Lament for a First Nation

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Peggy J. Blair

Lament for a First Nation
The Williams Treaties of Southern Ontario

UBC Press · Vancouver · Toronto

16 15 14 13 12 11 10 09 08 5 4 3 2 1

Printed in Canada on ancient-forest-free paper (100% post-consumer recycled) that is processed chlorine- and acid-free, with vegetable-based inks.

Library and Archives Canada Cataloguing in Publication

Blair, Peggy J. (Peggy Janice), 1955-
Lament for a First Nation : the Williams treaties of Southern Ontario / Peggy J. Blair.

Includes bibliographical references and index.
ISBN 978-0-7748-1512-3

1. Mississauga Indians – Treaties. 2. Ojibwa Indians – Ontario – Treaties. 3. Mississauga Indians – Land tenure. 4. Ojibwa Indians – Land tenure – Ontario. 5. Indians of North America – Canada – Government relations. 6. Mississauga Indians – Legal status, laws, etc. 7. Ojibwa Indians – Legal status, laws, etc. – Ontario. 8. Mississauga Indians – History. 9. Ojibwa Indians – Ontario – History. I. Title.

KE7709.B53 2008 342.7108'720899733 C2007-907480-4
KF8205.B53 2008

Canada

UBC Press gratefully acknowledges the financial support for our publishing program of the Government of Canada through the Book Publishing Industry Development Program (BPIDP), and of the Canada Council for the Arts, and the British Columbia Arts Council.

This book has been published with the help of a grant from the Canadian Federation for the Humanities and Social Sciences, through the Aid to Scholarly Publications Programme, using funds provided by the Social Sciences and Humanities Research Council of Canada.

Printed and bound in Canada by Friesens
Set in Stone by Robert Kroeger
Copy editor: Deborah Kerr

UBC Press
The University of British Columbia
2029 West Mall
Vancouver, BC V6T 1Z2
604-822-5959 / Fax: 604-822-6083
www.ubcpress.ca

Contents

Preface / ix

Introduction / xii

Part 1: Historical Background

1 History of the Williams Treaties First Nations / 1

2 Imperial Crown Policy / 14

3 A New Crown Policy / 38

4 Jurisdictional Disputes / 62

5 Bureaucratic Obstacles / 93

Part 2: The Williams Treaties

6 The Push for a New Treaty / 125

7 Differing Perceptions / 149

8 The *Howard* Case / 181

9 Analysis / 199

Conclusion / 235

Appendix: The Relevant Treaties / 240

Notes / 256

Bibliography / 302

Index / 310

An Indian's word, when it is formally pledged, is one of the strongest moral securities on earth; like the rainbow it beams unbroken, when all beneath is threatened with annihilation ... On our part, little or nothing documentary exists; the promises which were made, whatever they might have been, were almost invariably verbal – those who expressed them are now mouldering in their graves. However, the regular delivery of presents proves and corroborates the testimony of the wampums, and, by whatever sophistry we might deceive ourselves, we could never succeed in explaining to the Indians ... that their Great Father was justified in deserting them.

– Sir Francis Bond Head, *A Narrative*

Preface

In his 1965 book, *Lament for a Nation,* George Grant mourned the loss of Canadian identity due to assimilation by a dominant culture, the United States. My lament is not for Canada, however, but for the Hiawatha First Nation. It did not choose to go to court but was forced to defend the treaty rights of one of its members who had been charged with fishing without a licence. It lost the case, the result, I argue, of the same kind of assimilationist pressures and dominant cultural biases that Grant so eloquently described. Because of the ruling, six other First Nations are now trapped by the legalistic constraints of a decision which prevents them from hunting and fishing off-reserve, even though they were never charged, presented no evidence, and made no submissions. My lament, in that sense, is for all of them.

My interest in the subject matter of this book began late in the last century, when Bill Henderson invited me to watch him argue an appeal in the Supreme Court of Canada concerning the 1923 Williams Treaties. His client, George Howard, had been charged for fishing in the Otonabee River without a licence. The case – *Howard* – turned on the issue of whether the Williams Treaties had extinguished Howard's pre-existing treaty rights to fish there. As a lawyer practising Aboriginal law, I could sense at the time that Bill had lost his argument, although I wasn't familiar with the facts of the case and could not fully appreciate the arguments each party had made. When the Court's decision was released some months later, however, parts of it nagged at me. The Court's readiness to conclude that any First Nation would have surrendered its pre-existing treaty rights to hunt and fish was troubling, even if the surrender had occurred in 1923. I knew that my own First Nation clients would never have relinquished treaty rights to hunt or fish, as they considered these rights to be sacred. It seemed odd to me that a First Nation would have done so some seventy years earlier, at a time when one might assume it would be more, rather than less, dependent on the chase.

The paucity of evidence referred to in the Supreme Court decision also concerned me. It seemed to me that if such rights had been surrendered,

there should have been all kinds of evidence supporting it. Ironically, what the Court considered to be strong evidence for surrender of rights was to me a virtual absence of evidence. Where were the discussions between the Treaty Commissioners and the First Nations about pre-existing treaty rights? Where was the debate? I would have expected not just discussion but some outraged dissent on the part of at least some band members before a decision with such profound consequences would have been reached by any Aboriginal community. Instead, the treaties had been completed with almost alarming haste. Why were treaty rights not mentioned anywhere?

The Court relied primarily on the recollections of an elderly former Chief, called by the Crown, who had been ten years old at the time of the surrender and knew some of the signatories. The Court seemed to think that his belief that he had no special rights was convincing, but I knew that Ontario, with whom I had sparred many times during similar litigation, had always claimed that Indians had no special rights in the province. I needed more than that to be convinced. I asked myself why a First Nation community would give up its protected rights to hunt and fish for the small sum of twenty-five dollars per person. If the Williams Treaties First Nations had traded their rights to hunt and fish in 1923, how did they make a living? What was going on at the time to compel such a surrender? And if they had surrendered their rights, why did George Howard continue to assert that he still had such rights? I knew that Howard had not funded an appeal to the Supreme Court of Canada. If his community was supporting his position, how could that be reconciled with the Court's decision that it had given up its treaty rights only seventy years before?

With these questions in mind, I began what I thought might someday be an article. Instead, it became a lengthy journey with many lateral turns and twists, before I could reconstruct what had happened during the Williams Treaties to my own satisfaction.

Since I am not a historian, historical geographer, or anthropologist, that journey could not have been completed without the assistance of those who have specialized knowledge in these areas. I owe a profound debt of gratitude to Dr. Janet Armstrong, who allowed me almost unlimited access to the many archival files that she had collected over the years in support of her own PhD thesis and research. Dr. José Brandão, Dr. Reg Good, Bill Henderson, Joan Holmes, Darlene Johnston, Dr. Victor Lytwyn, Jim Morrison, Dan Shaule, Tara Smock, and Dr. William Starna were equally generous in helping me to clarify certain references.

Thanks go also to Dr. Charles (Chuck) Cleland, an anthropologist and expert witness in the *Mille Lacs* trial, and Marc Slonim of the Seattle law firm of Ziontz, Chestnut, Varnell, Berley & Slonim, one of the lawyers involved in it, who provided me with a huge collection of materials filed in the case. The expert evidence from that trial, which includes reports from

such well-known scholars as Thomas Lund, James McClurken, John Nichols, and Helen Tanner, as well as Chuck Cleland, has since been published as James M. McClurken, ed., *Fish in the Lakes, Wild Rice, and Game in Abundance: Testimony on Behalf of Mille Lacs Ojibwe Hunting and Fishing Rights* (East Lansing: Michigan State University Press, 2000) and was a very useful source.

I also acknowledge the contribution of the Department of Fisheries and Oceans, the Ontario Ministry of Natural Resources, and Indian and Northern Affairs Canada. These government offices released a great deal of information to me, and both the Ministry of Natural Resources and Indian Affairs made me aware of an exhaustive report on the Williams Treaties prepared by Tara Smock of Joan Holmes and Associates. The Holmes Report, as it is sometimes called, proved to be an invaluable resource.

This has been a long and sometimes difficult project, characterized by the usual conspiracy of late nights, computer glitches, broken printers, and looming deadlines. I would like to extend special thanks to Constance Backhouse for her consistent and unflagging encouragement and support. Similar thanks go to Randy Schmidt and Ann Macklem of UBC Press who were extremely patient with me on both a personal and professional level. I also acknowledge the very detailed and constructive feedback of Jamie Benidickson, Michael Coyle, Reg Good, Douglas Harris, Jean-Pierre Lacasse, and Michel Martin, who read and reviewed my efforts. The result is a much better work than would otherwise have been the case.

My final thanks go to my daughter, Jade, for her good-natured patience and acceptance of a time-consuming exercise that began when she was in elementary school and was still underway when she entered university. And of course to Bill Henderson, for inviting me to the Supreme Court of Canada in the first place, so many years ago.

As noted, I have had the help of some of the finest scholars in historical geography, Aboriginal law, anthropology, and history in developing this story. Any errors that remain are mine, and mine alone.

Introduction

With its 1994 decision in *R. v. Howard,* the Supreme Court of Canada effectively terminated the rights of seven Chippewa and Mississauga First Nations located in south-central Ontario to fish, hunt, and trap off-reserve. The Court declined to interfere with lower court judgments that had held that a "basket clause" in a 1923 treaty, one of the Williams Treaties, surrendering Indian title to certain lands within Ontario was unambiguous, and that the Aboriginal signatories understood that they had also surrendered their treaty rights to hunt, fish, and trap in all their traditional areas. In this regard, the seven Williams Treaties First Nations are unique among Aboriginal peoples in Canada. No other First Nations in Canada have ever been judicially held to have surrendered their subsistence rights to hunt and fish.

I argue that the circumstances in which the Williams Treaties First Nations find themselves are, in part, the result of a change in Crown policies that began in the mid-1800s. Before then, the Crown had affirmed and protected Aboriginal harvesting activities through treaties. As demonstrated by the recently discovered map of a 1701 treaty between the Imperial Crown and the Iroquois Five Nations, at that time the territorial extent of the Crown's treaty promises extended to waters and not merely lands. As settlement pressures developed, however, and as settler demands intensified, the Crown's policies changed to increasingly restrict Aboriginal hunting and fishing activities. Eventually, the Crown denied ever having made treaty promises protecting Aboriginal rights to hunt and fish. Restrictive legislation and aggressive enforcement actions throughout the nineteenth and twentieth centuries resulted in many Aboriginal people being charged and even jailed for exercising the rights promised by the Crown.

As will be seen, the Crown put forward differing justifications to explain its change in policies. At first, Crown officials argued that a reduced reliance on hunting and fishing was in the interest of Indians, as it would help to "civilize" them. Much later, Crown officials would suggest that

restrictions were needed to protect and conserve game and fish, and accused First Nations peoples of abusing their hunting and fishing "privileges."

A review of the history leading up to the *Howard* decision, however, shows that Crown policies had little to do with protecting resources but instead provided a means by which large tracts of lands and resources could be opened up for the exclusive use of whites, while reducing competition in the increasingly lucrative fisheries. The steadily diminished ability of the Mississaugas and Chippewas to access their traditional lands and waters was then used to justify the Crown's argument that they no longer used their hunting grounds, and ought not to be compensated for them.

In 1923, as a series of stunning events unfolded on the international stage, the Crown reversed its decades-long position and agreed to negotiate a new treaty with the Mississaugas and Chippewas. The rushed surrenders that resulted – the Williams Treaties – were relied on by the Ontario government in *Howard* as evidence that the Mississaugas and Chippewas had not only relinquished all their rights to hunt and fish off-reserve, but that they had done so with the expectation that they would be treated in the same manner as the non-Aboriginal people who had settled around them.

The *Howard* decision raises troubling issues about the relationship between the Crown and First Nations in southern Ontario generally. At the end of the nineteenth century, the federal government allowed Ontario to assume both operational and jurisdictional authority over Indian fishing and hunting. This policy decision, as well as the federal Crown's refusal thereafter to become involved in issues around Aboriginal hunting and fishing, has left Ontario in sole control of interpreting whether or not Aboriginal and treaty rights exist. First Nations in general, and the Mississaugas and Chippewas in particular, have thus been left at the mercy of a government determined to advance "equal" rather than "special" rights for Aboriginal peoples.

The Ontario government has continually disavowed the Crown's original commitment to protect Aboriginal hunting and fishing rights, instead introducing policies that favour public interests over Aboriginal ones. These policies, however, are not sufficient to explain the outcome in *Howard.* In the United States, which developed game and fish laws similar to those of Ontario, a Chippewa community that in 1855 had signed a treaty almost identical to the Williams Treaties was found to have retained rather than surrendered its treaty harvesting rights. Because the principles of treaty interpretation applied in the American case were the same as those in *Howard,* but with such a different result, I suggest that the *Howard* decision and the extent to which Ojibway rights have been restricted have been determined as much by the Euro-centric and often erroneous cultural assumptions held by Canadian courts as by the continuing failure of the provincial and federal governments to live up to the "honour of the Crown."

The first step in understanding the implications of the *Howard* decision is to understand the significance of hunting and fishing to the Mississaugas and Chippewas. In the first part of this book, then, I examine the history of the Williams Treaties First Nations. I describe how the Crown at first recognized and protected Aboriginal rights but later allowed legalized encroachments into Aboriginal lands and waters. In Part 2, I discuss the backdrop against which the 1923 treaties were negotiated, and the provisions of the treaties themselves. A legal and historical analysis of the *Howard* case, based both on information that was put before the Supreme Court and on information of which it was unaware, suggests the *Howard* decision was wrong.

Finally, I argue that the Canadian courts made a series of erroneous assumptions about the cultural needs of the Aboriginal people who had signed the treaties in question. I conclude that they did so in a manner that differed markedly from that of their American counterparts, and that their ignorance of Aboriginal culture and history caused a terrible injustice to those First Nations who had turned to the courts as their last resort.

Part 1
Historical Background

1
History of the Williams Treaties First Nations

The Mississaugas of South-Central Ontario

Like the majority of Aboriginal peoples in Ontario, the seven Ojibway First Nations that are the focus of this book belong to one linguistic family of Algonquian speakers – the Anishnabe, meaning "the people."[1] The Anishnabe also include the Algonquin (Algonkin), Nipissing, Ottawa (Odawa), and Cree peoples.[2] Archaeological evidence suggests that, for many thousands of years, the Anishnabe occupied large parts of what are now Ontario, Wisconsin, Michigan, and Minnesota. For example, in the United States, the Chippewa tribes are known to have lived in the Great Lakes–Upper Mississippi Valley from prehistoric times, and the Saugeen cultures of southern Ontario have been identified as one of the major cultures in the province between 1000 BC and AD 1000.[3]

Southern Ontario supported a greater population of Anishnabe than the north. There, local cultural groups interacted in a highly complex way.[4] Marriage partners had to be selected from outside the family clans, meaning that every family was connected to several clans and had multiple avenues to contribute to decision making. Anishnabe leaders were selected by their clan members in deliberations at seasonal councils.[5]

In general, the individual First Nations were distinguished by their dialect and their traditional hunting and fishing territories. The size of these family-based communities often varied, but seasonal hunting groups among the Anishnabe typically numbered between fifteen and twenty members. During the summer, small mobile groups came together around river mouths or favourite lakes and hunting grounds to socialize and contract marriages, and to participate in ceremonies and councils.[6]

Before European arrival, the Anishnabe were predominantly hunting and fishing tribes, and the importance of fish as a cultural and subsistence item among Ojibway peoples has been well established. Archaeological information indicates that, around 3000 BC, spears and harpoons were

adapted to capture fish in the shallow Great Lakes and that hand-held seine nets came into use some time between 200 BC and AD 500. By about AD 800, the direct ancestors of the modern Ojibway people had modified the seine to produce the gill net, which enabled them to catch fish in deep water; their seasonal movements were adapted to the resource.[7]

The importance of fishing is also revealed by the location of Saugeen settlements. Most Saugeen villages and campsites have been discovered along rapids or at the mouths of rivers and creeks.[8] Some of these sites contain large quantities of fish bones from species that spawn from spring to early summer, suggesting that the Saugeen engaged in seasonal rounds of fishing, "when individual families gathered at a favourite fishing location ... and formed a larger community."[9]

The Anishnabe traded with their neighbours, the Ontario Iroquois and the St. Lawrence Iroquois. As Bruce G. Trigger points out, by about AD 1000 in northern Simcoe County an earlier intertribal trade in copper and beads among these groups had evolved into a trade extending across the southern margin of the Precambrian Shield. The Iroquois traded with the First Nations that lived on the shores of Georgian Bay, exchanging corn, fish nets, and tobacco for furs, dried fish, and meat.[10] According to James V. Wright, the Terminal Woodland period of post-European contact included three major cultural groups within Ontario. These were the Ontario Iroquois (who gave rise to the Huron, Petun, Neutral, and Erie Nations), the St. Lawrence Iroquois (who were first encountered by Jacques Cartier in 1534 but had disappeared when Samuel de Champlain visited the area in 1603), and the Ojibway, or Anishnabe.[11]

Early in the seventeenth century, as the fur trade with Europeans began, European visitors identified the inhabitants of southeastern and central Ontario as including Algonquin, Nipissing, and Ottawa tribes, the latter being a group closely related to the Ojibway.[12] At that time, the Ojibway lived somewhat to the west of the Ottawas, who were found south of Nottawasaga Bay and east of the Bruce, or Saugeen, Peninsula, in Lake Huron. Jesuit missionaries identified one "Outaouan" Band that claimed Manitoulin Island, as well as a number of other bands on the eastern and northern shores of Georgian Bay.[13] Ojibway peoples did not move into south-central Ontario until the latter part of the seventeenth century, however, following the Iroquois wars.[14] Those who did are commonly referred to as the Mississaugas.

The Mississaugas settled in the lush valleys of the Credit, the Thames (Ashkahnahseebee, or Horn River), the Otonabee (mouth-water), and the Moira (Saganashcocon) Rivers, which, together with the inland lakes between Lake Simcoe and the Bay of Quinte, formed their chief hunting and fishing grounds.[15] Some historians suggest that the Mississaugas came originally from the Mississagi River along the north shore of Lake Ontario,

although there is little documentary evidence to support this claim. It is clear, however, that they were living farther north when they moved to Lake Ontario in the early eighteenth century.[16]

Presently, the seven Williams Treaties First Nations, named after Angus Seymour Williams, the Treaty Commissioner who negotiated with them, live on reserves at Scugog, Chemong, and Rice Lakes, as well as on islands in Lakes Simcoe and Huron. They are comprised of the Alderville (Alnwick), Curve Lake (Mud Lake or Chemong Lake), Hiawatha (Rice Lake), Scugog Island, Beausoleil (Christian Island), Georgina Island, and Mnjikaning (Rama) First Nations.

Today, the first four of these nations are known as Mississaugas; the remaining three are called Chippewas. As is so often the case with names applied to First Nations, these have a complex and sometimes confusing history. The word "Mississauga" means "persons who inhabit the country where there are many mouths of rivers." Fittingly, the first contact between European traders and the Mississaugas occurred at a river – the Credit River of Ontario (Mahzenahegaseebe, "the river where credit was given").[17] The name "Mississauga" was applied by French speakers to the group of Ojibway who came to live in the area around Lake Ontario. The French had taken the same approach with the Ojibway who lived near Sault Ste. Marie, designating them as Sauteurs or Saulteaux. "Chippewas" is simply an alternative spelling of "Ojibway" (Ojibwe), and the two words are often used interchangeably. In the US, their equivalents are "Chippewa" and "Ojibwa."

Because the Mississaugas are a branch of the Ojibway, European writers in the post-contact period often used the terms "Mississaugas" and "Chippewas" indiscriminately to describe tribes that belonged to the same linguistic group.[18] Adding to the confusion, in the post-contact era, as Anishnabe peoples began to settle in certain defined parts of Ontario, Europeans began to refer to the Ojibway of southwestern Ontario as "Chippewas" and the Ojibway of eastern Ontario as "Mississaugas," although this usage was not consistent.

At this time, as a result of this geographic separation, the terms "Chippewas" and "Mississaugas" refer to people who speak similar, although not identical, dialects. Whatever Europeans have called them, however, they prefer their own name, Anishnabe.

The Iroquois Wars

The desirability of south-central Ontario as a rich hunting and fishing ground is reflected in the oral traditions concerning the struggle between the Ojibway and the Iroquois for control of it. The wars between the Iroquois, or Five Nations Confederacy (formed of the Mohawk, Onondaga, Oneida, Seneca, and Cayuga Nations), and the Ojibway, supported by other First Nations allied to the French, are generally understood to have begun in the early to mid-1600s over the Iroquois desire to control the fur trade

with Europeans. This was particularly so in the areas north of Lake Ontario, which constituted prime beaver-hunting grounds. By the early 1650s, Iroquois attacks had driven the Aboriginal peoples of southern Ontario to the north and west, and the Iroquois controlled the entire area north of Lake Ontario as a large hunting territory. Those Algonquian-speaking peoples who had not perished in the attacks or the preceding epidemics were mostly exiled to the furthest reaches of Ontario, where sporadic raids by Iroquois warriors continued.[19]

By 1689, with their enemies dispersed, Iroquois hunters obtained most of their furs from the lands north of Lake Ontario.[20] In the winter of 1690, "a considerable Party of the Five Nations" was observed hunting "Bever on the Neck of Land between Cataracckui Lake [Lake Ontario] and Lake Erie, with great security,"[21] as well as in the Ottawa Valley.[22]

Over two hundred years later, in 1923, the Williams Treaties Commissioners took much oral history from Chippewa and Mississauga witnesses concerning the Ojibway warfare with the Iroquois. One, seventy-eight-year-old Isaac Johnston of Scugog Island, testified that his grandmother had told him of the war with the Mohawks, which he said had occurred ten or fifteen generations before. "There was war with them, and they were mound-builders, those Mohawks," he explained. "They came from the States, I believe, and then along by the Mississauga River and she said that they fought right through on Couchiching Lake, and there were mounds built on the other side."[23] In his testimony during the commission hearings, Chief George Paudash of Rice Lake also referred to battles with the Mohawks, citing one that took place at Hatterick's Point near Rice Lake. Like Johnston, he too associated battles with burial mounds, commenting that, at another battle site, "there's a great Serpent Mound there, filled with Mohawks bones – and there are Turtle Mounds there beside it."[24]

Throughout Ontario, Aboriginal oral history maintains that the Iroquois dug mounds and tunnels as part of their warfare; the presence of pits and trenches associated with Iroquois warfare was noted as recently as 1906 near Mattawapik Falls, Temagami River.[25] According to James V. Wright, the sinuous excavations known as serpent mounds arose some two thousand years ago and were used as burial grounds, the most impressive of them being the "Serpent Mound" at Rice Lake.[26] His conclusion suggests that the serpent mounds predated the Iroquois wars. However, according to the 1896 *Peterborough Examiner,* David Boyle, the Curator of the Archaeological Museum of Toronto, accompanied by a "callow archaeological acolyte" identified as "Mr. A.F. Hunter of Barrie," examined a dozen mounds found on the north shore of Rice Lake that fall and discovered that they contained "historic" skulls, probably connected to these wars, as well as prehistoric ones, suggesting that the Iroquois had long used these grounds to bury their dead. "These historic or lower skeletons have been buried in a sitting position, and

the 'intrusive' skeletons have been placed on the side with the knees drawn upward towards the chin. The Rice Lake mound system embraces, so far as explored scientifically, about a dozen examples of this aboriginal predilection for elevated burial places."[27]

In 1966, the oral tradition associating battles and mounds was recorded by George Cobb, a local historian commissioned by Trent University in 1962 to begin an experimental program in oral history. Over the next five years, he collected some seventy-eight audio reels of his interviews with elders, including those at Curve Lake. In 1966, a Curve Lake elder named Tom Taylor told Cobb that he knew the location of a mound but that he wouldn't tell a white man where it was "because they will dig it up."[28] Another Curve Lake elder explained that the Ojibway and Mohawks had "battles right out here on the big islands [on] Fox Island ... If you dig around you will find the skulls and everything there."[29]

The following three oral histories may point to this same battle. In 1905, the Ontario Historical Society was presented with an oral history prepared with the assistance of Chief Robert Paudash, which he claimed had come "from the mouth of Paudash, my father (son of *Cheneebeesh,* son of *Gemoaghpenasse*) who died aged 75 in the year 1893, the last hereditary chief of the tribe of Mississagas situated at Rice Lake and from the mouth of *Cheneebeesh,* my grandfather, who died in 1869 at the age of 104, the last Sachem or Head Chief of all the Mississagas, who in turn had learned, according to the Indian custom what *Gemoaghpenasse,* his father, had heard from his father and so on."[30] Chief Paudash described how the Mississaugas had battled with Mohawks all the way from Georgian Bay up the Severn River to Shunyung, or Lake Simcoe, where they had stopped at Machickning (fish fence) to get food, and then went east to Balsam Lake and down the valley of the Otonabee River, where the Mississaugas had villages.[31] Machickning is a reference to the Rama First Nation, which had (and still maintains) a fish fence at Atherley Narrows, near present-day Orillia.

In 1923, Johnson Paudash told the Williams Treaties Commissioners that an oral history passed on to him by his grandparents mentioned one of these battles. As a young boy, he had been told that fifteen hundred warriors of the Mississauga Nation, including O-ge-mah-be-nah-ke, his great-grandfather's grandfather, had fought with Mohawks at the mouth of the Severn River at a place called Skull Island, then down the Black River to the Narrows of Lake Simcoe, up the Talbot River, and over the heights of lands into Balsam Lake. At that point, the Mississauga war parties had separated into two groups. At Burlington Bay, a great battle then took place between the Mohawks and one Mississauga war party, while the other group of Mississauga warriors came toward Mud Lake, battled at Peterborough, and drove the Mohawks all the way to the mouth of the Otonabee River, at Hatterick's Point, where yet another fierce battle ensued.[32]

Almost seventy-five years earlier, George Copway, an Ojibway Chief and Methodist minister, published a history of the Ojibway in which he discussed the Iroquois battles in similar terms. He described the great war between the Iroquois and the Mississaugas as one of "the most bloody battles" and recounted how warriors had fought at Rama, Mud Lake, and Rice Lake until they reached the mouth of the Otonabee River, "where several hundred were slain. The bodies were in two heaps: one of which was the slain of the Iroquois; the other of the Ojibways."[33]

It has been suggested, on the one hand, that there was an Algonquian "diaspora" following the Iroquois wars, with the First Nations from southern Ontario dispersed or destroyed, and on the other, based on oral histories, that the Ojibway returned to drive the Iroquois out of southern Ontario.[34] The truth may be more complex. There is much evidence to suggest that far from being destroyed, Algonquian peoples maintained an involvement in the fur trade during and after the Iroquois wars, and that as skirmishes continued in disputed territories, negotiations were undertaken to bring an end to the conflict and to "overturn" the war kettles. The Mississaugas, in particular, entered into several peace agreements with the Iroquois that enabled them to occupy the lands in southern Ontario without further hostilities.

It is not possible in this particular work to provide a complete description of the diplomatic efforts leading to these intertribal treaties. A fascinating series of negotiations involving shuttle diplomacy between the Iroquois, the French and their Indian allies, and representatives of the English monarch, however, resulted in a series of multi-party agreements. These treaties form the basis from which both the Mississaugas and Iroquois claim treaty rights to hunt and fish in southern Ontario under the protection of the Crown, and are worthy of at least a cursory examination.

By the end of the seventeenth century, the Iroquois, like their enemies, had been weakened by disease and losses in battle. In the winter of 1672-73, Jesuit missionaries observed Iroquois and Mississauga warriors hunting together in the territory of Hudson's Bay, but elsewhere in Ontario, Iroquois warriors were being attacked by other French-allied Indians known as the "Far Indians."[35] In 1687, a Cayuga spokesman indicated that the current war with the "far nations" had rendered "our Bever hunting unfree and dangerous."[36]

In 1690, the Five Nations sent eight wampum belts to the First Nations who gathered for trade at Michilimackinac. The belts were made of shells or beads, and the symbolic images they depicted, like documents, were capable of being "read." According to French historian Bacqueville de la Potherie, one of the Iroquois wampum belts proposed a peace treaty by suggesting that the disputants should have "their own bowl, so that they might have but one dish from which to eat and drink," a metaphor for

the shared use of the disputed hunting grounds.[37] The offer appears to have been rejected. In 1699, fifty-five Iroquois hunters were killed near Detroit while hunting beaver, apparently at the hands of Ottawa warriors.

Following the 1697 Treaty of Ryswick between England and France, King Louis XIV agreed to join with the English monarch in calling on their respective Indian allies to cease "all acts of hostility" in the lands north of Lake Ontario. Each King sent a dispatch to his Governor in North America directing each to work with the other and act to "unite their forces ... in obliging these Indians to remain at peace ... as His Majesty does not doubt but that will be productive of tranquility throughout the whole country."[38] The French King also noted that some of his First Nations allies hoped that a general peace would enable them to cross the otherwise hostile Iroquois homelands and thereby gain access to the lucrative fur markets at Albany, New York. He wrote of the "desire on the part of some of the French [Indian] allies" to have this access "and to share hunting grounds in order to enjoy free movement through Iroquois territory on the north shore rather than continue at war."[39]

In June 1700, five Chiefs of the Dowaganhaes (also referred to at times as the Waganhaes or Dowagenhaws), an unidentified group of the Algonquian-speaking "far nations" of the upper Great Lakes, sent a belt of wampum to Iroquois leaders at Onondaga confirming their desire for peace in the hunting grounds. They proposed their "hunting places to be one, and to boile in one kettle, eat out of one dish and with one spoon."[40] Later, in August, fifty Iroquois Chiefs reported these events to the English Governor Bellomont, stationed at Albany, who encouraged them to continue their peace-making efforts. He urged them to "try all possible means to fix a trade and correspondence with all those nations by which means you would reconcile them to yourselves ... and then you might at all times without any sort of hazard go a hunting into their country, which I understand is much the best for Beaver hunting."[41]

The Iroquois were able to make peace with four of these unidentified nations and reported that "we got some skins from the Waganhaes, which is a sign of peace."[42] That September, Iroquois Chiefs met at Montreal with Chiefs from nineteen of the French-allied Indian nations in the presence of the French Governor. There, the Iroquois again presented a wampum belt calling for the peaceful sharing of hunting grounds, "to make one joint kettle when we shall meet,"[43] and to eat from one bowl, with one spoon, again representing a desire to put an end to the fighting and share the disputed grounds. The Iroquois referred to their recent peace treaty with the Waganhaes by proclaiming that they had planted a "tree of Peace; now we give it roots to reach the Far Nations so that it may be strengthened."[44]

The following year, in July 1701, the Five Nations negotiated a treaty with Lieutenant-Governor John Nanfan, the acting English Governor at

New York. Nanfan promised the Iroquois that, in exchange for the cession of their beaver-hunting grounds to the King of England, they would be protected by the Crown when engaged in harvesting activities within the same territory.

The treaty refers to a "vast tract" of land described as eight hundred miles in length and four hundred miles in "bredth."[45] In the document, the Iroquois were promised that "wee [the Five Nations] are to have free hunting for us and the heires and descendants from us the Five nations forever and that free of all disturbances expecting to be protected therein by the Crown of England."[46] The territory of the treaty was referred to as the Beaver Hunting Ground and was described as "the country where the bevers, the deers, Elks and such beasts keep." It included all the lands lying between the "great Lake of Ottowawa [meaning the lake claimed by the Ottawas, namely, Lake Huron] and the lake called by the natives Sahiquage and by the Christians the lake of Swege [Lake Erie]."[47]

It is significant that the product of these prolonged cross-cultural discussions was a treaty reflecting negotiations among equals. Although written in English, it incorporated Iroquois words for places and for some of the First Nations with whom the Iroquois had battled. As well, it was written in terms of what the Iroquois ("wee") would acquire or retain rather than the rights to be acquired by the Crown.

Of equal significance is the fact that the treaty was accompanied by a map on which many of its key phrases appear, again written in both Iroquois and English. The map, long thought lost or destroyed, was recently found at the Public Records Office in England.[48] It provides a fascinating glimpse into the understanding brought by both parties to the lands at issue. It also reveals the fears of another time, referring, for example, to the Great Lake of the Ottawawa, or Ottawas, as reportedly inhabited by a monster.[49]

As important as the discovery of the map, however, is the revelation that the area in which Iroquois activities were to be protected by the Crown included waters. The lands depicted on the map by a "prick'd line" extend several miles into the waters of Lake Huron and include all of Lake Erie, thereby protecting rights in water, such as fishing, as well as hunting and trapping activities.

The Minutes of the 1701 conference between Lieutenant-Governor Nanfan and the Iroquois confirm that they had finally ended their lengthy hostilities with a number of First Nations. Importantly, the Iroquois informed Nanfan that they had made peace with "seaven nations," including the Assissagh, the Iroquois term for the Mississaugas.[50]

In September 1701, just after the treaty was concluded with Nanfan, a general peace agreement involving the Five Nations and all of the Indian

nations allied to the French was reached at Montreal with the assistance of the French Governor, the Chevalier de Callieres.[51] As many as sixteen hundred Aboriginal delegates from the Great Lakes region attended this massive council as well as a large delegation from the Five Nations Confederacy. There, proposals put forward the year before by the Iroquois for a "tree of peace" and a "dish with one spoon" were ratified. The Aboriginal perspective of what was agreed to at that time, reflected in oral histories, has appeared in the historical record with remarkable consistency over the last three hundred years.[52]

For the Iroquois and the Ojibway, the "dish with one spoon" marked the end of violent conflict in the hunting grounds north of Lake Ontario. As Chief Jake Thomas explained to members of the Royal Commission on Aboriginal Peoples in 1993, the treaty signified that

> We shall only have one dish (or bowl) in which will be placed one beaver's tail, and we shall all have coequal right to it, and there shall be no knife in it, for if there be a knife in it, there would be danger that it might cut some one and blood would thereby be shed. This one dish or bowl signified that they will make their grounds one common tract and all have a coequal right to hunt in it. The knife being prohibited from being placed into the dish or bowl signifies that all danger would be removed.[53]

Chief Robert Paudash's oral history, referred to earlier, also described the arrangement as a treaty under which Mohawks and Mississaugas would intermarry and thus assure peace for the future. He explained that the Mississaugas, "seeing that the land conquered by them from the Mohawks, who had dispossessed the Hurons, was full of game and an excellent hunting ground, they came down from Lake Huron and settled permanently in the valley of the Otonabee, or Trent, and along the St. Lawrence as far as Brockville."[54] Victor Konrad disagrees, however, saying that the Mississauga villages located in the lands north of Lake Ontario were established "at the pleasure" of the Iroquois.[55]

Nonetheless, and whether they remained in the area as a result of war, consent, conquest, or diplomacy, the Ojibway remained virtually undisturbed in their possession of these lands until European settlement began. Indeed, by the late eighteenth century, the Mississauga and Chippewa occupation of southern Ontario was so well established that when the Crown needed lands in the area, it obtained land surrenders from them, and not from the Iroquois. These surrenders were obtained in general accordance with the provisions of the *Royal Proclamation of 1763* (discussed more fully below), and almost all were in exchange for promises that Aboriginal hunting and fishing activities would be protected by the Crown.

The Cultural Significance of Hunting and Fishing

As with other Aboriginal peoples in Ontario, hunting and fishing activities were important to the Mississaugas and Chippewas not just for subsistence but for cultural reasons as well. The earliest explorers to visit Ontario had noted the variety and ingenuity of Aboriginal harvesting techniques. In 1698, for example, Louis Hennepin described the intriguing methods by which the "Savages" fished:

> [They] catch all sorts of fish with Nets, Hooks and Harping-irons [harpoons or spears] as they do in Europe. I have seen them fish in a very pleasant manner. They take a fork of wood with two Grains or Points and fit a Gin to it, almost the same way that in France they catch partridges. After they put it in the water and when the Fish, which are in great plenty by far than with us go to pass through, and find they are entered in the gin, they snap together this sort of Nippers or Pinchers and catch the Fish by the Gills.[56]

Almost two centuries later, Johann Georg Kohl observed that the Ojibway language had a variety of specialized words to describe fishing that had no equivalents in English. The Ojibway, for example, had both a general word for fishing and specific words for each type of fishing they engaged in:

> "I fish" generically is *"Nin gigoike"* (literally the word signifies, "I make fish"); *"Nin pagidawa"* means: "I catch fish with nets"; *"Nin pagibad"*: "I catch fish with a line on which there are many hooks." *"Nin akwawa"* means: "I fish with a spear." We could certainly convey this idea in English with one word, "I spear," still it would not be so comprehensive as the Indian word, in which it is explained that *fish* are speared. They have also a separate term for spearing fish by torchlight; they call it *"wasswewin"* (fishing with a spear in the light). *"Nin wewebanabi"* signifies: "I fish with a hook"; it is the only term of the whole category which we can render in one English word, "I angle."[57]

Although the gill net was a major fishing technology in the development of the Aboriginal fishery, Anishnabe peoples invented many other diverse and creative devices for use in capturing fish. Kohl expressed his astonishment at the "many sorts of fish lances they [the Ojibway] have invented and how cleverly they use them ... They spear fish in winter and summer, by night and by day. They spear the huge sturgeon and the little herring often too, even smaller fish. In winter, spearing is almost the sole mode of catching fish." According to Kohl, fishing spears were called

generically *anit,* but, again, there were special names for different sorts of spears, and all appeared to be "neatly made." Some had two prongs; others had three. "For catching larger fish, they also have a species of spear-head, which on striking, comes loose from the pole and is merely attached to it by a cord. The fish darts off, dragging the wooden bob after it, gradually becomes exhausted and is captured without difficulty."[58]

To lure fish, the Ojibway carved small *okeau* (decoy-fish) from wood or bone. Kohl saw several of these stained to look like real fish and attached to a long string, which was in turn connected to a piece of wood of about eighteen inches long. The string was "weighted with a piece of lead, so that it may sink perpendicularly in the water. The fisherman, lying over the hole ... lets his *okeau* play round the mouth of the fish he is decoying, draws it up in time and tantalises the poor wretch higher and higher until he can easily spear it."[59]

The Ojibway had a distinctive way of fishing in the winter, sometimes referred to as "peep-hole" fishing. They would cut a small hole in the ice and erect a tent above it, so that the fish could be seen swimming in the shade created by the tent and be more easily detected.[60] Thomas Need, who wrote *Six Years in the Bush* in 1838, described the Mississauga fishermen he saw engaging in such activities: "we observed some forty or fifty of them in their picturesque gypsy-like tents, watch for fish. They will stand many hours together over a hole in the ice, darkened by blankets, with a fish-spear in one hand, and a wooden decoy fish attached to a line in the other waiting for a muskelonge or pike which they strike with almost unerring certainty ... In this way, a skillful fisherman will catch 50 to 200 lbs. weight of fish in a day."[61]

Throughout the nineteenth century, Aboriginal fishermen used nets, spears, and stone weirs to catch fish. They sometimes used hooks, but, unlike Europeans, did not use lines with a single hook. As one Ojibway elder explained to an ethnologist, this was because they fished for subsistence: "With a hook you can catch only one fish at a time. With a net you can catch lots of fish at one time."[62]

The Mississaugas also created fishing weirs by placing stones in a creek so as to form a small channel where spawning fish could be pulled out by hand. At the peak of the spawning season, around a hundred fish a day could be caught. Fish were most commonly speared during ice fishing and at night by torchlight. The Indians did not ice fish at night for fear that the spirits would send a large man-eating snake to the ice-hole.[63]

Like those of other Ojibway communities, village sites were usually situated around areas where fish spearing could easily take place. As David Cusick wrote around 1840, the use of fish weirs and fish fences, such as that at Machickning, was well known:

> The use of the spear naturally caused villages and camps to be located at or near rifts and shallow parts of rivers. At such places, too, stone-weirs were made between the walls of which the fish were driven and one very large one still remains in the Seneca River. The Hurons made hurdles which brought the fish into their nets and the Oneidas had annual fishing feasts in the spring. When all were assembled a row of stakes was placed across the stream and woven with branches. Then the fish were driven down the creek and another row of stakes was placed behind them. When this was done the spearing commenced and the division of fish and the feast followed.[64]

Fishing, however, was not the only means of subsistence among the Ojibway. Hunters enjoyed great respect, with the community regarding "the active deer-slayer or brave beaver-trapper as a man to be respected, who can support a family, a brave who gains the women's hearts, and whose praises the songs repeat."[65] One early Mississauga name for Rice Lake, Pem-e-dash-cou tay-ang (Pamadusgodayong, Lake of the Burning Plains, Lake of Plains), reflects the use made of the hunting grounds on the south shore of the lake where vegetation was burned each spring to encourage the growth of a particular type of grass that attracted deer.[66]

Spiritually and culturally, there were many ceremonies and rituals associated with hunting. This was particularly the case at the time of *manido-gizisons* (the Manido moon) in early February and March, when it was believed that the supernatural man-eating Windigo would attack and destroy camps. In the harsh months of winter, stores of berries, sugar, and rice would quickly be depleted, leaving bands almost completely dependent on hunting and ice fishing. To ward off the Windigo, many precautionary steps were taken, such as making a feast with the first animal killed, but offering part of it in sacrifice. For some animals, specific hunting "medicines" were used to help in the hunt as well: "For hunting beaver, medicine would be smeared on the end of a stick, which is attached to the trap planted in the ground. The stick doused in medicine attracts the beaver without fail. For luck in deer hunting, a man usually chewed some kind of root, then rubbed it on the cheeks, eyes, hands or weapons. Other deer medicines were believed to 'poison' the animals' blood, which the hunter threw away as an offering to the *manidos,* spirits who helped him in his pursuit."[67]

Deadfalls were used for smaller animals such as porcupine and mink, and snares were set for rabbit and grouse. Larger species such as deer or moose were called with a trumpet and lured into a fenced enclosure. In 1888, A.F. Chamberlain visited the various Mississauga reserves to prepare a PhD thesis on the Scugog and other Mississauga dialects. He described the variety of means by which the Mississaugas hunted and fished: "The

Indians at Rice Lake used to shoot by night (in canoes with torches) the deer *(wawasque)* that came to feed on the rice-beds. They also hunted the deer with hounds obtained from the settler. The Indians of Chemong [Mud] Lake were accustomed to 'bark squirrels' *(atchitamon),* i.e. to make the bullet strike the tree under the animal, so that the splinters of bark killed it without injuring fur or flesh. The muskrat *(ozasque),* beaver *(amic)* and other animals they caught by setting traps."[68]

Each Mississauga hunting band was composed of an extended family sharing the same totem through male lineage, involving some twenty to thirty people, headed by a Chief, or *ogemah.* Fishing grounds, rice fields, and sugar bushes were communal property, available to any family member, but permission was required before these common grounds could be used by others.[69] Families had specific hunting territories. In 1838, Thomas Need remarked on the protocols that ensured that these hunting grounds were protected from encroachment by others: "I am now becoming acquainted with these Aboriginal peoples and mutual attentions and civilities pass on both sides: they are honest and civil ... On one point alone, that of hunting furs, they are said to be as tenacious as English landholders of their game ... Each family possesses a hereditary hunting ground, which is marked by bounds well known to the tribe and on which a trespass is highly resented."[70]

Given their reliance on hunting and fishing, then, it is not surprising that, in the treaty process, the Mississaugas and Chippewas took steps to protect their hunting grounds and fisheries from encroachments.