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Concepts of Extinguishment in the Upper Canada Land Surrender Treaties, 1764–1862

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The views expressed in this communication are those of the author and not necessarily those of the Government of Canada.

Introduction

For the past two centuries, the Crown's interpretation of the Upper Canada Land Surrenders has been that they transfer all rights and title, including hunting and fishing rights, to the Crown in exchange for payment, without any remaining residual rights. In other words, the conclusion of the land surrender treaties constitutes the extinguishment of all rights of the Aboriginal signatories within the described lands. With the exception of a few cases where specific reserves were created, these land surrender agreements provided no lands within the described territory for the use of Aboriginal signatories. By agreeing to the land surrender provisions, the Aboriginal people of the Great Lakes Basin alienated themselves from these lands for hunting, fishing, cultivation, or other traditional practices. Through this alienation, the Crown believed it had total unfettered control over these lands, while Aboriginal people were expected to relocate to lands not yet surrendered.

Recently, this interpretation, and the scope of the surrenders themselves, has been questioned. By examining the language of the treaties, this new interpretation questions whether all existing Aboriginal rights were surrendered or only Aboriginal title. This perspective implies that only the title was surrendered to the Crown, while other rights, such as a right to hunt and fish, may still exist. While this new view is focused on the language of the treaty documents, it appears to ignore the historical context surrounding the negotiation and conclusion of the Upper Canada Land Surrenders (UCLS). The terms and language found in the texts must be tempered by a close examination of what the parties understood them to mean, of the historical context of the period, and of the intent of the agreements. Specifically, the issue of "hunting" or "hunting grounds" is one of considerable interest. Throughout this period, Aboriginal lands were constantly described as "hunting grounds" in official documents and correspondence of the Indian Department. In light of this usage, did British colonial officials make any

distinction between the "hunting grounds" and Aboriginal title in their policies and their practices of treaty-making?

In order to properly ascertain the true nature of these treaties, it is necessary to outline the policies that guided the treaty process, the terms of the surrenders themselves, and to what the parties believed they were agreeing. Specifically, this research will examine the creation and application of the Royal Proclamation of 1763, which forms the basis for all Aboriginal land cessions, the surrender and treaty-making process between 1764 and 1862, as well as the changing relationship between the parties during this period. While a general examination of the UCLS process is required, four specific treaties will be used as case studies. These treaties, concluded at different times during the treaty process, are similar in nature but unique either because of specific clauses, or because of the implementation of the treaty terms. These treaties are: the 1790 McKee Treaty, the 1796 Chenail Écarté and 1827 Huron Tract treaties, which will be examined together, and the Rice Lake Purchase of 1818. In all four treaties, there is specific language dealing with the nature of the land surrendered, such as the scope of the land, the usage of the land, or the reserving of lands. These treaties, as well as their negotiation and implementation, are useful examples of the differing views and understandings of the concept of land surrender in Upper Canada.

Royal Proclamation

The arrival of the first permanent European settlements brought a new system of land tenure to North America. Specifically, European land tenure introduced individual land ownership as well as Crown lands to the New World. As settlers arrived in the colonies, the lands were subdivided and allotted, through grant or purchase, to individuals who were to farm and develop them. Before these lands could be opened and settled, however, the title of the land needed to be held by the Crown. The various European powers had different views as to how to attain title. For France and Spain, discovery of new lands and a symbolic possession-taking, such as the raising of crosses, were sufficient to accord the territorial rights of the land to the discovering state. The British and Dutch, however, so as to ensure peaceful relations and safety within the lands of their colonies, negotiated land purchase agreements with the Aboriginal inhabitants in exchange for goods as well as military and trade alliances.[1]

All of the British colonies established along the Atlantic coast were somewhat independent one from the other. The Home Government, however, maintained an overall administration of various issues, most notably relating to colonial trade and commerce, as well as overall defence of the colonies. As the security of the colonies was always a pressing issue, either from French or Aboriginal threats, British administrators wanted to regularize the relations between the new settlements and their Aboriginal neighbours. In 1670, Parliament passed an act prohibiting any violence against Aboriginal populations, their "people, goods or posses-

sions."[2] The main purpose of this legislation was not so much to limit the growth of the colonies, but rather to ensure peaceful and friendly relations. It proved to be an ineffective tool, however, and impossible to enforce due to the vagueness of the act as well as the colonies' desire for new lands. By the end of the seventeenth century, a new administrative body, the Committee of the Lords of Trade and Plantations (referred to as the Board or Lords of Trade) gradually assumed a greater role in the administration of commerce between Britain and the Americas, as well as regularizing the British fur trade in the interior.[3] By the mid-eighteenth century, the position of the Lords of Trade shifted from a mere oversight committee to the leading decision makers of colonial policy.[4] This concentration also led to the consolidation of British policy regarding Indian affairs, and eventually, land policies in America.

The Lords of Trade were limited in their ability to effectively control the activities and actions of the colonies. Because of the quasi-independent nature of the colonies, colonial legislature and governors were responsible for the orderly settlement of their colony, including the subdivision of lands and dealing with the Aboriginal people who lived within its boundaries. As the population of colonies such as New York, Virginia, and Pennsylvania grew, so did their desire to increase their land base, which could only be done through the acquisition of Aboriginal lands. From colony to colony, the protocols for acquiring these lands differed. On the whole, acquisitions were based on the concept of a signed deed with an Aboriginal person or group. Who had the authority to sign, however, varied, and agreements could be elaborate ceremonies between governors and Aboriginal groups, or concluded by private land companies or land speculators.[5] Because of the lack of uniformity, not only between colonies but also within a colony, conflict between Aboriginal people and unscrupulous land-jobbers became increasingly frequent.

With the growth of the colonies, land usage pushed available hunting lands continuously westward, disrupting Aboriginal hunting and gathering.[6] British concerns over the rampant and uncontrolled land purchases focused primarily on its relationship with its Aboriginal trading partners and allies. The expansion of the colonies pushed the frontier west, and in consequence reduced the number of hunting grounds available to Aboriginal hunters, forcing them to go further afield to meet European demand for furs.[7] The fear of losing fur trade relationships to the French at Montreal due to displeasure at the loss of hunting grounds worried the Lords of Trade, as did the impact of uncontrolled land purchases upon the delicate military alliances made with the Iroquois Confederacy and other groups. As the threat of French military action remained high, the shady land deals and growing encroachments upon Aboriginal lands were being seen as a direct threat to the safety and viability of Britain's North American colonies.

The territorial expansions of the colonies of New York and Pennsylvania were of great concern to the Iroquois Confederacy. Numerous complaints from Iroquois sachems were heard by British officials in Albany, which had begun to attract

settlers looking for new agricultural lands, in the 1700s.[8] In 1742, an Onondaga chief, Canasseteego, while admitting that some members of his band had sold lands without the consent of the group as a whole, called upon the British to protect their land interest as they were "not well used with respect to the lands still unsold by us. Your People daily settle on these Lands and spoil our Hunting."[9] These complaints, however, had little impact upon the movement of settlers into the area as both New York and Pennsylvania continued to approve all manner of land deeds.

As Jack Stagg noted, by the 1740s, "an awareness developed among British officials in North America that a more rational, uniform, and most importantly, better coordinated policy for governing colonial Indian relations was needed."[10] Attempts were made at two colonial conferences in Albany in 1745 and 1753 to develop a more effective policy for defence and Aboriginal affairs. The second conference report recommended a series of administrative changes, including the unification of the colonies under one administration, and a uniform policy on the purchase of Aboriginal lands. It also recommended that only lands purchased by colonial officials be recognized and all private purchases be voided. Finally, the western boundaries of the colonies would be repudiated and all complaints be "speedily investigated."[11]

Upon review of the conference report, the Board of Trade saw merit in the sections relating to Indian affairs. Specifically, it agreed that a central administration for Indian affairs in the colony could be beneficial, especially as such a body would address issues that crossed colonial boundaries and thereby costs could be shared. The outbreak of the Seven Years' War in North America prompted the military establishment, which perceived Indian affairs as its responsibility, to move ahead with these recommendations. In 1755, William Johnson and Edmund Atkins were appointed superintendents for Indian affairs, Johnson in the northern colonies and Atkins in the south.[12] At their inception, these administrative units, collectively called the Indian Department, had a largely military purpose: to secure Aboriginal allies against the French. In the northern department, William Johnson was responsible for the Confederacy and all Aboriginal groups of the Ohio Valley.[13] As the conflict spread throughout the northern colonies, Johnson was able to address the land encroachment issues of the Confederacy and bring them back to the British ranks. Confederacy and other Aboriginal warriors played no small part in the ongoing war and were a valuable asset in Britain's eventual victory over their French rivals.

William Johnson's success in rallying the Six Nations to the British cause is largely attributable to his efforts to ease Iroquois concerns regarding encroachments upon their lands. In a 1756 letter, Johnson stated that the "deprivation of what [the Indians] deem their property was the chief cause of their Indifference in our Quarrel."[14] By 1759, Johnson continued to push for the development of a firm policy to address the questions of trade and Aboriginal land,[15] while the commander of the British military in North America, General Amherst, was

preparing to expropriate lands in the Great Lakes region for demobilized soldiers, a common military practice.[16] Fearing a general uprising by the Aboriginal population in the interior, the Board of Trade was reluctant to proceed with this plan. The Board stressed that proper attention had to be given to the interests of Aboriginal people in that region:

> The first of these points is essentially necessary to be [known] ... in reference to our engagement with the Indians, who may possibly claim part of the [lands to be granted] as their *hunting grounds* reserved to them by the most solemn treaties upon exact observance of which, not only our Interests, but our Rights in regard to the Claims of other foreign powers do greatly depend.[17] (emphasis added)

The Board of Trade was concerned that the grant would take place on land that had not been properly surrendered to the Crown through an orderly treaty, and that such an action would be seen as a land grab by the British at a time when they had no capacity to hold the frontier if a full revolt occurred. By disallowing Amherst's land grant plan, the Board of Trade was protecting their allies' claim of the territory and limiting the chances of conflict on the newly conquered frontier.

The Board of Trade's reaction to General Amherst's proposed settlement of soldiers became its general rule regarding all land purchases and encroachments upon Aboriginal hunting grounds in the colonies. Fearing a general uprising in the colonies if these issues were not addressed quickly, the Board of Trade recognized that the security and prosperity of the colonies depended directly on the continuance of good relations with Aboriginal peoples.[18] In December 1761, a circular of instruction was sent to governors proscribing a halt to all land grants on Aboriginal lands, the removal of all squatters, and Board of Trade approval for all future purchases of Aboriginal lands.[19] These instructions marked a new approach by Britain in Aboriginal relations—by taking control of land grants in Aboriginal territories, they effectively reduced the colonies' ability to expand territorially without check. The 1761 Instructions signalled the beginning of a centralized administration of Aboriginal affairs, which would only increase following the Royal Proclamation of 1763.

In the months prior to the signing of the Treaty of Paris in 1763, the Home Government used this opportunity to examine how best to administer its new North American territories as well as its Indian policy. The Board of Trade incorporated the opinions of both officials in the field and those within the Home Government to further its discussion. In a 1759 letter, Sir William Johnson recommended a strong central administration to deal with Aboriginal issues, such as alliances, treaties, and trade. He also recommended that a firm boundary be created between the areas of settlement and Aboriginal lands.[20] Both Johnson and Lord Egremont, secretary of state for the southern department, wrote letters expounding the need to secure peace with Aboriginal people by halting expansion of settlement and pulling troops out of frontier posts.[21] One document among Egremont's papers, entitled "Hints Relative to the Division and Government of the Conquered and newly acquired Countries in America," outlines recommendations for the gover-

nance, control, and administration of the colonies.[22] Several specific recommendations addressed problems with Indian policy, such as the creation of a fixed boundary line between settlement and Aboriginal lands as well as the centralization of Indian affairs.[23]

Egremont sent this paper, along with other recommendations, to the Board of Trade on May 5, 1763. He also asked the advice of the Board with respect to the governments to be created in North America, sources of colonial revenue and military establishments, and the need of "Preservation of the internal Peace and Tranquility of the Country against any Indian Disturbances."[24] The secretary of state also wrote that the goal of the government was:

> conciliating the Indians by protecting their Persons & Property & securing to them all Possessions, Rights and Priviledges they have hitherto enjoyed, & are entitled to, most cautiously guarding against any Invasion or occupation of their *Hunting Lands*, the Possession of which is to acquired by fair Purchase only.[25] (emphasis added)

Just as Johnson had expressed in his 1759 letter to the Board, Egremont's view was that in order to protect Britain's position in North America it was necessary to defend Aboriginal interests in the interior, specifically their hunting grounds, by halting settlement and securing a process for future land acquisitions.

On June 8, the Board responded with a report that incorporated most of Egremont's recommendations. On the whole, the report consolidated the practices that were already put in place, and was a fusion of "the mercantilist rationale of the 'Hints' paper with Egremont's exhortation of the need for 'conciliating' the Indians through the protection of their lands."[26] The June 8 report held all of the major elements that would be included in the October proclamation. It created a territory that was open to trade, but where no grants of land or settlement could be made.[27] A few months later, after official approval by Cabinet, on October 7, 1763, the British monarch issued a Royal Proclamation establishing a new administrative structure for the newly acquired territories in North America, as well as new rules and protocols for future relations with Aboriginal people.[28]

With respect to the clauses dealing with Aboriginal affairs, the ultimate purpose was to protect Aboriginal interests to land in order to assure peaceful relations between Aboriginal people and settlers. The Proclamation declared all Indian lands within the colonies to be "reserve lands" by establishing that lands west of the Allegheny Mountain divide "which, not having been ceded to, or purchased by Us ... are reserved to the said Indians."[29] This declaration created a separate territory, outside the jurisdiction of colonial administrators, where the Indian Department could operate without interference. The Proclamation also specified that the various Aboriginal peoples were under the Crown's protection and that they "should not be molested or disturbed in their Possession of such Parts of our Dominions and Territorys as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds." While removing anyone but the agents of the Indian Department from interacting with Aboriginal people, the Royal Proclamation also reinforced the distinctions between settlement

lands and Aboriginal lands. This explicit recognition of the "Indian Territory" as a reserve for the hunting practices of North America's Aboriginal population was a response to the numerous complaints that settlement and encroachment were having a negative impact upon their ability to hunt, for trade or sustenance.[30]

The primary goal of the Indian affairs clauses was to halt all new settlement and encroachment onto Aboriginal hunting grounds. In an examination of the intention of the Proclamation, F. Murray Greenwood comments that the prohibition on acquiring lands applied not only to private individuals, but also to colonial governments.[31] Furthermore, by enforcing the prohibition in the Proclamation, the Home Government was looking to secure the interior of North America by limiting encroachment, and to reopen the fur trade and commerce disrupted by the war by protecting hunting grounds. While its goal was self-serving, the Crown openly recognized that the Aboriginal populations of North America held rights to lands used for their livelihood and survival. These rights were to be protected and were only alienable to the Crown. Just as the Royal Proclamation reinforced the ban on the acquisition of Aboriginal lands established in 1761, it also established a process whereby official agents of the Crown would undertake the formal acquisition of lands when Aboriginal groups were willing to sell them.[32] As states Robert Surtees, "while the Royal Proclamation was certainly an important weapon in preserving the right of Indians to occupy and use their lands, it must also be seen as providing a method for removing that right by means of a formal purchase by the Crown."[33] By including these protocols within the Proclamation, the Crown gave itself a way to proceed with an orderly and systematic acquisition of Aboriginal lands that would limit any possible conflict, allow for minimal impact upon the fur trade, and control the rate of colonial territorial growth. At their core, the land cession protocols were written to strengthen the defence of the colonies by addressing the issues and complaints of Britain's Aboriginal military allies. By doing so, Britain was able to rebuild the relationship with its military and commercial allies by halting all encroachment to their lands, all the while preparing a process to acquire Aboriginal hunting grounds when it saw fit to do so.

Upper Canada Land Surrenders Policy

The creation of the Indian Territory and the new protocols for the acquisition of Aboriginal lands introduced by the Royal Proclamation of 1763 necessitated the development of new policies and administrative structure for Indian affairs. As responsibility for maintaining the relationship and alliances fell to the newly mandated Indian Department, the influence of individual colonies fell away and shifted to the superintendents of the Indian Department. Sir William Johnson held near total control over Indian affairs and dealt directly with the Lords of Trade. Johnson's view on Indian matters was that Britain had only two options: either wiping out the Aboriginal population through a military campaign or strengthening the existing alliances through trade and good treatment.[34] He was certain that the British did not have the military capacity in North America to engage in an all-

out war, nor could they hold onto their forts and trading posts without the cooperation of Aboriginal people. The only way that Britain's interests in the interior could be protected was through a strengthened relationship based on mutually beneficial trade and peaceful relations.

In the first decade after the Proclamation, the policies and positions of the Indian Department and colonial administrators were to follow Johnson's advice of limiting and controlling all contact between settlers and Aboriginal people. While encroachment continued to be an issue along the Ohio frontier and in the lands west of Virginia, in the Great Lakes Basin, the boundary line imposed in 1763 held fast mostly because of a lack of interest in the lands north of the St. Lawrence River and the instructions prohibiting any settlement. Without any real pressure, the hunting grounds of the Lower Great Lakes remained largely untouched. The only European activity allowed within the Indian Territory was to be trade. In July of 1764, the Lords of Trade presented a new policy framework for Indian affairs called the "Plan for the Future Management of Indian Affairs." The future plan focused on "the regulation of Indian Affairs both commercial; and political throughout all North America, upon one general system, under the direction of Officers appointed by the Crown so as to set aside all local interfering of Particular Provinces."[35] It reopened the interior to trade, outlined the structure and responsibilities of the Indian Department, and reiterated the protocols for the cession of Aboriginal lands to the Crown.

Just as the Proclamation and various instructions to colonial governors had stated, the acquisition of Aboriginal lands was to be strictly controlled by the Indian Department. As John Borrows states, the "British approach committed the Crown to entering into treaties with Aboriginal peoples if their lands were to be occupied by non-Aboriginal people … The Crown was bound to secure Aboriginal consent before occupying Aboriginal lands."[36] In the first decade after the Proclamation, however, the few land purchases concluded focused on the military and security needs of the colonies. The first land cession under the protocols of the Proclamation was concluded between Johnson and the Seneca. In this 1764 treaty, the Seneca ceded two miles on either side of the Niagara River to the British. For the British, this acquisition was to secure communication between Lakes Erie and Ontario as well as manage the relationship with its Aboriginal allies. As the negotiations in July 1764 were attended by representatives of some twenty-four different Aboriginal groups, Johnson seized the occasion to discuss a variety of issues with them, from land encroachment, to trade, to inter-tribal warfare.[37] He also attempted to strengthen military and trade relations by renewing an old alliance, referred to as the "Covenant Chain." The cession of the four-mile strip of land along the Niagara River is only one of many different aspects of the nearly month-long discussions. For Johnson, the Treaty at Niagara was a renewal of alliances, restitution of prisoners and trade losses, and the acquisition of a British foothold in the Great Lakes Basin.[38]

From the Aboriginal perspective, the negotiations leading up to the cession may well have been different. Borrows, in his examination of the 1764 Treaty of Niagara, suggests that the negotiations were not only about restoring the relationship, but also Aboriginal people accepting the principles of the Royal Proclamation.[39] Only by accepting the principles of land cession presented in the Proclamation could the surrender of the four-mile strip of land be valid. While he does push his argument to call the Proclamation itself a treaty, a disputed point, Borrows's reasoning that the land surrender principles of the Proclamation had to have been understood by the Aboriginal parties to the treaty is of considerable relevance here. William Johnson had gone to great lengths to disseminate copies of the Proclamation throughout the Indian Territory and presented the clauses to the Iroquois Confederacy himself in December 1763.[40] If Aboriginal parties accepted the land cession clauses of the Proclamation, they also accepted the definition of the Indian Territory as their hunting grounds, which could be sold to the Crown. This acceptance of the principles of land cessions was again demonstrated in 1768 at Fort Stanwix when Johnson negotiated the boundary line between the northern colonies and the Indian Territory.[41] While the Proclamation had stated the Alleghenies divide as the boundary, Johnson successfully negotiated a boundary further west, the Ohio River, because of pre-existing settlements in the area.

Only three valid land surrenders were concluded between the Indian Department and Aboriginal groups between 1764 and 1783.[42] The three treaties were very specific in nature and were more for security than settlement. As fear of an uprising remained and Johnson continued to remind colonial administrators of the threat, the initial Indian policy was centred on maintaining peaceful and friendly relations with Aboriginal peoples. To this effect, colonial governors and military commanders issued instructions and directives restating the protocols of the Proclamation and reminding all that the Indian Department was the body responsible for issues relating to Indian affairs.[43] While the intent of this policy may have been the protection of British interests against Aboriginal uprising or the threat from another European power, the strengthened relationship proved to be vital in the colonial conflict between the American colonies. The British called upon its military allies, specifically the Six Nations, to assist in putting down the American rebels especially in the interior where British forces were small and scattered. While their efforts were ultimately for a futile cause, the conclusion of the American War of Independence marked a shift in the relationship between Aboriginal people and the British Crown. Faced with a new threat in North America, the military role of Aboriginal people was of considerable importance to the British, while colonial administrators shifted their attention to the lands of the Lower Great Lakes to meet settlement needs.

The recognition of the United States of America in the 1783 Treaty of Paris created two specific issues for British colonial administrators: first, the defence of the colony against the new American threat; and second, the arrival of some thirty thousand Loyalist refugees into the colony of Quebec. British military command-

ers believed that it was in Britain's best interests to maintain its long-standing military alliances in the North American interior so long as the United States remained a threat to British interests. British officials also wanted to rebuild the damaged relationship after the signing of the Treaty of Paris in 1783.[44] It was believed that only by maintaining a strong presence in the Great Lakes could Britain assure its protection. For this reason, British troops remained in the posts throughout the Old Northwest, although clearly in American territory, so as to maintain links with their allies. Officials from the Indian Department, such as Alexander McKee, worked out of these posts to rebuild alliances. With thousands of refugees fleeing the Thirteen Colonies, colonial administrators in Quebec initially attempted to settle them in the Maritimes and in the Eastern Townships of Quebec. The lands in the townships, however, were insufficient for the number of refugees and many coveted the western lands in the Indian Territory, which were similar to those they had abandoned. The new governor general of Quebec, Frederick Haldimand, had the added concern of maintaining the integrity of Britain's North American holdings. He surmised that in order to secure the Great Lakes from any American threat, it was important to develop settlement around the military posts such as Cataraqui (Kingston) and Niagara. After appealing to the Home Government for approval of his settlement plan, Haldimand instructed the Indian Department to negotiate the surrenders.[45] He was, however, mindful of the fears and concerns of Aboriginal people. He wanted to minimize any conflict through upfront land purchases in advance of the arrival of settlers.

The first of these new treaties, signed in 1783 and 1784 at the Bay of Quinte and Niagara, represented a shift away from the isolationism created by the Royal Proclamation. Whereas after 1763, the Indian Department worked towards isolating Aboriginal people and settlers, the outcome of the War of Independence changed their focus. Now, in order to safeguard British holdings in the Great Lakes area, Indian agents were working to bring landless Loyalist refugees, who could in time of crisis, act as a militia, into Indian country. While Haldimand did recognize the need to protect Aboriginal lands from encroachment, by the mid-1780s, he knew that more lands were needed to accommodate the needs of the Loyalists.[46] Political pressure from the upper levels of colonial society was also a factor in Britain's decision to resume land acquisitions in the Indian Territory. People such as William Dummer Powell, judge and future member of the executive council of Upper Canada, stated that Loyalists were anxious to settle in the Great Lakes region and that such settlements would induce more Loyalists still in the United States to migrate north.[47] This settler population, through the militia, in conjunction with Aboriginal allies such as the Six Nations on the Grand River and American Indians, would prove to be an effective defence of British holdings.

The acquisition of Aboriginal hunting grounds was deemed necessary for the survival of the British colonies, but it needed to be balanced with the protection of Aboriginal interests and the military alliances. So long as the American threat remained, colonial administrators such as Sir John Johnson and Sir Guy

Carleton, who returned as governor general under the title Lord Dorchester in 1786, attempted to limit possible conflict in the interior. Dorchester believed that the primary nature of the relationship with Aboriginal people was a military one and that any land purchases for settlement had to be limited and tightly controlled so as to prevent any deterioration of the military alliance.[48] During his tenure as governor general, Dorchester, because of his active role in defending Quebec from the American Revolutionaries, believed the new Republic to be a threat to British interests in North America. He therefore wanted to keep Britain's military allies at the ready to repel the anticipated American invasion. This view was not universally shared by all colonial administrators. John Graves Simcoe, the first lieutenant-governor of Upper Canada in 1792, firmly believed that the military had no role to play in the development of the colony and that the military control over Indian affairs was impeding the growth of Upper Canada.[49] Simcoe clashed with Dorchester because he wanted control over Indian affairs in the Great Lakes so that he could move ahead with his plan of increased settlement throughout the region. These two competing perspectives would continue to impact the ongoing relationship between the Crown and its Aboriginal allies as well as their access to hunting grounds.

As had occurred in the American colonies prior to the 1761 Instructions, colonial interests began to take precedent over the need to maintain the military alliances. Colonial administrators and local land speculators pressed the Indian Department into making treaties for lands that could then be used for settlement.[50] Delays in the allocation of lands to settlers, however, led to a considerable amount of squatting throughout the colony, both on acquired lands and unsurrendered Aboriginal lands.[51] To respond to this problem, land boards comprised of local administrators and representatives of both the military and the Indian Department, such as Alexander McKee and Sir John Johnson, were created in 1788 to coordinate the issuance of land patents to settlers, to administer the newly acquired lands, and to decide any disputes and illegal patents. Initially four boards were created, with three more established in 1792. The purpose of having such diverse representation on the boards was to assure respect of trade interests, proper coordination of defensive needs, and maintenance of proper relations with the area's Aboriginal population.[52]

These land boards fit in well with Britain's overall Indian policy. The main goal of the policy was to advance British interests throughout the interior, and the land boards were meant to stabilize settlement and preserve Aboriginal interest by limiting squatting on unceded hunting grounds. In his study of the land board's dealing in the District of Hess, John Clark showed that members of the land board would call upon the Indian Department's representatives on the board to secure the title of Aboriginal lands well before these lands were needed for settlement.[53] In many cases, land purchases made by the Indian Department followed those recommendations. Before the outbreak of the War of 1812, sixteen land surrender treaties were negotiated with the largely Ojibway people of the Great Lakes region.

These treaties, such as the London Purchase in 1796, Penetanguishene Harbour Purchase in 1798, and the Head of the Lake and Toronto Purchases of 1805–06, corresponded with Upper Canada's military and settlement needs. Through these purchases, strategic military posts were secured, lands along the St. Lawrence and the Thames rivers were opened for settlement, and trade routes were opened into the interior.[54]

While the Proclamation and colonial instructions regarding the protocols for taking land surrenders in Upper Canada were specific and detailed, their application on the ground was not always as clear-cut. Several elements of the established protocols were respected, specifically the need for an official of the Indian Department to conduct the negotiations in a public manner with those Aboriginal people who were believed to hold land interests. Other elements, however, were not, as Peter Schmalz explains in his study of the Ojibway in southern Ontario. He identifies three main problems with these treaties: the description of the lands purchased were often vague; cessions from a specific group often covered lands used by others; and some groups surrendered lands to which they held no interests.[55]

The principal source of these problems lay with the bureaucracy and administration of the Indian Department. In many cases, the reports and treaty documents contained erroneous descriptions of the lands, repeated inconsistencies of place names and geography, or the documentation was simply lost and treaties were based on secondary accounts.[56] While colonial administrators at the time recognized that some of the treaties may be flawed, they wanted the "principles of honour, justice and upright dealings" to be respected. When problems were recognized, attempts were made to resolve the situation through communication with the signatories, and in some cases, the negotiation of a new treaty, such as in 1798 when Governor General Prescott ordered a new land cession agreement be concluded with the Mississauga along Lake Ontario.[57] While gaining certainty over the land purchases was a goal of the Indian Department, colonial officials also wanted to limit encroachment by clearly identifying ceded lands. Squatting on unceded lands did not, however, change the nature of the title.[58] These lands remained part of the "Indian Reserve" created by the Royal Proclamation and only through valid surrender could the "hunting grounds" described in the Proclamation become Crown lands for settlement. This principle was reiterated by colonial officials throughout the period. In 1792, lieutenant-governor of Upper Canada, John Graves Simcoe, although a proponent of more surrenders, stated that the Aboriginal population retained their rights and usage to lands in Upper Canada except on those they surrendered to the Crown through treaty.[59]

As the Indian Department continued with its piecemeal acquisition of lands throughout the Great Lakes Basin, they followed a clear goal of slowly opening the land to settlement without disrupting the vital military alliances with Aboriginal people. Indian officials attempted to protect Aboriginal rights over hunting lands by preventing encroachment on unsurrendered areas. As Peter Schmalz sums up:

> From the British point of view, this system of Indian land cession was almost ideal. The land was piece by piece taken over by the use of presents, which were necessary anyway to keep the Indians as allies. Land was obtained at a small expense … and British loyalty was enhanced by each of the early transactions.[60]

The largely Ojibway population in Upper Canada had a somewhat different perspective of these land cession treaties. As the British showed interest in acquiring those lands, they had several reasons for agreeing to sell. Mostly, they wanted the flow of British presents to continue after the War of Independence. Also, as suggested by Donald Smith in his study of the alienation of the Mississauga lands in Ontario, the Ojibway may not have fully understood that the cessions meant the full surrender of all lands and rights. According to Smith, "they had no concept of such a surrender, and they were assured that they could 'encamp and fish where they pleased.'"[61] Furthermore, as the various groups were small and weakly organized, the treaty payments and presents may have been seen as an immediate benefit to selling their lands.

In the first decades of land cession treaties in Upper Canada, there was relatively little impact upon the Aboriginal signatories. Until the 1810s, the majority of British settlement was concentrated in small pockets along the St. Lawrence River, at the Toronto Carrying Place, Niagara, and the St. Clair River, and was dwarfed by the Aboriginal population, making relations fairly easy to maintain. In this early period, both the British and the various Ojibway groups believed they were benefiting from the land cessions.[62] The British colonial administration believed they had secured the transfer of the rights and title to the lands for the Crown at a minimal cost while preserving the military relationship with its allies. On the other hand, Aboriginal signatories were receiving extra payments on top of the yearly presents issued by the British. So long as Aboriginal warriors were required as part of the defensive needs of the colony, the overall goal of the policy remained the same. Continued tension between Britain and the United States forced military and Indian Department officials to maintain good relations with Aboriginal allies.[63] The Indian Department's balancing of this defensive requirement and the need for settlement lands was a constant concern.[64] Although Aboriginal signatories may have parted with parcels of land, they still retained access to other hunting grounds for their use and occupation. Furthermore, military interests meant that Aboriginal warriors needed to be fairly close at hand and near the border, in case there was a requirement to call upon their assistance. These circumstances led Indian policy and Indian agents to keep settlement in check and to protect Aboriginal people's land interest. Aboriginal involvement in the War of 1812 clearly showed that the Indian Department was able to maintain the traditional military alliance and Aboriginal loyalty to the British cause.

The end of the war in 1815, however, brought about a new reality. Maintaining a strong military alliance with Aboriginal people was no longer the primary concern of British administrators and the Indian Department. While it was still necessary to follow the protocols established by the Royal Proclamation of 1763,

the rate of treaty-making increased in this postwar period to accommodate the growing number of settlers, a population which quickly outnumbered Aboriginal people. The policies that had guided the Indian Department to maintain Aboriginal warriors in close proximity to military positions were refocused to isolating Aboriginal peoples from settlements. The patchwork of land cessions of the previous decades encumbered settlement. Unsurrendered Aboriginal hunting grounds were seen as untapped agricultural lands being wasted by underdevelopment.[65] As land acquisition became the primary focus of the Indian Department, the relationship between the Crown and Aboriginal people began to change. The Aboriginal population was no longer seen as a whole but rather as small isolated groups that needed to be "civilized" and converted to Christianity.[66] Once seen as vital to the protection of the colonies, Aboriginal people were seen as an impediment to colonial growth and wealth.

Each new land cession alienated another parcel of hunting grounds from Aboriginal usage; once lands were purchased, Aboriginal signatories were expected to relocate to unceded territories or reserve lands specified by treaty.[67] While there had been considerable lands available around the Lower Great Lakes prior to the War of 1812, by the 1830s the increased rate of land cession treaties led to a rapid decrease in the ability of Aboriginal people to hunt and fish, as they were limited to the remaining available lands and small reserves set aside by the Crown.[68] Access to the remaining Aboriginal hunting grounds was further impeded by the land patent system of Upper Canada, which prevented trespass across those private farmlands.[69] Even by the turn of the eighteenth century, various groups had begun to realize the impact of their earlier land cessions. In 1797, the Mississauga of the Credit refused a request by the Indian Department to sell lands in Burlington Bay because they feared losing their remaining hunting grounds.[70] Six Nations leader Joseph Brant recommended to the Indian Department that the Mississauga be allowed to "retain some of their Lands, for unless they do, they certainly will be beggars." Eight years later, the Mississauga did surrender their remaining lands to the Crown. The concerns of the Mississauga of the Credit were widespread throughout the Aboriginal population of Upper Canada. In roughly half a century, the Aboriginal people of southern Ontario went from the dominant military power in the area to a hindrance to colonial development. A statement by a Mississauga chief to a British traveller in 1820, and recounted by Donald Smith, poetically summarizes this transformation:

> You [the British] came as wind blown across the Great Lake. The wind wafted you to our shores, we received you—we planted you—we nursed you. We protected you till you became a mighty tree that spread thro our Hunting Lands. With its branches you now lash us.[71]

There is debate as to whether Aboriginal signatories understood the full meaning of the Upper Canada Land Surrender treaties. Robert Surtees postulated that those who agreed to sell their lands to the Crown during the late eighteenth century did not understand that the treaties represented the complete abandonment of

their rights over the lands in question.[72] This ignorance of the meaning of the surrenders likely did not last very long as the lines of communication between the different groups remained open throughout this period, such as during the annual gatherings to receive presents from the British at key posts. Over the course of the century-long process, different Aboriginal groups had contact with those already dispossessed of their hunting grounds and could see the negative effects of settlers through loss of access to natural resources. None of these elements led to any true refusals to cede land to the Crown when requested to do so. It is likely, as Peter Schmalz suggests, that "rather than cross-cultural ignorance of land use, it was a need for trade goods, a feeling of trust, a certain degree of loyalty, and especially a lack of alternatives," which pushed Aboriginal people to agree to sell their lands for one-time payments and small annuities.[73]

Case Studies

While the policies of the Indian Department regarding land cession treaties were to be applied in the same manner for all agreements, the reality of the individual negotiations proved to be somewhat different. From the earliest treaties, the Indian agents needed to adapt their interpretation of these policies to each individual case, all the while maintaining the principles of fair dealings and protocols established by the Royal Proclamation. British motivation for undertaking these treaty negotiations shifted with colonial priorities during this ninety-eight-year period. In the earlier period, the focus of these treaties started with a policy of isolation, keeping settlers out of Aboriginal hunting grounds in order to maintain a strong military alliance, and transformed into a policy of displacement through which the Indian Department pushed Aboriginal people to surrender their lands for settlement purposes and relocated them elsewhere. While examining and tracking the language and negotiations of each of the thirty-two Upper Canada Land Surrender treaties would be the best way to see if the concept of the surrender of rights and access to lands were consistent during this period, such a task is beyond the scope of this current project. Instead, four specific treaties throughout the period are examined to see if the language and interpretation of British policy regarding Aboriginal hunting grounds remained consistent with the distinctions made by the Royal Proclamation of 1763.

1. The 1790 McKee Treaty

In the summer of 1790, Alexander McKee, the Indian agent at Detroit, concluded the purchase of a tract of land with the Aboriginal peoples inhabiting the area. As one of the earliest treaties in the post-War of Independence era, McKee's treaty was specifically undertaken to open the lands between Lakes Erie and St. Clair to settlement. This land cession was but one treaty of many negotiated to deal with land requirements of the nearly thirty thousand Loyalist refugees.[74] In 1788, Governor General Dorchester subdivided the proposed settlements into districts around the Great Lakes Basin, from east to west: Lunenburg, Mecklenburg,

Nassau, and Hess. It was hoped that land grants and settlement would be facilitated, as each district would have its own land board "which was to function as an intermediary between the governor and the governed."[75]

For the Hess district, including the territory between Lakes Erie and St. Clair, surveys of the area had already begun in 1785 and the first townships were laid out as of 1789 and continued for the next decade.[76] Illegal land acquisition by settlers had, however, preceded these surveys and the establishment of the land board itself. The Hess Land Board, fully aware that it could not issue title to settlers until a cession had been made by the local Aboriginal people, instead issued location certificates to Loyalists and reduced military officers, 121 concessions in total. In a letter to Governor General Dorchester, the land board stated that

> none of the Lands within the limits of this District [Hess] have been purchased from the Indians for the Crown, although they have been parcelled out in large grants to individuals by the Natives, so as to leave no unclaimed from Long Point on Lake Erie to Lake Huron.[77]

That same year, the board produced a report for the governor general describing the Indian lands that should be included in the next treaty—the entire area between Lake St. Clair and Lake Erie and west of the lands surrendered by the Mississauga in 1784. The following May, the board decided to petition McKee, as the deputy superintendent of Indian affairs, to acquire these lands from the Aboriginal population.[78] The lands in the area were already of interest to senior colonial officials. In August 1789, the governor general instructed Sir John Johnson, superintendent of the Indian Department to

> give the necessary directions to enable Mr. McKee to treat and agree with the Indians in the District of Hess, who may lay claims to pretensions to a track of land: beginning at the western boundary of the last purchase made by the Crown from the Indians west of Niagara, and extending along the whole, or such part of the borders of Lake Erie, and the Straight of Detroit, up to such distance towards Lake Huron, and to such a depth from the shore as the Land Board of Hess shall see expedient to be set apart for settlement, and as it shall be found proper to treat for with the Indians consistently with their comforts … and it is my desire that they be fully satisfied for what they may cede, and transfer to the Crown in the usual manner.[79]

On May 19, 1790, McKee organized a gathering at Chenail Écarté for the purpose of securing a cession of land by various members of Pottawatomi, Huron, Chippewa, and Ottawa groups inhabiting the area, mostly settled around Walpole Island. The negotiations for the surrender of the lands in question appear to have been fairly straightforward with the Aboriginal groups agreeing to part with the described lands for £1,200 worth of goods, with the only caveat that specific reserve lands be set aside along the Detroit River, known as the Anderdon and Huron Church reserves which McKee noted were village sites.[80] With the majority of the lands described by the treaty already being encroached or illegally sold by Aboriginal chiefs to settlers and military officers, the 1790 agreement was largely a legal confirmation of the reality in the area. As Victor Lytwyn and Dean Jacobs note,

the Aboriginal leadership was growing increasingly discontented with settler encroachment and may have expected that by formally ceding these lands, the Crown would better control settlement.[81]

While McKee did secure a treaty for the lands described by the land board, he also agreed to maintain the two small reserves, much to the displeasure of the board. These reserves were viewed as impediments to local settlement. William Robertson, an influential member of the land board and signatory to the treaty, stated that he believed the treaty fell short of what the land board had requested, was not what they believed had been negotiated, and would impede settlement of the area.[82] In his reply to the complaints, McKee stressed that the setting aside of the two reserves was a non-negotiable item for the Aboriginal chiefs. Furthermore, he pointed out that the governor general had instructed him that "all possible regard shall be had to the ease and comfort of the Indians."[83] Both the treaty and McKee's report to the Indian Department show how in this early period of land cessions, the principles of the Royal Proclamation were followed. Despite the reserves, the lands included in the 1790 McKee Treaty correspond with the earlier land deeded by individuals, as well as the planning and surveying organized by the land board itself.

Because the discussions surrounding the negotiations were private (as confirmed by the Land Board of Hess's criticism of the treaty) and were not mentioned in McKee's report to Governor General Dorchester, it is necessary to go to McKee's other correspondence for details of discussions. In his correspondence to the land board in March 1792, McKee fully acknowledged that the scope of the lands to be ceded had been fully debated with the chiefs.[84] His correspondence leading up to the 1796 treaty at Chenail Écarté provides more information on the matter, as he states that the Aboriginal population in the area had lost a considerable amount of their hunting grounds through the Treaty of 1790.[85] Furthermore, a March 7, 1794, memorial signed by several Chippewa chiefs at Detroit, directly comments on the nature of the 1790 surrender: "We the under mentioned Indian Chiefs do solemnly protest, that when application was made for the land on the River La Tranche, for the use of Government, we unanimously consented to grant the south side of it, but could not with propriety give the north side, as we wanted land to hunt and plant upon for our sustenance."[86] In this statement, the chiefs, who only four years earlier had negotiated and signed the McKee Treaty, clearly stated that they could only hunt and gather on the north shore of the Thames River because they had sold the lands on the south shore to the Crown.

The treaty negotiated by Alexander McKee in 1790 follows, nearly to the letter, the rules and protocols established by the Royal Proclamation and subsequent Indian policies relating to the acquisition of Aboriginal lands. McKee, an agent of the Indian Department since just after the Proclamation, was well acquainted with the need to fairly acquire Aboriginal lands through a proper agreement. He negotiated a cession that covered lands already being occupied by settlers and where Aboriginal access had already been diminished. In his subsequent corre-

spondence, he recognized that the Aboriginal signatories had lost access to these hunting grounds through sale, as did the Aboriginal leaders themselves.

2. The 1795 Chenail Écarté and the 1827 Huron Tract Treaties

Some thirty-seven years after the purchase of the lands between Lakes Erie and St. Clair by Alexander McKee, another agreement with the Aboriginal people of southern Upper Canada ceded the lands to the north, bound by the shore of Lake Huron and the Thames River, known as the Huron Tract. While the primary interest in these lands began only after the War of 1812, the lands north of the McKee Treaty had caught the attention of the Indian Department beginning in the 1790s and shed some light on the British attitudes towards Aboriginal land usage.

As mentioned in the examination of the 1790 Treaty, both Alexander McKee and Aboriginal signatories stated that Aboriginal hunting, fishing, and agriculture on the ceded lands had ceased once the lands were surrendered. With the anticipated abandonment of all British posts in Michigan, the Indian Department foresaw a migration of Aboriginal people from American soil into Upper Canada. McKee suggested that it would be best to set aside lands for the settlement of these American Indians. He proposed that the lands near Walpole Island, already a major Aboriginal settlement, be set aside as reserve lands held under the care of the Crown.[87] In McKee's opinion, this reserve land, along the Chenail Écarté waterway, would be large enough to accommodate Aboriginal settlement and still allow hunting and fishing throughout. At a provisional meeting in September 1795, McKee stated that "the Chippewas are the only Proprietors of these Lands, and I am Happy to state that they most readily consented to a sale thereof and cheerfully embraced my proposal" to establish a reserve. When members of the Ottawa were shown the lands of the reserve they were "extremely happy in having seen a country every way proper and calculated as well for Hunting as Cornfields and Villages."[88]

In trying to get colonial approval for the September 1795 conditional agreement, McKee noted that as the lands in the 1790 purchase were close to Aboriginal hunting and fishing, the lands of the Chenail Écarté were "indeed very proper for planting in the Summer … and in the Spring and Fall for hunting and fishing with Canoes."[89] In August 1796, McKee reconvened a council at the Chenail Écarté and finalized the surrender of the block for the reserve lands as well as other lands in the area.[90] During the council, he told the assembled chiefs that the Crown wanted to purchase a block of land on the north side of the Chenail Écarté River for those who wished to live under the British. He further stated that they were not "to consider this small strip of Lands as bought for the King's use but for the use of his Indian children and you yourselves will be welcome as any others to come and live thereon."[91]

Both McKee's proposal and report on the treaty indicate that the reserve set aside was to be used as a specific settlement and hunting preserve for the area's

Aboriginal population. The 1796 treaty served three different purposes. Firstly, it maintained the strong military alliance with the Aboriginal people of the Old Northwest and provided them with lands near a strategic military location. Secondly, it established reserve lands for the specific use of Aboriginal people for settlement and hunting. Finally, it assured the surrender of new lands along the Thames River for new British settlement in the interior of Upper Canada. While the anticipated migration of American Aboriginal people never materialized at the end of the eighteenth century, there are indications that the lands were used as Aboriginal hunting grounds. By 1838, Indian Affairs officials who were considering alienating the lands stated that the lands in question were sparsely settled and were the "Hunting Grounds of the Walpole and Chenail Écarté Indians."[92] Just as McKee had suggested, the reserve lands in Sombra Township became protected Aboriginal hunting grounds amid ever-increasing surrendered lands around it.

The practice of granting specific reserve lands through land cession treaties became a common one. As Allan McDougall and Lisa Philips Valentine note in their examination of the 1827 Huron Tract Treaty, "McKee's vision in 1796 for an Aboriginal homeland stretching northward from Walpole Island through the Sombra [Chenail Écarté] Purchase was still evident in the reserving of a tract of land in the southwest corner of what became Treaty 29."[93] The four reserves requested in the initial 1818 agreement and confirmed in the final 1827 treaty served as an extension of the Sombra Township reserve, specifically the Moore reserve, which was contiguous to Sombra, and allowed access to hunting and sugaring lands.[94] The inclusion of the four reserves had not been part of the initial offer made by John Askin, the deputy superintendent general of Indian affairs for the western district, but rather was a specific condition of Aboriginal signatories. In the October 1818 council minutes, the chiefs requested not only the creation of the reserves, but also that they would increase in size if "they are insufficient for the whole of our nation … to plant corn and hunt."[95] Just as the signatory chiefs to the Chenail Écarté Treaty of 1796 stated that the reserve lands would be for their settlement and hunting, the chiefs negotiating the Huron Tract Treaty viewed the reserve lands as hunting grounds, while other lands were to be completely surrendered. This position is consistent with the views expressed by both colonial and Indian Department officials who saw the treaties as bringing an end to Aboriginal usage and hunting over surrendered lands.

3. The 1818 Rice Lake Purchase

With the prospect of a long-lasting and secure peace with the United States through the 1815 Treaty of Ghent, Aboriginal people's military role came to an abrupt end. Furthermore, in the fifty years since the first land cessions in the Great Lakes region, the settlers had come to outnumber the Aboriginal population in Upper Canada. The Indian Department's main focus shifted entirely to the purchase of Aboriginal lands for settlement. A priority for the colonial officials was the opening of a second line of settlement behind the initial lands along the

St. Lawrence River and Lake Ontario surrendered at the turn of the century. In the decade after the War of 1812, Indian agents negotiated five treaties in Upper Canada.

In November 1818, William Clause, the deputy superintendent general of Indian affairs, negotiated a surrender of the lands in and around the Kawartha Lakes. The impetus of this specific land cession was for the opening of the lands north of Rice Lake, near what is now Peterborough. Clause was responding to a directive from the lieutenant-governor and governor general, who were looking to open more lands for settlement and to allow for greater exploitation of the lands in question.[96] On November 5, 1818, Clause convened a council at what is now Port Hope on Lake Ontario with the Aboriginal chiefs "inhabiting the back parts of the New Castle District." He proposed that in exchange for nearly 1.9 million acres of land, covering the majority of the Kawartha Lakes, the Aboriginal signatories would receive an annuity of £740 "to be well & truly paid, yearly, and every year."[97] During the discussions, the principal chief, Bucquaqet, commented on the destitute nature of his people and said that their hunting had been ruined by the advancing settlements. He went on to ask that the islands in the territory be set aside as reserves and that hunting and fishing be allowed to continue in the ceded lands. In his response, Clause indicated that the islands would surely be set aside as reserves and that the rivers were open to all for hunting and fishing.[98]

There has been considerable discussion on the continuing right to hunt and fish stemming from this treaty. As Peter Schmalz mentions in his study, *The Ojibwa of Southern Ontario*, the language used by Clause during the treaty negotiations appears to allow a limited continuance of rights to hunt and fish instead of a complete cession of those rights, as is the case in the 1790 McKee Treaty.[99] In his report of the November 1818 council meeting, Clause reports the following exchange between Chief Bucquaqet and himself:

> Bucquaqet: Father. We hope that we shall not be prevented from the right of Fishing, the use of the Waters & Hunting where we can find game ...
>
> Father. We do not say that we must have the Islands, but we hope our Father will think of us & allow us this small request.
>
> Clause: Children … The request for the Islands, I shall also inform him of, & have no doubt but that he will accede to your wish. The Rivers are open to all & you have an equal right to fish & hunt on them.[100]

This reference to a continued right to hunt and fish on the water is one of particular interest to this study. While it does appear to be a direct promise maintaining these rights, it is also linked to the question of the aforementioned islands to be set aside as reserve lands. On several occasions, Indian Department officials have made direct links between Aboriginal usage and reserve lands, as was done in the 1796 Chenail Écarté Treaty. As on other occasions, it was expected that Aboriginal people would use these lands for such activities as fishing or hunting. The case here in 1818 is not necessarily much different. In this case, Clause may

well have implied that the Aboriginal population could use the islands as they needed them, including for hunting and fishing, which is consistent with other treaty negotiations. It is also apparent that the scope of the rights may well be broader than Clause had originally intended. By stating that the rights applied to the water as well, Clause appears to have extended that right onto the waterway. This argument was presented in the 1979 Ontario Supreme Court in the *Taylor and Williams* case, which argued successfully that Clause had promised that very right.[101]

The circumstances of the 1818 Rice Lake Purchase are not markedly different from the other land cessions of the period. The Crown was continuing its practice to purchase Aboriginal lands so they could become settlement lands. Clause, acting as the Crown representative, followed the tenants and principles established by the Royal Proclamation of 1763 to acquire Aboriginal hunting grounds. Bucquaqet's request to be allowed to hunt and fish appears to be an attempt to hold off starvation "where we [his people] can find game."[102] For Clause and the Indian Department, this concession is consistent with the existing practice of allowing hunting and fish on reserve lands, in this case, the island reserves.

Conclusion

Between 1764 and 1862, the agents of the Indian Department negotiated thirty-two land cession treaties with the Aboriginal people of the Great Lakes Basin. The protocols and procedures for negotiating and concluding these agreements were based upon the policies set out by the 1763 Royal Proclamation. The Proclamation, as a response to prior abuses, states that only Crown officials could acquire Aboriginal hunting grounds in an open and fair process. Senior colonial officials attempted to maintain tight control on any land purchases so as to protect Aboriginal access to their unceded hunting lands and maintain the lucrative British-Aboriginal fur trade, as well as strengthen the all-important military alliances in the undefended interior. While the protection of Aboriginal interest was part of the larger colonial perspective, the need for new settlement lands was just as pressing. The need for land, however, at least in the earlier period, needed to be balanced with protecting the military alliances. Governors and senior officials all advocated the protection of Aboriginal hunting grounds through an orderly and controlled series of land cessions.

The language and wording of instructions demonstrate the Crown's understanding of the land cession treaties. In the twenty-year period between the Royal Proclamation and the Treaty of Paris in 1783, the correspondence to the Indian Department specifically instructed the protection of Aboriginal rights by limiting encroachment. Squatters were seen as disrupting Aboriginal hunting and fishing because these lands had yet to be ceded to the Crown. Only when those hunting lands were sold to the Crown could settlement proceed. This need to acquire lands prior to settlement was the basis for both protecting and extinguishing hunting and

fishing rights in Upper Canada. Indian Department officials attempted to prevent encroachment of hunting grounds on the one hand, while negotiating surrenders, which, in their view, ceded all rights and title to the Crown on the other. In the four examples of Upper Canada Land Surrenders presented, the understanding that Aboriginal hunting and fishing rights were extinguished on surrendered land is demonstrated. In all cases, the Indian Department officials reported that hunting and fishing would only be permitted on the lands set aside as reserve lands. In the case of the 1790 McKee Treaty, the Aboriginal leadership corroborated this understanding when they stated four years later that they could only hunt on the lands to the north of the cession. In both the 1796 Chenail Écarté and 1827 Huron Tract treaties, the council minutes show that the Indian agent informed the signing chiefs that the lands set aside as reserves were to be used as their exclusive hunting grounds. Similarly, the negotiations for the 1818 Rice Lake Purchase indicate that the Indian agent agreed that hunting and fishing could continue on the islands that were to be set aside as reserves for the Aboriginal signatories.

In the two centuries since the signing of the Upper Canada Land Surrender treaties, the position of both the British and Canadian governments has remained unchanged: these treaties cede all rights and title to the Crown unless otherwise specified by the text. While these four case studies do seem to indicate a relatively consistent policy regarding the nature of these land cession treaties, further research into all thirty-two treaties in Upper Canada would help determine if there were any differences in the Crown's approach or language used. As each treaty was negotiated under somewhat different circumstances by different Indian agents, it may become apparent that the Crown's overall perspective was not expressed as clearly as it could have been in all circumstances. It would also be useful to examine the tactics and approaches used by Crown officials to achieve successful cessions. Lastly, it may be useful to examine how the position and understanding of Aboriginal signatories evolved during this period, as the number of settlers grew and Aboriginal hunting lands became increasingly scarce.

Endnotes

1 Jean-Pierre Morin. "Treaties and the Evolution of Canada," in *Hidden in Plain Sight*, vol. 1, David Newhouse, Cora Voyageur, and Dan Beavon, eds. (Toronto: University of Toronto Press, 2005), p. 22.

2 Jack Stagg. Protection and Survival: Anglo-Indian Relations, 1748–63—Britain and the Northern Colonies. PhD thesis, Cambridge University, 1984, p. 27.

3 Ibid., p. 24.

4 Ibid., p. 177.

5 Ibid., p. 34.

6 Ibid., p. 31.

7 Ibid., p. 31.

8 Leclair Historical Research. *Historical Report on the Royal Proclamation of October 7, 1763, 1742–1782*, prepared for the Treaty Policy Directorate, INAC, June 2005, p. 20.

9 Ibid., p. 22.

10 Stagg, *op. cit.*, p. 29.

11 Ibid., p. 213.

12 Robert C. Allen. "The British Indian Department and the Frontier in North America, 1755–1830," in *Canadian Historic Sites: Occasional Papers in Archaeology and History*, no. 14. (Ottawa: Thorne Press Limited, 1975), p. 11.

13 Robert S. Allen. *His Majesty's Indian Allies: British Indian Policy in the Defence of Canada, 1774–1815*. (Toronto: Dundurn Press, 1992), p. 25.

14 William Johnson to the Lords of Trade, September 10, 1756, in *Documentary History of the State of New York*, vol. II, E. B. O'Callaghan, ed. (Albany, Weed, Parsons & Co., 1856), p. 735.

15 William Johnson to Board of Trade, May 17, 1759, in *Documentary History of the State of New York*, vol. II, E. B. O'Callaghan, ed. (Albany, Weed, Parsons & Co., 1856), pp. 781–785.

16 Morin, *A Question of Protection*, *op. cit.*, p. 6.

17 Lords of Trade to Secretary of State William Pitt, February 21, 1760, in *Documents Relative to the Colonial History of the State of New York*, E. B. O'Callaghan, ed. (Albany, Weed, Parsons & Co., 1856), p. 429.

18 Leclair Historical, *op. cit.*, p. 38.

19 Lords of Trade to King George III, December 2, 1761, in *Documents Relative to the Colonial History of the State of New York*, E. B. O'Callaghan, ed. (Albany, Weed, Parsons & Co., 1856), pp. 478–79.

20 Johnson to Board of Trade, May 17, 1759, *op. cit.*, pp. 781–785.

21 Stagg, *op. cit.*, pp. 289–293.

22 Leclair Historical, *op. cit.*, p. 48.

23 Egremont Papers, no date, no author, C.O. 5, vol. 323/16/188ff.

24 Egremont to Lords of Trade, May 5, 1763, *Documents Relative to the Colonial History..., op. cit.,* pp. 93–96.

25 Ibid., pp. 94–95.

26 Jack Stagg, *op. cit.*, pp. 467–68.

27 Lords of Trade to Egremont, June 8, 1763, *Documents Relative to the Colonial History..., op. cit.,* pp. 97–107.

28 Morin, *A Question of Protection*, *op. cit.*, p. 9.

29 Clarence S. Brigham, ed. *British Royal Proclamations Relating to America. Transactions and Collections of the American Antiquarian Society*, vol. 12. (Worcester, 1911), p. 215.

30 Darleen Johnston, *The Taking of Indian Lands in Canada: Consent or Coercion?* (Saskatoon: University of Saskatchewan Native Law Centre, 1989), p. 7.

31 F. Murray Greenwood. *The Intentions of the Framers of the Royal Proclamation of 1763, as its Applicability to Colonial Nova Scotia*, prepared for the Federal Government of Canada, March 1998, p. 4.

32 Clarence S. Brigham, *op. cit.*, p. 216.

33 Surtees, *op. cit.*, p. 9.

34 Joan Holmes and Associates, *British-Indian Relationships…*, *op. cit*., p. 93.

35 Lords of Trade to Johnson, July 10, 1764, in E. B. O'Callaghan, ed., *Documentary History of the State of New York*, vol. VII. (Albany, Weed, Parsons & Co., 1856), p. 624.

36 Borrows, "Crown and Aboriginal Occupation of Land…", *op. cit.*, p. 10.

37 Joan Holmes and Associates, *British-Indian Treaty Relationships…*, *op. cit.*, p. 91.

38 William Johnson to Lords of Trade, August 30, 1764, in E. B. O'Callaghan, ed., *Documentary History of the State of New York*, vol. VII. (Albany, Weed, Parsons & Co., 1856), p. 650.

39 John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History and Self-Government," in *Aboriginal and Treaty Rights in Canada*, Michael Asch, ed. (Vancouver, University of British Columbia Press, 1997), p. 155.

40 William Johnson to Cadwallader Colden, December 24, 1763, in *The Papers of Sir William Johnson*, vol. IV, Alexander Flick, ed. (Albany: University of the State of New York, 1925), pp. 273–277; and William Johnson to Lords of Trade, January 20, 1764, in *Documentary History of the State of New York*, vol VII, E. B. O'Callaghan, ed. (Albany, Weed, Parsons & Co., 1856), pp. 599–602.

41 Brian Slattery. The Land Rights of Indigenous Canadian Peoples, as Affected by the Crown's Acquisition of their Territories. PhD thesis, University of Oxford, 1979, p. 220.

42 The three treaties are the 1764 Treaty of Niagara with the Seneca, the 1768 Fort Stanwix Treaty, and the 1781 Treaty of Niagara with the Mississauga.

43 Joan Holmes and Associates, *British-Indian Relationships…*, *op. cit.*, p. 100.

44 Morin, *A Question of Protection…*, *op. cit*., p. 14.

45 Lillian Gates. *Land Policies in Upper Canada*. (Toronto, University of Toronto Press, 1968), p. 14.

46 Gates, *op. cit.*, p. 16.

47 Ibid., p. 13.

48 Joan Holmes and Associates, *British-Indian Relationships…*, *op. cit.*, p. 108.

49 Ibid., p. 108.

50 Morin, *A Question of Protection…*, *op. cit.*, p. 16.

51 Gates, *op. cit*., p. 17.

52 John Clark. *Land, Power and Economics on the Frontier of Upper Canada*. Montreal and Kingston: McGill-Queen's University Press, 2001), p. 101.

53 Ibid., p. 114.

54 For more detail on these purchases, please consult Robert Surtees, *Indian Land Surrenders in Ontario,* and Joan Holmes and Associates, *The Taking of Land Cessions and Surrenders in Pre-Confederation Ontario*.

55 Peter S. Schmalz. *The Ojibwa of Southern Ontario*. (Toronto, University of Toronto Press, 1991), p. 126.

56 Joan Holmes and Associates, *British-Indian Relationships…*, *op. cit*., p. 109.

57 Prescott to Russell in *Correspondence of the Hon. Peter Russell*, vol. II, 1797–1798, E. A. Cruickshank and E. F. Hunter, eds. (Toronto: Ontario Historical Society, 1935), p. 137.

58 *R. v. Jackson*, Ontario Court of Justice, Provincial Division Justice, February 19, 1992, in *Canadian Native Law Review*, no. 4, 1992, p. 44.

59 Peggy Blair. "Taken for Granted: Aboriginal Title and Public Fishing Rights in Upper Canada," in *Ontario History*, vol. 42, no. 2, Spring 2000, p. 33.

60 Schmalz, *op. cit.*, p. 123.

61 Donald B. Smith. "The Dispossession of the Mississauga Indians: a Missing Chapter in the Early History of Upper Canada," in *Ontario History*, vol. 73, no. 2, June 1981, p. 71.

62 Ibid., p. 74.

63 Morin, *A Question of Protection…*, *op. cit.*, p. 16.

64 For more information regarding Britain's military alliance with Aboriginal people, please see Robert Allen, *His Majesty's Indian Allies*.

65 Morin. *Peace, Order and Good Government: Indian Treaties and Canadian Nation Building*, Canadian Studies Conference, "First Nations, First Thoughts." Edinburgh, Scotland: May 6, 2005, p. 8.

66 Joan Holmes and Associates, *British-Indian Relationships…*, *op. cit*., p. 117.

67 Johnston, *op. cit.*, p. 48.

68 Ibid., p. 117.

69 Borrows, "Crown and Aboriginal Occupation of Land…", *op. cit.*, p. 20.

70 Joan Holmes and Associates. *Land Cession Treaties and Reserve Surrenders in Pre-confederation Ontario*, vol. I, prepared for the Specific Claims Branch, INAC, 2003, p. 36.

71 Smith, *op. cit.*, p. 82.

72 Surtees, *op. cit.*, p. 23.

73 Schmalz, *op. cit*., p. 125.

74 Petition of Sir John Johnson and Loyalists, April 11, 1785, in *Documents relating the Constitutional History of Canada, 1759–1791*. pp. 524–527.

75 Clarke, *op. cit*, p. 101.

76 Ibid., pp. 58–68.

77 Land Board of Hess District to Lord Dorchester, August 28, 1789, RG 1, L4, vol. 2, pp. 230–232.

78 Clark, *op. cit.*, pp. 138–139. See footnote 239.

79 Lord Dorchester to Sir John Johnson, August 17, 1789, in *Third Report of the Bureau of Archives for the Province of Ontario*. Public Archive of Ontario, 1905.

80 Joan Holmes and Associates, *Land Cession Treaties…*, p. 46.

81 Victor Lytwyn and Dean Jacobs. "For Good Will and Affection: The Detroit Deeds and British Land Policy, 1760–1827," in *Ontario History*, vol. CXII, no. 2, Spring 2000, p. 25.

82 Journal Proceedings of the Land Committee, Powell Papers, B80, L16, October 22, 1790. p. 97.

83 Alexander McKee to Sir John Johnson, May 25, 1790, in *Report of the Department of Public Records and Archives of Ontario 1928*. Archives of Ontario, no. 45, p. 189.

84 Alexander McKee to Land Board of Hess, March 30, 1792, RG 1, L4, vol. 3, p. 577.

85 Robert Allen (Aber Dole Associates). *The Council at Chenail Ecarté*, prepared for the Treaty Policy and Review Directorate, DIAND, 1995, p. 19.

86 Memorial of Chippewa Chiefs, March 7, 1794, Detroit.

87 Robert Allen (Aber Dole Associates), *The Council at Chenail Ecarté*, prepared for the Treaty Policy and Review Directorate, DIAND, 1995, p. 17.

88 Alexander McKee to Joseph Chew, Detroit, October 24, 1795, Simcoe Papers, Archives of Ontario, MG 11, Q Series, vol. 75, part 2, p. 474.

89 Alexander McKee to Joseph Chew, Detroit, December 16, 1795, RG 8, "C" Series, vol. 249, part 1, p. 12.

90 Robert Allen, *The Council at…*, *op. cit.*, p. 20.

91 Council at Chenail Ecarté, August 30, 1796, NAC, RG 10, vol. 9, p. 9167.

92 Correspondence of S. P. Jarvis, Chief Superintendent of Indian Affairs, July 20, 1838, NAC, RG 10, vol. 24, p. 69840.

93 Allan K. McDougall and Lisa Philips Valentine. "Treaty 29: Why Moore Became Less," in *Papers of the 34th Algonquian Conference*, H. C. Wolfart, ed. (Winnipeg, University of Manitoba Press, 2003), p. 248.

94 Ibid., p. 148.

95 Minutes of a Council held at Amherstburg, October 16, 1818, Askin Papers NAC, MG 19, F1, vol. 11, pp. 95–96.

96 William Clause to Major Bowles, Military Secretary, November 10, 1818, NAC, RG 10, vol. 489.

97 Minutes of Council Meeting, November 5, 1818, NAC RG 10, vol. 790, pp. 7029–7032.

98 Minutes of Council Meeting, November 5, 1818, NAC RG 10, vol .790, pp. 7029–7032.

99 Schmalz, *The Ojibwa…*, *op. cit.*, p. 124.

100 Minutes of Council Meeting, November 5, 1818, NAC RG 10, vol. 790, pp. 7029–7032.

101 *R. v. Taylor and Williams*, Ontario Supreme Court, Divisional Court, Labrosse, Griffiths and Trainor JJ., September 13–14, 1979.

102 Minutes of Council Meeting, November 5, 1818, NAC RG 10, vol. 790, pp. 7029–7032.