

## How the Commissioners Explained Treaty Number Nine to the Ojibway and Cree in 1905

John S. Long

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Résumé de l'article

Comment les représentants du gouvernement ont-ils présenté et expliqué les dispositions du Traité No 9 aux Ojibwes et Cris du nord de l'Ontario pendant l'été 1905 ? D'après les termes du traité, texte à valeur légale sur lequel plusieurs chefs Cris et Objiwe ont apposé leurs marques ou signatures, les autochtones renonçaient à leurs droits de propriété sur les terres, libérant celles-ci pour le développement de plusieurs projets gouvernementaux. En échange, certains cadeaux leur étaient octroyés, aussi bien que les responsabilités, bénéfices et symboles attachés à la qualité de citoyen du Dominion et sujet de Sa Majesté. Cependant, lorsque l'on consulte les notes des représentants du gouvernement quant aux circonstances de la signature du traité, on se rend compte que le texte même du traité, les termes employés dans sa rédaction, n'ont pas été expliqués aux négociateurs ojibwes et cris; ceux-ci n'ont en fait donné leur accord qu'aux explications orales des commissaires du gouvernement. Dans l'esprit des négociateurs indiens, il ne s'agissait que d'un accord oral qui reconnaissait leur besoin de continuer à utiliser ces terres et qui leur promettait assistance et protection.

# How

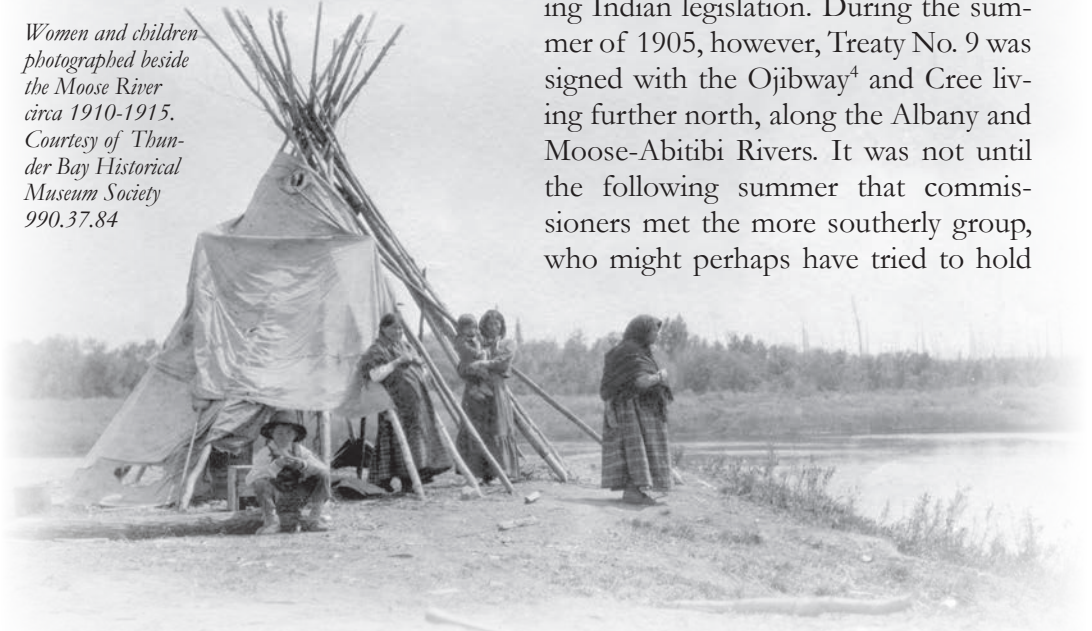
## *the Commissioners Explained Treaty Number Nine to the Ojibway and Cree in 1905*

by John S. Long<sup>1</sup>

**W**hen Rupert's Land, the Hudson's Bay Company territory, was transferred to Canada in 1870, the new nation explicitly promised "to make adequate provisions for the protection of the Indian tribes whose interests and well-being are involved in

the transfer."<sup>2</sup> To federal politicians, this Rupert's Land promise meant signing another treaty, something the First Nations living closest to the Canadian Pacific Railway line (constructed on their unsundered lands) had been asking for since 1889,<sup>3</sup> and applying its evolving Indian legislation. During the summer of 1905, however, Treaty No. 9 was signed with the Ojibway<sup>4</sup> and Cree living further north, along the Albany and Moose-Abitibi Rivers. It was not until the following summer that commissioners met the more southerly group, who might perhaps have tried to hold

*Women and children  
photographed beside  
the Moose River  
circa 1910-1915.  
Courtesy of Thunder  
Bay Historical  
Museum Society  
990.37.84*



## Abstract

*How did government representatives explain Treaty No. 9 to the Ojibway and Cree of northern Ontario during the summer of 1905? The written treaty on which the commissioners obtained the marks and signatures of certain Ojibway and Cree, is a legal instrument which sought to remove the impediment of "Indian title" to the land, freeing it for state projects, claiming its indigenous inhabitants as subjects, extending to them some of the responsibilities and benefits and symbols of citizenship, and granting them certain gifts. The commissioners' own records, however, indicate that treaty signing was a very different transaction. Most of the actual terms of the written treaty were not explained to the Ojibway and Cree, who gave their consent only to the commissioners' oral explanations. For them, the treaty was an oral covenant acknowledging their continuing need to use the land, and providing them with promises of assistance and protection.*

**Résumé:** *Comment les représentants du gouvernement ont-ils présenté et expliqué les dispositions du Traité No 9 aux Ojibwes et Cris du nord de l'Ontario pendant l'été 1905? D'après les termes du traité, texte à valeur légale sur lequel plusieurs chefs Cris et Objive ont apposé leurs marques ou signatures, les aborigènes renonçaient à leurs droits de propriété sur les terres, libérant celles-ci pour le développement de plusieurs projets gouvernementaux. En échange, certains cadeaux leur étaient octroyés, aussi bien que les responsabilités, bénéfiques et symboles attachés à la qualité de citoyen du Dominion et sujet de Sa Majesté. Cependant, lorsque l'on consulte les notes des représentants du gouvernement quant aux circonstances de la signature du traité, on se rend compte que le texte même du traité, les termes employés dans sa rédaction, n'ont pas été expliqués aux négociateurs ojibwes et cris; ceux-ci n'ont en fait donné leur accord qu'aux explications orales des commissaires du gouvernement. Dans l'esprit des négociateurs indiens, il ne s'agissait que d'un accord oral qui reconnaissait leur besoin de continuer à utiliser ces terres et qui leur promettait assistance et protection.*

out for more generous benefits had the treaty not been presented to them as a fait accompli. (A senior federal official had worried that once "Indians come into closer contact with the white people . . . they are apt to be easily influenced to make extravagant demands."<sup>5</sup>)

Canada's ninth post-confederation

or numbered treaty is not widely understood, although it impacts some 582,000 sq km, just over half of Ontario's surface area.<sup>6</sup> Brian Titley has focussed on the records of commissioner Duncan Campbell Scott, a pivotal figure in the making of Treaty No. 9.<sup>7</sup> James Morrison's excellent analysis of this treaty

<sup>1</sup> The author is grateful to David Calverley, for alerting him to the existence of MacMartin's journal, and to James Morrison for providing biographical information on MacMartin and Stewart.

<sup>2</sup> Kent McNeil, *Native Claims in Rupert's Land and the North-West Territories* (Saskatoon: Native Law Centre, 1982). See also "The Territorial Evolution of Canada, 1870," *The Atlas of Canada* <[http://atlas.gc.ca/maptexts/map\\_texts/english/Texte18](http://atlas.gc.ca/maptexts/map_texts/english/Texte18)> 70\_e.html> accessed 7 June 2005.

<sup>3</sup> John S. Long, *Treaty No. 9: The Indian Petitions, 1889-1927* (Cobalt: Highway Book Shop, 1978).

<sup>4</sup> The terms Ojibway and Cree are used on the Nishnawbe Aski website <[www.nan.on.ca](http://www.nan.on.ca)> accessed 6 June 2005 and in the original treaty itself.

<sup>5</sup> Frank Pedley to J.J. Foy, 8 May 1905, Library and Archives Canada (LAC) RG 10, v.3033 file 235,225-1.

<sup>6</sup> Ontario covers 415,000 square miles; Government of Ontario website "Geography: it's a big place" <<http://www.gov.on.ca/MBS/English/about/geography/bigPlace.html>> accessed 12 December 2004. Treaty No. 9 covers 58,219,449 hectares or 224,727 square miles; Treasury Board of Canada website "Treaty areas" <<http://www.tbs-sct.gc.ca/dfrp-rbif/treaty-traite.asp?Language=EN>> accessed 12 December 2004.

<sup>7</sup> Brian E. Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs*

used the journal kept by Scott as well as that of his fellow commissioner Samuel Stewart.<sup>8</sup> The neglected writings of the third commissioner, D. George MacMartin, examined here, show exactly how Treaty No. 9 was explained to the Ojibway and Cree in 1905. (MacMartin's journal for 1906 has not survived.) The present analysis will add to a growing body of literature on Treaty No. 9.<sup>9</sup> It also complements our understanding of Canada's other numbered treaties.<sup>10</sup> We will briefly look at earlier treaties and Ontario's territorial evolution, what the written version of Treaty No. 9 says, the treaty party and the commissioners' route, and then examine in detail the commissioners' records of making treaty during the summer of 1905, focussing on how they explained the treaty to the Ojibway and Cree.

## EARLIER TREATIES IN ONTARIO AND THE WEST

Following the War of 1812, the allegiance of First Nations was deemed less important to the survival of Upper Canada. In addition, the influx of United Empire Loyalists and other immigrants meant more intense competition for First Nations' hunting territories. Although there had been land surrenders in what is now southern Ontario prior to this time, numerous land surrenders were sought in succeeding decades, during a period of intense displacement of First Nations.<sup>11</sup> The Robinson-Huron and Robinson-Superior treaties of 1850, along the north shore of those lakes and north to the height of land marking the James Bay watershed, became almost a template for the

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*in Canada* (Vancouver: University of British Columbia Press, 1986), 60-74.

<sup>8</sup> *Treaty research report. Treaty No.9 (1905-1906): The James Bay Treaty* (Ottawa: Indian and Northern Affairs Canada, 1986).

<sup>9</sup> Patrick Macklem, "The Impact of Treaty 9 on Natural Resource Development in Northern Ontario" in Michael Asch, *Aboriginal and Treaty Rights in Canada*, 98-134; Long, *The Indian Petitions*; John S. Long, *Treaty No. 9: The Negotiations, 1901-28* (Cobalt: Highway Book Shop, 1978), *Treaty No. 9: the Half-Breed Question, 1902-1910* (Cobalt: Highway Book Shop, 1978), "Treaty No. 9 and Fur Trade Company Families: Northeastern Ontario's Indians, Halfbreeds, Petitioners and Métis" in *The New Peoples: Being and Becoming Métis in North America*, eds. Jacqueline Peterson & Jennifer S.H. Brown (Winnipeg: University of Manitoba Press, 1985), 137-62, "Who Got What at Winisk? Treaty Making 1930" *The Beaver* (February-March 1995), 22-31, "No Basis for Argument?: The Signing of Treaty No. 9 in Northern Ontario, 1905-1906" *Native Studies Review* 5,2 (1989): 19-54, with photographs in *Native Studies Review* 6,2 (1990): 99-102, "Early Visions of Development on the Abitibi River: Treaty No. 9 and the People of New Post, 1900-1905," in *Reflections on Northern Culture: Visions and Voices*, A. W. Plumstead, L. Kruk and A. Blackbourn eds. (North Bay: Nipissing University, 1997), 21-44, "The Government is Asking You for Your Land": The Treaty Made in 1905 at Fort Albany According to Cree Oral Tradition" (1993), 160 pp. unpublished ms; Jacqueline Hookimaw-Witt, "Keenebonanoh Keemoshominook Kaeshe Peemishikhik Odaskiwakh: We Stand on the Graves of Our Ancestors: Native Interpretations of Treaty No. 9 with Attawapiskat Elders" (MA thesis, Trent University, 1998). See also Telford and Armstrong in note 101.

<sup>10</sup> See, for example, Treaty No. 7 elders and Tribal Council with Walter Hildebrandt, Dorothy First Rider and Sarah Carter, *The True Spirit and Original Intent of Treaty 7* (Montreal: McGill-Queen's University Press, 1995) and Arthur J. Ray, Jim Miller and Frank J. Tough, *Bounty and Benevolence: A Documentary History of the Saskatchewan Treaties* (Montreal: McGill-Queen's University Press, 2000).

<sup>11</sup> For earlier treaties see Donald B. Smith, "The Dispossession of the Mississauga Indians: A

post-confederation numbered treaties. The Ojibway were allocated reserve lands, cash annuities and continued access to their hunting and fishing territories. But in an echo of what was to follow in 1905, the written version of the Robinson treaties referred to a wholesale surrender of their traditional lands, something that may not have been clear in the actual discussions. The Ojibway, who had pressured the government to make a treaty, were adamant that miners and surveyors stay out of their territories until their claims were addressed. But they may have believed that the Robinson treaties involved “only a limited use of their land for . . . exploiting subsurface rights where minerals were discovered” – a very restricted sharing of the land, consistent with their experience of allowing fur traders to establish trading posts among them during the preceding two centuries.<sup>12</sup>

Following Canada’s acquisition of Rupert’s Land in 1870 and the creation of Manitoba, Treaty 1 was signed in the new province in 1871, once again at the insistence of the indigenous peoples. The surrender provisions of Treaties 1 through 7 would provide the government with

unfettered access (at least in the eyes of the government) from the western end of the Robinson treaties all the way to the eastern border of British Columbia, a vast area crucial to the expansion of Canada, the building of the Canadian Pacific Railroad and the settlement of the west. Of particular interest to Ontario, Treaty 3 was signed in 1873, surrendering the Northwest Angle, an area between Rainy River and Lake of the Woods. The first of Canada’s northern treaties, Treaty No. 8, was concluded south of Great Slave Lake in northeastern British Columbia and parts of what are now Alberta, Saskatchewan and the Northwest Territory in 1899, following the Klondike gold rush.<sup>13</sup>

The Treaty 3 area was disputed territory until Ontario’s present western boundary with Manitoba, at Lake of the Woods, was firmly established by a decision of the Judicial Committee of the Privy Council in 1884 and by federal statute in 1889. The province’s objections arising from Treaty No. 3 were settled, twenty-one years after its signing, by an 1894 agreement with Canada which specified “that any future treaties . . . shall be deemed to require the concurrence of the government of Ontario.”<sup>14</sup>

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Missing Chapter in the Early History of Upper Canada” *Ontario History* 73:2 (1981), 67-87; Leo A. Johnson, “Mississauga-Lake Ontario Land Surrender of 1805” *Ontario History* 83:3 (1990), 233-253. For the Saugeen and Manitoulin treaties of 1836 see *Looking Forward, Looking Back, Report of the Royal Commission on Aboriginal Peoples*, vol. 1 (Ottawa: Canada Communication Group, 1996), 156-158.

<sup>12</sup> *Looking Forward, Looking Back*, 158-159. The reserves were smaller and the annuities calculated differently in the numbered treaties; James Morrison, “The Robinson Treaties of 1850: A Case Study” in *For Seven Generations: An Information Legacy of the Royal Commission on Aboriginal Peoples* (Ottawa: Libraxis, 1997), 5. See also Robert J. Surtees, *Treaty Research Report: The Robinson Treaties (1850)* (Ottawa: Indian and Northern Affairs Canada, Treaties and Historical Research Centre, 1986).

<sup>13</sup> *Looking Forward, Looking Back*, 161-171.

<sup>14</sup> See Anthony J. Hall, “The St. Catherine’s Milling and Lumber Company versus the Queen: Indian Land Rights as a Factor in Federal-Provincial Relations in Nineteenth Century Canada,” in Kerry

The 1889 boundary decision also extended Ontario north of the height of land (i.e., north of the Robinson treaties) to the Albany River, the region for which Treaty No. 9 sought to obtain a surrender. (When the provincial boundary was further enlarged to its present limits in 1912, Treaty No. 9 was revised and extended by an adhesion.<sup>15</sup>)

## THE WRITTEN TREATY

Unlike earlier treaties in Ontario, this one would involve both the federal and provincial governments, due to the aforementioned 1894 agreement. The written terms of Treaty No. 9 were finalized in principle, and the Order in Council approved, before treaty commissioners ever met with the Ojibway and Cree in northern Ontario.<sup>16</sup> The treaty had been drafted by the federal government, but Ontario had insisted on certain additions discussed below.

The treaty's purpose is stated in a preamble. The Ojibway and Cree had been summoned to meet with representatives of the government of Canada and "deliberate upon certain matters of interest." They had been "notified and informed" that the King wished "to

open . . . a tract of country" for "settlement, immigration, trade, travel, mining, lumbering, and . . . other purposes." The commissioners would obtain the Indians' consent "to make a treaty and arrange with them, so that there may be peace and goodwill" and so that the Ojibway and Cree would "know and be assured of what allowances they are to count on and receive from His Majesty's bounty and benevolence."<sup>17</sup>

The commissioners represented the King and his government of Canada. (Although MacMartin represented the province of Ontario, he was appointed by the federal government.) The Ojibway and Cree, having been "duly convened in council," would be asked "to name certain chiefs and headmen . . . to conduct such negotiations and sign" the treaty. Their leaders would thereafter "become responsible . . . for the faithful performance by their respective bands of [any] obligations" arising from the treaty. The Ojibway and Cree agreed to "cede, release, surrender and yield up," forever, all their "rights, titles and privileges . . . to the lands."<sup>18</sup>

In return, the First Nations would receive six types of compensation: "the

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Abel and Jean Friesen, eds. *Aboriginal Resource Use in Canada: Historical and Legal Aspects* (Winnipeg: University of Manitoba Press, 1991), 267-85.

<sup>15</sup> Long "Who Got What at Winisk?"

<sup>16</sup> The commissioners left Ottawa on 30 June 1905. An Order in Council authorizing the treaty was approved on 9 June and then revised on 29 June. Provincial commissioner MacMartin's appointment was approved on 6 July. "Extract from a report of the Committee of the Honourable the Privy Council, approved by the Governor General on 9th of June 1905," "Extract . . . 29th of June 1905," and "Extract . . . 6th July 1905," LAC RG 10 v. 3033, file 235, 225-1. See also note 21 below.

<sup>17</sup> *The James Bay Treaty: Treaty No. 9 (Made in 1905 and 1906) and Adhesions made in 1929 and 1930* (Ottawa: Queen's Printer, 1964), 19.

<sup>18</sup> *The James Bay Treaty*, 19.

right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered . . . subject to . . . regulations . . . and [with the exception of areas which might in future be needed] for settlement, mining, lumbering, trading or other purposes”; a reserve, to be calculated using a formula of one square mile per family of five, “arranged between [the] commissioners and the chiefs and headmen” but subject to certain restrictions; a “present of eight dollars in cash” per person and, thereafter, a perpetual annuity of four dollars per person; a flag and copy of the treaty for the chief, “for the use of his band”; payment of “salaries of teachers to instruct [their] children” and the provision of “such school buildings and educational equipment as may seem advisable to His Majesty’s government of Canada.”<sup>19</sup>

Under the terms of the written treaty, the Ojibway and Cree would also undertake to

obey and abide by the law; . . . maintain peace between each other and between themselves and other tribes of Indians, and between themselves and others of His Majesty’s subjects, whether Indians, half-breeds or whites . . . not molest the person or property of any inhabitant . . . or interfere with or trouble any person passing or travelling through . . . and . . . assist the officers of His

Majesty in bringing to justice and punishment any Indian offending against the stipulations of this treaty, or infringing the law in force in the country so ceded.<sup>20</sup>

At Ontario’s insistence, the written treaty included reference to an agreement between Canada and the province, made on 3 July 1905 (but actually signed four months later). According to this agreement, Ontario would reimburse the federal government for the treaty gratuities and annuities, reserves would be “chosen by the commissioners” and subsequently approved by the Ontario government, no reserve would contain any “site suitable for the development of water-power exceeding 500 horse-power” and the federal government would be responsible for all other costs of the treaty.<sup>21</sup> The written treaty would be signed by the commissioners, by the chiefs and headmen, and by witnesses. It sought to clearly define “what allowances” the Ojibway and Cree could “count upon and receive.”<sup>22</sup>

## THE TREATY PARTY AND ITS ROUTE

On 30 June 1905, most of the treaty officials left Ottawa by train on a comfortable and entertaining two-day trip to Dinorwic, near present-day Dryden and Sioux Lookout. There

<sup>19</sup> *The James Bay Treaty*, 20-1.

<sup>20</sup> *The James Bay Treaty*, 21.

<sup>21</sup> *The James Bay Treaty*, 21; “Agreement Between the Dominion of Canada and the Province of Ontario, dated 3 July 1905” in *The James Bay Treaty*, 25-8. The federal and provincial governments back dated the agreement to 3 July, three days after the commissioners left Ottawa, in order “to make the date of the agreement some day previous to the date in the Treaty.” A.J. Matheson to Frank Pedley, 17 November 1905, LAC RG 10 3033, file 235,225-1.

<sup>22</sup> *The James Bay Treaty*, 19, 22.

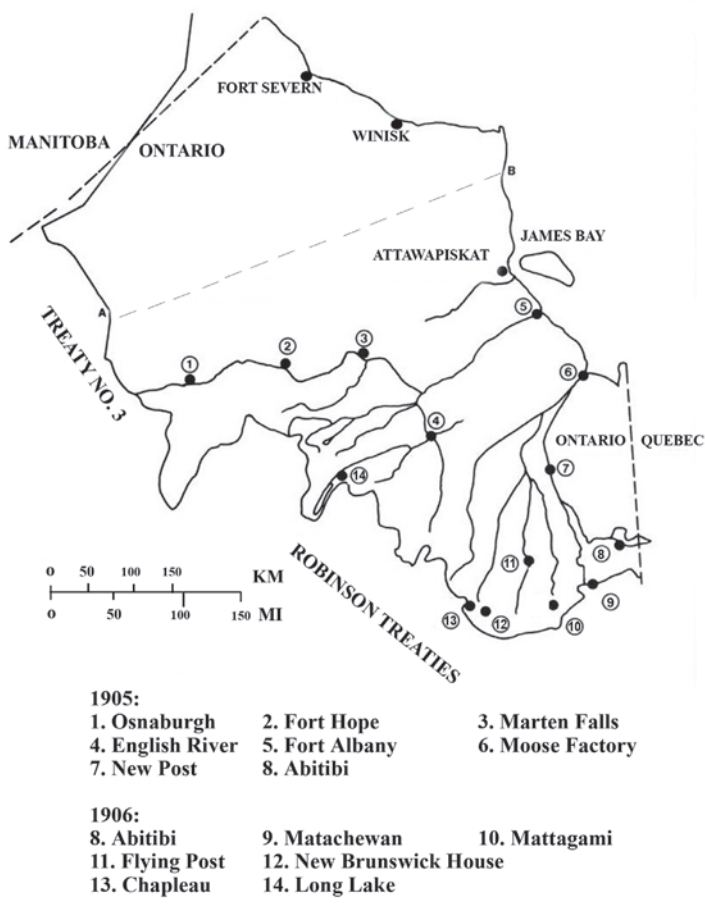
were seven “whites” in the all-male treaty party: three commissioners, two constables of the Dominion Police Force, a physician and a Hudson’s Bay Company (HBC) transport officer. For the next two months, they travelled by canoe and portage to meet the Ojibway and Cree at the HBC trading posts where they had been asked to gather and wait. (We have no idea how HBC traders explained the purpose of these treaty meetings.) Scott wrote that their

flotilla consisted of three canoes, two large Peterboroughs and one birch-bark thirty-two feet long which could easily hold eleven or twelve men and 2,500 pounds of baggage and supplies, as well as the treasure-chest which was heavy with thirty thousand dollars in small notes.<sup>23</sup>

They passed Frenchman’s Head en route to Lac Seul, both reserves established 32 years earlier under Treaty 3. From there, they crossed the height of land signifying the Hudson Bay watershed and proceeded down the Albany

River, stopping at Osnaburgh (11-13 July), Fort Hope (18-21 July) and Marten Falls (25-26 July) HBC posts. They took a difficult and unpleasant side trip up the Kenogami to English River (29-31 July) and then returned to the Albany, travelling down to Fort Albany (3-7

## TREATY NO. 9 REGION



<sup>23</sup> Samuel Stewart, Journal (1905-6, 1908), LAC RG 10 vol. 11,399, 1 and 3 July. Duncan Campbell Scott, “The Last of the Indian Treaties” *Scribner’s Magazine* 40:5 (November 1906), 574. The DPF, established in 1868, amalgamated with the Royal North West Mounted Police in 1920 to form the Royal Canadian Mounted Police. See “A Historical Perspective on CSIS” < [http://www.csis-scrs.gc.ca/eng/backgrnd/back5\\_e.html](http://www.csis-scrs.gc.ca/eng/backgrnd/back5_e.html) > accessed 25 February 2005. Stewart says the bark canoe was twenty-nine feet long and three feet wide.



August) near its mouth. After sailing along the James Bay coast, they reached Moose Factory (8-12 August), at the head of the Moose River, and then travelled up the Abitibi River by canoe and portage to New Post (19-22 August) and Abitibi (30 August - 1 September). Abitibi would have to be revisited and the treaty signed there the following year, for many of the Ojibway had already left for their hunting territories.<sup>24</sup>

The federal government had contracted the Hudson's Bay Company to arrange the commissioners' travel, accommodations and meals once they stepped off the train in Dinorwic. Chief Trader Thomas Clouston Rae traveled with the treaty party, hiring river guides and crew for each leg of the journey (and signing Treaty No. 9 himself as a witness). From Dinorwic to Fort Albany, they had a crew of eleven "Indians," including head guide Jimmy Swain, cook Harry Black from Missanabi, Isaac Ritch, Isaac Nicole, David Sugarhead, Oombash and several others from Osnaburgh. At Moose Factory they engaged a crew of Crees, led by treaty sig-

natory Simon Smallboy, who took them as far as Abitibi, where a third and final crew was hired.<sup>25</sup>

The commissioners visited some of the larger and more "important" posts like Osnaburgh, Fort Hope, Marten Falls, Fort Albany and Moose Factory, as well as the more "desolate" English River and the "small and comparatively unimportant" New Post.<sup>26</sup> The commissioners would admit other northern Ojibway and Cree to Treaty No. 9 the following summer, and again in 1908, 1929 and 1930.<sup>27</sup>

But what did treaty signing entail? Are we to assume that the Ojibway and Cree understood the written terms of the treaty and readily agreed? Records kept by the treaty commissioners provide us with some insight on these questions.

## THE COMMISSIONERS' ACCOUNTS

There were three treaty commissioners. Duncan Campbell Scott, the famous poet, was the party's spokesman. Scott was 42 years old and had 26 years of experience with the Department of

<sup>24</sup> Duncan Campbell Scott, Samuel Stewart and Daniel G. MacMartin, "[Report to] The Honourable Supt. General of Indian Affairs, November 6, 1905" in *The James Bay Treaty*, 4, 10.

<sup>25</sup> David Calverley, "The Impact of the Hudson's Bay Company on the Creation of Treaty Number Nine," *Ontario History* 98:1, 30-51. Scott, Stewart & MacMartin "Report (1905)," 4. Duncan Campbell Scott, Samuel Stewart and Daniel G. MacMartin, "[Report to] The Honourable Supt. General of Indian Affairs, October 5, 1906" in *The James Bay Treaty*, 21-3. Ritch's father was employed by the HBC at Abitibi. At New Post, John Luke replaced an injured Caleb Cheena. Stewart, "Journal," 2-3, 11-12 July; 12, 17, 20, 22 August; 1, 4, 6, 8 September. Scott, "Last of the Indian Treaties."

<sup>26</sup> Stewart considered it "the most desolate one could well imagine. It is as much out of the world as if situated in the heart of Labrador"; Stewart "Journal," 27 July. Scott described "A miserable Post & a poor boring lot of Indians"; Duncan Campbell Scott, Journal (1905-6) LAC, RG 10 vol. 1028, 25 July. Scott, Stewart & MacMartin "Report (1905)," 6-9.

<sup>27</sup> Besides Abitibi, Treaty No. 9 was also signed in 1906 at Matachewan, Mattagami, Flying Post,



*The James Bay Treaty signing party at Fort Albany 3 August 1905. Standing: Joseph L. Vanasse (L) and James Parkinson (R) of the Dominion Police Force. Seated: Commissioners Samuel Stewart (L), D. George MacMartin, Duncan Campbell Scott (R). Foreground: HBC Chief Trader Thomas Clouston Rae (L) and Dr. A.G. Meindl (R). Photographer unknown. Archives of Ontario, C 275-2-0-1 (S 7546). Duncan Campbell Scott fonds.*

Indian Affairs.<sup>28</sup> He and fellow Indian Affairs employee Samuel Stewart, 54, represented the federal government, while 61-year-old D. George MacMartin, a miner from Perth and the son of a lawyer,<sup>29</sup> was appointed to represent the interests of the province. The commissioners left an official published report, their individual journals and a popular article published by Scott. These writings reveal the commissioners' reliance on interpreters and indicate the sequence of events at treaty signing.

## *Communication Problems*

Since the commissioners did not speak Ojibway or Cree, they had to rely on others to explain their transactions. At Osnaburgh, the official report says that trader Jabez Williams “rendered great service to the party by interpreting whenever necessary,” but MacMartin reveals it was the treaty party’s own Ojibway guide, Jimmy Swain, who interpreted the treaty.<sup>30</sup> At Fort Hope, the official report acknowledges “the assistance of Rev. Father F.X.

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New Brunswick House and Long Lake. Morrison, *Treaty Research Report*.

<sup>28</sup> Scott’s writing was “an abiding passion,” while his work at the Department of Indian Affairs was a “source of income.” E.K. Brown, a contemporary, wrote that Scott “seldom came early, and never stayed late” at the office. Titley, *A Narrow Vision*, 204.

<sup>29</sup> James Morrison, e-mail communication with the author, 23 and 29 September 2005.

<sup>30</sup> Scott, Stewart & MacMartin “Report (1905),” 5. Daniel George MacMartin “Diary of a journey to N. W. T. in 1905 (re Indian treaty),” Queen’s University Archives, Miscellaneous Collection 2999, 11 July. In 1905, English-born Williams was forty-seven years old and Post Master. He died at Osnaburgh in 1923 and was buried there (Hudson’s Bay Company Archives [hereafter HBCA] biography).

Fafard, of the Roman Catholic Mission at Albany, whose thorough knowledge of the Cree and Ojibwey tongues was of great assistance during the discussion,” but MacMartin indicates that Sinclair Ritch interpreted the treaty.<sup>31</sup> Similarly, MacMartin writes that Cree HBC clerk Samuel Iserhoff acted as their interpreter at Marten Falls, while Cree James Linklater performed this duty at Fort Albany.<sup>32</sup> At Moose Factory, the official report reads, “Bishop Holmes kindly interpreted the address of the commissioners,” but Stewart reveals it was George McLeod, a Cree “halfbreed” refused admission to the treaty, who did most of the interpreting. McLeod was “assisted occasionally by Bishop Holmes and [HBC officer] Mr. Mowat.”<sup>33</sup> One of the New Post Cree signatories to the treaty, John Luke, served as interpreter at New Post.<sup>34</sup>

Unable to communicate with the

Ojibway and Cree, the commissioners could only rely on what their various interpreters reported, and what they could observe. They frequently observed reticence or quiet behaviour in the presence of strangers, for these northern Aboriginal peoples placed a high value on non-interference and emotional control in public.<sup>35</sup> MacMartin misinterpreted this as a “stolid indifference characteristic of their race.”<sup>36</sup> Scott called them almost “taciturn,” and wrote of “the stoicism of the race.”<sup>37</sup> Stewart was surprised to see so little emotion (in his presence) when two Cree parents were reunited with their son, “a boy from English River post” who the commissioners had transported to Fort Albany: “They may have been pleased to see each other but they certainly did not show it by the slightest sign.”<sup>38</sup>

Scott noticed that the Ojibway greet-

<sup>31</sup> Scott, Stewart & MacMartin “Report (1905),” 6. MacMartin, “Diary,” 19 July. In 1905 Thomas Sinclair Ritch was a 26 year-old man of Aboriginal ancestry employed as a labourer at Fort Hope; he remained in the HBC service at Fort Hope until 1923, becoming Outpost Manager and then General Servant (HBCA biography).

<sup>32</sup> MacMartin, “Diary,” 25 July, 3 August. In 1905, Samuel R. Iserhoff was a twenty-nine year-old Post Master. Originally from Waswanapi, he worked at Albany and English River for six years before being posted to Marten Falls in 1901. After 1925 he was a teacher and Anglican missionary (HBCA Biography of Iserhoff, Samuel R. ‘A’).

<sup>33</sup> Scott, Stewart & MacMartin “Report (1905),” 9. Stewart, “Journal,” 9 August. McLeod was one of five “halfbreeds” who were refused treaty at Moose Factory. See Long *The Half-Breed Question* and “Treaty No. 9 and Fur Trade Company Families.”

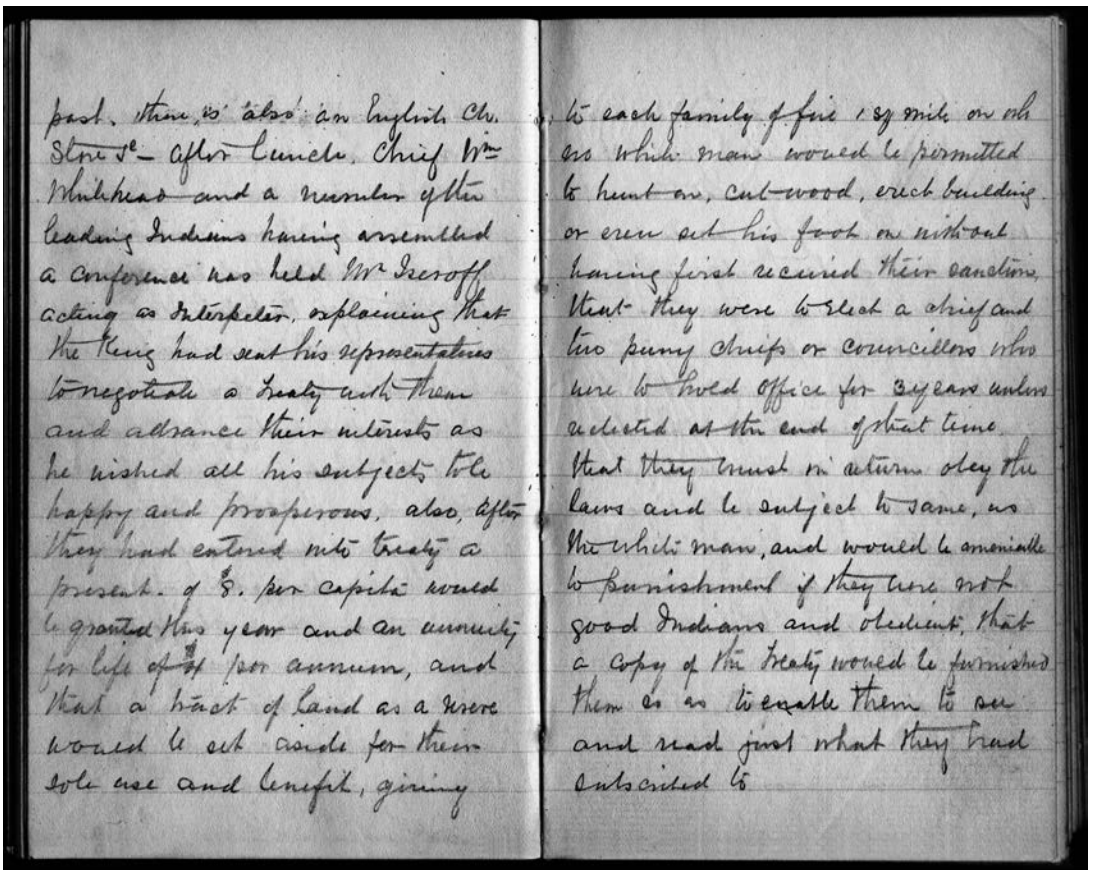
<sup>34</sup> Stewart, “Journal,” 21 August. At Abitibi it was HBC trader George Drever. Scott, Stewart & MacMartin “Report (1905),” 10.

<sup>35</sup> Richard J. Preston, “Reticence and Self-Expression: A Study of Style in Social Relationships” in *Papers of the 7th Algonquian Conference*, ed. William Cowan (Ottawa: Carleton University, 1976), 450-94 and his *Cree Narrative: Expressing the Personal Meanings of Events*, 2nd ed. (Montreal: McGill-Queen’s University Press, 2002), 11; C.C. Brant, “Communication Patterns of Indians – Verbal and Non-Verbal” *Education and Research* (University of Western Ontario, London Psychiatric Hospital) 2:6 (1979), 1-15.

<sup>36</sup> MacMartin, “Diary,” 19 July.

<sup>37</sup> Scott, “Last of the Indian Treaties,” 581, 577.

<sup>38</sup> They carried another “boy” of 14 from Dinorwic to Osnaburgh. Stewart, “Journal,” 1 August.



Pages 2-3 of Daniel George MacMartin's "Diary of a Journal to N.W.T. in 1905." Though he was appointed by the federal government, MacMartin, a miner from Perth and the son of a lawyer, represented the province of Ontario on the commission. His diary or journal often contradicts the official record and fills in many gaps. Queen's University Archives, Miscellaneous Collection 2999.

ing "Boow jou" (borrowed from the French bon jour) gave way at Fort Albany to the Cree "Wat che" (borrowed from Shakespearean "what cheer"), but he and his fellow commissioners had no

understanding of either language and could not attest that Scott's oral explanations of Treaty No. 9 were accurately conveyed to the Ojibway and Cree.<sup>39</sup> Indeed, Scott later admitted that, even

Compare this with anthropologist A.I. Hallowell's description of a similar situation. When an old woman's "favorite son returned from boarding school after three years' absence," Hallowell saw him "step off the boat and walk past his mother with scarcely a greeting, while she stood there impassively. Since I was living with this family, however, I knew about the excited talk that anticipated that homecoming and continued long after we were all finally settled in the kitchen. Yet one would have gained no clue to the emotion that seethed beneath the surface from the behavior observed on the dock. In public the pattern is always one of severe restraint under such circumstances." *Culture and Experience* (Philadelphia: University of Pennsylvania Press, 1955), 146.

<sup>39</sup> Stewart mentions "many bon jours from the Inds" at Osnaburgh, "Journal," 13 July. Scott, "Last of the Indian Treaties," 581..

if the words of the written treaty could have been interpreted, the Cree and Ojibway would never have understood the concepts, so he misled them:<sup>40</sup>

They were to make certain promises and we were to make certain promises, but our purpose and our reasons were alike unknowable. What could they grasp of the pronouncement on the Indian tenure which had been delivered by the law lords of the Crown, what of the elaborate negotiations between a dominion and a province which had made the treaty possible, what of the sense of traditional policy which brooded over the whole? Nothing. So there was no basis for argument. The simpler facts had to be stated, and the parental idea developed that the King is the great father of the Indians, watchful over their interests, and ever compassionate. After gifts of tobacco, as we were seated in a circle in a big room of the Hudson's Bay Company, the interpreter delivered this message.

This deception does not seem to have mattered to Scott, so long as he convinced the Ojibway and Cree to sign the all-important written treaty. For him, "the sacredness of treaty promises" meant that "[w]hatever has been written down and signed by king and chief, both will be bound by so long as 'the sun shines and the water runs.'"<sup>41</sup> If there was "no basis for argument," neither was there any basis for agree-

ment if what was explained orally did not reflect what was written down and signed.

### *Treaty Making*

The treaty party's arrival would sometimes be heralded by the hoisting of flags at the post and a volley of gunfire or cannon, indicating that they were important and powerful people.<sup>42</sup> A short distance from the post, the treaty party would raise a large Union Jack at the front of each canoe and line up their canoes side by side, the largest in the centre, to maximize the visual impression.<sup>43</sup> Soon after arriving, the commissioners would arrange, through the HBC official in charge of the post, a meeting with "representative men to whom the treaty might be explained."<sup>44</sup> These meetings usually began with "solemn hand-shaking" and then "gifts of tobacco" were distributed, a blending of European and Aboriginal protocols.<sup>45</sup>

Treaty making in 1905 typically involved several activities: meeting with representatives to explain the treaty, signing the treaty, paying gratuities and distributing identification cards, holding elections and presenting a flag, making speeches, feasting, meeting the doctor, and choosing a reserve. Besides this, there were often church services.<sup>46</sup> And,

<sup>40</sup> Scott, "Last of the Indian Treaties," 578.

<sup>41</sup> Scott, "Last of the Indian Treaties," 574.

<sup>42</sup> Scott, "Last of the Indian Treaties," 577; MacMartin, "Diary," 7-8 August.

<sup>43</sup> MacMartin, "Journal," 6, 11 July.

<sup>44</sup> Scott, Stewart & MacMartin "Report (1905)," 5-6, 8.

<sup>45</sup> Scott, "Last of the Indian Treaties," 577-8.

<sup>46</sup> E.g. "Inds held service this Evg." Scott, "Journal," 12 July.

if a fiddler could be found, there would also be all-night dances.<sup>47</sup> We learn how the treaty was explained from Scott's formal addresses to the Ojibway and Cree representatives and from further clarifications provided in the discussions that followed.

### *Explaining the Treaty*

A careful explanation of the treaty was essential, for the commissioners had no latitude to change its provisions. "The terms of the treaty were fixed" and they "were not allowed to alter or add to them in the event of their not being acceptable to the Indians."<sup>48</sup> If at times the commissioners' official report provides few details of how the treaty was explained, at other times it and the commissioners' private journals flatly contradict the written provisions of Treaty No. 9. MacMartin's journal is especially helpful.

At Osnaburgh, the commissioners met with Missabay, Thomas Missabay, George Wahwaashkung, Kwiash, Nahokeesic, Oombash, David Skunk, John Skunk and Thomas Panacheese.<sup>49</sup> The official report states that "those nominated presented themselves and the

terms of the treaty were interpreted," but it gives no indication of how this was actually done.<sup>50</sup> MacMartin writes that "Mr. D.C. Scott . . . stated the object of our coming so long a distance to meet them, [with] Jim Swain as Interpreter, and having ordered a feast similar to that held yearly," but he provides none of the details that we will later come to expect in his descriptions of treaty making in the summer of 1905.<sup>51</sup>

MacMartin was not a career employee of the Department of Indian Affairs, like Scott and Stewart. Perhaps his conscience bothered him after witnessing the so-called negotiations at Osnaburgh. He had signed as an official witness, below a statement that said: "Signed . . . after having been first interpreted and explained." This lawyer's son knew that the text of the written treaty, which he would have carefully read before embarking on this summer adventure in northern Ontario, had not been fully interpreted and explained. Perhaps, before embarking for the north, he had discussed treaty making with former treaty commissioner Alexander Morris, who lived in Perth across the street from his father.<sup>52</sup> Whatever the reason,

<sup>47</sup> Stewart, "Journal," 12, 19, 25 July; 8, 10, 21, 31 August.

<sup>48</sup> Scott, Stewart & MacMartin "Report (1905)," 4.

<sup>49</sup> *The James Bay Treaty*, 21.

<sup>50</sup> Scott, Stewart & MacMartin "Report (1905)," 5.

<sup>51</sup> MacMartin, "Diary," 11 July. This could easily give rise to expectations of an annual treaty feast (but see explanation at Fort Albany in MacMartin, "Diary," 3 August). See James Morrison, "The Poet and the Indians: Duncan Campbell Scott Woos the Muse and Negotiates Treaty Number Nine," *The Beaver* 68,4 (August/September 1988), 16.

<sup>52</sup> James Morrison, e-mail communication with the author, 23 September 2005. See also Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories* (Toronto: Belfords, Clarke & Co., 1880; facsimile edition, Coles Publishing Company, 1979).

we are indebted to MacMartin for recording his observations.

We can only guess that Scott may have explained the treaty at Osnaburgh the way he explained it at Fort Hope. Indeed, a week later, at Fort Hope, the official report states, "The same course of procedure was followed as at Osnaburgh."<sup>53</sup> Scott simply writes, "signed Treaty in the morning," but fortunately we have MacMartin's account of how Treaty No. 9 was explained at Fort Hope to Yesno, George Namay, Wenangasie Drake, George Quisees, Moonias, Joe Goodwin, Abraham Atlookan, Harry Ooskinegish, Noah Neshinapais, John Ashpanaqueskum and Jacob Rabbit.<sup>54</sup> Scott explained, with Ritch interpreting,

that the King had sent the Commission to see how his people were and to enter into a Treaty with them, and that the King wished to help his subjects and see that they were happy and comfortable, giving them as a present this year \$8 per capita and an annuity for ever of \$4 per annum, also setting aside for their sole use and benefit a tract of land 1 square mile to each family of 5 that no white man should put his foot on without their permission.<sup>55</sup>

The following week, at Marten Falls,

the official report states, "The necessary business at this post was transacted" with "due explanation."<sup>56</sup> MacMartin gives us the details. With Iserhoff interpreting, Scott explained to William Whitehead, William Coaster, David Knapayswet, Ostamas Long Tom and William Weenjack that "the King had sent his representatives to negotiate a treaty with them and advance their interests as he wished all his subjects to be happy and prosperous."<sup>57</sup> Again, the gratuity, the perpetual annuity and the reserve were explained, along with election procedures. But here, the importance of obeying the laws, being "subject to same, as the white man," and avoiding "punishment if they were not good Indians" were also emphasized.<sup>58</sup>

A few days later, at English River, there was no meeting with representatives. There were few Crees at the post, the trip up the Kenogami had been difficult, the post itself was deplorable (the HBC clerk's house "little more than a dog kennel"), and the treaty party was eager to push on as the summer was nearly over.<sup>59</sup> The official report says, "it did not take long to explain to the Indians the reason why the commission

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<sup>53</sup> Scott, Stewart & MacMartin "Report (1905)," 6.

<sup>54</sup> Scott, "Journal," 19 July. MacMartin, "Diary," 20 July.

<sup>55</sup> MacMartin, "Diary," 19 July.

<sup>56</sup> Scott, Stewart & MacMartin "Report (1905)," 7. See also Stewart, "Journal," 25 July. Scott writes, "Made Tr. & paid Indians"; "Journal," 25 July.

<sup>57</sup> *The James Bay Treaty*, 22.

<sup>58</sup> MacMartin, "Diary," 25 July. Stewart adds that interpreter Iserhoff, a Cree from northern Quebec, "had not had many opportunities of meeting with whitemen and seemed hardly to know just how he should act under the circumstances." Stewart, "Journal," 25 July.

<sup>59</sup> Stewart, "Journal," 27 July.

was visiting them.”<sup>60</sup> Stewart writes that the terms of the treaty were “fully explained to them.”<sup>61</sup> MacMartin provides no details of how this was done, if indeed it was.<sup>62</sup>

Scott’s journal provides scant details of what transpired at Fort Albany: “Arrived at Post 9.30 Very cold. Made Treaty.”<sup>63</sup> The official report simply states that “an interesting and satisfactory conversation followed. The explanations that had been given at the other points were repeated.”<sup>64</sup> MacMartin again provides the information we seek. After lunch, “the leading Indians not absent” (Charlie Stephen, Patrick Stephen, David George Wynne, Andrew Wesley, Jacob Iahtail, John Wesley, Xavier Bird, Peter Sackaney, William Goodwin and Samuel Scott) met in a room at the HBC post, where D.C. Scott “explained to them thro Interpreter James Linklater that the King had sent his representatives to enter into Treaty with them as he wished all his subjects both whites and Indians to be happy and prosperous.” Commissioner Scott explained the reserve, the treaty money that they would receive as soon as the treaty was signed, and the feast. With “so many of their band being absent,” elections were postponed until 1906, at which time their chief “would be given a flag wh.

he was to fly on all occasions when visitors or Gov’t officials visited his camp.” This Union Jack would be passed to the next chief at the end of his three-year term.<sup>65</sup>

At Moose Factory, the official report says nothing of how the treaty was explained to Simon Smallboy, George Tappaise, Henry Sailor, John Nakogee, John Dick, Simon Quatchegan, John Jeffries, Fred Mark, Henry Utappe and Simon Cheena.<sup>66</sup> Once again, MacMartin’s journal fills in the gaps. They met in a room over the HBC storehouse, where Scott explained, through interpreter McLeod, “that the King had sent his representatives to them to make a Treaty, that he wished them to be happy and prosperous and that if they entered into Treaty they would be protected.” He explained the treaty money, the feast, the reserve, the election and the flag (“a badge or sign of authority [which] was to be transferred”). For the first time, finally realizing the importance of these issues, Scott explained at the outset that the Cree would not be “obliged to live on [their reserve] until they felt inclined” and “could follow their custom of hunting where they please.” And here, for the first and only time, schooling was mentioned, perhaps at the request of Bishop Holmes. The

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<sup>60</sup> Scott, Stewart & MacMartin “Report (1905),” 7.

<sup>61</sup> Stewart, “Journal,” 29 July.

<sup>62</sup> MacMartin, “Diary, 29 July.

<sup>63</sup> Scott, “Journal,” 3 August.

<sup>64</sup> Scott, Stewart & MacMartin “Report (1905),” 8.

<sup>65</sup> *The James Bay Treaty*, 22. MacMartin, “Diary,” 3 August.

<sup>66</sup> *The James Bay Treaty*, 23.



Cree were informed that “when they were ready for same, schools would be established for the purpose of educating their children.”<sup>67</sup>

The official report simply states, “The treaty was concluded” at New Post.<sup>68</sup> MacMartin explains that Scott, through interpreter and treaty signatory John Luke, explained the money, reserve, election, flag and feast to Angus Weenusk and William Gull.<sup>69</sup> The Union Jack was the chief’s “emblem

As at Moose Factory, it was apparently explained at the outset that they “were not obliged to live on” their reserve, but would be “allowed as of yore to hunt and fish where they pleased.”<sup>70</sup>

### *Discussing the Treaty.*

After Scott’s interpreters had explained Treaty No. 9, the Ojibway and Cree representatives were asked to reply. They “were . . . told that it was the desire of the commissioners that any point

on which they required further explanations should be freely discussed, and any questions asked which they desired to have answered” (Osnaburgh), “asked if they had anything to say” (Fort Hope), “asked if they had any reply” (Marten Falls), “asked if they had anything to say in return” (Fort Albany), “if they had anything to say” (Moose Factory, or

“if they wished to ask any questions or say anything in reply” (New Post).<sup>71</sup> They could receive clarification if any-



*Treaty 9 family at Moose Factory(?), circa 1910-20. Courtesy of the Thunder Bay Historical Museum Society 990.37.71*

of office and reminder that he and his band had agreed to become good citizens, and obey the laws of the land.”

<sup>67</sup> MacMartin, “Diary,” 9 August.

<sup>68</sup> Scott, Stewart & MacMartin “Report (1905),” 9.

<sup>69</sup> *The James Bay Treaty*, 23.

<sup>70</sup> MacMartin, “Diary,” 21 August. Stewart suggests that this was (also) a discussion point: “As usual the point on which the Indians desired full information was as to the effect the treaty would have on their hunting and fishing rights.” Stewart, “Journal,” 21 August.

<sup>71</sup> Scott, Stewart & MacMartin “Report (1905),” 5. MacMartin, “Diary,” 19, 25 July, 3, 9, 21 August.

thing about the treaty (as it had been orally explained) was unclear, but rejecting it or modifying it were not options.

At all of the meetings, the primary concern of representatives, despite the commissioners' explanations, was whether they would be able to continue to survive from the resources of their traditional territories. For their survival required territories much greater than the treaty's one square mile per family of five.<sup>72</sup> Two issues had to be resolved: what was the purpose of this reserve, and how would their traditional harvesting practices be affected? At the start of their summer adventure, the commissioners seem to have been unaware of the importance of these issues, although identical concerns had been raised during the Treaty No. 8 deliberations six years earlier.<sup>73</sup>

The commissioners expected some dissatisfaction from the Osnaburgh Ojibway representatives concerning the terms of the new treaty. Treaty No. 9 would provide perpetual annuities of only four dollar per person, not the five dollars of their Treaty No. 3 neighbours, and no farm tools, seed, ammunition or cattle would be distributed.<sup>74</sup> One of the commissioners' crewmen, Oombash, was among the nine Osnaburgh

representatives and several of the other crew members were associated with Osnaburgh as well.<sup>75</sup> They were mobile people and some of them would have had opportunities over the preceding decades to hear from the Ojibway at Frenchman's Head and Lac Seul about the 1873 treaty and its impacts.

At Osnaburgh, the commissioners' official report states that blind

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

Scott reassured Missabay and the other Osnaburgh representatives "that their fears in regard to both these matters were groundless, as their present manner of making their livelihood would in no way be interfered with."<sup>76</sup> Stewart confirms that Scott promised "they could continue to live as they and their forefathers had done" but he maintains that a condition was added: "they could [only] make use of any lands not disposed of by the government." With this explanation, Stewart reports, "they appeared to be satisfied."<sup>77</sup> If the Ojibway (and Cree) could continue to hunt

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<sup>72</sup> Regina Flannery and Mary Elizabeth Chambers, "John M. Cooper's Investigation of James Bay Family Hunting Grounds, 1927-1934" *Anthropologica* N.S. 18:1-2 (1986), 108-44.

<sup>73</sup> Dennis F.K. Madill, *Treaty Research Report: Treaty Eight* (1899) (Ottawa: Treaties And Historical Research Centre, 1986).

<sup>74</sup> Scott, Stewart & MacMartin "Report (1905)," 5.

<sup>75</sup> Scott, "Last of the Indian Treaties."

<sup>76</sup> Scott, Stewart & MacMartin "Report (1905)," 5.

<sup>77</sup> Stewart, "Journal," 11 July.

and fish as they had for countless generations, there would be no restrictions; they would not be limited to whatever territory was left over after the government gave what it wanted to white men. The commissioners' careful use of the word "privileges," in English a code for the Crown's right to regulate or restrict, would have been lost, even if it had been literally translated, on Aboriginal people who relied upon the resources of their lands and waters.

But if the commissioners hoped to sign the treaty that night, they were in for a surprise. Having received Scott's reassuring answer to Missabay's question, the official report states that the Osnaburgh Ojibway "talked the matter over with among themselves [i.e. in Ojibway], and then asked to be given until the following day to prepare their reply. This request was at once acceded to and the meeting adjourned."<sup>78</sup> MacMartin's journal puts a different spin on it: "the Indians departed, shortly afterwards sending word through the Agent Mr. Williams that they would give a reply the following morning."<sup>79</sup> (Evidently the Ojibwa representatives did not have the authority to agree. Like the Cree, they valued consensus and their "chiefs" had no real authority.) The Osnaburgh rep-

resentatives did not report back early the next morning, but waited until the HBC's noon bell rang, announcing the start of the celebratory feast.<sup>80</sup> Food for the feast was distributed in advance of the discussions, further evidence that rejecting the treaty was not an option.

Then, according to the official account, the Ojibway representatives

signified their readiness to give their reply, and the meeting being again convened, the chief [Missabay] spoke, stating that full consideration had been given to the request . . . and they were prepared to sign, as they believed that nothing but good was intended. The money that they would receive would be of great benefit to them, and the Indians were all very thankful for the advantages they would receive from the treaty. The other representatives . . . signified that they were of the same mind as Missabay.<sup>81</sup>

MacMartin again puts a different spin on what happened. Missabay may have felt he had no choice, for he replied, "Whatever you say we will do" and he told the other Ojibway representatives

that the white men were their friends, were good, had assisted them giving money and lands for their benefit, that the H.B.[C.] was good to them and that they could not get along without the white men and they must be good and obey the laws, they were poor and needed assistance.<sup>82</sup>

<sup>78</sup> Scott, Stewart & MacMartin "Report (1905)," 5. See also Stewart, "Journal," 11 July.

<sup>79</sup> MacMartin "Diary," 11 July. Williams was a trusted ally of the Ojibway and, in 1901, he had written a petition on their behalf, asking for this treaty. The petition stated that the Ojibway were "desirous of releasing our rights in the lands" (undoubtedly Williams' concept, not theirs) and "having the benefits of the Annuity Grant extended to us." It complained of prospecting on their lands and stated that "white men are already building upon land which we desire to retain"; Long, *The Indian Petitions*, 7, 10-11.

<sup>80</sup> MacMartin, "Diary," 12 July. Stewart claims they appeared next morning; "Journal," 12 July.

<sup>81</sup> Scott, Stewart & MacMartin "Report (1905)," 5. See also Stewart, "Journal," 12 July.

<sup>82</sup> MacMartin, "Diary."

These deferential and respectful comments are consistent with traditional rhetorical styles.<sup>83</sup> If the Ojibway and Cree thought of “laws,” the only written laws they might have known were the biblical commandments introduced to them by missionaries over the previous sixty years. Most of their own laws were values about sharing, cooperation and other culturally proper behaviours so essential to their survival and wellbeing—literally, the laws of the land.

At Fort Hope, the first Ojibway representative to speak was Yesno, who stated “that he was willing to enter into Treaty and advised the others to act likewise.”<sup>84</sup> He “told the Indians that they were to receive cattle and implements, seed-grain and tools,” as in Treaty No. 3, but the commissioners quickly corrected this misunderstanding. It was explained that the Fort Hope Ojibway “could not hope to depend upon agriculture as a means of subsistence; [and] that hunting and fishing, in which occupations they were not to be interfered with, should for many years prove lucrative sources of revenue.”<sup>85</sup>

The next speaker was more suspicious. The official report states that

Moonias, one of the most influential chiefs . . . said that ever since he was able to earn anything, and that was from the time he was very young, he had never been given something for nothing; that he always had to pay for everything that he got, even if it was only a paper of pins. ‘Now,’ he said, ‘you gentlemen come to us from the King offering to give us benefits for which we can make no return. How is this?’<sup>86</sup>

MacMartin confirms Moonias’ suspicion, but adds that the man wished to “consult with” his “aunts and cousins.”<sup>87</sup> An Oblate priest came to Scott’s aid. The official report says,

Father Fafard thereupon explained to [Moonias] the nature of the treaty, and that by it the Indians were giving their faith and allegiance to the King, and for giving up their title to a large area of land of which they could make no use, they received benefits that served to balance anything that they were receiving.<sup>88</sup>

Stewart states that Fafard explained the Ojibway would “surrender the title to their unused land.”<sup>89</sup> The commissioners had once again guaranteed that these Ojibway could continue to use their traditional lands to hunt and trap, fish and gather as they always had, without fear of interference. Their mobile hunting

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<sup>83</sup> Mary Black Rogers, “Ojibwa Power Interactions: Creating Contexts for ‘Respectful Talk’” in *Native North American Interaction Patterns*, ed. Regna Darnell and Michael K. Foster (Hull: National Museums of Canada, 1988), 44–68, and her “Varieties of ‘Starving’: Semantics and Survival in the Subarctic Fur Trade, 1750–1850” *Ethnohistory* 33:4 (1986): 353–83.

<sup>84</sup> MacMartin omits Yesno’s mention of farm equipment, cattle and seed. “Diary,” 19 July.

<sup>85</sup> Scott, Stewart & MacMartin “Report (1905),” 6.

<sup>86</sup> Scott, Stewart & MacMartin “Report (1905),” 6.

<sup>87</sup> MacMartin, “Journal,” 19 July.

<sup>88</sup> Scott, Stewart & MacMartin “Report (1905),” 6.

<sup>89</sup> Stewart, “Journal,” 9 July.

life required continued access to the land, and ownership was a foreign concept that could not be interpreted. They could not have understood Fafard's concept of giving up their title to the land they used, let alone the land they did not use.

According to the official report, the Fort Hope representatives were also told that by signing the treaty they pledged themselves not to interfere with white men who might come into the country surveying, prospecting, hunting, or in other occupations; that they must respect the laws of the land in every particular, and that their reserves were set apart for them in order that they might have a tract in which they could not be molested, and where no white man would have any claims without the consent of their tribe and of the government.<sup>90</sup>

It must have seemed confusing, assuming that the interpreters conveyed what the commissioners actually said. The Ojibway and Cree couldn't be "interfered with" on their traditional lands, but they might be "molested," and the government might only protect them on their reserves. If signing the treaty gave the government a free hand to make "laws," the promises made to Moonias and Yesno, and to Missabay before them, were deliberately misleading.

MacMartin reports that the discussion was conclusive: "after an explanation, [Moonias] along with the others

signified his assent."<sup>91</sup> Stewart's journal reads "Several of the Indians spoke expressing their pleasure that they were to receive annuity money and also at the fact that they were to have lands reserved for their own use."<sup>92</sup>

At Marten Falls, MacMartin writes that the "chief said he was ready to accept the terms as offered and his people were also willing,"<sup>93</sup> although after the signing he would publicly express his dissatisfaction with restrictions imposed on their selection of a reserve. At English River, where there was no meeting with specific representatives, there was not much discussion. The official report states,

The terms of the treaty having been fully explained, the Indians stated that they were willing to come under its provisions, and they were informed that by the acceptance of the gratuity they would be held to have entered treaty, a statement which they fully realized.<sup>94</sup>

MacMartin indicates that gratuities were paid and a reserve allocated, but he mentions no discussion of the treaty.<sup>95</sup>

At Fort Albany, "Wm. Goodwin said that they were very glad to accept the terms as stated, that the King was good & that his present would help them very much, then said we are ready to sign the Treaty."<sup>96</sup> And at Moose Factory, MacMartin reports,

<sup>90</sup> Scott, Stewart & MacMartin "Report (1905)," 6. See also Stewart, "Journal," 9 July.

<sup>91</sup> MacMartin, "Diary," 19 July.

<sup>92</sup> Stewart, "Journal," 19 July.

<sup>93</sup> MacMartin, "Diary," 25 July.

<sup>94</sup> Scott, Stewart & MacMartin "Report (1905)," 7.

<sup>95</sup> MacMartin, "Diary," 29-31 July.

<sup>96</sup> MacMartin, "Diary," 3 August.

Fred Mark replied that they had long wished to enter into Treaty, that they concurred in all that had been said, that it was right and reasonable, that they were satisfied that they would be better cared for and protected by the King [than by the HBC?], that they would obey his laws and be good and dutiful subjects, that under the laws their children would be protected and properly educated, that they thanked the King for the present offered as they were poor & it would help them.<sup>97</sup>

The official report confirms that the Moose Factory Cree representatives “expressed their perfect willingness to accede to the terms and conditions.” It states that Fred Mark

said the Indians were all delighted that a treaty was about to be made with them; they had been looking forward to it for a long time, and were glad that they were to have their hopes realized and that there was now a prospect of law and order being established among them.

It adds that John Dick spoke in favour of establishing a (residential) school “wherein their children might receive an education” and that George Tappaise expressed appreciation for the money, saying that it would help the “poor and sick.”<sup>98</sup>

At New Post, MacMartin states,

<sup>97</sup> MacMartin, “Diary,” 9 August.

<sup>98</sup> Scott, Stewart & MacMartin “Report (1905),” 9. See also Stewart, “Journal,” 9 August. Scott simply writes, “Made Treaty in the morning”; “Journal,” 9 August.

<sup>99</sup> MacMartin, “Diary,” 21 August.

<sup>100</sup> Stewart, “Journal,” 21 August. As noted earlier, Stewart indicates that they wished to be assured that they could continue to hunt.

<sup>101</sup> Scott, “Last of the Indian Treaties,” 574. See also Macklem, “The Impact of Treaty 9 on Natural Resource Development, 99-134. Rhonda M. Telford, “‘The Sound of the Rustling of the Gold is Under My Feet Where I Stand; We Have a Rich Country’: A History of Aboriginal Mineral Resources in Ontario” (Ph.D. diss., University of Toronto, 1996); and Janet M. Armstrong, “A Political Economy of Native Marginalization. A Study of the Appropriation of Aboriginal Water Rights: The Mishkee-

“Angus Weenusk replied that they accepted the terms as stated and did not wish to throw obstacles in the way. They were satisfied.”<sup>99</sup> Stewart confirms that they “they expressed much pleasure and their willingness to sign.”<sup>100</sup>

The oral explanations may have been confusing to the Ojibway and Cree, but there was no confusion in Scott’s mind. The signing of this treaty would secure to the Crown the Indian title to “much arable land, many million feet of pulpwood, untold wealth of minerals, and unharnessed water-powers sufficient to do the work of half the continent.”<sup>101</sup>

## SIGNING, CELEBRATING, AND OTHER MATTERS

Once the explanations were given, the treaty was usually “signed” at once. The representatives who signed at Osnaburgh, Fort Hope, Marten Falls, Fort Albany, and New Post apparently made the mark of a cross, the religious significance of which would have confirmed the solemnity of the oral promises which had been made. At Moose Factory, four made the mark of a cross while five signed using the Cree syllabic characters introduced by missionaries half a century earlier. All the crosses

look identical.<sup>102</sup> Fort Albany Cree elder Marius Spence explained that the commissioner (Scott?) held the pen and each signatory touched its end with a finger tip.<sup>103</sup> Two of the signatories (Katchang of Fort Hope and Esau Omakees of New Post) actually arrived late, missing the explanation and discussion.<sup>104</sup>

Following the signing, gratuities were paid. Some 1,617 Ojibway and Cree received these gratuities during the summer of 1905, but absentees would inflate this number to 2,047 when Inspector Joseph George Ramsden visited the same posts in the summer of 1906.<sup>105</sup> Many Cree and Ojibway were absent from the posts during treaty making. Some were paid along the route, and others did not meet the treaty party until the following summer, or even later. For most northern Ontario Ojibway and Cree, this was their first experience with paper currency.<sup>106</sup>

Payment of the gratuities necessitated careful record keeping, and pay lists had to be prepared before distribution of the money began. Upon the urging of the Hudson's Bay Company, the federal government had decided at

the last minute – and after the commissioners had left Ottawa – to admit Indians who traded along the Albany River but hunted in the North West Territories, north as far as the imaginary line AB shown on the map accompanying this article.<sup>107</sup> Since the Albany River served as the boundary between Ontario and the Northwest Territories, in 1905, these lists also had to distinguish those who hunted south of the Albany River (“Ontario Indians”) from those who hunted to the north (“Dominion Indians”), for the province would only assume the costs of the former. Movement, intermarriage and errors meant that, in future years, federal officials had to balance the ledgers by transferring individuals from one pay list to another, and sometimes from one treaty to another. Names on the pay lists were listed in alphabetical order, assigning each family a number and indicating the name of the male household head, the number of men, women, boys, girls, and totals. The lists were prepared with help from the local traders and sometimes the clergy.

Along with the cash, each male

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gogoming First Nation” (Ph.D. diss., Queen’s University, 2001).

<sup>102</sup> Ontario Archives, Miscellaneous Collection 1905 # 13OS James Bay Treaty (No. 9).

<sup>103</sup> Long, “The Treaty Made at Fort Albany According to Cree Tradition.”

<sup>104</sup> Katchang was reluctant to sign and did not do so until the following day. MacMartin, “Diary,” 20 July; Scott, Stewart & MacMartin “Report (1905),” 10. Omakees is misspelled Omakeess in this report.

<sup>105</sup> Stewart, “Journal,” 3, 5 August; MacMartin, “Diary,” 10 August. “Inspector J.G. Ramsden Treaty 9,” LAC RG 10 v. 3097, file 297,171.

<sup>106</sup> For the HBC’s barter system see J.W. Anderson, *Fur Trader’s Story* (Toronto: Ryerson Press, 1961).

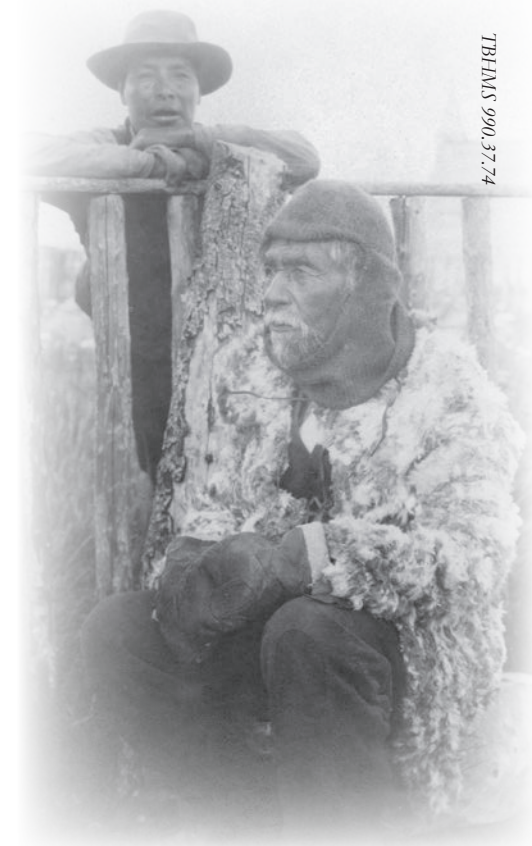
<sup>107</sup> The commissioners left Ottawa on 30 June 1905. The federal Order-in-Council which authorized them to admit Ontario Indians was dated 3 July. Three days later, on 6 July 1905, a second Order-in-Council allowed them to admit Indians north of the Albany River. See Morrison, *Treaty Research Report*, 47.

household head received a card or “ticket numbered for future use and identification,” for they were now involuntary wards in Canada’s Indian Affairs administration, a critical subtext of Treaty No. 9.<sup>108</sup> Even without a treaty, under the Indian Act of 1876 they were already “Indians” - and not “persons.”<sup>109</sup> Assimilation had been the goal of Canadian Indian policy for at least half a century. “[N]on-Indians determined who was an Indian” and Aboriginal people were considered primitive savages in need of civilization, pagan souls in want of Christian salvation.<sup>110</sup>

Feasting also meant an opportunity for public oratory intended for a wider audience, the many Ojibway and Cree who had not been involved in their representatives’ private discussions with the commissioners. These speeches confirm the First Nations representatives’ understanding of Treaty No. 9, show their traditional deference and respect, and express any lingering concerns. The feasts provided the commissioners with an opportunity to speak in a public forum, but apparently they did so just twice.

At Marten Falls, Stewart records that the chief “made a very sensible speech.”<sup>111</sup> But MacMartin contradicts

this when he reports that Chief Whitehead complained of restrictions on their choice of reserve, “pointing up and down the river, that they were be-



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ing cornered by not being allowed both banks of the river for miles to fish and hunt on but that they must accept what was offered from those who had given

<sup>108</sup> MacMartin, “Diary,” 19 July. See Ernie Epp, “Allies or Wards: Did the Indian Act Violate the Treaties of Canada With the Indians?” *Indigenous Learning. Proceedings From the First Biennial Aboriginal Peoples Conference*, eds. Sylvia O’Meara and Douglas A. West (Thunder Bay: Lakehead University, 1996), 91-110.

<sup>109</sup> *Indian Acts and Amendments 1868-1950*, 2nd ed. (Ottawa: Treaties and Historical Research Centre, 1981), 59; *The Historical Development of the Indian Act*, eds. John Leslie and Ron Maguire (Ottawa: Treaties and Historical Research Centre, 1978), 61

<sup>110</sup> John L. Tobias, “Protection, Civilization, Assimilation: An Outline History of Canada’s Indian Policy,” *Western Canadian Journal of Anthropology* 6:2 (1976), 13-30.

<sup>111</sup> Stewart, “Journal,” 25 July.



them presents and promised a feast for them.” He adds that

When it was explained to them that they could hunt and fish as of old and they were not restricted as to territory, the Reserve merely being a home for them where no white man could interfere or trespass upon, that the land was theirs for ever, they gladly accepted the situation and said they would settle the reserve question later on.<sup>112</sup>

At Fort Albany, Stewart says, “Speeches were made by several of the Indians, and were replied to by the commissioners. Those by the Indians expressed their thanks for the good treatment they had received from the representatives of His Majesty the King.”<sup>113</sup> We have no idea what the commissioners said in their reply.

While the food was being cooked and the gratuities distributed, Dr. A.G. Meindl of Mattawa visited each “Indian encampment,” examining the Ojibway and Cree at their tents and vaccinating the “women and children, but not the men, whose usefulness as workers might be impaired by sore arms.”<sup>114</sup> The Dominion Police Force constables hovered in the background, an imposing and intimidating presence.<sup>115</sup>

Finally, there were reserves to be

chosen, in most cases a straightforward transaction. But at two locations the commissioners had to once again explain the treaty. At Fort Hope, MacMartin reveals that the newly elected leaders wanted “a water frontage of 100 miles.” The commissioners “having again explained that a reserve was simply a home for them on which no white man could hunt or cut timber, or build without their permission and that 1 square mile per each family was the basis on which the size of the land would be allotted” and “that it was impossible to grant a tract of land of the dimensions asked for,” MacMartin reports that Chief Katchang “then said he was satisfied.”<sup>116</sup>

At Marten Falls, the official report states that a reserve was agreed upon “to the satisfaction of all.”<sup>117</sup> MacMartin confirms that it was chosen in less than half an hour, but reports that this happened only after the Ojibway representatives twice attempted to secure a much larger area. Soon after the feast “the chief and his councillors came to our quarters saying that they wanted both banks for 50 miles down river as a hunting reserve.” When it was “put *forcibly* before them, that it was a home

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<sup>112</sup> MacMartin “Diary,” 25 July.

<sup>113</sup> Stewart, “Journal,” 5 August.

<sup>114</sup> Stewart, “Journal,” 30 June, 8 September; MacMartin, “Diary,” 13, 21, 25, July; 6 August; Scott, “The Last of the Indian Treaties,” 579; Meindl to the Honourable Supt. General, Indian Affairs, 12 September 1905, LAC RG10 v. 3033 file 235,225-1.

<sup>115</sup> See, for example, Stewart, “Journal,” 1 August.

<sup>116</sup> MacMartin, “Diary,” 20 July.

<sup>117</sup> Scott, Stewart & MacMartin “Report (1905),” 7, 11. Stewart, “Journal,” 25 July. Scott simply writes, “arranged reserve”; “Journal,” 20 July.

for them that was being provided & not a hunting preserve and that they could hunt wherever they pleased,” the Ojibway leaders finally “signified their assent.” The matter was seemingly resolved, for “after the usual handshaking [the representatives] took their departure perfectly satisfied.”<sup>118</sup>

## TWO TREATIES

The commissioners confidently assert in their official report that the written treaty was perfectly understood by the northern Ojibway and Cree:<sup>119</sup>

Throughout all the negotiations we carefully guarded against making any promises over and above those written in the treaty which might afterwards cause embarrassment to the governments concerned. No outside promises were made, and the Indians cannot, and we confidently believe do not, expect any other concessions than those set forth in the documents to which they gave their adherence.

But when MacMartin writes that William Goodwin at Fort Albany would “accept the terms *as stated*,” that Fred Mark at Moose Factory “concurred in all that had been *said*,” and that Angus Weenusk at New Post “replied that they accepted the terms *as stated*,”<sup>120</sup> he was making a crucial observation. The Cree

and Ojibway had oral cultures, and had made oral agreements among themselves for millenia. For two centuries they had concluded oral agreements during the fur trade, using European symbols like the Union Jack and traditional Aboriginal practices like feasting, speech-making and gift-giving.<sup>121</sup>

Since Treaty No. 9 was not written in Ojibway or Cree syllabics, they would have to wait until they learned to read the English language before they could actually read what Treaty No. 9 said.<sup>122</sup> The commissioners’ report and their personal journals make no mention of actually distributing “a copy of the treaty . . . for the use of the band” in 1905, as required in the written version of the treaty.<sup>123</sup> MacMartin states that the Marten Falls Ojibway were promised that “a copy of the Treaty would be furnished them so as to enable them to see and read just what they had subscribed to,” but these would not be distributed until a year later. The commissioners did not have copies when they left Ottawa because an agreement with Ontario was not signed until three days after they departed the national capital. Inspector J.G. Ramsden was given 50 copies to distribute to “the Chiefs and Headmen” in the summer of 1906.<sup>124</sup> When

<sup>118</sup> MacMartin, “Diary,” 25 July, emphasis mine.

<sup>119</sup> Scott, Samuel Stewart and MacMartin, “Report (1905),” 10-11.

<sup>120</sup> MacMartin, “Diary,” 3, 9 and 21 August, emphases mine.

<sup>121</sup> Long, “No Basis for Argument?” See also the photographs in *Native Studies Review* 6:2 (1990), 99-102.

<sup>122</sup> Some Anglican Crees at Fort Albany learned about the written treaty from a clergyman, a quarter of a century later; Long, “The Treaty Made at Fort Albany.”

<sup>123</sup> *The James Bay Treaty*, 20.

<sup>124</sup> MacMartin, “Diary,” 25 July. LAC, “Inspector Ramsden,” J.D. McLean, Secretary, to Ramsden, 2 May 1906.

they signed Treaty No. 9 in 1905, the northern Ojibway and Cree representatives “accepted the terms as stated,” not the treaty as printed.

If we look only at the text of the treaty itself, Treaty No. 9 removed the impediment of Indian title to the land, freeing it for state projects.<sup>125</sup> The First Nations would give up all their rights but would receive certain benefits and could continue to hunt and fish, subject to state regulation.<sup>126</sup> They were obliged to obey, and to help enforce, the laws of Canada and they agreed not to molest anyone traveling through their territories. But the oral explanations mentioned in the commissioners’ writings are quite different. We have seen that the commissioners relied on a different interpreter at each HBC post, and that their explanations were not identical at each location. What they intended to say to the Ojibway and Cree was that the commissioners had been sent by the King to inquire of the First Nations’ wellbeing, to enter into or negotiate or make a treaty with them, to help them (and perhaps whites as well) to be happy and comfortable or prosperous, to advance their interests or protect them, to give them each a gift of \$8 and a perpetual annuity of \$4, to hold elections, to give them a reserve (on which they need not live), a Union Jack as a symbol of the Crown’s authority, and a one-time feast.

No white man could enter or build on their reserve without the First Nation’s permission (and perhaps that of the government) and they could not be molested there. They were sometimes told to obey the law and avoid punishment by being good Indians, whatever those things meant, and to abstain from alcohol. They were sometimes told not to interfere with white men who entered their territories. They were assured that they could follow their custom of hunting and fishing, wherever they pleased, without interference, and were told that they should make a good living from that for many years. But was this restricted to lands that the government did not require, or was it on lands that the Ojibway and Cree did not need? Were hunting and fishing “privileges” or were they “rights”?

The commissioners’ oral explanations clearly contradicted the signed treaty document. They reveal no willingness to actually negotiate with the Cree and Ojibway, although the First Nations did attempt to do so, ensuring that their hunting and fishing were protected and clarifying the purpose of the reserves. On the upper Albany River, the Ojibway tried to secure larger tracts of reserve land and additional water frontage, concerns that would surface again in a few years when their reserves were surveyed.<sup>127</sup>

<sup>125</sup> See Kent McNeil, “The Meaning of Aboriginal Title” in Michael Asch ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver: University of British Columbia Press, 1997), 135-54.

<sup>126</sup> See discussion in Macklem, “Impact of Treaty 9 on Natural Resource Development.”

<sup>127</sup> E.g., LAC, “Survey of Treaty 9 Reserves,” William Galbraith to Secretary, 30 September 1909;



*The Hudson's Bay Company post, Moose Factory. Note the Commissioner's annuities tent in the background, 10 August 1905. Photographer unknown. Archives of Ontario, C 275-1-0-3 (S 7551), Duncan Campbell Scott fonds*

The surrender of Indian title was not explained in the commissioners' oral explanations of the treaty, unless we accept Stewart's account at Osnaburgh that "they could [only] make use of any lands not disposed of by the government."<sup>128</sup> Opening up the territory for state projects is not mentioned and, like surrendering the land, is contradicted by promises about hunting and fishing and the land being theirs forever. Without these key elements, Treaty No. 9 is little more than gifts and promises from the Crown, and expressions of goodwill from all parties – a treaty of peace and friendship. (This generally conforms with Cree elders' views of Treaty No. 9.<sup>129</sup>) Contradicting this goodwill, however, was the imposition of the Indian Act, and the commissioners' duplicity in seeking binding signatures on a document that the Ojibway and Cree could neither read nor

understand, even if they had been given copies as the written treaty promised. The treaty provided

the illusion that the northern Ojibway and Cree had consented to a system of wardship, as specific mechanisms like elections and reserves were introduced and the province prepared to proceed with its own development, tourism and conservation initiatives. (The Indian Act already applied and could have been implemented even without a treaty, as in northern Quebec and most of British Columbia.)

The commissioners' official and private records of what transpired in the summer of 1905 are in agreement with the written version of the treaty in the following areas: the commissioners represented the Crown; they met with representatives of the Ojibway and Cree; there were some expressions of goodwill; specified gratuities and annuities were promised; Union Jacks were presented to elected chiefs; schooling was promised (at Moose Factory); reserves

Galbraith's Diary 1909; Galbraith's Report dated 22 February 1910.

<sup>128</sup> Stewart, "Journal," 11 July.

<sup>129</sup> Long, "The Treaty Made at Fort Albany."

were decided upon; the Ojibway and Cree could continue to hunt and fish (with some restrictions in the written version); the First Nations were sometimes told to obey the law, abstain from alcohol and not interfere with whites.

## CONCLUSION

The written version of Treaty No. 9 signed in 1905 is very different from what was explained orally to the northern Ojibway and Cree, judging from the treaty commissioners' own writings. Despite representatives of the King who sometimes spoke forcefully to emphasize that the First Nations had no choice in the matter (and the intimidating presence of powerful officials, like police officers and clergy), the Ojibway and Cree only agreed to the treaty once they were assured that they would be free to hunt and fish as they had for countless centuries, and would not be forced to live on reserves.<sup>130</sup> There is no evidence that the Ojibway and Cree understood they were giving away ninety-nine percent of their land area, merely retaining small reserves. Half of northern Ontario may have been acquired through Treaty No. 9, more than a quarter it in 1905 alone, but it does not seem to have been knowingly or willingly ceded, released, surrendered or yielded up by the Ojibway and Cree. The commissioners confidently announced that

they had acquired 90,000 square miles south of the Albany River – plus another 30,000 square miles between that river and the line AB.<sup>131</sup>

Would the northern Ojibway and Cree have agreed to share their land if they had been asked? They had coexisted with fur traders for two centuries, in a symbiotic relationship that usually benefited both parties. They would undoubtedly have agreed to a modest expansion of this respectful partnership, and may somehow have understood or expected the treaty to be a confirmation of the fur trade model of coexistence, a modest sharing of the land and its benefits. Fred Mark's comment at Moose Factory, "that they were satisfied that they would be better cared for and protected by the King," suggests that some understood their long established relationship with the HBC was being replaced by a similar relationship with the King's government of Canada – something not incompatible with the commissioners' oral explanations, but definitely at odds with the written treaty and the Indian Act.<sup>132</sup>

If Treaty No. 9 intended to one day sweep the northern Ojibway and Cree from their ancestral lands, as in southern Ontario, it has so far failed to do so. In 1977, their leaders declared themselves "a free and sovereign nation."<sup>133</sup> In 2003, several of the Cree bands in

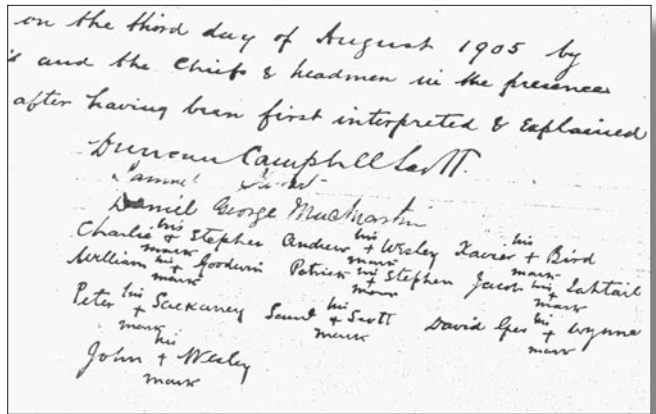
<sup>130</sup> See also Richard J. Preston, "A Sustainable Life Perspective: The Whiteman and the Cree View of the James Bay Treaty," 6 pp. ms. (1990).

<sup>131</sup> Scott, Stewart & MacMartin "Report (1905)," 10.

<sup>132</sup> MacMartin, "Diary," 9 August.

<sup>133</sup> "Nishnawbe-Aski, the People and the Land" [videorecording]. A co-production by Graeme

*A portion of page 4 of the James Bay Treaty (Treaty No. 9), showing signatures of Cree leaders and the three commissioners, 3 August 1905, Fort Albany. Archives of Ontario, Miscellaneous collection, Reference Code: F 775, (1905) Item 13. Available online at <[www.archives.gov.on.ca/english/exhibits/james\\_bay\\_treaty/big/p04james\\_bay\\_treaty.htm](http://www.archives.gov.on.ca/english/exhibits/james_bay_treaty/big/p04james_bay_treaty.htm)> accessed 3 July 2005.*



northern Ontario (now known as Mushkegowuk First Nations) asked the Ontario Superior Court of Justice to decide that several federal and provincial laws “destroy rather than protect” their “historic Mushkegowuk interest in their traditional homelands.”<sup>134</sup> A century after the summer of 1905, the First Nations show no signs of being swept aside, and the treaty commissioners’ own writings show that they were never clearly asked to “cede, release, surrender and yield up” their territory.

Memories of Treaty No. 9 are kept alive by elders who, like the late Hosea Wynne of Kashechewan, wonder if the understandings which have been passed down to them will be preserved by their descendents:

Many times we, the elders, discuss this and we tell the young people of today. But they do not believe, just like the government doesn't believe . . . But we don't forget. I

will not forget, for as long as I live. But I don't know what it will be like in the future, if what our grandfathers passed on to us will be kept, or will it be lost.<sup>135</sup>

If it is difficult to maintain memories of this event within Aboriginal communities, it is also a challenge for scholars to attempt to inform non-Aboriginal Canadians about Aboriginal issues. As Cairns observes, Aboriginal peoples comprise “less than 3 percent of the population, [and] the non-Aboriginal community is constantly [being] reinforced by new immigrants with their own pasts, and the community they join has only mild feelings of guilt and responsibility” for the historical legacy and present situation of Aboriginal peoples in Canada.<sup>136</sup>

Ferguson Ltd. with the Environment Program and the National Film Board of Canada, in co-operation with Grand Council Treaty 9 and the Department of Indian and Northern Affairs. Montreal: National Film Board, 1977.

<sup>134</sup> The Rupert's Land Protection Pledge Lawsuit: Questions and Answers <[www.mushkegowuk.ca/rupertsland.html](http://www.mushkegowuk.ca/rupertsland.html)>, accessed 25 August 2004.

<sup>135</sup> See Long, “The Treaty Made in 1905.”

<sup>136</sup> Alan C. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: University of British Columbia Press, 2000), 40.