

Upper Canada Land Surrenders

(1781-1862)

After years of conflict in North America between the British and the French, the Treaty of Paris was signed on February 10th 1763. That treaty saw France cede its claim to colonial territories in North America, including Acadia, New France, the interior lands of the Great Lakes and Ohio, and the Mississippi valley, to Britain. Recognizing the limitations of their claims, British administrators like Superintendent of Indian Affairs Sir William Johnson believed that the successful development of Britain's colonies depended on stable and peaceful relations with Aboriginal peoples.

On **October 7, 1763**, Britain issued a **Royal Proclamation** to direct how the colonies should be administered. The wide ranging document dealt with the administration of the new provinces of Quebec and Florida, compensated soldiers for their participation in the Seven Years' War, and established a western limit to settlement for the colonies. The Royal Proclamation also stipulated that the new Indian Department would be the primary point of contact between Aboriginal peoples and the colonies and stipulated that only the Crown could purchase Aboriginal lands. This was to stop the widespread encroachment of settlement on Aboriginal land and maintain strong and peaceful relations.

The first land cession under the protocols of the Royal Proclamation was concluded between Sir William Johnson of the Indian Department and the Seneca, a member group of the powerful Six Nations Haudenosaunee Confederacy. In 1764, the Seneca negotiated a treaty with the British that granted the British unimpeded access to two miles on either side of the Niagara River for the purposes of communication and travel between Lake Erie and Lake Ontario. The land cession was only one part of the Niagara Conference, which renewed alliances, restored trade interrupted by the War, and strengthened Britain's presence in the Great Lakes Basin. Three additional land surrenders were concluded between the Department of Indian Affairs and Aboriginal communities between 1764 and 1783. These surrenders covered very small parcels of land and dealt more with security and trade than settlement.

The outbreak of the American War for Independence and the subsequent recognition of the United States of America in 1783 had a severe impact on the relationship between the British Crown and its Aboriginal allies. The loss of the American colonies brought some 30,000 United Empire Loyalist refugees to the remaining British colonies in North America. These refugees called upon colonial administrators to open up new lands for settlement. Settlers were not the only refugees: Aboriginal peoples who had fought alongside the British were also dispossessed by the war. As a response, a series of land surrender treaties were negotiated between Indian Department agents with the various Anishinaabe peoples living along the shores of the St. Lawrence River and the

lower Great Lakes. Between 1783 and 1812, fifteen land surrender treaties were concluded in the Upper Canadian peninsula. By preceding the arrival of settlers in the area, the land surrenders peacefully established an agricultural colony in the region and helped the Crown compensate its Aboriginal allies for losses incurred during the war with the Americans. The terms of the treaties negotiated in Upper Canada were relatively simple. The documents described the groups involved in the surrender, the extent of the lands surrendered, and what Aboriginals were to receive in compensation. Before 1818, Aboriginals were compensated with one-time payments in goods or money or both, paid to the signatories at the time of the treaty. These treaties did not always establish reserved lands for Aboriginals to live on.

In the period following the War of 1812, European immigrants came in increasingly large numbers to Upper Canada to join the earlier loyalist settlers. With the establishment of a lasting peace between Britain and the United States, Aboriginal peoples began to lose the influence they once held over British officials, and as more immigrants arrived, the pace of land surrenders increased to provide settlers with land for farming. The treaties conducted between 1815 and 1860 covered all the remaining lands of Upper Canada, from the productive agricultural lands south of Lake Huron to the resource-rich lands around Lake Superior and Georgian Bay.

As new British policies focused on ideas of transforming Aboriginal people to a new way of life, Indian agents shifted their roles from solidifying military alliances with Aboriginal nations towards encouraging Aboriginal peoples to abandon their traditional ways of life and to adopt a more agricultural and sedentary lifestyle. In the colonies of Upper and Lower Canada, the Indian Department became the vehicle for the expression of the new plan of "civilisation". After 1818, British administrators opted for a yearly payment, or annuity, in an effort to reduce the initial expense of treaty-making. Annuities could be funded by revenue earned from the sale of the surrendered lands. Annuity monies were used by the Indian Department to build agricultural communities on which they intended to settle Aboriginal peoples. The annuity money funded home construction and purchased agricultural implements and livestock.

By the 1830s, there were only a few pockets of unsurrendered First Nation lands in Upper Canada. In 1836, a treaty concluded by Lieutenant-Governor of Upper Canada Sir Francis Bond Head established Manitoulin Island in Georgian Bay as a reserve for the dispossessed First Nations population. This landless population was to be encouraged to relocate to the island where they would be removed and protected from the more harmful aspects of colonial society, specifically alcohol and prostitution. Few First Nation groups, however, did relocate to Manitoulin Island.

As more lands were taken up by settlers, new interest in a surrender of the Saugeen (today known as the Bruce) Peninsula and Manitoulin Island developed during the 1850s and 1860s. Throughout the 1850s, several attempts were made by the Indian Department to secure the sale of these lands, which finally culminated with the Saugeen Treaty of 1854, and in 1862, another treaty surrendering the majority of Manitoulin Island. By the time Confederation of the new Dominion of Canada was established in

1867, nearly the entire land mass of the Province of Ontario at the time was ceded by a treaty.

Williams Treaties (1923)

Between 1764 and 1862, colonial officials, in an attempt to secure a continuous band of settlement along the St. Lawrence River and along the Lower Great Lakes, negotiated a number of land surrender treaties with the Aboriginal groups of the region. When Confederation was declared in 1867, it was widely held that these lands in the Province of Ontario were all legally surrendered to the Crown through treaties. By the 1910s, however, concerns were being raised that some of the treaties were problematic and that not all the lands of Central Ontario were covered by a treaty.

In fact, throughout the late 19th and early 20th centuries, the Chippewa of the Lake Simcoe region and the Mississauga of the north shore of Lake Ontario had complained that some of the treaties concluded during the colonial period were highly problematic with faulty descriptions, incomplete documents and failed payments. Furthermore, it appeared that an extensive parcel of land covering the Muskoka and Upper Ottawa River region were never included in any of the Upper Canada Land Surrender treaties. Their complaints were ignored until 1916 when the Federal Minister of Justice appointed R.V. Sinclair to investigate the matter. One of the primary issues that had come to light was the possible claims by the Lake Simcoe Chippewas over the southern lands ceded by the 1850 Robinson-Huron Treaty which they had not signed. Sinclair concluded that there were a number of problems with the existing treaties and that some lands had never been fully surrendered to the Crown.

In 1921, the federal government approached the Ontario provincial government regarding the Aboriginal claims and after a year and a half, the two levels of government worked out a procedural agreement for addressing the issue. The agreement called for the appointment of a three-man commission, consisting of Department of Indian Affairs' lawyer, A.S. Williams, as chairman, R.V. Sinclair, whose experience with the issue dated from 1916, and Uriah McFadden, a lawyer from Sault Ste. Marie. Their goal was to investigate the claims and, if they deemed it appropriate, to negotiate an arrangement with the Aboriginal peoples involved.

In its 1923 report, the Williams Commission revealed that the Indians' claims were not only valid, but were also far more extensive than those that had been suggested by the 1916 Sinclair investigation. The two governments involved, having been suddenly confronted with a report that not only validated the claims to the central portion of the province but also verified ancient claims to lands on the north shore of Lake Ontario and to a sizeable tract below Lake Simcoe, moved very quickly to extinguish the Indian title to those regions. The lands in question were already being used by the government for settlement and the exploitation of its natural resources. Though part of the territory had likely been acquired by the government more than a century previous, it was decided

that new surrender agreements should be taken in light of the problematic documentation for the original agreements.

Asking Williams and his colleagues to finish the process that had started, the treaty commission negotiated two separate treaties, known as the Williams Treaties, one covering the lands between Georgian Bay and the Ottawa River; and another for the lands along the shore of Lake Ontario and the lands up to Lake Simcoe respectively signed on October 31st and November 21st, 1923. The Williams Treaties saw the First Nation signatories surrender all their rights and title over the lands in question, including hunting and fishing rights. The agreement signed on October 31st, 1923 addressed the existing claims of the Lake Simcoe groups that had unresolved title claims to the lands of the Muskokas and Upper Ottawa River, as well as any underlying claims to the lands surrendered by the 1850 Robinson-Huron Treaty. Meanwhile, the November 21st, 1923 treaty covered the lands implicated by some of the more problematic land cession agreements dating from the 1780s.

In addition to the initial payments and the continuing annuities, the Treaties preserved the signing bands existing reserves but did not provide for any new reserve lands. The Williams Treaties also departed from some existing practices included in earlier treaties such as the Robinson Treaties (1850), and the Numbered Treaties. Where these treaties established continuing rights to hunt and fish, new reserve lands and yearly annuities, the Williams Treaties were more like the Upper Canada Land Surrender treaties with single cash payments, few if any reserves and the surrender of all rights.

This was not only a departure from what had become an established practice, it also created some potential problems. Nearly half of the October 31st treaty overlapped with territory taken in the Robinson-Huron Treaty. This has led to a different sets of rights over the same territories as the Robinson-Huron Treaty clearly recognizes a continued right to hunt and fish throughout that area.

According to Ontario premier Howard Ferguson, speaking on the future of the Williams Treaties, "... every tribe that could possibly have a claim on the 'white man's' government had been taken care of." Ultimately, the Williams Treaties secured the surrender of the last substantial portion of land in southern Ontario that had not been given up to the government. The conclusion of the 1923 Williams Treaties marked the cession of nearly all the remaining Aboriginal lands to the Crown – only two small parcels of lands remain unceded – they also mark the end of the long standing treaty process initiated in 1763.

Date modified:
2013-02-15