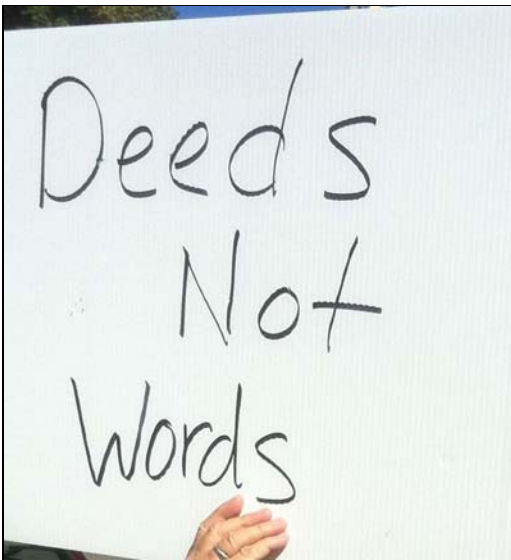


March 3, 2018 - No. 8

Supplement

**Robinson Treaty with Ojibewa of
Lake Huron Conveying Certain Lands
to the Crown**



- **Open Letter to Carolyn Bennett,
Minister of Indigenous and Northern Affairs**
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**Robinson Treaty with Ojibewa of Lake Huron
Conveying Certain Lands to the Crown**

**Open Letter to Carolyn Bennett,
Minister of Indigenous and Northern Affairs**

- ***Ogimaa Duke Peltier and Ogimaa Dean Sayers*** -

Dear Minister Bennett:

This is a response to your letter dated July 24, 2017, which is a response to our letter to Prime Minister Trudeau dated August 21, 2016, regarding the Robinson Huron Treaty Annuities Claim.

We are writing to express, in good faith but in no uncertain terms, our profound disappointment regarding the clear and complete disconnect between your government's enlightened words and hopeful statements and the actions of your government in dealing with our Claim. Your letter says: "The Government of Canada places a high priority on renewing a nation-to-nation relationship with Indigenous Peoples. We are committed to developing a partnership based on recognition of rights, respect and cooperation." Yet, by its actions, your government is doing the exact opposite!

We wrote to the Prime Minister on Aug. 21 in the hopes that your government's stated commitment to reconciliation would provide us with an opportunity to resolve our claim through negotiation rather than litigation. Unfortunately, not only have your officials rejected our overtures at reconciliation, your lawyers are advancing arguments and evidence in the litigation that can only be described as outdated, obsolete, ethnocentric, adversarial and inflammatory. Needless to say, they reflect attitudes that are contrary to the Truth and Reconciliation Commission Report and the UN Declaration on the Rights of Indigenous Peoples.

We will provide you with just a few of the most egregious examples. Canada's Expert, Professor Alexander von Gernet, states in his Report:

I believe it is safe for me to express (a rare) certainty that no Anishinaabe person living today would bring a ball-headed war club with attached American scalp-locks to a meeting with the Governor General, as happened when Shingwaukonse's delegation met Lord Elgin in Montreal in July of 1849. And it is probably just as safe to say that our current Governor General has never publically referred to Indigenous people as "children," as was the common practice for centuries. These were different times, and cultural norms change. This may seem self-evident, but it bears repeating.

Dr. Stark's description of Anishinaabe "law," "jurisprudence," "legal principles," and philosophies is very interesting, but it is in large part a construction of late twentieth and early twenty-first-century academics who have generated a burgeoning literature that is as sophisticated in its discourse as it is disconnected from everyday practical realities.

Even if it is partly derived from the wisdom of Elders and their oral traditions, uncritically projecting such a modern academic construct back in time for the purpose of illuminating what motivated the actions of past peoples or reconstructing what they would or might have thought or expected is problematic, for it must carry an assumption of continuity that needs to be balanced against evidence for change.

Another of Canada's Experts, Professor Alain Beaulieu, seeks to undermine the significance of the Treaty negotiated at Niagara in 1764, and characterizes the Indian Nations that attended the Niagara Treaty Council as supplicants fearful of British reprisal rather than nations of equals. He also downplays the significance of the Royal Proclamation of 1763 and the role it played at the Niagara Treaty Council. Professor Beaulieu's opinion is backed-up by another of Canada's experts, Professor Paul McHugh, who argues in his Expert report that the Royal Proclamation of 1763 has no legal effect.

Your lawyers will argue that these are the independent opinions of experts. However, their ethnocentric opinions are being tendered as evidence on behalf of your government. And, in the case of Professor Beaulieu, for example, his opinion appears to be mandated by the terms of his engagement, by the federal Department of Justice, which calls the Niagara Treaty "the so-called Treaty of Niagara."

The landmark importance of this Treaty and the connection with the Royal Proclamation has been carefully set out by the Ontario Court of Appeal in the decision, *Chippewas of Sarnia Band v.*

Canada (2000). The refusal of your government to accept and embrace judicial rulings such as the Chippewas of Sarnia case only promotes conflict rather than reconciliation.

Your letter refers to without prejudice exploratory discussions which you had previously proposed in your letter of July 22, 2016. You say that your "Government is open to constructive dialogue" and that you "look forward to the results of these discussions." It is surprising that your officials would not have reported the failed results of those "exploratory discussions".

Minister Bennett, we had a meeting on Dec. 22, 2016 -- seven months before your letter of July 24, 2017 -- and the meeting was far from a "constructive dialogue". We were certainly prepared to be constructive; but your officials were not. Indeed, on Mar. 14, 2017, Mr. Gary Penner of the Department of Justice wrote:

Canada's position, as expressed at the meeting, is that it does not and will not have a mandate to enter into negotiations predicated upon the Plaintiffs' interpretation of the Robinson-Huron Treaty.

In other words, Canada's position is that if we do not accept Canada's interpretation of the treaty, then it is not prepared to enter into any negotiations. Canada was built on treaties. If Canada cannot commit to constructive engagement with respect to treaty interpretation and implementation, the goal of reconciliation is in a word, doomed.

In refusing to negotiate, Canada resorts to the age-old tactic of passing the buck to the province. Mr. Penner's letter continues:

Ontario's position, as understood from the December 22nd meeting, is that the province is willing to contemplate indexing the annuities, but to date has given no indication that it has a mandate to consider revenue sharing.

Given that the Plaintiffs' mandate is limited to settling this litigation on the basis of treaty annuities interpretation and revenue-sharing, Canada believes that negotiations can only advance if Ontario has a mandate to negotiate revenue-sharing or if the Plaintiffs have a willingness to explore other settlement options. Absent this, and in light of the current limits of the Plaintiffs' mandate, there does not appear to be any basis to enter negotiations.

Canada ought to be taking the lead in bringing Ontario to the table. Instead, it is Ontario that has expressed a willingness to negotiate from the beginning. I might also say that Ontario's expert reports are not nearly as adversarial and ethnocentric as Canada's. In our view, "the Crown" owes the Robinson Huron Treaty Anishinaabek the duty to act honourably in interpreting and implementing our Treaty. This includes both Ontario and Canada, and both governments ought to decide how that responsibility should be discharged.



Canada should be taking the lead in promoting reconciliation, instead of shirking its responsibility just because Ontario refuses to negotiate on certain terms. This is consistent with the mandate letters issued to you and your cabinet colleague Justice Minister Jody Wilson-Raybould. Those letters identified the need for renewal of the relationship between Canada and Indigenous Peoples, including major adjustments to the laws, policies and operational practices applied to Indigenous Peoples.

According to the mandate letters, this renewal must be a nation-to-nation relationship, based on recognition, rights, respect, co-operation, and partnership. Moreover, Minister of Justice and the Attorney General Jody Wilson-Raybould was mandated to review Canada's litigation strategy to abandon positions that are not consistent with the Government of Canada's commitments, the *Constitution Act*, 1982 and the *UN Declaration on the Rights of Indigenous Peoples*.

Your announcement of Canada's support for the *UN Declaration on the Rights of Indigenous Peoples* at the United Nations Permanent Forum on Indigenous Issues on May 10, 2016, in New York City was clear:

We intend nothing less than to adopt and implement the declaration in accordance with the Canadian Constitution. Canada is in a unique position to move forward.

In fact, through Section 35 of its Constitution, Canada has a robust framework for the protection of indigenous rights. Section 35 of our Constitution states, "the existing Aboriginal and treaty rights of Aboriginal peoples of Canada are hereby recognized and affirmed." Indigenous people, including Grand Chief John, and so many others fought hard to include these rights in our Constitution.

By adopting and implementing the Declaration, we are excited that we are breathing life into Section 35 and recognizing it now as a full box of rights for Indigenous peoples in Canada. Canada believes that our constitutional obligations serve to fulfil all of the principles of the declaration, including "free, prior and informed consent."

As declared in the *R. v. Sparrow* case, the Supreme Court of Canada established that the recognition and affirmation of treaty and Aboriginal rights through section 35 of the *Constitution Act*, 1982, produced a significant transformation for Indigenous Peoples:

... this (s.35) is not just a codification of the case law on aboriginal rights that had accumulated by 1982. Section 35 calls for a just settlement with aboriginal peoples. It renounces the old rules of the game under which the Crown established courts of law and denied those courts the authority to question sovereign claims by the Crown.

Over the past thirty plus years, the Supreme Court of Canada and other Appellate Courts have been showing some remarkable leadership in seeking to understand the aspirations, perspectives and expectations of Indigenous Peoples and in giving effect thereto through case law like *Taylor and Williams*, *Sparrow*, *Marshall*, *Chippewas of Sarnia*, *Delgamuukw*, *Haida*, *Mikisew Cree* and *Tsilhqot'in Nation*.

In cases like those above-noted, the Courts use language which encourages less rigidity in discussing and finding solutions for the conflict between Crown law and policy and Aboriginal and treaty rights.



The less rigid approach means not seeking to explain how Aboriginal and treaty rights fit into the existing paradigms such as extinguishment, but rather, how unique these rights are and that the common and constitutional law are flexible enough to accommodate such challenges. The Court refers to it as the challenge of reconciling pre-existing Aboriginal rights and treaty rights with Crown sovereignty. The Courts have also expressed the view that Aboriginal perspectives need to be given equal weight.

A positive outlook on the Court's approach would be to describe their carefully crafted judgments as encouraging a principled approach in determining what is "justice" in the circumstances. Language in the judgments suggestive of the principled approach is reflected in Canada's recently announced Principles which speak of reconciliation, the honour of the Crown, respecting and implementing rights and the fundamental purpose of section 35 of the *Constitution Act*, 1982. In particular, Principles 5 and 9 state:

5. The Government of Canada recognizes that treaties, agreements and other constructive arrangements between Indigenous peoples and the Crown have been and are intended to be acts of reconciliation based on mutual recognition and respect.

9. The Government of Canada recognizes that reconciliation is an ongoing process that occurs in the context of evolving Indigenous-Crown relationships.

Yet, the approach of your government in the Robinson Huron Treaty litigation is the complete opposite of your government's stated intentions. And, while some disputes might benefit from judicial interventions to advance reconciliation, the adversarial and ethnocentric arguments and approach being advanced in this litigation are counter-productive.

We can only hope that your words and Canada's announcement of its Principles Respecting the Government of Canada's Relationship with Indigenous Peoples and the need for a new litigation strategy will combine to cause Canada to negotiate, rather than to litigate, a resolution of our treaty annuities claim. Only in this way can reconciliation truly be reached.

Sincerely,

*Ogimaa Duke Peltier and Ogimaa Dean Sayers Robinson
Huron Treaty Trust Fund*

(August 22, 2017)

Text of 1850 Robinson Huron Treaty

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ROGER DUHAMEL, F.R.S.C.
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OTTAWA, 1964
Cat. No. Ci 72-1264

THIS AGREEMENT, made and entered into this ninth day of September, in the year of our Lord one thousand eight hundred and fifty, at Sault Ste. Marie, in the Province of Canada, between the Honorable WILLIAM BENJAMIN ROBINSON, of the one part, on behalf of HER MAJESTY THE QUEEN, and SHINGUACOUSE NEBENAIGOCHING, KEOKOUSE, MISHEQUONGA, TAGAWININI, SHABOKISHICK, DOKIS, PONEKEOSH, WINDAWTEGOWININI, SHAWENAKESHICK, NAMASSIN, NAOQUAGABO, WWBEKEKIK, KITCHEPOSSIGYN by PAPASAINSE, WAGEMAKI, PAMEQUONASHEUG, *Chiefs*; and John Bell, PAQWATCHININI, MASHEKYASH, IDOWEKESIS, WAQUACOMICK, OCHEEK, METIGOMIN, WATACHEWANA, MINWAPAPENASSE, SHENAOQUOM, ONINGEGUN, PANAISSY, PAPASAINSE, ASHEWASEGA, KAGESHEWAWETUNG, SHAWONEBIN; and also chief MAISQUASO (also *Chiefs* MUCKATA, MISHOQUET, and MEKIS), and

MISHOQUETTO and ASA WASWANAY and PAWISS, principal men of the OJIBEWA INDIANS, inhabiting and claiming the Eastern and Northern Shores of Lake Huron, from Penetanguishine to Sault Ste. Maire, and thence to Batchewanaung Bay, on the Northern Shore of Lake Superior; together with the Islands in the said Lakes, opposite to the Shores thereof, and inland to the Height of land which separates the Territory covered by the charter of the Honorable Hudson Bay Company from Canada; as well as all unconceded lands within the limits of Canada West to which they have any just claim, of the other part, witnesseth:

THAT for, and in consideration of the sum of two thousand pounds of good and lawful money of Upper Canda, to them in hand paid, and for the further perpetual annuity of six hundred pounds of like money, the same to be paid and delivered to the said Chiefs and their Tribes at a convenient season of each year, of which due notice will be given, at such places as may be appointed for that purpose, they the said Chiefs and Principal men, on behalf of their respective Tribes or Bands, do hereby fully, freely, and voluntarily surrender, cede, grant, and convey unto Her Majesty, her heirs and successors for ever, all their right, title, and interest to, and in the whole of, the territory above described, save and except the reservations set forth in the schedule hereunto annexed; which reservations shall be held and occupied by the said Chiefs and their Tribes in common, for their own use and benefit.



Territory covered by Robinson-Huron Treaty. [Click to enlarge.](#)

And should the said Chiefs and their respective Tribes at any time desire to dispose of any part of such reservations, or of any mineral or other valuable productions thereon, the same will be sold or leased at their request by the Superintendent-General of Indian Affairs for the time being, or other officer having authority so to do, for their sole benefit, and to the best advantage.

And the said William Benjamin Robinson of the first part, on behalf of Her Majesty and the Government of this Province, hereby promises and agrees to make, or cause to be made, the payments as before mentioned; and further to allow the said Chiefs and their Tribes the full and free privilege to hunt over the Territory now ceded by them, and to fish in the waters thereof, as they have heretofore been in the habit of doing; saving and excepting such portions of the said Territory as may from time to time be sold or leased to individuals or companies of individuals,

and occupied by them with the consent of the Provincial Government.

The parties of the second part further promise and agree that they will not sell, lease, or otherwise dispose of any portion of their Reservations without the consent of the Superintendent-General of Indian Affairs, or other officer of like authority, being first had and obtained. Nor will they at any time hinder or prevent persons from exploring or searching for minerals, or other valuable productions, in any part of the Territory hereby ceded to Her Majesty, as before mentioned. The parties of the second part also agree, that in case the Government of this Province should before the date of this agreement have sold, or bargained to sell, any mining locations, or other property, on the portions of the Territory hereby reserved for their use; then and in that case such sale, or promise of sale, shall be perfected by the Government, if the parties claiming it shall have fulfilled all the conditions upon which such locations were made, and the amount accruing therefrom shall be paid to the Tribe to whom the Reservation belongs.

The said William Benjamin Robinson, on behalf of Her Majesty, who desires to deal liberally and justly with all her subjects, further promises and agrees, that should the Territory hereby ceded by the parties of the second part at any future period produce such an amount as will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound Provincial Currency in any one year, or such further sum as Her Majesty may be graciously pleased to order; and provided further that the number of Indians entitled to the benefit of this treaty shall amount to two-thirds of their present number, which is fourteen hundred and twenty-two, to entitle them to claim the full benefit thereof. And should they not at any future period amount to two-thirds of fourteen hundred and twenty-two, then the said annuity shall be diminished in proportion to their actual numbers.

The said William Benjamin Robinson of the first part further agrees, on the part of Her Majesty and the Government of this Province, that in consequence of the Indians inhabiting French River and Lake Nipissing having become parties to this treaty, the further sum of one hundred and sixty pounds Provincial Currency shall be paid in addition to the two thousand pounds above mentioned.

Schedule of Reservations made by the above-named subscribing Chiefs and Principal Men.

FIRST -- Pamequonaishcung and his Band, a tract of land to commence seven miles, from the mouth of the River Maganetawang, and extending six miles east and west by three miles north.

SECOND -- Wagemake and his Band, a tract of land to commence at a place called Nekickshegeshing, six miles from east to west, by three miles in depth.

THIRD -- Kitcheposkissegan (by Papasainse), from Point Grondine westward, six miles inland, by two miles in front, so as to include the small Lake Nessinassung a tract for themselves and their Bands.

FOURTH -- Wabakekik, three miles front, near Shebawenaning, by five miles inland, for himself and Band.

FIFTH -- Namassin and Naoquagabo and their Bands, a tract of land commencing near Qacloche, at the Hudson Bay Company's boundary; thence westerly to the mouth of Spanish River; then four miles up the south bank of said river, and across to the place of beginning.

SIXTH -- Shawenakishick and his Band, a tract of land now occupied by them, and contained between two rivers, called Whitefish River, and Wanabitaseke, seven miles inland.

SEVENTH -- Windawtegawinini and his Band, the Peninsula east of Serpent River, and formed by it, now occupied by them.

EIGHTH -- Ponekeosh and his Band, the land contained between the River Mississaga and the River Penebewabecong, up to the first rapids.

NINTH -- Dokis and his Band, three miles square at Wanabeyakokaun, near Lake Nipissing and the island near the Fall of Okickandawt.

TENTH -- Shabokishick and his Band, from their present planting grounds on Lake Nipissing to the Hudson Bay Company's post, six miles in depth.

ELEVENTH -- Tagawinini and his Band, two miles square at Wanabitibing, a place about forty miles inland, near Lake Nipissing.

TWELFH -- Keokouse and his Band, four miles front from Thessalon River eastward, by four miles inland.

THIRTEENTH -- Mishequanga and his Band, two miles on the lake shore east and west of Ogawaminang, by one mile inland.

FOURTEENTH -- For Shinguacouse and his Band, a tract of land extending from Maskinongé Bay, inclusive, to Partridge Point, above Garden River on the front, and inland ten miles, throughout the whole distance; and also Squirrel Island.

FIFTEENTH -- For Nebenaigoching and his Band, a tract of land extending from Wanabekineyunnung west of Gros Cap to the boundary of the lands ceded by the Chiefs of Lake Superior, and inland ten miles throughout the whole distance, including Batchewanaung Bay; and also the small island at Sault Ste. Marie used by them as a fishing station.

SIXTEENTH -- For Chief Mekis and his Band, residing at Wasaquesing (Sandy Island), a tract of land at a place on the main shore opposite the Island; being the place now occupied by them for residence and cultivation, four miles square.

SEVENTEENTH -- For Chief Muckatamishaquet and his Band, a tract of land on the east side of the River Naishconteong, near Pointe aux Barils, three miles square; and also a small tract in Washauwenega Bay -- now occupied by a part of the Band -- three miles square.

Signed, sealed, and delivered at Sault Ste. Marie, the day and year first above written, in presence of:

(Signed)

Astley P. Cooper, Capt. Rifle Brig.

George Ironside, S. I. Affairs.

F. W. Balfour, Lieul. Rifle Brig.

Allan MacDonnell.

Geo. Johnston, Interpreter.

Louis Cadott.

J. B. Assikinack.

T. W. Keating.

Joe. Wilson.

(Signed)

W. B. Robison. Shinguaconse, his + mark. [L. S.]
Nebenaigoching. his + mark. [L. S.]
Keokunse, his + mark. [L. S.]
Mishequonga, his + mark. [L. S.]
Tagawinini, his + mark. [L. S.]
Shabakeshick, his + mark. [L. S.]
Dokis, his + mark. [L. S.]
Ponekeosh, his + mark. [L. S.]
Windawegowinini, his + mark. [L. S.]
Shawanakeshick, his + mark. [L. S.]
Namassin, his + mark. [L. S.]
Muckata Mishaquet, his + mark. [L. S.]
Mekis, his + mark. [L. S.]
Maisquaso, his + mark. [L. S.]
Naoquagaho, his + mark. [L. S.]
Warokekick, his + mark. [L. S.]
Kithepossegun, (by Papasainse) his + mark. [L. S.]
Wagemake, his + mark. [L. S.]



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