



# Understanding Aboriginal and Treaty Rights in the Northwest Territories:

## Chapter 2: Early Treaty-making in the NWT

**T**he first chapter in this series, *Understanding Aboriginal and Treaty Rights in the NWT: An Introduction*, touched briefly on Aboriginal and treaty rights in the NWT. This chapter looks at the first contact between Aboriginal peoples and Europeans. The events relating to this initial contact ultimately shaped early treaty-making in the NWT.

### Early Contact

When European explorers set foot in North America they claimed the land for the European colonial powers they represented. This amounted to European countries asserting sovereignty over North America. But, in practice, their power was built up over time by settlement, trade, warfare, and diplomacy. Diplomacy in these days included entering into treaties with the indigenous Aboriginal peoples of what would become Canada. Some of the early treaty documents aimed for “peace and friendship” and refer to Aboriginal peoples as “allies” rather than “subjects”, which suggests that these treaties could be interpreted as nation-to-nation agreements.

### The Royal Proclamation

After Great Britain defeated France for control of North America, the British understood the importance of maintaining peace and good relations with Aboriginal peoples. That meant setting out rules about land use and Aboriginal rights. The Royal Proclamation of 1763 is the most important statement of British policy towards Aboriginal peoples in North America. The Royal Proclamation called for friendly relations with Aboriginal peoples and noted that “great frauds and abuses” had occurred in land dealings. The Royal Proclamation also said that only the Crown could legally buy Aboriginal land and any sale had to be made at a “public meeting or assembly of the said Indians to be held for that purpose.”

### Who is “the Crown”?

The Queen is the formal head of the government in Canada. For this reason, the government is often called “the Crown”. For the same reason, agreements with the government are called agreements with “Her Majesty”.

The Royal Proclamation set out certain guiding principles for dealings between the Crown and Aboriginal peoples. As a result, it provided a foundation for future treaty talks.

### The Royal Proclamation of 1763 is important for establishing that:

- Aboriginal peoples had an interest in certain land;
- this interest belonged to the “tribe” or “nation”, not to individuals;
- only the Crown could buy or accept Aboriginal land;
- the Crown was required to obtain land from Aboriginal peoples by agreement;
- any unsold or un-surrendered Aboriginal land was reserved for the exclusive use of Aboriginal peoples; and
- the Aboriginal peoples were under the protection of the Crown.

Most early treaties were simple land sales, but some cases also included hunting and fishing rights. Annual treaty payments first appeared in a treaty in 1818 and after that became the norm.

## The Rupert’s Land and North-Western Territory Transfer

So where does the NWT fit in? A few years after the Royal Proclamation was signed, Europeans began exploring northern waterways to expand the fur trade. Trading posts were set up and Aboriginal peoples began trading furs.

Much of the NWT and western Canada was known then as “Rupert’s Land and the North-Western Territory.” In 1670, the King of England had granted control over this area to the Hudson’s Bay Company. When Canada was established as a country in 1867, its boundaries did not include this region. After Confederation, the government of Canada made it clear it wanted the territory. Great Britain transferred Rupert’s Land and the North-Western Territory to Canada in 1870. One of the terms of the deal was: “Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government...”

## Treaty 8 and Treaty 11

Before the beginning of modern land claim negotiations, two treaties – Treaty 8 and Treaty 11 – were signed within the present NWT. At that time, several major development projects were on the horizon: the Yukon gold rush of 1898 and the discovery of oil at Norman Wells in 1920.

The negotiations for Treaty 8 were conducted in the summer of 1899 with the “Cree, Beaver, Chipewyan, and other Indians inhabiting the district...” and the Treaty was signed at Lesser Slave Lake in northern Alberta on June 21, 1899. An “adhesion” to the Treaty was also signed in 1900 in Fort Resolution, NWT. Treaty 11 was signed by the Crown and representatives of “the Slave, Dogrib, Loucheux, Hare, and other Indians...” in 1921. An adhesion to Treaty 11 was also signed in Fort Liard in 1922.

Some Métis joined Treaty 8 and Treaty 11 and so became “Treaty Indians”. However, most Métis were given “scrip” instead of treaty rights. Scrip was a government certificate that could be exchanged for land or money. In 1929 there were discussions in Aklavik about bringing some of the Inuvialuit under Treaty 11, but the Inuvialuit rejected this proposal.

### The Text of the Treaties

The written texts of Treaty 8 and Treaty 11 are similar to those of other numbered treaties in western Canada. The main features, according to the texts, are:

- to establish “peace and goodwill” between the Dene and the Crown’s other subjects;
- the Dene are stated as giving up their rights to their land to the Crown;
- the Crown guaranteed the right to hunt, trap and fish throughout the Treaty area, subject to regulation, except in those areas taken up for settlement, mining, timber cutting, etc.;
- reserves were to be set aside on the formula of one square mile (2.6 square kilometres) per family of five;
- a cash payment following signing;
- annual Treaty payments;
- the Crown was to pay the salaries of teachers to instruct the Dene;
- agricultural assistance and equipment was to be provided; and
- the Dene promised to act as “good and loyal subjects of Her Majesty”, to obey the law, and to maintain peace with other subjects of the Crown.

### Disagreement Over the Meaning of Treaty 8 and Treaty 11

There was one problem with writing down the terms of these treaties: Dene is an oral culture. The Dene understanding of the treaties comes from the testimony of elders. They understood the treaties as agreements of “peace and friendship” that did not give up Aboriginal rights and lands. However, the federal government understood the treaties as giving up certain undefined Aboriginal rights and title, in exchange for benefits and other promises made in the treaties.

The disagreement came to a head in 1973 during the Paulette case. The Dene registered a formal notice of claim to some Crown lands as a way of challenging the treaties in court. In the Supreme Court of the NWT, Justice Morrow found that, “...there [is] a sufficient doubt on the facts that Aboriginal title was extinguished...” Although the Supreme Court of Canada did not rule on this specific point, this case called into question the ability to rely on the written text of the treaties.

### A Change in Direction

When the first main period in treaty-making in Canada ended in 1930 with the final numbered treaty, attempts to address Aboriginal rights and title in Canada stopped for about 40 years. Then in 1973, a Nisga'a chief claimed Aboriginal title to traditional lands in north-western British Columbia – a region without previous treaties. While he lost in court on a technicality, the Calder case led the federal government to announce in 1973 a new way to negotiate Aboriginal land claims: the federal Comprehensive Land Claims Policy.

When the Government of Canada began negotiating comprehensive land claim agreements in the NWT in the 1970s, the Paulette case and Dene opposition to the federal interpretation of Treaty 8 and Treaty 11 likely played a role. However, the federal decision was also based on the fact that some of Canada's treaty obligations under Treaty 8 and Treaty 11 were not fulfilled. The announcement of the federal Comprehensive Land Claims Policy marks the beginning of "modern" Aboriginal rights negotiating processes in the NWT, and it will be the starting point for the next chapter in this series.