WILLIAMS TREATIES

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What is it to surrender? Have we, the Anishinaabe, ever surrendered our lands? The verb to *give up* puts the onus on the one who acted, so we can wholeheartedly say, 'No.' *Surrender* as a noun in law started circulating in the fifteenth century, at the beginning of imperial and colonial incursions into North and South America. It's not an accident that this was also the moment when the notion of a legal surrender, a giving up of land, came into existence. A surrender was impossible on many levels, because it would have meant the end of the Anishinaabe way of life and being. It's not just the land; it's the food, the relationships, the heart, the love, the ceremonies, the language, and the freedom of us all.

I am Anishinaabe-kwe (Chippewa) from Beausoleil First Nation on Chimnissing (Christian Island) in Georgian Bay. The second (of three) Williams Treaty was signed on Christian Island on November 3, 1923. The signatories of the Beausoleil First Nation were Henry Jackson, Frank Copegog, Albert Monague, John S. Hawk, Edward W. King, Robert Marsden, Jerry D. Monague, Walter Simons, and William P. Assance. Our people, along with the Michi Saagig (Mississauga) of Rice Lake, Mud Lake, Scugog Lake, and Alderville, as well as other Chippewa of Georgina Island and Rama, signed three Williams Treaties in 1923. In September 2018, these nations concluded the fight for compensation for the impact of the wrongful interpretation of those treaties on our communities, our livelihoods, our families, and our bodies. What we signed this time is also an injustice, but I will speak to that later. We are always signing agreements with the government when we are backed into the corner of mere survival, without the strength to hold out for real justice.

The Williams Treaties had a 'basket clause' embedded in the text, whereby a surrender of huge amounts of land – a total of 12,944,400 acres minus some reservations lands – was agreed to. This clause was

contested by every person from every First Nations community who was either directly involved in the signing or who holds the oral history of the event.

We did not surrender.

Our lands (covered in the Williams Treaties) were bounded by rivers and lakes – from the northern shore of Lake Ontario between the Trent and Etobicoke Rivers (including Toronto); from north of Lake Simcoe to Nipissing; and finally, between the Ottawa River and Lake Huron. In exchange, the Mississauga and Chippewa nations received a one-time payment of $25 for each band member, as well as a one-time lump sum of $466,800.

The Elders in our communities did not think they had given up their rights. This is why, according to Elder Doug Williams, '[t]hey continued to hunt and trap and fish as they had always done after the treaty was signed. It was not until the game wardens showed up and began harassing them that there was a problem.'[1] There had been a push to move Anishinaabe onto reservations, but it was understood that this was to clear the way for settlers, not an end to treaty rights. As Williams notes, 'They would never have given up their right to feed themselves.'[2]

The effect of losing access to our 'country' food had a direct impact on our health. According to Mr. Charles Big Canoe of Georgina Island, the increase in diabetes began with the introduction of government rations of white flour and sugar.[3] As we became increasingly reliant on the government for food because we could not legally access our lands, our diets began to kill us. Elders in my community speak about the fact that the theft of lands and the loss of hunting and fishing rights that were not supposed to be part of the Williams Treaties was due to the lack of translation and the inability of the signatories to read and write English.[4] In most countries, a legal agreement would be null and void if the signatories did not know exactly what they were signing. Instead, we hold on to the oral history of what was promised and continue to assert that what has become the written document is not the truth of what had been agreed to.

Our people starved because of the intentional misinterpretation of the Williams Treaties; the advent of harsh colonial measures under the Indian Acts of 1876 onward, which included the creation of reservations and the institution of Indian agents to control movements and commerce; and the establishment of residential schools for assimilation. Any action

that looks like surrender was really about survival. It is also about resistance within the context of an extreme lack of freedom and power. Many of the Elders interviewed for the most recent Williams Treaty settlement claim speak about the ways they avoided or outwitted the game wardens – for example, by fishing at night. Many were caught and charged in direct violation of their treaty rights. In 1981, Doug Williams and a Mr. Taylor decided to take his charge to the Supreme Court. This case would be referenced and the judgment cited in subsequent case law protecting Aboriginal and treaty rights.

The late Associate Chief Justice MacKinnon wrote the opinion in R. v. Taylor and Williams (1981), 34 O.R. (2d) 360. He argued that First Nations history and traditions, as well as the perceived effect of a treaty at the time of its execution, needed to factor into fishing and hunting rights cases. Justice MacKinnon pointed out that the Crown needs to consider its relationship of trust with First Nations and therefore the Crown must act fairly.

'The principles to be applied to the interpretation of Indian treaties have been much canvassed over the years,' Justice MacKinnon wrote. 'In approaching the terms of a treaty quite apart from the other considerations already noted, the honour of the Crown is always involved and no appearance of "sharp dealing" should be sanctioned.'[5]

This means the government cannot be seen to be acting out of self-interest to the detriment of First Nations. In interpreting treaties, this argument shifts the emphasis onto First Nations interpretations, because the alternatives have meant starvation and poverty.[6] The current situation, whereby First Nations own less than .02 per cent of their lands and have high rates of poverty, represents a break in the trust relationship between

Rebecca Belmore, X. *Performance on June 17, 2010. Wall of the Price Chopper, 181 Brock Street, Peterborough,* ON. *Performance for Mapping Resistances exhibition curated by Wanda Nanibush as part of the Ode'Min Giizis Festival, June 17–18, 2010, Peterborough,* ON.

First Nations and the Crown. It also blatantly proves that treaty interpretation and government dealings around land have been shady, to the detriment of our people's survival.

It is an important fact that resistance in terms of taking the government to court was consistently attempted by many First Nations across the country but was made difficult by Section 141 of the Indian Act. This section made it illegal for First Nations to hire lawyers, obtain legal counsel, or raise funds for legal defence. The draconian nature of Canada's desire to shut down our dissent went so far as to institute pass systems to leave the reserve to sell goods, and to make it illegal to gather in large groups. It still amazes me, and fills my soul with pride, that our people persisted through this oppression and still keep fighting for their rights today.

When Williams and Taylor[7] fought the charge of poaching based on an interpretation of the Williams Treaties that maintained their hunting and fishing rights, the country was in discussions about repatriating the Constitution and ending colonial status with Britain. First Nations leader George Manuel, who was president of the National Indian Brotherhood[8] and was then president of the UBCIC,[9] chartered the train that would carry First Nations community members from Vancouver to Ottawa in a campaign called 'the Constitution Express.' The Constitution Express hoped to delay the repatriation of the Constitution and protest the exclusion of First Nations from the discussion. First Nations worried that their rights would be trampled and more land stolen without reparations, because that was how the Canadian governments had treated First Nations, Inuit, and Métis peoples until that point.

First Nations were not brought to the table, but a clause was added to the Constitution that has become one of the many sources of protections of rights used in courts today. Section 35 reads as follows:

> 35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
>
> Definition of 'aboriginal peoples of Canada'
>
> (2) In this Act, 'aboriginal peoples of Canada' includes the Indian, Inuit and Métis peoples of Canada.

The ensuing decades have witnessed a struggle in interpreting the term 'existing.' Again, the issue of surrender raises its ugly head. First Nations understand that their inherent right to their lands is an 'existing' right. The main reason is the desire to survive.

In 1992, after five hundred years of colonization, the Williams Treaties First Nations took the government to court, arguing that it did not act honourably and that harvesting rights were 'unjustly' denied. In November 2018, the federal and Ontario governments apologized for the impacts of the Williams Treaties and the notion of surrender implied by the 'basket clause.'

Crown-Indigenous relations minister Carolyn Bennett stated, 'We are sorry that, in not recognizing your rights to harvest in your pre-Confederation treaty areas, your communities faced hardship and hunger, with the bounties of the land being replaced by biscuits and tins of government meat. We are sorry that your people were not able to pursue traditional activities with pride and dignity, but instead were persecuted for exercising their rights. And we are sorry that your grandmothers and grandfathers, mothers and fathers, and aunts and uncles were constrained in their ability to do what their ancestors had always done – to teach younger generations about your communities' traditional lands and waters and pass along Anishinaabe culture and practices.'

The settlement came with financial compensation nowhere near what the land is worth today, as well as the right to purchase 11,000 acres to use for hunting and harvesting. One of the main wins in the settlement is an acknowledgement of harvesting rights as a treaty right under Section 35 of the Constitution.

An apology doesn't mark the end of the trauma caused by the Williams Treaties. This is not just the cognitive dissonance between pens and paper versus oral history. It is not resolved with the simplicity of land acknowledgements. This episode is still a life-and-death fight, and one that has had lasting impacts on our bodies, our cultures, our children. As Doug Williams courageously wrote, 'I witnessed the trauma and the fear that was put on my people that were trying to live on the land. They lived daily watching over their backs and trying to maintain their lifestyle as Michi Saagig Nishnaabeg.'[10]

I have travelled to many communities, listening to people describe the pain caused by development on their lands and by the destruction of their ways of life. I have heard through tears and anger the way their children now don't remember the time when the land and water was clean and bountiful. This sadness settles in our DNA and gets passed on; it is expressed in all the ways we try to numb the shame and loss, generation after generation. I have also heard the multiple exciting ways in which communities are reinstituting traditional governance that includes

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women and Elders. I have heard of folks moving back out onto their lands and practising the stewardship and relations with the Earth and her kin that a genocide has attempted to break.

This work remains illegal; we still do not have access to our lands, but we never surrender. We never surrender despite broken treaties, residential schools, Indian Acts, child welfare, and jails – all the institutions that have taken over where draconian laws have ended.

At the heart of the Williams Treaties is the issue of being able to present an Anishinaabe perspective, because colonialism still lives on today. The courts still treat our Elders' testimony as hearsay because it is known through someone living to whom it was passed down. The people who signed the treaty are not alive to be cross-examined. If the Crown stopped seeing itself as an adversary to First Nations' claims, our Elders' understandings could be honoured.

Ultimately, it will mean Canadians who have made their wealth at our expense will need to shift some resources back to us so we can also

Performance for Mapping Resistances exhibition curated by Wanda Nanibush as part of the Ode'Min Giizis Festival June 17–18, 2010, Peterborough, ON.

thrive. It will also mean accepting as equally valid our ways of thinking, being, and doing. Currently, when we step into the arena of the street, the courtroom, and the boardroom, we are stepping into someone else's world view, just like the original treaty signatories did. Until this inequity is acknowledged, we will always lose land at the negotiating table.

The reason we harp on land rights is for our physical survival, but also for our spiritual survival. As long as the land and water remain clean and bountiful, our cultures will exist. The millennia of knowledge were built up through observing and working with the lands that are here, so we could regain that knowledge through careful, thoughtful, guided observation and experimentation for many generations to come. Many Elders speak of the speed at which settlers have polluted the land and water, making the exercise of treaty rights almost impossible.

As Charles Warren of Georgina Island said, 'The local people didn't know anything about the treaty [with] the non-Native people. Wild rice and wild cranberries grew southeast of the island. Last time when I was

twelve – I remember wild rice and wild cranberries. There's no native fish in here anymore – the lake is polluted and the fish are horrible.'[11]

While treaty recognition is a very important step in the right direction, the Anishinaabe notions of land stewardship and communal relations with non-human beings need to come back to the forefront of the discussion of land. We speak in ownership terms because that is what is understood in the white world we inhabit. But if we could – as Anishinaabe writer Gerald Vizenor has asked – unwind ourselves from the white words we have become,[12] the idea that all lands are there to sustain life in a collective stewardship model doesn't seem so idealistic.