

# Treaty of Peace and Friendship started 1760 concluded February 1763

## Treaty of Peace and Friendship 1760

This fact sheet gives some context to the Peace and Friendship Treaties in the Maritimes and Gaspé. They are important historical documents that can be viewed as the founding documents for the development of Canada. The Treaties were signed with Mi'kmaq, Maliseet and Passamaquoddy First Nations prior to 1779. Treaties are solemn agreements that set out long-standing promises, mutual obligations and benefits for both parties.

## Early History

The Mi'kmaq, Maliseet and Passamaquoddy have inhabited the Atlantic region for thousands of years. The three communities believe their ancestors have lived in this area since the beginning of time. Archaeologists have been able to confirm evidence of their occupation going back at least 2500 to 3000 years.

Before 1500 AD, the Mi'kmaq's main communities were on mainland Nova Scotia, Cape Breton Island, Prince Edward Island, along the coast and rivers of eastern New Brunswick, and the Gaspé Peninsula of eastern Quebec.

The Maliseet, on the other hand, lived along the St. John River Valley and its tributaries in central New Brunswick. Some families may also have hunted and fished on the south shore of the St. Lawrence River above Lake Temiscouata.

The Passamaquoddy lived along the St. Croix River and its tributaries though families appear to have lived mainly in coastal areas bordering on Passamaquoddy Bay. Though the Passamaquoddy are often identified as a separate and distinct people, British and French officials stressed the strong cultural and biological ties between the Passamaquoddy and the Maliseet.

Little is known about the history of the Maliseet, the Mi'kmaq and the Passamaquoddy before 1500. We do know that 500 to 3000 years ago, families from each communities lived in small family groupings and moved with the seasons in search of fish and game. The region's growing season was short but the Passamaquoddy, Mi'kmaq and Maliseet were able to rely on plentiful and reliable sources of fish and marine mammals to sustain themselves. Salmon, alewives (gaspereaux), herring, sturgeon, cod, mackerel and eels were some of the principal fish caught while seals and walrus were the main marine mammals.

From the early spring, families lived principally through fishing but beginning in October, more time was spent hunting game. During the cold weather months, families who had

been living together in one village divided into hunting groups, composed of several households.

Game served two main purposes. First, families depended on animals for a steady supply of meat for much of the winter. Moose were especially valued because of the animal's size. Smaller animals were hunted as well, including beaver, marten, fox, and otter. Second, skins and furs were used to make clothing while sinew was used in lieu of nails and porcupine quills to make snowshoes. [\[Note 2\]](#) Some animal products had multiple purposes. Besides being used for clothing, moose hides were also used to make the outer covering for a small canoe. [\[Note 3\]](#) The hide could also be used as a sail.

Like most pre-industrial people, the Mi'kmaq and Maliseet depended on nature's bounty to provide for themselves. Therefore, the Maliseet and Mi'kmaq stressed the importance of maintaining a close spiritual relationship with all living organisms, and especially fish and animal spirits. Like other aboriginal people, the Maliseet and Mi'kmaq believed that animals allowed themselves to be killed so that humans could live. However, the continuance of this relationship depended upon respecting the laws which governed the relationship, such as properly disposing of fish and animal bones and not over-hunting.

There is some uncertainty about the Maliseet, Passamaquoddy and Mi'kmaq political structures before 1500. Some scholars believe Mi'kmaq communities were politically organized into the Sante Mawioimi or Grand Council. The Sante Mawioimi included a keptin or chief from each of Mi'kma'ki's seven geographical districts. The keptins were elected by their people to represent their interests at the Council. At the head of the Council was the Grand Chief who was elected to his position by the keptins. The Grand Chief was assisted in his duties by the Grand Captain.

The precise duties and responsibilities of the Grand Council are not well known. However, the council and its members appear to have made decisions on issues of common concern to all communities. One such concern was war and threats posed to Mi'kma'ki by outsiders.

However, not all historians agree that the Grand Council existed before 1500. These historians believe that the Council only emerged sometime in the late 1600s or late 1700s.

## **The Contact and Colonial Periods**

The Europeans who arrived off the coasts of Atlantic Canada between the 1500s and 1600s were mostly fishermen, who arrived in March and left in October or November. They were fishing for cod, which then populated the waters off the coasts of Newfoundland and Nova Scotia. These fishermen mainly came from present-day Spain, Portugal and France. Many were from the Basque regions of these countries. English fishermen only became more prevalent in the late 1500s.

Contact between the fishermen and local aboriginal peoples was always limited, since the fishermen spent only a short time on land, except in instances where they dried their fish on shore. However, we do know that fishermen were present throughout much of the Atlantic region and that they must have had some contact with local Mi'kmaq populations. The fishermen's contact with the Maliseet and Passamaquoddy was likely considerably less since their families lived along the St. John River, and not along the Atlantic coast.

While they came to fish, Europeans also brought viruses that were not present in Maliseet or Mi'kmaq society before the 1500s. Because the Maliseet and Mi'kmaq had never been exposed to these viruses, the results were catastrophic. We don't know how many people died. Most demographers suppose that most aboriginal communities lost from 50 % to 90% of their original population. This depopulation did not occur all at once but took place over one or two generations. Before 1500, the combined Maliseet and Mi'kmaq population had probably numbered between 10,000 and 15,000. By the 1600s, their numbers were down to half that and possibly less.

The second major affect of contact was the change wrought by trade. Soon after fishermen began fishing off the East Coast, they began trading with local Mi'kmaq. The Mi'kmaq exchanged furs and skins for such European goods as knives, hatchets, cloth, thread, mirrors, beads, and tobacco. In Europe, the furs were used to make hats. As the demand for such hats increased, so too did the number of beaver furs shipped from North America. Though the Atlantic region was only a critical component of the trade in the first half of the 17<sup>th</sup> century, its long term affect on families was profound. On the one hand, the introduction of European manufactured goods created a dependence upon them. Knives were useful tools which were quickly integrated into family life. So too were muskets and cloth. But to acquire these items, families needed to trap furs in greater quantities than they had ever done before. It also meant that families spent more time hunting inland than they had done before the 1500s.

After the contact period our understanding of Maliseet and Mi'kmaq society increases considerably. This is because in the early 1600s European nations established colonies in the region and the correspondence from these regimes provide information about local indigenous populations. Such correspondence, however, was often sporadic and so there are few records to give a chronological overview of either the Maliseet or the Mi'kmaq in the post-contact period. We cannot document the major events occurring within each society in the same manner that we can for England or France at the same time. What we know about the Mi'kmaq and the Maliseet comes exclusively from European written accounts.

## **The 1726 Treaty**

Great Britain's interest in trade lay at the foundation of the series of treaties negotiated with the Mi'kmaq, the Maliseet, and the Passamaquoddy after 1713. The treaties were mainly concerned with one thing: to establish a durable alliance between the British and the region's aboriginal communities. In this context, the British were concerned with

each community's relationship with the French Crown. That alliance, thought the British, undermined their own efforts to establish some form of political control over the region. To that end the treaties created a series of laws which were designed to normalize relations between the British and the region's three aboriginal societies.

The first of the treaties was signed in 1726, formally bringing to an end a three year long war between New England and the Wabanaki. The Wabanaki was a political alliance of the major aboriginal communities living in the Atlantic region. The alliance was composed of four societies: the Mi'kmaq, the Maliseet, the Passamaquoddy and a loosely-allied group of communities living between the Penobscot and the Kennebec Rivers. This allied group is often called the Abenaki.

The war, which had begun in 1722, was mainly sparked by Mi'kmaq, Maliseet and Abenaki concerns regarding the New England colonies northward expansion. New England fishermen had pushed more aggressively into Nova Scotia's coastal waters than had been true before 1713. For the Mi'kmaq, the fishermen's aggressive actions sparked concerns about possible interference in the fishery. As well, the Abenaki were upset with attempts by New England land companies to alienate lands at the mouth of the Kennebec River, which is a major river flowing into the Gulf of Maine in the southwest Maine.

These two concerns about the expansion of English interests also underlay Mi'kmaq and Maliseet motivations in negotiating a treaty with the British in 1726.

The 1726 treaty is composed of two separate documents. One document, termed the articles of peace and agreement, was signed by the Mi'kmaq, Maliseet and Passamaquoddy. This document contains the promises made by each of the three communities to the British. In total, 77 aboriginal male delegates signed this part of the treaty. The second document, often referred to as the reciprocal promises, contain those promises made by the British to the Mi'kmaq, Maliseet, and Passamaquoddy. This part of the treaty was signed by the colony's principal military leaders, Lawrence Armstrong and John Doucett. Armstrong was the Lieutenant-Governor of Nova Scotia while Doucett was the Lieutenant-Governor of the British garrison at Annapolis Royal.

The 1726 treaty and later treaties are unique as much for what they do say as for what they do not. The treaties were meant to do one thing: harmonize relationships with the Mi'kmaq and Maliseet and in the process wean them away from their alliance with the French. The treaties were also meant to establish some general laws regarding inter-relationships between the British and the region's aboriginal inhabitants.

The most important of the treaty's provisions dealt with land. On the one hand, the Mi'kmaq and Maliseet agreed not to molest His Majesty's subject in their settlements 'already made or lawfully to be made.' By this clause, both communities formally accepted the legality of existing settlements. They also agreed that the British might establish future settlements, though such settlements could only be made 'lawfully.' The treaty, however, did not define 'lawfully.' This issue might have been addressed in the

treaty negotiations but the minutes of these discussions are not extant. Nonetheless, it is reasonable to assume that the two sides to the agreement agreed that future settlement would be a subject of future negotiations.

In the reciprocal portion of the treaty, the British agreed not to molest the communities' fishing, hunting, planting and 'other lawful activities. ' Though the treaty did not define the location or size of such fishing, hunting, and planting grounds, we would assume that such grounds lay outside the 'existing settlements.' We would also assume that these grounds were ones that were used by the Mi'kmaq and Maliseet at the time the treaty was signed at 1726. However, it is not clear whether or not all those lands outside the 'existing settlements' could be considered to be part of the 'fishing, hunting, and planting grounds.'

As is evident, the 1726 treaty did not focus on the issue of land in any great detail. Nor did the treaties signed after 1726. This was different from what transpired in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries when the Canadian federal government negotiated a series of treaties with western natives. Those treaties, which are often called the numbered treaties, involved the surrender of aboriginal lands to the federal government. In exchange, communities received some form of compensation, including the provision that separate reserves would be established for them. Such provisions were not part of the treaties signed with the Maliseet and Mi'kmaq.

As is apparent from this article and others, the British were attempting to bring the Mi'kmaq, Maliseet, and Passamaquoddy under the dictates of British law. However, this was far from a simple process. In 1726 the British lacked any real physical presence in Nova Scotia. There were no English settlers and the military posts at Annapolis Royal and Canso totaled at most 400 men. The bulk of the population was Acadian and Mi'kmaq. Given the lack of any real British presence, British law had no real force in Mi'kmaq, Maliseet or Passamaquoddy communities. Disputes between villagers and with people from other communities were settled according to the customary laws the people themselves had developed to deal with their communities' problems. In this sense, the treaties were not intended to impose a new legal system on the region's aboriginal peoples but only to create mechanisms to mediate their relations with the British.

The problem today is trying to determine how to interpret these clauses when there is so little documentation.

## **The 1749, 1752 and 1760/61 Treaties**

The 1726 treaty was the first of several treaties the British negotiated with the Maliseet, Passamaquoddy, and Mi'kmaq. Other treaties were signed in 1749, 1752, and 1760/1. These later treaties were necessary because up until the late 1750s, the Mi'kmaq remained allied with France and during periods of British-French conflict, many communities chose to side with the French against the British. To a large degree, this decision was dictated by geography. For instance, up until 1758, France retained de

jure (legal) control over Ile Royale, and Ile St. Jean, as well as de facto (actual) control over much of what is now the province of New Brunswick. Not surprisingly Mi'kmaq and/or Maliseet communities living in these areas tended to side with France, a position that had as much to do with practicalities as with their political or cultural affinities with French officialdom. Thus, the treaties of 1749, 1752, and 1760/61 were negotiated to reaffirm the peace after periods of war.

Each of these later treaties was different. The 1749 treaty, which was concluded at the end of yet another British-French conflict (1744-48), reaffirmed the 1726 treaty and did not in any manner modify it. As well, the treaty was only signed with the Maliseet and with one Mi'kmaq community. Other Mi'kmaq communities refused to do so, a position which they adopted in anger over the British decision to establish a new settlement at Halifax in June of 1749. This led to a period of intermittent warfare with the Mi'kmaq which only came to an end in 1751.

The end of this conflict led to the 1752 treaty. This treaty was signed in Halifax on 22 November by Governor Hopson and Jean-Baptiste Cope, chief sakamow of Shubenacadie, a community located along the shores of the Shubenacadie River in central Nova Scotia. Some scholars have argued that Jean-Baptiste Cope was the Grand Chief and that in signing the treaty, he did so in the name of all Mi'kmaq communities. Not all scholars, however, agree and point out that the treaty does not say that Cope was Grand Chief. Nor do the treaty minutes say so. Nonetheless, there is evidence that Cope tried to convince other communities to sign the treaty, suggesting that he was more than what the English documents said he was.

Some scholars say Shubenacadie was the only community to sign the treaty and point to the fact that both La Heve and Cape Sable communities had come to some form of agreement with British administrators after 1752. However, not all scholars share this viewpoint and argue that no treaty for either community exists, nor is there any British documentation suggesting that a final treaty document was signed.

The 1752 treaty reaffirmed the 1726 treaty but also modified it by formalizing a commercial relationship between the British and Mi'kmaq. This provision was outlined in the treaty's fourth article:

'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 Truck house needful at the River Chibenaccadie (Shubenacadie), or any other place of their resort they shall have the same built and proper merchandise 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 the Province skins, feathers, fowl, fish or any other thing they shall have to sell where they shall liberty to dispose thereof to the best Advantage.'

For the British, this provision was a critical measure in attempting to wean the Mi'kmaq from their friendly relationships with the Acadians and French officials in Ile Royale and

Ile St. Jean. The British wanted to forge personal and financial relationships between merchants and Mi'kmaq families.

Cope's attempts to enlist other communities - and especially those still living within the French sphere of influence in Ile Royale (Cape Breton Island), Ile St-Jean (Prince Edward Island), and the present-day limits of New Brunswick - to sign the treaty foundered and from the middle months of 1753, relations between the British and the Mi'kmaq degenerated. The eruption of war in the Ohio Valley between British and French forces in 1754 further undermined any hope of concluding a more general treaty with other communities. War soon spread throughout much of eastern North America and then to Europe.

In the ensuing conflict - known in the British colonies as the French and Indian War and in Europe as the Seven Years War - the British accomplished what they had long desired: the total defeat of French colonial forces in North America. This victory was sealed in four major campaigns against the four of the principal French fortresses in eastern North America: the conquest of Fort Beausejour in June 1755, the capture of Louisbourg in July 1758, the defeat of Quebec in September 1759, and the conquest of Montreal in June 1760.

In the midst of these campaigns, the British initiated peace discussions with the Maliseet, Passamaquoddy and Mi'kmaq, all of whom had fought alongside French forces. Discussions began soon after the conquest of Quebec. Negotiations began first with the Maliseet and the Passamaquoddy in late November 1759 and concluded with the signing of a separate peace treaty with them at Halifax on February 22, 1760. The treaty was later ratified by individual Maliseet and Passamaquoddy communities at Fort Frederick, a British fort near to the present day city of St. John, New Brunswick

The treaty re-established the centrality of the 1726 treaty in Maliseet-British relations. At the same time, the treaty also modified that agreement. The most important aspect of the new agreement was the creation of a commercial relationship between British merchants and Maliseet traders. By this provision, the Maliseet agreed not to trade with the French. To ensure that such trade did not occur, the British agreed to establish a truck house. When asked if they had anything to propose, the Maliseet representatives replied 'their Tribes had not directed them to propose any thing further than they might be a Truck house established, for the furnishing them with necessaries, in Exchange for their Peltry, and that it might, at present, be at Fort Frederick.' Governor Lawrence, speaking on behalf of the Nova Scotia Council replied that upon the ratification of the treaty, 'a Truck house should be established at Fort Frederick, agreeable to their desire, and likewise at other Places if it should be found necessary, for furnishing them with such Commodities as shall be necessary for them.'

The Maliseet-Passamaquoddy treaty of February 1760 formed the basis on which later treaties were signed with individual Mi'kmaq communities in 1760 and 1761. The first of these Mi'kmaq treaties was signed on 10 March, 1760 with three communities: the Shubenacadie, La Have, and Richibuctou Mi'kmaq. Later treaties were finalized with

communities from Cape Breton, Miramichi, Pokemouche, Shediac (all signed on 25 June 1761), Chignecto/Missiquash (8 July 1761), and Pictou/Malogomich (12 October 1761).

Though some scholars have argued that a number of Mi'kmaq communities did not sign treaties in 1760 or 1761, later documentation suggests that the British thought they had done so. However, the issue of who are parties to the treaty continues to be a matter of some controversy, particularly in the wake of the Supreme Court of Canada's decision in *R. v. Marshall* in 1999.

There are both similarities and differences between the treaty signed with the Maliseet-Passamaquoddy in February 1760 and those treaties signed later with Mi'kmaq communities. The most important difference was that the February treaty specifically reaffirmed earlier treaties made with the Maliseet-Passamaquoddy. In this case, the texts of both the 1726 and 1749 treaties were included. At the same time, the treaty also introduced several new agreements and so modified the British relationship with the Maliseet-Passamaquoddy. The most important addition was the truck house clause.

The Mi'kmaq treaties assumed a different form. Unlike the Maliseet-Passamaquoddy treaty, the Mi'kmaq treaties did not specifically reaffirm earlier treaties. This fact has led some scholars to suggest that the agreements signed with the Mi'kmaq in 1760 and 1761 formed the basis of a new relationship, and that the British considered the former treaties, and specifically those made in 1726 and 1752, to be null and void. However, other scholars have argued that the earlier treaties continued in force and could be only terminated by some formal means.

A closer examination of the Mi'kmaq treaties suggests continuity between the 1726 treaty and those signed in 1760 and 1761. Each of the first six articles of the later treaties correspond to the first six articles of the 1726 treaty. However, in each case the later clauses modify the earlier agreement. To take one example: article two of the 1726 treaty had stipulated that the Mi'kmaq would not 'molest His Majesty's Subjects or their Dependents in their Settlements already made.' The 1760/61 treaty reproduced the same language of this article with one significant exception. The treaty now read that the Mi'kmaq would not molest 'His Majesty's subject or their Dependents in their settlements already made or *hereafter to be made*.' It would seem therefore that both the British and the Mi'kmaq considered the 1726 treaty to form the basis of their relationship. However, they agreed that some changes were necessary and so the 1760/61 treaties spoke to those changes. One of those changes was the inclusion of the truck house clause which was repeated verbatim from the treaty signed earlier with the Maliseet and Passamaquoddy.

## **The 1778 and 1779 Treaties**

The two last treaties were signed in 1778 and 1779. Both treaties were occasioned by attempts by agents from the United Colonies (later known as the United States) to enlist the support of both the Mi'kmaq and Maliseet in their rebellion against British rule.

These efforts had resulted in a number of warriors assisting the colonists attacks upon Fort Cumberland in 1776. In order to stave off further assistance given to the rebels, the Superintendent of Indian Affairs for Nova Scotia, Michael Francklin convened a council with Maliseet from the St. John River and with Mi'kmaq delegates from Richibouctou, Miramichi and from Chignecto. These discussions took place at Fort Howe at the mouth of the St. John River on 24 September 1778 and resulted in the delegates promising not to assist the rebels and that they would 'follow my (their) hunting and fishing in a peaceable and quiet manner.'

About a year later, Francklin signed another treaty with Mi'kmaq representing communities between Cape Tormentine (in southeast New Brunswick) and the Baye des Chaleurs in the Gulf of St. Lawrence. Like the 1778 treaty, the 1779 treaty was necessitated by disturbances between the Mi'kmaq and the colonists, raising fears that some communities were siding the United Colonies against Great Britain. However, like the treaty signed a year earlier with the Maliseet, the 1779 treaty did not alter existing treaty relationships. The most significant aspect of the treaty is the fact that each of the Mi'kmaq communities reaffirmed their treaty relationship with the British on the basis of treaties signed with Governor Charles Lawrence in 1760/61. Among the Mi'kmaq who did so were those communities living along the Baye des Chaleurs.

Though it is possible that a representative from the Gaspé attended the treaty signing in Halifax on 25 June 1761, there is no document which shows this. However, as the 1779 treaty makes clear, the Mi'kmaq political structure was far more complicated than we sometimes think. In this case, the 1779 treaty clearly indicates that the Miramichi Mi'kmaq were acting and signing the treaty on behalf of those communities located along the Baye des Chaleurs. This not only shows that these communities were included in the treaty but also more importantly that they had probably delegated the Miramichi Mi'kmaq to sign the 25 June 1761 treaty on their behalf.

## **The Period after 1780**

With the creation of the United States as an independent country in the early 1780s, thousands of colonists who had remained loyal to the British Crown sought refuge from the punitive actions of their neighbours by fleeing northward to Nova Scotia, Prince Edward Island, and Canada. Many chose to come to Nova Scotia which up until 1784 encompassed not only the present-day limits of Nova Scotia but also New Brunswick. The flood of new refugees created a new dynamic in the relationships between the colonial governments and the aboriginal communities. One of the most important changes was the gradual erosion of the meanings given to the treaties. Both the Mi'kmaq and the Maliseet, however, continued to believe that the treaties formed the basis of their relationships with settler governments. Over the following two hundred years, both communities petitioned governments, attempting to force them to reconsider their policies in light of the legal regime created by the treaties. They were particularly concerned that governments had failed to honour agreements regarding the protection of fishing, hunting, and planting grounds and pointed to the fact that most of their people were impoverished.

Though governments refused to honour the treaties, they did agree to create reserves. These reserves were established throughout much of Atlantic Canada in the 19<sup>th</sup> century. In general, the reserves were placed in areas which by then were frequented by Maliseet and Mi'kmaq families. In some cases, this led to a reserve's location in an area used by the community. However, this was not always true, particularly in Nova Scotia where disputes over land were often settled in favour of white settlers. Moreover, the reserves were usually too small and the land too infertile to support a large population.

## Footnotes:

1. This paper is the work of Prof. Wicken, PhD, and represents his views respecting the Crown/ Aboriginal treaty relationship in the Atlantic. It does not necessarily represent the views of the federal government. ([return to the source paragraph](#))
2. C. Bruce Fergusson, ed., *Clarkson's Mission to America 1791-1792* (Halifax: 1971), 69; "Lettre de M. l'Abbé Maillard sur les missions de l'Acadie et particulièrement sur les missions micmaques à Madame de Drucourt," in *Les Soirées Canadiennes* (1863), 354. ([return to the source paragraph](#))
3. John Gyles, *Memoirs of Odd Adventures and Signal Deliverances* (Boston: 1806), first ed., 1736, 10; 'Lettre de M. l'abbé Maillard, 306. ([return to the source paragraph](#))