actuality at the time of the enactment of the Constitution Act, 1982 on April 17, 1982. Justice Godin dismissed the appeal.

This appears to be the last fisheries-related trial which makes reference to Maritime treaty rights. [Numerous other fisheries-related cases exist, but deal with Band by-laws.] However, in a case that went to the Supreme Court of Canada involving native hunting rights under the Maritime treaties, it was determined that both the Governor and the Micmac Indians who entered into the Treaty of 1752 had the capacity to do so. [See Simon v. The Queen [1985], 2 S.C.R.] This is the exact opposite view that was opined by Patterson, Acting Co. Ct. J. in the Syliboy case in 1928. This ruling, in effect, confirms the legality of the Maritime treaties.

**Conclusion:**

An historical argument can be made that the colonial treaties signed in the eighteenth century between the representatives of the British government and Micmac and Malecite Indians of what is today known as Maritime Canada were generally documents of unconditional surrender on the part of the natives. There is little evidence to suggest that the Indians were in any position to negotiate rights when these treaties were drawn up; what rights were written into the treaties were allowed them by the British. However, the ulterior motive of the British was surely that these rights were to primarily advantage the non-natives.

Courts, over the years, have taken a different perspective of these treaties. They have also shifted their opinion as to the legality of these accords. They have generally accepted the rights contained in the treaties verbatim, with little reference to the historic circumstances surrounding their enactments. Moreover, from rejecting outright the idea that eighteenth century Maritime natives could negotiate a binding legal treaty, the courts later opined that the treaties were binding, but only to the specific areas to which they applied and to the direct descendants of the original signatories. Today, the courts are of the opinion that because of the Royal Proclamation of 1763, the treaties have a wide application over most of the Maritimes.

Recent case law has also determined that the rights written into these treaties do not override legally enacted federal legislation. Specifically, it has been determined that the fishing rights contained in the treaties do not override the federal Fisheries Act and its regulations. Even with the inclusion of aboriginal and treaty guarantees in the Constitution Act, 1982, enacted on 17 April 1982, the courts have ruled that legally enacted federal legislation and case law prior to that date supersede treaty rights. This is not the case for provincial laws of general application, where the courts have ruled that the treaties are paramount on reserves, especially with application to hunting rights.

The point that must now be debated by the Department of Fisheries and Oceans is whether there is a moral obligation to honour the fishing rights of these pre-Confederation treaties. If, as our courts currently rule, the treaties are legally binding and were negotiated by the natives to protect their lifestyle, then we must decide on whether to accept the native argument that their ancestors had the independent capacity to enter into negotiations with British authorities. As independent entities, it is argued, the natives negotiated hunting and fishing rights over territory they had never previously ceded to either the French or the British.

It was whitemen, and not the natives, who later decided to divide legislative powers over hunting and fishing between provincial governments and the federal government. And it was whitemen who decided that legally-enacted legislation of the Parliament of Canada should be paramount to treaty rights. If fishery legislation of general application, like hunting legislation, were totally within the sphere of provincial powers, then the fishing rights within these treaties now recognized by the courts would probably supersede these enactments.

The question now before us is whether we should accept the historic circumstances of these Maritime treaties [as interpreted by non-natives] and its implicit rejection of the idea that eighteenth century natives were in a position to negotiate fishing rights, or adopt a liberal approach which would accept to some degree that fishing rights under these treaties exist and should be recognized by the Department of Fisheries and Oceans.

**APPENDIX I**

## Treaty of 1693

The Submission and Agreement of the Eastern Indians at Fort William Henry in Pemmaquid, the 11th day of August, in the fifth year of the reign of our Sovereign Lord and Lady, William and Mary, by the grace of God, of England, Scotland, France, and Ireland, King and Queen, Defenders of the Faith, &c., 1693.

WHEREAS a bloody war has for some years now past been made and carried on by the Indians within the eastern parts of the said province, against their Majesties' subjects the English, through the instigation and influences of the French; and being sensible of the miseries which we and our people are reduced unto, by adhering to their ill council: We, whose names are hereunto subscribed, being Sagamores and Chief Captains of all the Indians belonging to the several rivers of Penobscote and Kennebeck, Amarascogin and Saco, parts of the said province of the Massachusetts Bay, within their said Majesties' sovereignty, having made application unto his Excellency Sir William Phips, Captain General and Governor in Chief in and over the said province, that the war may be put to an end, do lay down our arms, and cast our selves, upon their said Majesties' grace and favour. And each of us respectively for our selves, and in the name and with the free consent of all the Indians belonging unto the several rivers aforesaid, and of all other Indians within the said province, of and from Merrimack river unto the most easterly bounds of the said province: hereby acknowledging our hearty subjection and obedience unto the crown of England; and do solemnly covenant, promise and agree, to and with the said Sir William Phips, and his successors in the place of Captain General and Governour in Chief or the aforesaid province or territory on their said Majesties' behalf in manner following, viz:

That at all time and times for ever, from and after the date of these presents, we will cease and forbear all acts of hostility towards the subjects of the crown of England, and not offer the least hurt or violence to them, or any of them, in their persons or estate: But will henceforward hold and maintain a firm and constant amity and friendship with all the English.

Item. - We abandon and forsake the French interest, and will not in any wise adhere to, join with, aid or assist them in their wars or designs against the English, nor countenance, succour or conceal any of the enemy Indians of Canada, or other places that shall happen to come to any of our plantations within the English territory, but secure them, if in our power, and deliver them up unto the English.

That all English captives in the hands or power of any of the Indians, within the limits aforesaid, shall with all possible speed be set at liberty, and returned home without any ransom or payment to be made or given for them, or any of them.

That their Majesties' subjects the English shall and may peaceably and quietly enter upon, improve, and for ever enjoy all and singular their

rights of lands, and former settlements and possessions within the eastern parts of the said province of the Massachusetts Bay, without any pretensions or claims by us, or any other Indians, and be in no wise molested, interrupted, or disturbed therein.

That all trade and commerce, which may hereafter be allowed between the English and the Indians, shall be under such management and regulation as may be stated by an act of the General Assembly, or as the governour of the said province, for the time being, with the advice and consent of the council, shall see cause to direct and limit.

If any controversie or difference at any time hereafter happen to arise between any of the English and Indians, for any real or supposed wrong or injury done on one side or the other, no private revenge shall be taken by the Indians for the same, but proper application be made to their Majesties' government upon the place, for remedy thereof, in a due course of justice; we hereby submitting ourselves to be ruled and governed by their Majesties' laws, and desire to have the benefit of the same.

For the full manifestation of our sincerity and integrity in all that which we have herein before covenanted and promised, we do deliver unto Sir William Phipps, their Majesties' governour as aforesaid, Ahassombamett, brother to Edgeremett, Wenongahewitt, cousin to Madockawando, and Edgeremett, and Bagatawawongon, alias Sheepscoat John, to abide and remain in the custody of the English, where the governour shall direct, as hostages or pledges for our fidelity, and the true performance of all and every the foregoing articles, reserving liberty to exchange them in some reasonable time for a like number, to the acceptance of the governour and council of the said province, so they be persons of as good account and esteem amongst the Indians as those which are to be exchanged. In testimony whereof, we have hereunto set our several marks and seals, the day and year first above-written.

The above-written instrument was deliberately read over, and the several articles and clauses thereof interpreted unto the Indians, who said they well understand and consented thereunto, and was then signed, sealed, and delivered in the presence of us,

Edgeremett,	John Wing,
Madockawando,	Nicholas Manning,
Wassambomet of Mavidgwock,	Benjamin Jackson,
Wenobson of Tenconnet,	Robin Doney,
in behalf of Moxus,	Madaumbis,
Keterramogis of Narridgwock,	Paquaharet, alias, Nathaniel,
Ahanquit of Penobscot,	*John Hornybrook,
Bomaseen,	*John Bagatawawongo, alias,
Nitamemet,	Sheepscoat John,
Webenes,	*Phill, Ounsakis Squaw,
Awansomeck,	*Interpreters

Treaty of 1713

At Portsmouth, in her Majesty's Province of New Hampshire, in New England, the thirteenth day of July, in the twelfth year of the Reign of our Sovereign Lady Anne, by the Grace of God, of Great Britain, France, (1713) and Ireland, Queen, Defender of the faith, & c.

WHEREAS for some years last past We have made a breach of our Fidelity and Loyalty to the Crowns of Great Britain, and have made open Rebellion against her Majesty's Subjects, the English inhabitants in the Massachusets, New Hampshire, and other of her Majesty's Territories in New England, and being now sensible of the miseries which We & our people are reduced thereunto thereby, We whose names are here subscribed, being Delgates of all the Indians belonging to Norrigawake, Narrakamegock, Amasacontoog, Pigwocket, Penecook, & to all other Indian Plantations situated on the Rivers of St. Johns, Penobscot, Kenybeck, Amascogon, Saco & Merrimack, & all other Indian Plantations lying between the said Rivers of St. Johns and Merrimack, Parts of her Majesty's Provinces of the Massachusets Bay and New Hampshire, within her Majesty's Sovereignty, having made application to his Excellency, Joseph Dudley, Esquire, Captain General & Governour in Chief in and over the said Provinces, That the Troubles which we have unhappily raised or occasioned against her Majesty's subjects, the English, & ourselves, may cease & have an end, & that we may enjoy her Majesty's Grace & Favour, and each of us Respectively, for ourselves & in the name & with the free consent of all the Indians belonging to the several rivers and places aforesaid, & all other Indians within the said Provinces of the Massachusetts Bay and New Hampshire, hereby acknowledging ourselves the lawfull subjects of our Sovereign Lady, Queen Anne, and promising our hearty Subjection & Obedience unto the Crown of Great Britain, do solemnly Covenant promise, & agree to & with the said Joseph Dudley, Esquire, Governour, and all such as shall hereafter be in the place of Captain General and Governour in Chief of the aforesaid Provinces or territories on her Majesty's behalf, in manner following. That is to say:

That at all times forever, from and after the date of these presents, we will cease and forbear all acts of hostility toward all the subjects of the Crown of Great Britain, and not to offer the least hurt or violence to them or any of them in their persons or estates, but will honour, forward, hold, & maintain a firm & constant amity & friendship with all the English, and will not entertain any Treasonable Conspiracy with any other Nation to their Disturbance.

That her Majesty's Subjects, the English, shall & may peaceably & quietly enter upon, improve, & forever enjoy, all and singular their Rights of Land & former Settlements, Properties, & possessions, within the Eastern Parts of the said Provinces of the Massachusetts Bay and New Hampshire, together with all the Islands, Islets, Shoars, Beaches, & Fisheries within the same, without any molestation or claims by us or any other Indians, And be in no wais molested, interrupted, or disturbed therein. Saving unto the said

Indians their own Grounds, and free liberty for Hunting, Fishing, Fowling, and all other their Lawful Liberties & Privileges, as on the Eleventh day of August, in the year of our Lord God, one thousand six hundred & ninety-three.

That for mutual Safety & Benefit, all Trade & Commerce which hereafter may be allowed betwixt the English & Indians shall be in such places & under such management & regulations as shall be stated by her Majesty's Governments of the said Provinces respectively. And to prevent mischiefs & inconveniencies the Indians shall not be allowed, for the present, & until they have liberty from the respective Governments, to come near to any English Plantations or Settlements on this side of Saco River.

That if any Controversy or Difference at anytime hereafter happen to arise betwixt any of the English or Indians, for any real or supposed wrong or injury done on the one side or the other, no Private Revenge shall be taken by the Indians for the same, but proper application shall be made to her Majesty's Government, upon the place, for remedy thereof, in our Course of Justice, We hereby submitting ourselves to be ruled & Governed by her Majesty's Laws, & desire to have the protection & benefit of the same.

We confess that we have, contrary to all faith and justice, broken our articles with Sir William Phipps, Governour, made in the year of our Lord God 1693, and with the Earl of Bellemont, Governour, made in the year of our Lord God 1699, And the assurance we gave to his Excellency, Joseph Dudley, Esquire, Governor, in the years of our Lord God 1702, in the month of August, and 1703, in the month of July, notwithstanding we have been well treated by the said Governours; and we resolve for the future not to be drawn into any perfidious Treaty or Correspondence, to the hurt of any of the subjects of her Majesty the Queen of Great Britain, and if we know of any such we will seasonably reveal it to the English.

Wherefore, we whose names are hereunto subscribed Delegates for the several tribes of the Indians, belonging unto the River of Kenybeck, Amarascogen, St. Johns, Saco, & Merrimack, & parts adjacent, being sensible of our great offence & folly in not complying with the aforesaid Submission & agreements, and also of the sufferings & mischiefs that we have thereby exposed ourselves unto, do, in all humble & submissive manner, cast ourselves upon her Majesty's mercy for the pardon of all our past rebellions, hostilities, and Violations of our promises; praying to be received unto her Majesty's Grace & Protection. And for & on behalf of ourselves, and of all other the Indians belonging to the several Rivers and places aforesaid, within the Sovereignty of her Majesty of Great Britain, do again acknowledge & profess our hearty and sincere obedience unto the Crown of Great Britain, and so solemnly renew, ratify, and confirm all & every of the articles & agreements contained in the former and present submission.

This Treaty to be humbly laid before her Majesty, for her ratification and farther orders. In Witness whereof, We, the Delegates aforesaid, by name, Kireberuit, Iteansis, and Jackoit, for Penobscot, Joseph and Eneas, for St. Johns, Waracansit, Wedaranaquin, and Bomosen, for Kennebeck, have hereunto set our hands & seals, the day and year first above written.

SIGNED, SEALED & DELIVERED  
IN THE PRESENCE OF

George Vaughan

Spencer Phips

Samu. S. Lynde

Henry Somorby

James Alford

Stepan Minot

John Leighton

John Yoo

Stephan Eastwick

Jabex Hitch

Nikolas Lever

Richard Waldron

John Penhallow

John Newman

W. Dudley

Sam A. Moody

Josiah Willard

Joseph Lloyd

John Gillman

Johnathan Pollard

Peter Martin

Robert Carver

Henry Hynt

John Karnard

James Lusmore

Thos. Sheppard

Geo. Huntington

James Jaffry

(and 19 other signatures)

Treaty of 1717

Georgetown, on Arrowsick Island, in his Majesty's Province of the Massachusetts Bay in New England, the 12th Day of August 1717, in the fourth year of the Reign of our Sovereign Lord George, by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith, & c.

We, the Subscribers, being Sachems and Chief men of the several Tribes of Indians belonging to Kennebeck, Penobscut, Pegwackit, Saco, and other, the Eastern Parts of his Majesty's Province aforesaid, having had the several Articles of the foregoing Treaty distinctly read and interpreted to us by a Sworn Interpreter at this time, do Approve of, Recognize, Ratify, and Confirm all and every the said Articles, (excepting only the fourth and fifth articles, which relate to the restraint and limitation of Trade and Commerce, which is now otherwise managed.)

And whereas, some rash and inconsiderate Persons amongst us, have molested some of our good fellow Subjects, the English, in the Possession of their Lands, and otherwise illtreated them; - We do disapprove & condemn the same, - and freely consent that our English friends shall possess, enjoy & improve all the Lands which they have formerly possessed, and all which they have obtained a right & title unto, Hoping it will prove of mutual and reciprocal benefit and advantage to them & us, that they Cohabit with us.

In testimony and perpetual memory whereof, We have hereunto set our hands & seals, in behalf of ourselves and of the several Tribes of Indians that have delegated us to appear for, & represent them the day and year aforementioned.

NUDGUMBOIT	X Sign)	
ABISSANEHRAW	X Sign)	
UMGUINNAWAS	X Sign)	Kennebeck
AWOHAWAY	X Sign)	
PAQUAHARET	X Sign)	
CAESAR	X Sign)	
LEREBENUIT	X Sign)	
CHANUMBAMES	X Sign)	Penobscut
SEGUNKI	X Sign)	
ADEAWANDO	X Sign)	
SCAWESCO	X Sign)	Pegwackit
MOXU	X Sign)	
BOUMAZEEN	X Sign)	
CAPT. SAM	X Sign)	Kennebeck
NAGUCAWEN	X Sign)	

SUMMEHAWIS X Sign)  
WEGWAREMENET X Sign)  
TERRAMUSSUS X Sign)

SABADIS X Sign)  
SAM HUMPHRIES X Sign)

Anmarascoggin

SIGNED, SEALED, & DELIVERED IN PRESENCE OF AUGUSTIN MOXUS SON

W. Dudley  
Joshua Winslow  
John Penhallow

Wm. Little  
Theodore Atkinson  
John Denison

(and 8 other signatures)

The Submission and Agreement  
of the  
Delegates of the Eastern Indians  
(December 15, 1725, Boston, New England, British Possession)

WHEREAS the Severall Tribes of Eastern Indians vis: The Penobscot, Maridgwalk, St. John, Cape Sables and other tribes Inhabiting within His Majesty's Territories of New England and Nova Scotia who have been engaged in the present War from whom Wesauguaaram alias Loron Arexus Francois Xavier and Meganumoe are delegated and fully impowred to enter into Articles of Pacification with his Majesty's Governments of the Mass Bay New Hampshire and Nova Scotia, Have contrary to the several Treaties they have Solemnly intered into with the said Governments made an open rupture and have continued some years in Acts of Hostility against the subjects of His Majesty King George within the said Governments. They being now sensible of the miseries and troubles they have involved themselves in, and being desirous to be restored to His Majesty's Grace and favour and to live in peace with all His Majesty's Subjects of the said Three Governments, The Province of New York and Colonys of Connecticut and Rhod Island and that all former acts of injury be forgotten. Have concluded to make and we Do by these presents in the name and behalf of the said Tribes make our Submission unto his most Excellent Majesty George by the Grace of God of Great Britain, France and Ireland, King Defender of the faith in as full and ample manner as any of our Predecessors have heretofore done.

And we do hereby promise and engage with the Honourable William Dummer Esq; as he is Lieutenant Governour and Commander in Chief of His Majesty's Province of the Massachusetts Bay And with the Governours or Commanders in Chief of the said Province for the time being. That is to say.

We the said Delegates for and in behalf of the several Tribes abovesaid Do promise and engage that at all times forever from and after the date of these presents We and They will Erase and for bear all Acts of Hostility, Injuries and discords towards all the Subjects of the Crown of Great Britain and not offer the least hurt, violence or molestation to them or any of them in their persons or Estates, But will hence forward hold and maintain a firm and Constant Amity and Friendship with all the English, and will never confederate or combine with any other nation to their prejudice.

That all the Captives taken in the present War shall at or before the time of the further Ratification of this Treaty be restored without any ransom or payment to be made for them or any of them.

That His Majesty's Subjects the English Shall and may peaceably and quietly enter upon Improve and forever enjoy all and singular their Rights of God and former Settlements properties and possessions within the Eastern parts of the said province of the Massachusetts Bay Together with all Islands, inlets Shoars Beaches and Fishery within the same without any molestation or claims by us or any other Indian and be in no ways molested interrupted or disturbed therein.

Saving unto the Penobscot, Naridgwalk and other Tribes within His Majesty's province aforesaid and their natural Descendants respectively all their lands, Liberties and properties not by them convey'd or sold to or possessed by any of the English Subjects as aforesaid. As also the privilege of fishing, hunting, and fowling as formerly.

That all trade and Commerce which hereafter may be allowed betwixt the English and Indians shall be under such management and Regulations as the Government of the Mass Province shall direct.

If any Controversy or difference at any time hereafter happen to arise between any of the English and Indians for any reall or supposed wrong or injury done on either side no private Revenge shall be taken for the same but proper application shall be made to His Majesty's Government upon the place for Remedy or induse there of in a due course of Justice. We Submitting ourselves to be ruled and governed by His Majesty's Laws and desiring to have the benefit of the same.

We also the said Delegates in behalf of the Tribes of Indians Inhabiting within the French Territories who have assisted us in this war for a term we are fully Impowered to Act in this present Treaty. Do hereby promise and ingage that they and every of them shall henceforth cease and forbear all acts of Hostility force and violence towards all and every the Subjects of His Majesty the King of Great Britain.

We do further in behalf of the Tribe of the Penobscot Indians promise and engage that if any of the other Tribes intended to be included in this Treaty that notwithstanding Refuse to confirm and ratifie this present Treaty entered into on their behalf and continue or renew Acts of Hostility against the English. In such case the said Penobscot Tribe shall join their young men with the English in reducing them to reason.

In the next place We the aforementioned Delegates. Do promise and engage with the Honourable John Wentworth Esq; as he is Lieutenant Governour and Commander in Chief of His Majesty's Province of New Hampshire and with the Governour and Commanders in Chief of the said province for the time being that we and the tribes we are deputed from will henceforth erase and for bear all Acts of Hostility Injuries an discords towards all the Subjects of His Majesty King George within the said province And we do understand and take it that the said Government of New Hampshire is also included and excepting that respecting the regulating the trade with us.

And further we the aforementioned Delegates do promise and ingage with the Honourable Lawrence Armstrong; Lieutenant Governour and Commander in Chief of His Majesty's Province of Nova Scotia or Acadia to live in peace with His Majesty's Good Subjects and their Dependants in the Government according to the Articles agreed on with Major Paul Makarene commissioned for that purpose and further to be Ratified as mentioned in the said Articles.

That this present Treaty shall be accepted Ratified and confirmed in a public and solemn manner by the Chiefs of the several Eastern Tribes of Indians included Therein at Talmouth in Casco Bay sometime in the month of May next. In Testimony whereof we have signed these presents and affixed our Seals.

Done in the presence of the Great and General Court of Assembly of the Province of Massachusetts Bay aforesaid.

Being first read distinctly and interpreted by Capt. John Gyles Capt. Samuel Jordan and Capt. Joseph Baries Sworn Interpreters.

(Signed) A. Willard

Dated at the Council Chamber in Boston in New England this fifteenth Day of December Anno Dom. One Thousand Seven Hundred and Twenty five.

Annog 3 Ri Rex Georgy Magna Britania Duodecimo

Ganarraarum x Alt Loron  
Signed

Arexies x  
by  
Francois x Xavier  
by  
Megonunoe x

Treaty No. 239

ARTICLES OF SUBMISSION AND AGREEMENT made at Boston, in New England, by Sanguaaram alias Loran Arexus, François Xavier and Meganumbe, delegates from Penobscott, Naridgwack, St. Johns, Cape Sables and other tribes inhabiting within His Majesty's territories of Nova Scotia or New England.

Whereas His Majesty King George by concession of the Most Christian King, made at the Treaty of Utrecht, is become the rightful possessor of the Province of Nova Scotia or Acadia according to its ancient boundaries: We, the said Sanguaaram alias Loran Arexus, François Xavier and Meganumbe, delegates from the said tribes of Penobscott, Naridgwack, St. Johns, Cape Sables and other tribes inhabiting within His Majesty's said territories of Nova Scotia or Acadia and New England, do, in the name and behalf of the said tribes we represent, acknowledge His said Majesty King George's jurisdiction and dominion over the territories of the said Province of Nova Scotia or Acadia, and make our submission to His said Majesty in as ample a manner as we have formerly done to the most Christian King.

And we further promise on behalf of the said tribes we represent that the Indians shall not molest any of His Majesty's subjects or their dependants in their settlements already made or lawfully to be made, or in their carrying on their traffick and other affairs within the said Province.

That if there happens any robbery or outrage committed by any of the Indians, the tribe or tribes they belong to shall cause satisfaction and restitution to be made to the parties injured.

That the Indians shall not help to convey away any soldiers belonging to His Majesty's forts, but on the contrary shall bring back any soldier they shall find endeavouring to run away.

That in case of any misunderstanding, quarrel or injury between the English and the Indians no private revenge shall be taken, but application shall be made for redress according to His Majesty's laws.

That if the Indians have made any prisoners belonging to the Government of Nova Scotia or Acadia during the course of the war they shall be released at or before the ratification of this treaty.

That this treaty shall be ratified at Annapolis Royal

Dated at the Council Chamber in Boston in New England, this fifteenth day of December, Anno Domini one thousand seven hundred and twenty five, Annoq. Regni Regis Georgii, Magna Britannia, & c., Duodecimo.

Signed, sealed and delivered in the presence of the Great and General Court or Assembly of the Province of the Massachusetts Bay.

Sanguaaram (totem) alias Loran	
(L.S.)	
Arexus (totem)	(L.S.)
François Xavier	(L.S.)
Meganumbe (totem)	(L.S.)

Ratification of Treaty No. 239

We, the underwritten Chiefs and others of the St. Johns, Cape Sables and other tribes of Indians and inhabiting within this His Majesty's Province of Nova Scotia or Acadia having had the several articles of the within written Instrument (being a true copy of what was signed in our behalf by Sanquaaram alias Loran Arexus, François Xavier and Meganumbe, our delegates at the Treaty of Peace concluded at Boston) distinctly read over, faithfully interpreted and by us well understood, do hereby for ourselves and in behalf of our respective tribes consent to ratifie and confirm all the within mentioned articles and that the same shall be binding to us and our heirs forever to all intents and purposes.

IN WITNESS WHEREOF, we have signed, sealed and delivered these presents to the Honourable Lieut. Governour in the presence of several officers belonging to His Majesty's troops and other gentlemen underwritten.

Done at the Fort of Annapolis Royal in Nova Scotia, this thirteenth day of May, in the first year of the reign of Our Sovereign Lord, George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, & c., Annoq. Domini, 1728.

In the presence of  
St. Johns River Indians

Frs. Aldridge,	Ignace, (totem) Chiefs	(L.S.)
Hen. Daniell,	Michael, (totem)	(L.S.)
Rey. Nugent,	Pierre x Paul	(L.S.)
Otho Hamilton,	Thomas x	(L.S.)
Richard Bull,	Augustine x Gregoire,	(L.S.)
Jno. Handfield,	Captain (totem) Moses,	(L.S.)
Robert Wroth,	Guillaume, x	(L.S.)
Chas. Aldridge,	Barnaby, (totem)	(L.S.)
L. Natts,	Francis (totem) De Salle,	(L.S.)
Saml. Cottnam,	Fils de Nepavonte,	(L.S.)
F. Mangean,	François (totem)	(L.S.)
Joseph Bissell,	Michael (totem)	(L.S.)
Wm. Armstrong,	François x Germain,	
	Francis De Salle (totem) Chiefs	
	Joseph (totem),	(L.S.)
	Bernard, x	(L.S.)
	Joseph (totem) Salle,	(L.S.)
	Mitsa (totem) Tagamish	(L.S.)
	Paul, (totem)	(L.S.)
	Dennis,	(L.S.)
	Gipsies,	(L.S.)
	François, x	(L.S.)
	Joseph (totem) Ogster,	(L.S.)
	Joseph x St. Aube,	(L.S.)
	François, (totem)	(L.S.)
	Emanuel	(L.S.)

Annapolis Royal, Sept. 24th, 1728.

Signum

x Charles Mandidupkike (L.S.)  
Chief Sachem of the whole Tribe  
of St. Johns Indiana.

Jacques x Mon Roussem, (L.S.)

Oreuire Chevourn (L.S.)

Gregoire x (L.S.)

poine nacuer

Ketoudaskesse Martin

(totem) (L.S.)

rot

his

Nepum (totem) Occile (L.S.)

mark

Renewal of the Treaty of 1725 (Chibucto 1749)

ARTICLES of SUBMISSION and AGREEMENT made at Boston, in New England, by Sanquaaram alias Loran Arexus, François Xavier and Maganumbe, delegates from the tribes of Penobscott, Naridgwalk, St. Johns, Cape Sables, and other tribes of the Indians inhabiting within His Majesty's territories of Nova Scotia and New England.

Whereas, His Majesty King George, by the concession of the Most Christian King made at the Treaty of Utrecht, is become the rightful possessor of the Province of Nova Scotia or Accadie, according to its ancient boundaries: We, the said Sanquaaram alias Loran Arexus, François Xavier and Maganumbe, delegates from the said tribes inhabiting within His Majesty's said territories of Nova Scotia or Accadie and New England, do, in the name and behalf of the said tribes we represent, acknowledge His said Majesty King George's jurisdiction and dominion of the territories of said Province of Nova Scotia or Accadie, and make our submission to His said Majesty in as ample a manner as we have formerly done to the Most Christian King.

And we further promise, in behalf of the said tribes we represent, that the Indians shall not molest any of His Majesty's subjects or their dependants in their settlements already or lawfully to be made, or in their carrying on their trade and other affairs within said the Province.

That if there happens any robbery or outrage committed by any of the Indians the tribe or tribes they belong to shall cause satisfaction and restitution to be made to the parties injured.

That the Indians shall not help to convey away any soldiers belonging to His Majesty's forts, but on the contrary, shall bring back any soldier they shall find endeavouring to run away.

That in case of any misunderstanding, quarrell or injury between the English and the Indians no private revenge shall be taken, but application shall be made for redress according to His Majesty's laws.

That if the Indians have made any prisoners belonging to the Government of Nova Scotia or Accadie during the course of war they shall be released at or before the ratification of this treaty.

That this treaty shall be ratified at Annapolis Royall.

Dated at the Council Chamber at Boston, in New England, this fifteenth day of December-. An. Dom., one thousand seven hundred and twenty-five. Annoq. Ri Ris. Georgii Mag., Britan & c., Duodecimo.

I, Joannes Pedousaghtigh, Chief of the Tribe of Chinecto Indians, for myself and in behalf of my Tribe, my heirs and their heirs forever, and we, François Aurodowish, Simon Sactawino and Jean Battiste Maddouanhook \* \* \* \* deputys from the Chiefs of the St. Johns Indians, and invested by them with

full power for that purpose, do in the most solemn manner renew the above articles of agreement and submission, and every article thereof, with His Excellency Edward Cornwallis, Esquire, Cap. Gener'l and Governor in Chief in and over His Majesty's Province of Nova Scotia or Accadie, Vice-Admiral of the same, Colonel in His Majesty's service and one of His bed Chamber. In witness whereof, I, the said Joannes Pedousaghtigh, have subscribed this treaty and affixed my seal, and we, the said François Aurodowish, Simon Sactawino and Jean Battiste Maddouanhook \* \* \* \* in behalf of the chiefs of the Indian Tribes we represent, have subscribed and affixed our seals to the same, and engage that the said Chief shall ratifie this treaty at St. Johns. Done in Chibucto Harbour the fifteenth of August, one thousand seven hundred and forty-nine.

In Presence of:

L.E. HOPSON,  
T. MASCARENE,  
ROBT. ELLISON,

Members of the Council for Nova Scotia

JAMES T. MERIER,  
CHAS. LAWRENCE,

ED. HDW

JOHN GORHAM,  
BENJ. GREEN  
JOHN SALUSBURY,  
HUGH DAVIDSON,  
WM. STEELE,

Members of the Council for Nova Scotia

JOANNES PEDOUSAGHTIGH, (TOTEM) (L.S.)  
FRANCOIS AURODOWISH, (TOTEM) (L.S.)  
SIMON SACTAWINO, (TOTEM) (L.S.)  
JEAN BATTISTE MADDOUANHDOK  
(TOTEM) (L.S.)

Renewal of Treaty 1725 (St. John River Indians)

The Articles of Peace on the other side, concluded at Chebucto, the fifteenth of August, one thousand seven hundred and forty-nine, with His Excellency Edward Cornwallis, Esqr., Capt. General, Governour and Commander in Chief of His Majesty's Province of Nova Scotia or Accadie, and signed by our deputies, having been communicated to us by Edward How, Esqr., one of His Majesty's Council for said Province, and faithfully interpreted to us by Madame De Bellisle, inhabitant of this river, nominated by us for that purpose. We the Chiefs and Captains of the River St. Johns and places adjacent do for ourselves and our different Tribes conform and ratify the same to all intents and purposes. Given under our hands at the River St. Johns this fourth day of September, one thousand seven hundred and forty-nine, in the presence of the under written witnesses.

Ed How, of his Majesty's Council

Nath. Donnell,  
John Weare,  
Joseph Winniett,  
John Wenn,  
Robert Wenn,  
Robert McKoun,  
Matt. Winniett,  
John Phillipps

Michell (totem) Narreyones, Chief,  
Ninola (totem) Nequin, Capt.,  
François (totem) De Xewier Archibane Margillie,  
Pierre (totem) Alexander Margillie,  
Augusta (totem) Meyawet, Maitre Clef de la Rio,  
François (totem) Mayawyawet, Maitre Serure Det.,  
Rene (totem) Neyum,  
Neptune (totem) Pierre Paul, Chief of Capneyneidy,  
Saupau (totem) Papaulonet,  
François (totem) Gormam, Capt.,  
Pierre (totem) Bennoit, Capt.,  
François (totem) Drino, Capt.,  
Rene (totem) Fils Dambrous, Capt.

Treaty of 1752

Treaty or  
Articles of Peace and Friendship Renewed

between

His Excellency Peregrine Thomas Hopson Esquire Captain General and Governor in Chief in and over His Majesty's Province of Nova Scotia or Accadie. Vice Admiral of the same & Colonel of One of His Majesty's Regiments of Foot, and His Majesty's Council on behalf of His Majesty.

and

Major Jean Baptiste Cope chief Sachem of the Tribe of Mick Mack Indians, Inhabiting the Eastern Coast of the said Province, and Andrew Hadley Martin, Gabriel Martin & Francis Jeremiah, Members & Delegates of the said Tribe, for themselves and their said Tribe their Heirs and the Heirs of their Heirs forever-. Begun made and Concluded in the manner form & Tenor following, viz.

1. It is agreed that the Articles of Submission & Agreement, made at Boston in New England by the Delegates of the Penobscot Norridgwook & St. John's Indians, in the Year 1725 Ratified & Confirmed by all the Nova Scotia Tribes, at Annapolis Royal, in the Month of June 1726, & lately renewed with Governor Cornwallis at Halifax and Ratified at St. Johns River, now read over, Explained and Interpreted, shall be and are hereby from this time forward Renewed, Reiterated, and forever Confirmed by them and their Tribe; and the said Indians for themselves and their Tribe and their Heirs aforesaid Do make & Renew the same Solemn Submissions and promisses for the Strickt observance of all the Articles therein contained as at any time heretofore hath been done.
2. That all Transactions during the late War shall on both sides be buried in Oblivion with the Hatchet, and that the said Indians shall have all favour, Friendship & Protection shewn them from this His Majesty's Government.
3. That the said Tribe shall use their utmost Endeavours to bring in the other Indians to Renew and Ratify this Peace, and shall discover and make known any attempts or designs of any other Indians or any Enemy whatever against his Majestys Subjects within this Province so soon as they shall know thereof and shall also hinder and Obstruct the same to utmost of their power, and on the other hand if any of the Indians refusing to ratify this Peace, shall make War upon the Tribe who have now confirmed the same; they shall upon Application have such aid and Assistance from the Government for their Defence, as the case may require.

4. It is agreed that the said Tribe of Indians shall not be hindered from, but have free liberty of Hunting and Fishing as usual and that if they shall think a Truckhouse needful at the River Chibenaccadie or any other place of their resort they shall have the same built and proper Merchandize, lodged therein, to be Exchanged for what the Indians shall have to dispose of and that in the mean time the said Indians shall have free liberty to bring for Sale to Halifax or any other Settlement within this Province, Skins, feathers, fowl, fish or any other thing they shall have to sell, where they shall have liberty to dispose thereof to the best Advantage.
5. That a Quantity of Bread, Flour, & such other Provisions, as can be procured, necessary for the Familys and proportionable to the number of the said Indians, shall be given them half yearly for the time to come; and the same regard shall be had to the other Tribes that shall hereafter agree to Renew and Ratify the Peace upon the Terms and Conditions now Stipulated.
6. That to Cherish a good harmony & mutual Correspondance between the said Indians & this Government, His Excellency Peregrine Thomas Hopson Esqr. Captain General & Governor in Chief in & over His Majesty's Province of Nova Scotia or Accadie, Vice Admiral of the same & Colonel of one of His Majesty's Regiments of Foot, hereby Promises on the part of His Majesty, that the said Indians shall upon the first day of October Yearly, so long as they shall Continue in Friendship, Receive Presents of Blankets, Tobacco, some Powder & Shott; and the said Indians promise once every Year, upon the said first of October, to come by themselves or their Delegates and Receive the said Presents and Renew their Friendship and Submissions.
7. That the Indians shall use their best Endeavours to save the lives and goods of any People Shipwrecked on this Coast, where they resort, and shall Conduct the People saved to Halifax with their Goods, & a Reward adequate to the Salvadge shall be given them.
8. That all Disputes whatsoever that may happen to arise between the Indians now at Peace, and others His Majesty's Subjects in this Province shall be tryed in His Majesty's Court of Civil Judicature, where the Indians shall have the same benefit, Advantage and Priviledges, as any others of His Majesty's Subjects.

In Faith & Testimony whereof, the Great Seal of the Province is hereunto Appended, and the partys to these presents have hereunto, interchangeably Set their Hands in the Council Chamber at Halifax this 22nd day of Nov. 1752, in the twenty-sixth year of His Majesty's Reign.

P.T. Hopson  
 Chas. Lawrence  
 Benj. Green  
 Jno. Salusbury  
 Willm. Steele  
 Jno. Collier

Jean Baptiste Cope, his Mark  
 Andrew Hodley, his Mark  
 Francois Jeremie, his Mark  
 Gabriel Martin, his Mark

Micmac Treaty 1760

Copy of the Treaty made by Augustine, the Indian Chief, with the Governor of Nova Scotia on the 10th day of March 1760.

I, Michael Augustine for myself and the tribe of Richebuctou Indians of which I am Chief do acknowledge the jurisdiction and dominion of His Majesty King George, Second over the territories of Nova Scotia or Acadia and we do make submission to His Majesty in the most perfect ample and solemn manner.

And I do promise for myself and my tribe, that I nor they shall not molest any of His Majesty's subjects in their settlements as already made, or that may be hereafter made or in Carrying on their commerce or in any thing whatever within this the said Province of His said Majesty or elsewhere.

And if any insult, robbery or outrage still happens to be committed by any of my tribe, satisfaction and retribution shall be made to the person or person injured.

That neither I nor my tribe shall in any manner entice any of His said Majesty's troops or Soldiers to desert, nor in any way assist in conveying them away, but on the contrary will do our utmost endeavours to bring them back to the Company, regiment, fort or garrison to which they shall belong.

That if any quarrel or misunderstanding shall happen between myself and the English, or between them and any of my tribe, neither I nor they shall take any private satisfaction or revenge, but will apply for redress, according to the Laws established in His said Majesty's dominions.

That all English prisoners made by myself or my tribe shall be released and we will use our utmost endeavours to prevail on the other tribes to do the same, if any prisoners shall happen to be in their hands.

And I do further promise for myself and my tribe that we will not either directly or indirectly, assist any of the enemies of His most Sacred Majesty King George the Second, his heirs or successors nor hold any manner of commerce, traffic nor intercourse with them; but on the contrary will as much as may be in our power discover and make known to His Majesty's Governor any ill designs that may be formed or contrived against any of His Majesty's subjects.

And I do further engage that we will not traffic, barter or exchange any commodities in any manner but with such persons or the managers of such truck houses as shall be appointed or established by His Majesty's Governor at Fort Cumberland or elsewhere in Nova Scotia or Acadia.

And for the more effective security of the due performance of this Treaty, and for every part thereof I do promise and engage that a certain number of

persons of my tribe, which shall not be less in number than two, shall, on or before the 24th day of June next reside as hostages at Fort Cumberland, or at such other place in the Province of Nova Scotia or Acadia, as shall be appointed for that purpose by His Majesty's Governor of the said Province which hostages shall be exchanged for a like number of my tribe when requested.

And all of the foregoing Articles and every one of them, made with His Excellency Chas. Lawrence Esq. His Majesty's Governor of the said Province, I do promise for myself and on behalf of my tribe the we will most strictly keep and observe in the most solemn manner.

In witness whereof I have hereunto put my mark and seal at Halifax in Nova Scotia this tenth day of March, One Thousand Seven Hundred and Sixty in the Thirty Third Year of His Majesty's reign.

his

Michael x Augustine  
mark

I do accept and agree to all the Articles of the foregoing treaty, In Faith and Testimony whereof I have signed these presents and caused my seal to be hereunto affixed, this Tenth day of March in the Thirty Third year of His Majesty's reign and in the year of Our Lord 1760.

signed Charles Lawrence

By His Excellency's Command  
R. Bulkeley - Sec'y

Treaty with the St. Johns and  
Passamaquoddy Tribes 1760

And Whereas the said Articles of Submission and Agreement, so made and concluded, renewed, confirm'd and ratified have notwithstanding been since violated contrary to the good Faith therein engaged for the constant and strict observation and performance thereof, and to the Allegiance due from the said Tribes to His Majesty Our Sovereign Lord King George We Mitchel Neptune Chief of the Tribe of Indians of Passamaquoddy and Ballomy Glode Captain in the Tribe of Indians of St. Johns River Delegates from the said Tribes and by them fully authorized and impowered to make and conclude with His Excellency Chas. Lawrence Esq. His Majesty's Captain General and Governor in Chief of the Province of Nova Scotia or Accadie in behalf of His Majesty's Government of the Said Province a Treaty for the renewal & future firm Establishment of Peace and Amity between the said Tribes of Passamaquoddy and St. Johns River Indians and his Majesty's other Subjects and to renew the Acknowledgement of the Allegiance of the said Tribes and their engagements to a perfect and constant Submission and Obedience to His Majesty King George the Second his Heirs and Successors. Do accordingly in the name and behalf of said Tribes of Passamaquoddy and St. Johns hereby renew and Confirm the aforesaid Articles of Submission and Agreement and every part thereof and do solemnly promise and engage that the same shall for ever hereafter be strictly observed and performed.

And We the said Mitchel Neptune, and Ballomy Glode, for ourselves and in the name & behalf of the said Tribes of Passamaquoddy & St. Johns Indians Do respectively further promise and engage that no person or persons belonging to the said Tribes shall at any time hereafter aid or assist any of the Enemies of His most Sacred Majesty King George the Second or of his Heirs and Successors nor shall hold any Correspondence or Commerce with any such His Majesty's Enemies in any way or manner whatsoever and that for the more effectually preventing any such Correspondence and Commerce with any of His Majesty's Enemies the said Tribes shall at all times hereafter Traffic and barter and exchange Commodities with the Managers of such Truckhouses as shall be established for that purpose by his Majesty's Governors of this Province at Fort Frederick or elsewhere within the Said Province at no other place without permission from His Majesty's Government of the said Province.

And We do in like manner further promise and engage that for the more effectually securing the due performance of this Treaty and every part thereof a certain Number, which shall not be less than Three from each of the aforesaid Tribes, shall from and after the Ratification hereof constantly reside in Fort Frederick at St. Johns or at such other place or places within the Province as shall be appointed for that purpose by His Majesty's Governors of the said Province as Hostages, which Hostages shall be exchanged for a like Number of others of the said Tribes when requested.

And We do further promise and engage that this Treaty and every part thereof shall be ratified by the Chiefs and Captains and other principal persons of the said Tribes for themselves and in behalf of their Tribes, at Fort Frederick aforesaid on or before the 20th of Mar. next.

In Faith and Testimony whereof We have Signed these Presents and caused the Seal of the Province to be hereunto affixed; And the said Mitchel Neptune and Ballomy Glode have hereunto put their Marks and Seals in the Council Chamber at Halifax in Nova Scotia the Twenty third Day of February in the Year of our Lord One Thousand and Seven hundred & Sixty and in the Thirty third Year of His Majesty's Reign.

A true Copy  
Rich. Bulkeley Sec<sup>y</sup>.

By His Excell.<sup>ys</sup>. Comm<sup>d</sup>.

Signed Rich. Bulkeley Sec<sup>y</sup>.

Treaty of 1761 (Merimichi tribe)

Treaty of Peace and Friendships concluded by the Honorable Jonathon Belcher Esquire President of His Majesty's Council and Commander in Chief in and over His Majesty's Province of Nova Scotia or Acadia & c & c & c with Joseph Shabecholouest of the Merimichi Tribe of Indians at Halifax in the Province of Nova Scotia or Acadia.

I Joseph Shabecholouct for myself and the Tribe of Merimichi Indians of which I am Chief Do acknowledge the Jurisdiction and Dominion of His Majesty King George the third over the Territories of Nova Scotia or Acadia, and we do make Submission to His Majesty in the most perfect ample and solemn manner.

And I do promise for myself and my Tribe that I nor they shall not molest any of His Majesty's Subjects or their Dependants in their Settlements already made or to be hereafter made, or in carrying on their Commerce, or in any thing whatever within this the Province of His said Majesty or elsewhere.

And if any Insult Robbery or Outrage shall happen to be committed by any of my Tribe, Satisfaction & Restitution shall be made to the person or persons Injured.

That neither I nor my Tribe shall in any manner entice any of his said Majesty's Troops or Soldiers to desert, nor in any manner assist in conveying them away; but on the contrary will do our utmost endeavours to bring them back to their Company Regiment Fort or Garrison to which they shall belong.

That if any Quarrel or Misunderstanding shall happen betwixt myself and the English, or between them and any of my Tribe neither I nor they shall take any private Satisfaction on Revenge but we will apply for Redress according to the Laws established in His Majestys Dominions.

That all English prisoners made by myself or my Tribe shall be set at liberty; and that will use our utmost endeavours to prevail on the other Tribes to do the same if any prisoners shall happen to be in their hands.

And I do further promise for myself and my Tribe that we will not either directly or indirectly assist any of the Enemies of His most Sacred Majesty King George the third his Heirs or Successors, nor hold any manner of Commerce Traffick nor intercourse with them, but on the contrary will as much as may be in our power discover and make known to His Majesty's Governor, any ill designs which may be formed or contrived against His Majesty's Subjects. And I do further Engage that we will not Traffick, Barter, or Exchange any Commodities in any manner, but with such person or the Managers of such Truckhouses as shall be appointed or established by His Majesty's Governor at Fort Cumberland or elsewhere in Nova Scotia.

And for the more effectual Security of the due performance of this Treaty and every part thereof, I do promise and engage that a certain number of persons of my Tribe which shall not be less in number than Two persons shall on or before the Twenty first day of September next reside as Hostages at Fort Cumberland or at place or places in this Province of Nova Scotia or Acadia shall be appointed for that purpose by His Majesty's Governor of said Province, which Hostages shall be exchanged for a like number of my Tribe when requested.

And all these foregoing Articles and everyone of them made with

I do promise for myself and in behalf of my Tribe, that we will most strictly keep and observe in the most solemn manner. In Witness whereof I have hereunto put my Mark and Seal at Halifax in Nova Scotia this Twenty-fifth day of June One thousand Seven hundred and Sixty one and in the First year of His Majesty's Reign.

Joseph his Sabecholouct  
mark

Treaty Entered Into With - The Indians of Nova Scotia  
From Cape Tormentine To The Bay De Chaleurs 22 Sept. 1779

Whereas in May and July last a number of Indians at the Instigation of the Kings disaffected Subjects did Plunder and Rob Wm. John Cort and several other of the English Inhabitants at Mirimichy of the principal part of their Effects in Which transaction, we the undersigned Indians had no conscience, but nevertheless do blame ourselves, for not having exerted our Abilitys more Effectually than We did to prevent it, being now greatly distressed and at a loss for the necessary supplys to keep us from the Inclemancy of the approaching Winter and to Enable us to Subsist our familys. And Whereas Captaine Augustus Gervey commander of His Majesty's Sloop Viper did in July last (to prevent further mischief) seize upon the Mirimichy River, Sixteen of the said Indians one of which was killed, Three released and Twelve of the most Atrocious have been carried to Quebec, to be dealt with, as His Majesty's Government of this Province, shall in future Direct, which measures We hope will tend to restore Peace and good order in that Neighbourhood.

Be it Known to all Men That we John Julien, Chief; Antoine Arueau Captain, Francis Julien and Thomas Dewagonisde Councillors of Mirimichy, and also Representatives of, and Authorized by, the Indians of Pagumske and Restigousche, Michael Chief, Louis Augustine Cobaise, Francis Joseph Aruiph, Captains, Antoinnes and Guissance Gabalier Councillors of Richebouctou, and Thomas Tauros Lose and Representatives of the Chief of Jedyac, do for ourselves and in behalf on the several Tribes of Mickmack Indians before mentioned and all others residing between Cape Tormentine and the Bay De Chaleurs in the Gulph of St. Lawrence inclusive, Solemnly Promise and Engage to and with - Michael Francklin Esq. the Kings Superintendant of Indian Affairs in Nova Scotia.

That we will behave Quietly and Peaceably towards all his Majesty King George's good Subjects treating these upon every occasion in an honest friendly and Brotherly manner.

That we will at the Hazard of our Lives defend and Protect to the utmost of our power, the Traders and Inhabitants and their merchandize and Effects who are or may be settled on the Rivers Bays and Sea Coasts within the forementioned District against all the Ehemys of His Majesty King George Whether French, Rebels or Indians.

That We will wherever it shall be required apprehend and deliver into the Hands of the said Mr. V. Francklin, to be dealt with according to his Deserts, any Indian or other person who shall attempt to Disturb the Peace and Tranquility of the said District.

That we will not hold any correspondence or Intercourse with John Allan, or any other Rebell or Enemy to King George, let his nation or Country be what it will.

That we will use our best Endeavours to prevail with all other our Mickmack Brethern throughout the other parts of the Province, to come into the like measures with us for their several Districts.

And We do also by these presents for ourselves, and in behalf of our Several Constituents hereby Review, Ratify and Confirm all former Treatys, entered into by us, or any of us or these heretofore with the late Governor Lawrence, and other His Majesty King Georges Governors who have succeeded him in the command of this province.

In consideration of the true performance of the foregoing Articles, on the part of the Indians Affairs doth hereby Promise in behalf of government:

That the said Indians and their Constituents shall remain in the Districts before mentioned Quiet and Free from any molestation of any of His Majesty's Troops or other his good Subjects in their Hunting and Fishing.

That immediate measures shall be taken to cause Traders to supply them with Ammunition, clothing and other necessary stores in exchange for their Furrs and other Commoditys. In Witness whereof we the above mentioned have interchangeably set our hands and Seals at Windsor in Nova Scotia this Twenty second day of September 1779.

**APPENDIX II**

Proclamation of 1761 and Related Documents

Proclamation of 1761

*Draft of an Instruction for the Governors of Nova Scotia, New Hampshire, New York, Virginia, North Carolina, South Carolina, and Georgia forbidding them to Grant Lands or make Settlements which may interfere with the Indians bordering on those Colonies.*

WHEREAS the peace and security of Our Colonies and Plantations upon the Continent of North America does greatly depend upon the Amity and Alliance of the several Nations or Tribes of Indians bordering upon the said Colonies and upon a just and faithful Observance of those Treaties and Compacts which have been heretofore solemnly entered into with the said Indians by Our Royall Predecessors Kings and Queens of this Realm, And whereas notwithstanding the repeated Instructions which have been from time to time given by Our Royal Grandfather to the Governors of Our several Colonies upon this head the said Indians have made and do still continue to make great complaints that Settlements have been made and possession taken of lands, the property of which they have by Treaties reserved to themselves by persons claiming the said lands under pretence of deeds of Sale and Conveyance illegally, fraudulently and surreptitiously obtained of the said Indians; And whereas it has likewise been represented unto Us that some of Our Governors or other Chief Officers of Our said Colonies of the Duty they owe to Us and of the Welfare and Security of our Colonies have countenanced such unjust claims and pretensions by passing Grants of the Lands so pretended to have been purchased of the Indians. We therefor taking this matter into Our Royal Consideration, as also the fatal Effects which would attend a discontent amongst the Indians in the present situation of affairs, and being determined upon all occasions to support and protect the said Indians in their just Rights and Possessions and to keep inviolable the Treaties and Compacts which have been entered into with them, Do hereby strictly enjoyn & command that neither yourself nor any Lieutenant Governor, President of the Council or Commander in Chief of Our said Colony/Province of \_\_\_\_\_ do upon any pretence whatever upon pain of Our highest Displeasure and of being forthwith removed from your or his office, pass any Grant or Grants to any persons whatever of any lands within or adjacent to the Territories possessed or occupied by the said Indians or the Property Possession of which has at any time been reserved to or claimed by them. And it is Our further Will and Pleasure that you do publish a proclamation in Our Name strictly enjoining and requiring all persons whatever who may either willfully or inadvertently have seated themselves on any lands so reserved to or claimed by the said Indians without any lawfull Authority for so doing forthwith to remove therefrom And in case you shall find upon strict enquiry to be made for the purpose that any person or persons do claim to hold or possess any lands within Our said Colony/Province upon pretence of purchases made of the said Indians without a proper licence first had and obtained either from Us or any of Our Royal Predecessors or any person acting under Our or their Authority you are forthwith to cause a prosecution to be carried on against such person or persons who shall have made such fraudulent purchases to the end that the land may be recovered by due Course of Law And whereas the wholesome Laws that have at different times been passed in several of our said Colonies and the instructions which have been given by Our Royal Predecessors for restraining persons from purchasing lands of the Indians without a Licence for the purpose and for regulating the proceedings

upon such purchases have not been duly observed, It is therefore Our express Will and Pleasure that when any application shall be made to you for licence to purchase lands of the Indians you do forebear to grant such Licence untill you shall have first transmitted to Us by Our Commissioners for Trade and Plantations the particulars of such applications as well as in respect to the situation as the extent of the lands so proposed to be purchased and shall have received Our further directions therein; And it is Our further Will and Pleasure that you do forthwith cause this Our Instruction to you to be made Publick not only within all parts your said Colony/Province inhabited by Our Subjects, but also amongst the several Tribes of Indians living within the same to the end that Our Royal Will and Pleasure in the Premises may be known and that the Indians may be apprized of Our determin'd Resolution to support them in their just Rights, and inviolably to observe Our Engagements with them.

Letter of Jonathan Belcher to the Lords of Trade, 2nd July, 1762

Halifax,  
Nova Scotia  
2nd July 1762

My Lords,

I have received from Mr. Secretary Pownall His Majesty's Additional Instructions directed to His Excellency Governor Ellis, or the Commander in Chief, of this Province and dated the 9th of December 1761, respecting the Appointment of Judges in this Province, and the Incroachments upon the possessions and Territories of the Indians in the American Colonies, to the interruption of their hunting Fowling and Fishing.

Inobedience to this Royal Instruction from His Majesty, I caused a Proclamation to be published in His Majesty's name injoining all Persons against any Molestation of the Indians in the Claims. Lest any difficulties might arise, it appeared advisable, previous to the proclamation, to inquire into the Nature of the Pretensions of the Indians for any part of the Lands within this Province. A return was accordingly made to me, from a Common-right to the Sea Coast from Cape Fronsac onwards for Fishing without disturbance or Opposition by any of His Majesty's Subjects. This claim was therefore inserted in the Proclamation, that all persons might be notified of the Reasonableness of such a permission, whilst the Indians themselves should continue in Peace with Us, and that this Claim should at least be entertained by the Government, till His Majesty's pleasure should be signified. After the Proclamation was issued no Claims for any other purposes were made. If the Proclamation had been issued at large, the Indians might have been incited by the disaffected Acadians and others, to have made extravagant and unwarrantable demands, to the disquiet and perplexity of the New Settlements in the Province. Your Lordships will permit me humbly to remark that no other Claim can be made by the Indians in this Province, either by Treaties or long possession (the Rule, by which the determination of their Claims is to be made, by Virtue of this His Majesty's Instructions) since the French derived their Title from the Indians and the French ceded their Title to the English under the Treaty of Utrecht. The issuing of this proclamation, My Lords, was seasonable and of moment, as some little time before, disquiets and complaints had been occasioned among the Indians, by interruptions in their hunting grounds, which the Government upon inquiry had the satisfaction of finding, was committed by some of the Acadians, and not by any of the inhabitants of the province. Other applications have been made to the

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The Rt. Honorable  
Commissioners

His Majesty  
9th day of Decem

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Proclamation of 1761 and Related Documents

Government from supposed Violences upon the personal property of the Indians, which it was judged best to accomodate in a private way, rather than to hazard a decision in the courts, where the verdicts if found against them for want of sufficient evidence or otherwise, might have discontented their Tribes, and have been of disagreeable consequences in the present situation of affairs. It could be wished, My Lords, that some measures might be pursued for removing the Acadians whose members are this summer increasing by the resort to Cumberland from Restigouche and Miramichi, of such as had made their submission to Captain McKenzie last Year, as the firmness of the peace with the Indians so considerably depends upon their being separated from the Acadians, who are incessant in their endeavours for alienating the Savages from His Majesty's Government. The necessary reduction of the Troops and of the Fleets for other services (having at presently only a single Man of War in the harbour and not a thousand regular troops, and those in the several Forts having been greatly reduced) adds weight to the applications for removing the Acadians.

Jonathan Belcher

The Rt. Honorable The Lords  
Commissioners for Trade & Plantation

Proclamation issued in Nova Scotia, 1762

His Majesty by His Royal Instruction, Given at the Court of St. James, the 9th day of December, 1761, having been pleased to Signify,

THAT the Indians have made, and still do continue to make great Complaints, that Settlements have been made, and Possessions taken, of Lands, the Property of which they have by Treaties reserved to themselves, by Persons claiming the said Lands, under Pretence of Deeds of Sale & Conveyance, illegally, Fraudulently, and surreptitiously obtained of said Indians.

AND THAT His Majesty had taken this Matter into His Royal Consideration, as also the fatal Effects which would attend a Discontent among the Indians in the Present Situation of Affairs.

AND BEING determined upon all Occasions to support and protect the Indians in their just Rights and Possessions and to keep inviolable the treaties and Compacts which have been entered into with them, was pleased to declare His Majesty's further Royal Will and Pleasure, that His Governor or Commander in Chief in this Province should publish a Proclamation in His Majesty's Name, for this special purpose;

WHEREFORE in dutiful Obedience to His Majesty's Royal Orders I do accordingly publish this proclamation in His Majesty's Royal Name, strictly injoining and requiring all Persons what ever, who may either willfully or inadvertently have seated themselves upon any Lands so reserved to or claimed by the said Indians, without any lawful Authority for so doing, forthwith to remove therefrom.

AND, WHEREAS Claims have been laid before me in behalf of the Indians for Fronsac Passage and from thence to Nartigonneich, and from Nartigonneich to Piktouk, and from thence to Cape Jeanne, from thence to Emchih, from thence to Ragi Pontouch, from thence to Tedueck, from thence to Cape Ronmentin, from thence to Miramichy, and from thence to Bay Des Chaleurs, and the environs of Canso. From thence to Mushkoodabwet, and so along the coast, as the Claims and Possessions of the said Indians, for the more special purpose of hunting, fowling

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Halifax,  
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2nd July 1762

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and fishing, I do hereby strictly injoin and caution all persons to avoid all molestation of the said Indians in their said claims, till His Majesty's pleasure in this behalf shall be signified.

AND if any person or persons have possessed themselves of any part of the same to the prejudice of the said Indians in their Claims before specified or without lawful Authority, they are hereby required forthwith to remove, as they will otherwise be prosecuted with the utmost Rigour of the Law.

Given under my Hand and Seal at Halifax this Fourth Day of May, 1762, and in the Second Year of His Majesty's Reign.

(ROYAL PROCLAMATION 1763)

BY THE KING.<sup>1</sup>

George R.

A PROCLAMATION.

I Whereas We have taken into Our Royal Consideration the extensive and valuable Acquisitions in America, secured to our Crown by the late Definitive Treaty of Peace concluded at Paris, the 10th Day of February last; and being desirous that all our loving Subjects, as well of Our Kingdom as of our Colonies in America,<sup>2</sup> may avail themselves with all convenient Speed, of the great Benefits and Advantages which must accrue therefrom to their Commerce, Manufactures, and Navigation, We have thought fit, with the Advice of our Privy Council, to issue this our Royal Proclamation, hereby to publish and declare to all our loving Subjects, that we have, with the Advice of our Said Privy Council, granted our Letters Patent under our Great seal of Great Britain, to erect, within the Countries and Islands ceded and confirmed to Us by the said Treaty

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<sup>1</sup>Taken from the text as contained in the "Papers Relative to the Province of Quebec," 1791, in the Public Record Office. Copied in the Canadian Archives Q 62 A, pt. 1., p. 114. (Confirmed as per R.S.C. GSB - 12 Nov. 1970)

<sup>2</sup>The attitude of the Home Government at this time, on the Subject of immigration, the kind of immigrants to be favoured, and even the need of an outlet for surplus population on the part of some of the older colonies in America, may be gathered from a report of the Lords of Trade, Nov. 5, 1761, upon the proposal to transport a number of Germans to the American Colonies after the peace. They point out that as "regards colonies possessed before the war, the increase of population is such 'as scarce to leave room in some of them for any more inhabitants.' The encouragement and advantages of the less populated southern colonies are such as to induce sufficient migration without burdening the public. Our own reduced sailors and soldiers would be more proper objects of national bounty, and better colonists, than foreigners, whose ignorance of the English language laws and constitution cannot fail to increase those disorders and that confusion in our Government, which the too great migration of people from Germany has already fatally introduced in some of our most valuable possessions." Calendar of Home Office Papers, of the Reign of George III. 1760-1765. No. 349.

Four distinct and separate Governments, styled and called by the names of Quebec, East Florida, West Florida and Grenada, and limited and bounded as follows, viz.

First -- The Government of Quebec bounded on the Labrador Coast by the River St. John, and from thence by a Line drawn from the Head of that River through the Lake St. John, to the South end of the Lake Nipissim; from whence the said Line, crossing the River St. Lawrence, and the Lake Champlain in 45. Degrees of North Latitude, passes along the High Lands which divide the Rivers that empty themselves into the said River St. Lawrence from those which fall into the Sea; and also along the North Coast of the Baye des Chaleurs, and the Coast of the Gulph of St. Lawrence to Cape Rosieres, and from thence crossing the Mouth of the River St. Lawrence by the West End of the Island of Anticosti, terminates at the aforesaid River of St. John.

Secondly -- The Government of East Florida, bounded to the Westward by the Gulph of Mexico and the Apalachicola River; to the Northward by a Line drawn from that part of the Said River where the Chatahouchee and Flint Rivers meet, to the source of St. Mary's River, and by the course of the said River to the Atlantic Ocean; and to the Eastward and Southward by the Atlantic Ocean and the Gulph of Florida, including all Islands within Six Leagues of the Sea Coast.

Thirdly -- The Government of West Florida, bounded to the Southward by the Gulph of Mexico, including all Islands within Six Leagues of the Coast from the River Apalachicola to Lake Pontchartrain; to the Westward by the said Lake, and Lake Maurepas, and the River Mississippi; to the Northward by a Line drawn due East from that part of the River Mississippi which lies in 31 Degrees North Latitude, to the River Apalachicola or Chatahouchee; and to the Eastward by the said River.

Fourthly -- The Government of Grenada, comprehending the Island of that name together with the Grenadines, and the Islands of Dominico, St. Vincent's and Tobago.

II And to the end that the open and free Fishery of our Subjects may be extended to and carried on upon the Coast of Labrador, and the adjacent Islands, We have thought fit, with the advice of our said Privy Council, to put all that Coast, from the River St. John's to Hudson's Streights, together with the Islands of Anticosti and Madelaine, and all other smaller Islands lying upon the said Coast, under the care and Inspection of our Governor of Newfoundland.

III We have also, with the advice of our Privy Council, thought fit to annex the Islands of St. John's and Cape Breton, or Isle Royale, with the lesser Islands adjacent thereto, to our Government of Nova Scotia. <sup>1</sup>

IV We have also, with the advice of our Privy Council aforesaid, annexed to our Province of Georgia all the Lands lying between the Rivers Alatomaha and St. Mary's.

V And whereas it will greatly contribute to the speedy settling our said new Governments, that our loving subjects should be informed of our Paternal care, for the security of the Liberties and Properties of those who are and shall become Inhabitants thereof. We have thought fit to publish and declare by this Our Proclamation, that We have in the Letters Patent under our Great Seal of Great Britain, by which the said Governments are constituted, given express Power and Direction to our Governors of our Said Colonies respectively,

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<sup>1</sup>Nova Scotia would thus include the three present maritime provinces of Nova Scotia, New Brunswick, and Prince Edward Island.

that so soon as the state and circumstances of the said Colonies will admit thereof, they shall, with the Advice and Consent of the Members of our Council, summon and call General Assemblies <sup>2</sup> within the said Governments respectively, in such Manner and Form as is used and directed in those Colonies and Provinces in America which are under our immediate Government; and We have also given Power to the said Governors, with the consent of our Said Councils, and the Representatives of the People so to be summoned as aforesaid, to make, constitute, and ordain Laws, Statutes, and Ordinances for the Public Peace, Welfare, and good Government of our said Colonies, and of the People and Inhabitants thereof, as near as may be agreeable to the Laws of England, and under such Regulations and Restrictions as are used in other Colonies; and in the mean Time, and until such Assemblies can be called as aforesaid, all Persons Inhabiting in or resorting to our Said Colonies may confide in our Royal Protection for the Enjoyment of the Benefit of the Laws of our Realm of England; for which Purpose We have given Power under our Great Seal to the Governors of our said Colonies respectively to erect and constitute with the Advice of our said Councils respectively, Courts of Judicature and public Justice within our Said Colonies for hearing and determining all Causes, as well Criminal as Civil, according to Law and Equity, and as near as may be agreeable to the Laws of England, with Liberty to all Persons who may think themselves aggrieved by the Sentences of such Courts, in all Civil

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<sup>2</sup>With reference to the reasons given and provisions made for calling assemblies in the new Provinces, see Report of the Lords of Trade, Oct. 4th, 1763, p. 114, also report of the Lords of the Committee of Council for Plantation Affairs, Oct. 6th, 1763, p. 116. See also the Commission to Hon. James Murray, sec. 11, p. 135.

Cases, to appeal, under the usual Limitations and Restrictions, to Us in our Privy Council.

VI We have also thought fit, with the advice of our Privy Council as aforesaid, to give unto the Governors and Councils of our said Three new Colonies, upon the Continent full Power and Authority to settle and agree with the Inhabitants of our said new Colonies or with any other Persons who shall resort thereto, for such Lands, Tenements and Hereditaments, as are now or hereafter shall be in our Power to dispose of; and them to grant to any such Person or Persons upon such Terms, and under such moderate Quit-Rents, Services and Acknowledgements, as have been appointed and settled in our other Colonies, and under such other Conditions as shall appear to us to be necessary and expedient for the Advantage of the Grantees, and the Improvement and settlement of our said Colonies.

VII And Whereas, We are desirous, upon all occasions, to testify our Royal Sense and Approbation of the Conduct and bravery of the Officers and Soldiers of our Armies, and to reward the same, We do hereby command and empower our Governors of our said Three new Colonies, and all other our Governors of our several Provinces on the Continent of North America, to grant without Fee or Reward, to such reduced Officers as have served in North America during the late War, and to such Private Soldiers as have been or shall be disbanded in America, and are actually residing there, and shall personally apply for the same, the following Quantities of Lands, subject, at the Expiration of Ten Years, to the same Quit-Rents as other Lands are subject to in the Province within which they are granted, as also subject to the same Conditions of Cultivation and Improvement; viz.

To every Person having the Rank of a Field Officer..	5,000 Acres.
To every Captain.....	3,000 Acres.
To every Subaltern or Staff Officer.....	2,000 Acres.
To every Non-Commissioned Officer.....	200 Acres.
To every Private Man.....	50 Acres.

VIII We do likewise authorize and require the Governors and Commanders in Chief of all our said Colonies upon the Continent of North America to grant the like Quantities of Land, and upon the same conditions, to such reduced Officers of our Navy of like Rank as served on board our Ships of War in North America at the times of the Reduction of Louisbourg and Quebec in the late War, and who shall personally apply to our respective Governors for such Grants.<sup>1</sup>

IX And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds. -- We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands, beyond the Bounds of their respective Governments, as described in their Commissions; as also that no Governor or Commander in Chief in any of our other Colonies or

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<sup>1</sup>On Oct. 13th, 1763, the Earl of Halifax wrote to the Attorney General, inquiring "as to the means which should be used to nullify the doubtfulness of a paragraph in H.M.'s proclamation, which makes it appear that only those officers which served both at Louisbourg and Quebec are entitled to grants of land, such not being His Majesty's intention." Calendar of Home Office Papers, 1760-1765, no. 1036.

Plantations in America do Presume for the present, and until our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

X And we do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the limits of Our Said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid;

XI And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for that Purpose first obtained.

XII And We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

XIII And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our interests, and to the great Dissatisfaction of the said Indians; in order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be

convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where, We have thought proper to allow Settlement but that, if at any Time any of the said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie; and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for that Purpose; And we do, by the Advice of our Privy Council, declare and enjoin, that the Trade with the said Indians shall be free and open to all our Subjects whatever, provided that every Person who may incline to Trade with the said Indians do take out a Licence for carrying on such Trade from the Governor or Commander in Chief of any of Our Colonies respectively where such Person shall reside, and also give Security to observe such Regulations as We shall at any Time think fit, by ourselves or by our Commissaries to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade:

XIV

And we do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all our Colonies respectively, as well those under Our immediate Government as those under the Government and Direction of Proprietaries, to grant such Licences without Fee or Reward, taking

especial Care to insert therein a Condition, that such Licence shall be void, and the Security forfeited in case the Person to whom the same is granted shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

XV And we do further expressly enjoin and require all Officers whatever, as well Military as those Employed in the Management and Direction of Indian Affairs, within the Territories reserved as aforesaid for the use of the said Indians, to seize and apprehend all Persons whatever, who standing charged with Treason, Misprisions of Treason, Murders, or other Felonies or Misdemeanors, shall fly from Justice and take Refuge in the said Territory, and to send them under a proper guard to the Colony where the Crime was committed of which they stand accused, in order to take their Trial for the same. <sup>1</sup>

Given at our Court at St. James's the 7th Day of October 1763 in the Third Year of our Reign.

GOD SAVE THE KING

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From Shortt and Doughty - "Documents relating to the Constitutional History of Canada" 1759-1791 - Ottawa 1907.

<sup>1</sup>The Earl of Halifax, in a letter to the Secretary at War, March 11, 1765, directing him to prepare and bring into Parliament a bill to extend the Mutiny Act to North America, points out that there are many posts in that country which are not under any civil jurisdiction, and that therefore the additions to be made to the 60th clause of the Mutiny Act are very necessary. This is especially so since, in the Proclamation of Oct. 7th, 1763, while provision is made for apprehending and bringing to justice such criminals as might take refuge at these posts, yet no mode is established for the punishment of crimes committed at those posts, or in the reserved territories. See Calendar of Home Office Papers 1760-1765, No. 1671.

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