

The Treaty Relations Commission of Manitoba
We are All Treaty People!!



Transcript: Interview with Jeff Harris

Jeff Harris is a partner in the Winnipeg law firm of Myers Weinberg LLP. His practice focuses on representing First Nations and their organizations in asserting their aboriginal and treaty rights. He is the past Chair of the Aboriginal Law Section of the Canadian Bar Association in which capacity he advocated for fair compensation for residential school survivors and for the appointment of aboriginal people to the courts, including the Supreme Court of Canada. He is currently negotiating land claims for several First Nations in Manitoba.

Royal Proclamation of 1763 and The Numbered Treaties

The Royal Proclamation recognized that in British North America all Indian Lands belonged to the Indians until they are ceded to the Crown. The Proclamation protects Indian lands by preventing them from being alienated to anybody but the Crown. And indeed it forms the basis for how the Crown saw Indian lands as it moved forward throughout time recognizing that it was necessary to treat with the Indians in order to acquire title to the land. You recognized, essentially, the Indians were sovereign within on their own land and only the British Crown could take title to that land and only upon their consent.

The Numbered Treaties essentially were necessary in order to open up the west for settlement. There was a major press by the government of the day to establish a settlement out in the west. It was necessary of course to bring British settlers into western Canada in order to protect our land; our territory, or what the British thought was their territory, by the invasion by the Americans from the south. So, it was necessary to get settlers out. And in order to do that it was necessary to find a way to restrict the Indians; to get them off the land. The Indians at the time of course were using the land freely; they were hunting and fishing and they were carrying their lives in their traditional way. And it was impossible for settlement to take place while the Indians continued to live in their traditional way. So it is necessary to treat with them, to make agreements with them, for the Indians to give up their rights to their traditional land, in exchange for reserve land, in order to free up the land for expansion to the west. That was the primary purpose of the Numbered Treaties.

British precedent and Treaty-making

The British Crown has a long history of moving around the world; and either conquering of peoples, or making treaties with other peoples to take over their land, and certainly when they came to North America they had that experience already. And what you'll find is when you look from east to west in Canada that Treaties are built one upon the other. The original Treaties in eastern Canada were primarily Treaties of peace and friendship in order to allow Europeans to come in and make small settlements.

As they moved further westward; the needs changed. And you'll find now that as you move, say into Ontario, that the Treaties will start dealing with issues such as giving up of land. What a Treaty may do is say that the Aboriginals are giving up all their rights to this particular land in exchange for some money. They may not even be a discussion about reserves.

The Treaty Relations Commission of Manitoba
We are All Treaty People!!

Transcript: Interview with Jeff Harris, continued...

Then you moved further west and we talked about the ‘Numbered Treaties’ earlier and now the pressures of settlement is starting to be felt by both the Crown and by Aboriginal peoples. The Treaties changed in that they started making specific provisions for reserves within the Treaties and they promised the Aboriginal People that they would come back, within a reasonable period of time and set out where their reserves were going to be. So the Treaties build one upon the other depending upon the needs of the time and they are still living documents; they’re still important documents. And of course they are interpreted by the courts on a regular basis because they sometimes are not as clear we would like them to be so it is necessary for Aboriginal people or perhaps the Government to go to court to get an understanding as to what the Treaties really say.

Oral History and Reconciliation

Oral History has been accepted by the courts as a valid way of establishing the history of Aboriginal Peoples. And it goes back to, I guess really, to the case where oral history made its debut, so to speak, would be Delgamuukw, which was a title case in British Columbia. The whole issue of oral history has been evolving since Delgamuukw which was in 19... in the early eighties, and many cases have dealt with the issue of oral history. But there is a recognition by the courts; that, an understanding by the courts, that Aboriginal People were an ‘Oral People’. The Crown wrote things out. The Aboriginal People didn’t write things out; and they passed the history down through the generations by telling one another what happened. And the courts have given effect to that and the courts will accept oral history, and it’s important I think, that we as Canadians understand and appreciate the significance of this, because to not give an effect to oral history, is to deny the history of the Aboriginal people. Because, again as I say, they’re an oral, they’re traditions are oral; so if don’t recognize the fact that they pass on their stories through their generations, then we fail to recognize them as a people in my respectful view. So again the courts have given credence to that and you’ll see in looking at the cases that oral history is now an integral part in many of the cases on Treaty and Aboriginal Rights that wind their way to the courts.

‘Reconciliation’ is a word that, I think, that first primarily appears in the Supreme Court decision, I believe it was in *Sparrow*, and we talk about Section 35 of the Constitution Act. Section 35 of the Constitution Act again gives constitutional protection to Aboriginal and Treaty Rights. It recognizes and affirms existing Aboriginal and Treaty Rights. And the Supreme Court has interpreted that as saying that Section 35 calls out for a ‘reconciliation’ between the Aboriginal and; calls out for reconciliation of Aboriginal and Treaty Rights. Again, that these rights are dynamic, and they continue to exist, that they are now constitutional entrenched and that there has to be an understanding, a recognition by Canadian Society, that these rights are here, they are here to stay, and that they have meaning. That they are not frozen in time, that they are dynamic. That Aboriginal People are not to be forgotten in society, that they are an integral part of society, their rights are important, they need to be recognized and they need to be given life. That’s how I understand ‘Reconciliation’.

