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Keeping it a Secret: The HBC, Canada and Sovereignty in the Peace River and Athabasca Districts

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In the summer of 1899 and 1900 Commissioners representing the Canadian government met First Nations throughout the Athabasca and Peace River region of the Northwest Territories to make Treaty No. 8. Almost 30 years had passed since British sovereignty claims to the district had been transferred to Canada. Legal scholars, influenced by recent decisions at the Supreme Court of Canada, have recently argued that treaty-making is necessary to the assertion of sovereignty. Kent McNeil, for example, notes that prior to making treaties the Crown's sovereignty claim "extended far beyond the areas controlled by the Europeans at the time" and was not based upon "the actual exercise of jurisdiction."¹ *De facto* sovereignty, he concludes, required negotiation with the Indigenous population. Indigenous legal scholars go even further. Harold Johnson informs Canadians that: "discovery does not provide justification for occupation." Consequently, "the only right you have to occupy this territory must come from treaty."² But does this legal argument about assertion sovereignty reflect the actual historical circumstance in the Athabasca and Peace River country?

This paper looks at Canada's activities in the area covered by Treaty No. 8 in the years prior to the making of that agreement. In particular, it looks at the Canadian government's response to a famine crisis that occurred in the period 1886-1888. Famine and starvation were not new to the Athabasca and Peace River districts. Provisioning activities related to the fur trade had extirpated wood bison from many parts of the district and cyclical famines were a regular occurrence in areas where fur-bearing animals were aggressively exploited.³ But the situation in 1886-1888 appeared particularly acute. Historian David Leonard describes the period as "the tribulations of the Beaver."⁴ Prior to the transfer of

1. Kent McNeil, "Sovereignty and Indigenous Peoples in North America," *UC Davis Journal of International Law and Policy* 22, no. 2 (2016), 82; Shiri Pasternak, "Jurisdiction and Settler Colonialism: Where do Laws Meet?" *Canadian Journal of Law and Society/Revue Canadienne Droit et Societe* 29, no. 2 (2014).

2. Harold Johnson, *Two Families: Treaties and Government*, (Saskatoon: Purich, 2007), 23-27. Johnson's conclusion appears to reflect a general consensus among Indigenous legal scholars. See Blair Stonechild, "The Indian View of the 1885 Uprising," in J. R. Miller, ed. *Sweet Promises: A Reader on Indian White Relations in Canada* (Toronto: University of Toronto Press, 1991), 259-276; Sharon Venne, "Understanding Treaty 6: An Indigenous Perspective," in Michael Asch, ed. *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver: University of British Columbia Press, 1997), 173-207; Sharon Venne, "Treaty-making with the crown," in John Bird, Lorraine Land, and Macadam, eds. *Nation to Nation: Aboriginal Sovereignty and the future of Canada* (Toronto: Irwin, 2002), 44-52; James (Sa'ke'j) Henderson, *Treaty Rights in the Constitution of Canada*, (Toronto: Thomson, 2007); and Aimee Craft, *Breathing Life into the Stone Fort Treaty: An Anishinabe Understanding of Treaty One* (Saskatoon: Purich, 2013), 66-83.

3. Arthur Ray, "Periodic Shortages, Native Welfare, and the Hudson's Bay Company, 1670-1930," in *The Subarctic Fur Trade*, Shepard Krech III, ed. (Vancouver: University of British Columbia Press, 1984), 1-20

4. David Leonard, *Delayed Frontier: The Peace River Country to 1909* (Detselig, 1995), 52-64. The Beaver First Nation is among the Indigenous groups with whom Canada made Treaty No. 8.

sovereignty to Canada, the Hudson's Bay Company had assumed responsibility for relief.⁵ Following the transfer, this responsibility had passed to the Canadian government. In studies of the southern regions of the North West Territories during this period, historians have concluded that Canada used its control over relief as a weapon in imposing its First Nation treaty settlements. James Daschuk goes so far as to suggest Canada's withholding of rations was an aspect of its genocidal campaign to clear the plains.⁶ In the Peace River and Athabasca Country, however, Canada did not use the famine crisis as a way to impose a treaty settlement. Indeed, it considered but rejected that option. Instead it chose to accept responsibility for relief of the famine crisis, but it chose to do it secretly. Contrary to the legal argument, it appears that Canada did accept and express the responsibilities of sovereignty prior to making Treaty No. 8. It was, however, careful to not express it in a fashion that might lead to concerns. As expressions of Canadian sovereignty continued to grow in the district, Canada finally decided in 1898 that the time had arrived to make Treaty No. 8.

5. Robert Coutts argues that it was part of the social cost of business. Robert Coutts, "We See Hard Times Ahead of Us: York Factory and Indigenous Life in the Western Hudson Bay Region, 1880-1925," *Journal of Canadian Studies* 51, no. 2 (Spring 2017), 448. Edward Cavanagh argues it was an obligation of sovereignty. Edward Cavanagh, "A Company with Sovereignty and Subjects of Its Own? The Case of the Hudson's Bay Company, 1670-1763," *Canadian Journal of Law and Society/Revue Canadienne Droit et Societe* 26, no. 1 (2011), 44-45.

6. John Tobias, "Canada's Subjugation of the Plains Cree, 1879-1885" *Canadian Historical Review* 64 (1983), 519-48.; Jill St. Germain, "Feed or Fight: Rationing the Sioux and the Cree, 1868-1885," *Native Studies Review* 16, no. 1 (2005): 71-90; James Daschuk, *Clearing the Plains: Disease, Politics of Starvation, and the loss of Aboriginal Life* (Regina: University of Regina Press, 2013), 127-158.



Map 1: Territory covered by Treaty No. 8

Source: *Annual Report of the Department of Indian Affairs, 1900*

Canada had acquired British title to the Athabasca and Peace River country in the Rupert's Land and North-Western Territory Order, 1870.⁷ Although these districts were not part of Rupert's Land, the Hudson's Bay Company had exercised power and authority in the North-Western Territory as an agent of the British government. With the transfer, the Hudson's Bay Company maintained trading operations in the district, but Canada obtained obligations "to legislate for the future welfare and good government of the said Territory." In

7. Imperial Order in Council, 23 June 1870, in *Statutes of Canada, 1872*. The British provided for the surrender of Hudson's Bay Company title to Rupert's Land in the Rupert's Land Act, 1868, 31-32 Victoria c. 105 (UK) but in 1870 transferred to Canada not only Rupert's Land but all British claims to the North-Western territories including such areas as the Peace and Athabasca watersheds, the Mackenzie river basin, the Coppermine River basin, and the area that encompasses the modern Yukon territory.

addition, Canada accepted that: "Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government." In this manner, the British Parliament transferred its authority to govern and the obligations of that governance to Canada.

During the 1870s, Canada took steps to provide for the establishment of governmental authority and to provide for the administration of justice, and to fulfill its obligations to acquire Indigenous title to its new territories. Canada provided for a form of colonial governmental control with opportunities for local legislative control as population increased. It provided for the creation of a court, the North West Mounted Police as a constabulary, and the appointment of local Justices of the Peace. In Treaties 1-7 (1871-1877), Canada obtained a cession of First Nation title to the territory known as the fertile belt and to the area around Lake Winnipeg.⁸ But with the exception of a few limited steps by the Geological Survey and Department of the Interior to investigate the North-Western territories beginning in 1872, the government took no steps to extend a visible characteristic of its jurisdiction into Peace River or Athabasca districts. Treaty-making ground to a halt following the completion of Treaty 7 in 1877 and no further efforts were made to obtain a cession of Indigenous title. As the settler population of the Northwest Territories increased, the Department of the Interior, "for the convenience of settlers" and "for postal purposes," took steps to create the provisional districts of Assiniboia, Saskatchewan, Alberta and Athabasca in 1882.⁹ Although it was never intended to have such consequences, this decision established a set of important dividing lines in the North-West territories. The districts of Assiniboia, Saskatchewan, and Alberta roughly coincided with the lands surrendered in Treaties 4, 6 and 7. Dominion land surveys and agricultural settlement occurred in these three districts and as representative government was established in the North West territories, elections for members of Parliament and the Territorial Assembly, as well as the enforcement of ordinances of the North West Territorial government appear to have been restricted to the districts of Assiniboia, Saskatchewan, and Alberta. The Athabasca district was virtually without visible expressions of governmental authority.¹⁰

8. The legislation designated the entire area, except for the portion dealt with in the Manitoba Act, as the North West Territories and did not distinguish the two areas in the context of governmental authority. See for example, the "An Act for the Temporary Government of Rupert's Land and North-Western Territories, 1869," 32-33 Victoria c. 3; "The Dominion Lands Act, 1872," 35 Victoria, c. 23; "The Administration of Justice, North-West Territories Act, 1873" 36 Victoria, c. 35; "The North-West Territorial Act, 1875," 38 Victoria, c. 49. Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories including the Negotiations on which they were based*, (Toronto, 1880) reprinted Saskatoon: Fifth House, 1991. See the map in Appendix 3 for treaty boundaries.

9. Order in Council, 982(a), Authorizing the Formation of New Territories in the Northwest, 8 May 1882, RG 2, Series 1, vol. 228

10. Federal constituencies in Assiniboia, Saskatchewan, and Alberta were created by legislation in 1886. 49 Victoria, c. 24. L.H. Thomas, *The Struggle for Responsible Government in the North-West Territories, 1870-97*, 2nd edition, (Toronto: University of Toronto Press, 1978) provides a thorough examination of territorial governance. The practice of restricted application of Territorial Ordinances appeared through convention. An important illustrative example might be seen in the management of game. Nothing in the Game Ordinance, *Territorial Ordinances*, No. 8, 1893 suggests that it does not apply to all of the North West Territories including the Mackenzie, Yukon, and Athabasca areas yet no enforce-

Visible expressions of Canadian governmental sovereignty in the Peace River and Athabasca country came in the form of expeditions by the Geological Survey and Department of the Interior. These expeditions to inventory the resources of the region were an aspect of what Suzanne Zeller describes as inventing the nation.¹¹ Horetzky and Macoun (1872), Selwyn and Macoun (1875), Dawson (1879), Bell (1882-84), Ogilvie (1884), McConnell (1889-90), and Ogilvie (1891) all spent significant time surveying potential transcontinental railways routes and investigating the region's resources. These expeditions frequently followed the Hudson Bay Company's transportation routes and made visits at most Hudson's Bay Company trading operations during their journeys. The evidence they present in their reports also indicates that they made regular enquiries with both traders and Indigenous people to supplement their own observations about resources and conditions.¹² A select committee of the Canadian Senate held hearings and compiled all of the information acquired in these expeditions; it was published under the title *The Great Mackenzie Basin* in an apparently symbolic act acknowledging Canada's sovereignty over the district.¹³

These expressions of Canadian sovereignty had little impact upon the economy and society of the Peace River and Athabasca districts. *The Great Mackenzie Basin* had emphasized the potential for agriculture and petroleum and the government took steps to foster the development of both activities. Experimentation with agriculture was well underway in the district before 1890.¹⁴ At Shaftesbury and Fort Vermilion, farm operations were underway in association with missions led by the Brick and Lawrence families. J. Hayes, William Lloyd, John Milton and Henry McCorrister, meanwhile, had farms at Dunvegan. These farms included livestock, grist mills, and saw mill operations and with some limited assistance

ment was undertaken outside of the districts of Assiniboia, Alberta, and Saskatchewan. The next year, the Parliament of Canada decided to enact its own legislation with regard to game in "The Unorganized Territories' Game Preservation Act, 1894" which applied to "those portions of the North-west Territories of Canada not included within the provisional districts of Assiniboia, Alberta, and Saskatchewan." 57-58 Victoria, c. 31, s. 2.

11. Suzanne Zeller, *Inventing Canada: Early Victorian Science and the Idea of a Transcontinental Nation*, Carlton Library Series Edition (Montreal: McGill-Queen's University Press, 2009).

12. Sir Sandford Fleming, *Report of Progress on the Explorations and Surveys up to January 1874*, (Ottawa, 1874), Appendix B, "Peace River Expedition", 45-55 and 68-79; Charles Horetzky, *Canada on the Pacific: Being an Account of Journey from Edmonton to the Pacific by the Peace River Valley*, (Montreal, 1874); Alfred Selwyn, "Report on Explorations in British Columbia," *Geological Survey of Canada: Report of Progress, 1875-76* (Montreal, 1877), 28-86; John Macoun, "Report on the Botanical Features of the Country Traversed from Vancouver Island to Carleton, on the Saskatchewan," *Geological Survey of Canada: Report of Progress, 1875-76* (Montreal, 1877), 110-232; George Dawson, "Report on an Exploration from Port Simpson on the Pacific Coast to Edmonton on the Saskatchewan Embracing a portion of the Northern Part of British Columbia and the Peace River Country," *Geological Survey of Canada: Report of Progress, 1879-1880* (Montreal, 1881), B1-B98; Robert Bell, "Report on Part of the Athabasca River," *Geological Survey of Canada, Report of Progress for 1882-4* (Montreal, 1884). William Ogilvie, "1884 Report" *Annual Report of the Department of the Interior, 1884 Sessional Paper No. 13*, 1885, 45-56; Geological and Natural History Survey of Canada, *Annual Report, 1888-89*, (Montreal, 1890), 12A-15A; William Ogilvie, *Report on the Peace River and Tributaries, 1891* (Ottawa, 1892).

13. Canada, *Report of the Select Committee of the Senate appointed to enquire into the resources of The Great Mackenzie Basin* (Ottawa, 1888).

14. Leonard, *Delayed Frontier: The Peace River Country to 1909*, 176-79; 184-189.

from the Department of Indian Affairs, they were providing seed grain, agricultural assistance, and milling operations for local Metis and First Nation farmers.¹⁵ In 1892, samples of the crops produced at Shaftesbury were displayed at the Chicago World Fair.¹⁶ The Hudson's Bay Company, meanwhile, had opened a large scale ranching operation at Spirit River. This ranch, operated as an outpost of Fort Dunvegan, consisted of 10 buildings, a large cattle herd, pigs, and a small plot of land seeded to oats, barley, and potatoes.¹⁷ But frost destroyed often destroyed the crops and these failures led Department of Interior surveyor William Ogilvie to remark that "I would not advise anyone seeking a home in our great Northwest to think of Peace River. There is only a limited area in the valley which is the only place where success can reasonably be expected."¹⁸

The government also made an effort to develop the potential petroleum resources in the Athabasca district. The Geological Survey of Canada undertook to drill test wells along the Athabasca River. At the same time, Privy Council Order 52, 26 January 1891, authorized the making of a treaty in the Athabasca district and made particular reference to petroleum, sulfur and salt discoveries, potential railway projects, and settlement possibilities as the rationale for the treaty.¹⁹ The failure of the GSC to find a suitable method to exploit the bituminous sands and the chaos in the Conservative government following the death of John A. Macdonald led to the abandonment of this treaty-making proposal.²⁰ The Geological Survey, nevertheless, continued prospective oil exploration operations and maintained control of exploration until 1898.²¹ Other prospectors, meanwhile, illicitly searched for gold and other minerals in the Peace and Athabasca River basins in the period prior to treaty.²²

With little success in agriculture or petroleum development, the fur trade remained the dominant colonial activity. The cost structure and commercial and trading dominance

15. Richard Athabasca, Letter of Introduction, 16 September 1886; Vankoughnet to John A. Macdonald 16 May 1887 and J. Gough Brick to Vankoughnet, 16 June 1891 RG 10, vol. 3779, 39478; E. J. Lawrence to Minister of Agriculture, 6 Dec. 1879, RG 10, vol. 3707, file 19446 pt. 3 is the first record of the Fort Vermilion farm and school operation. By 1883, that school had 7 First Nation students, 4 Metis students, and 4 white children in attendance. See Bishop Bompas to Laird, 15 February 1883, RG 10, vol. 3707, file 19446 pt. 3 (with the associated attendance record from the school)

16. Edmonton *Bulletin* 8 September 1892.

17. Daniel Francis and Michael Payne, *A Narrative History of Fort Dunvegan*, (Winnipeg: Watson and Dwyer, 1993), 31-32.

18. Ogilvie, *Report on the Peace River and Tributaries*, 1891, 36.

19. Geological and Natural History Survey of Canada, *Annual Report*, 1888-89, (Montreal, 1890), 12A-15A and Geological Survey of Canada, *Annual Report*, 1894 (Montreal, 1896), 8A-12A; Dewdney to Vankoughnet, 8 Dec. 1890 and PC 52, 26 January 1891, LAC, RG 10, vol. 3848, f. 75236-1

20. Rene Fumoleau, *As Long As This Land Shall Last* (Toronto: McClelland and Stewart, 1976), 41-43 discusses the aborted treaty proposal and blames the delay on the chaos that ensued in the Conservative party following Macdonald's death.

21. Private interests were not permitted to prospect for oil in the region prior to making the treaty. Subsequent to the treaty some 33 claims were staked by 1910. H.W. Rowatt, Memorandum to Minister of Interior, 20 December 1910, RG 85, v. 1814, f. 55190

22. Don Wetherell, *Alberta's North: A History, 1890-1950*, (Edmonton: University of Alberta Press, 2000), 32.

of the Hudson's Bay Company were challenged.²³ The transfer had confirmed earlier adjustments in the HBC trading system as commerce shifted away from York Factory, the Bay, and Britain toward the emerging railway networks of the continent.²⁴ This change forced the company to pay Canadian customs duties on products leading to increased costs and changed product inventories. The HBC opened a trail system from Edmonton to Lesser Slave Lake and on to Peace River Crossing in 1878 and re-oriented its supply lines for more direct access between the Peace River district and Edmonton. The HBC also expanded its operations in the Peace River district from the three significant posts at Fort Vermilion, Fort Dunvegan, and Fort St. John opening small outposts at Little Red River, Battle River, Sturgeon Lake, Grande Prairie, Peace River Crossing, and Hudson's Hope. Along the Athabasca River, meanwhile, the HBC operated a sternwheel steamer to transport goods from Athabasca Landing to Fort Chipewyan which became a gateway to Fond du Lac, Fort Resolution, and the Mackenzie River. Historian David Leonard notes that these transportation changes led to competition as free traders from Edmonton like Colin Fraser, Guillaume Desjarlais, and Adrien LaRiviere used the new trail systems and steamers to supply their operations. The increased competition produced increased prices but it also led to the depletion of game and fur-bearing animals and, by early 1880s, the beaver trade in the region began a steady decline.²⁵

The circumstances of the First Nations people were reported to be dreadful. From Fort Chipewyan in 1884, Roderick MacFarlane reported:

Beaver are rapidly diminishing in the number, especially along the Peace River, where the presence of opposition cause indiscriminate slaughter. The recent scarcity of moose and Deer has compelled most of our Indians to give more of their attention to the capture of fish for food than they had previously been accustomed to, but despite their best efforts cases occur every winter particularly when rabbit and deer fail, of individuals and families who almost perish from want – a few indeed do so as would many others but for the succor afforded them by the Company's officer, and occasionally also by the resident missionaries. It is almost impossible to exaggerate the amount of privation frequently experienced by the poor natives.²⁶

In his report from Dunvegan in 1885, Dr. William McKay first commented upon the "steady" decline in moose and the decline in the associated leather and provisioning trade. Then he noted: "Beaver [animals] are without doubt decreasing in the country around Dunvegan and the Grande Prairie owing to the influx, some years ago, of a large number of Crees and Free-men from Jasper House and the Saskatchewan who devoted their whole energies to hunting

23. Gerald Friesen, "Imports and Exports in the Manitoba Economy, 1870-1890," *Manitoba History* no. 16 (Autumn, 1988)

24. Alvin Gluek, "The Minnesota Route," *The Beaver* (Spring 1956), 44-50.

25. David Leonard, *Delayed Frontier*, 150-55.

26. MacFarlane to Clarke, 28 May 1884, LAC, RG 10, v. 4006, f. 241209-1

Beaver and literally cleaned out every 'Beaver Lodge' they found. These people are gradually returning to their own country but the "Beavers" [Dane-zaa] continue hunting this animal; both for its carcass and pelt, which is now comparatively speaking much less numerous."²⁷

The precarious condition of First Nation and Metis populations, particularly in the Peace River country around Dunvegan, Grande Prairie, and Fort St. John, is a constant refrain in the reports of the Hudson's Bay Company in this period. In extracts forwarded to the Department of Indian Affairs in 1886, Dr. William McKay reported that measles had spread from Lesser Slave Lake to Peace River causing 64 deaths. "In consequence of the severe sickness among our Indians and the scarcity of Lynx and Rabbits, I fear those on the Peace River, particularly Dunvegan and Grand Prairie should the disease get among them will suffer much from starvation. In 1880 and 1881 a number died under somewhat similar circumstances."²⁸ According to his report from 1887, these fears of starvation were realized. McKay remarked: "I believe the Hudson's Hope Indians suffered from starvation more than any others. Several who were in the mountains died from that cause."²⁹ That same year, Reverend J. Gough Brick reported that the First Nations along the Peace River, having killed their horses for food, were reduced to eating old shoes and cowhides.³⁰ Indeed, the future of the fur trade in the region was actually summarized neatly in the 1890 report from Lesser Slave Lake. Following a review of Richard Hardisty's notes and books, HBC Commissioner J. Wrigley noted: "Beaver and other game killed out so that Indians cannot get a living, and what they do hunt is traded for provisions which form a large part of the outfit and for which there is heavy freight and small profit."³¹

Occasionally, this reporting evokes scenes of catastrophe and tragedy. From their missions at Fort Chipewyan and Fort Vermilion, Bishop Clut and Erastus Lawrence reported that starvation was severe at Red River post along the Lower Peace River in 1887 with as many as 27 of a band of 30 people dying there that winter.³² In 1889, Richard Hardisty reported from Dunvegan that "Indians in this district are dying out fast, especially the Beaver tribe. On the Peace River, game and Beaver were plentiful in former days, but there is now very little to be obtained, and the Indians are most of the time in a starving condition." He described those trading in the district around the post as including: "About 12 heads of families; Beaver Indians in starving and sickly condition, fast dying out. 4 have left, 17 have died, all good hunters, in the past 3 years. 6 families of Cree also trade at this Post, all on the N. Side. On the S. Side, 6 families of Iroquois and 12 head of families of Beavers; the latter all trade at Grande Prairie; 12 died out of the band in Outfit of 1888, all of them good

27. Dunvegan Inspection Report, 1885, HBCA, B.56/e/1.

28. Extracts from a letter to the Commissioner of the Hudson's Bay Company from Dr. McKay, 12 October 1886, RG 10, v. 3708, f. 19502 pt. 1

29. Post Reports, Lesser Slave Lake, 1888, HBCA B.115/e/7

30. Vankoughnet to Superintendent General, 19 May 1888, RG 10, v. 3708, f. 19502-1

31. Post Reports, Lesser Slave Lake, 1890, HBCA, B.115/e/10

32. Bishop Clut to John A. Macdonald, 18 May 1888, RG 10, v. 3708, f. 19502 pt. 1

hunters.”³³ Remarking on the overall condition of the fur trade in 1889, Ewan Macdonald noted that: “The subject of destitution among the Indians of the Peace River country is a serious one.” Even in the vicinity of Grande Prairie “the best fur hunting country on the Peace River, but the natives, Beaver Indians, are in a chronic state of destitution.”³⁴ The Anglican missionary Alfred Garrioch reported: “there is no word more familiar to our ears than ‘tes-pot,’ I am hungry.”³⁵

The earliest rumours regarding destitution in the district and the need for the government to establish relationships and provide relief in the regions north of Treaty 6 had led to a discussion about a potential treaty. David Laird, the Lieutenant Governor of the North West Territories, first notified the government about the concerns regarding destitution in the north in 1880.³⁶ He suggested the government consider offering educational assistance and relief to First Nations north of Treaty 6, but Indian Commissioner Edgar Dewdney expressed some concerns about any potential government support to First Nations in the absence of a treaty. As a result, Dewdney and Deputy Superintendent General Lawrence Vankoughnet advised the government to consider a treaty in 1883-84.³⁷ Vankoughnet wrote:

The undersigned was informed from several quarters while in the Northwest that very much uneasiness exists among the Indians in the unceded part of the Territories at parties making explorations into their country in connections with railroads, etc., without any Treaty being made with them; and it was reported to him by persons well acquainted with these Indians that they are most anxious to enter into Treaty relations with the Government and that it is in the interest of humanity very desirable that the Government should render them assistance, as their condition at many points is very wretched. The Indians in the unceded portions of the Territories are not numerous; but at the same time they could of course do great injury to any railway or any public work which might be constructed in their country, unless the Government had a previous understanding with them relative to the same.³⁸

Vankoughnet thus highlighted several potential justifications for a treaty including government activity in the region, settlement potential, and the need to offer service to First Nations. Prime Minister John A. Macdonald, however, rejected the advice determining such a course of action was unnecessary until the taking up of lands for settlement in the region

33. Dunvegan Inspection Report, 1889, HBCA, B.56/e/3

34. Post Reports, Lesser Slave Lake, 1890, HBCA B.115/e/11

35. Garrioch to Young, 15 December 1887, PAA, Acc. 70.387, v. A281, f. 105 also see Synod Report, 8 July 1888 Acc. 70.387, v. A220, f. 3

36. David Laird to Minister of Interior, 24 December 1880 and attached letters from H. Moberly (Fort Vermilion), W. Bompas (Bishop of Athabasca) and Vital Grandin (Bishop of St. Albert), RG 10, vol. 3708, file 19502, pt. 1; David Laird to Superintendent General, 30 December 1880 and attached letters from E. J. Lawrence (Fort Vermilion) and Reverend Legoff (Ile a la Crosse), RG 10, vol. 3707, f. 19446 pt. 3

37. Dewdney to Superintendent General, 12 January 1881, RG 10, vol. 3708, file 19502 pt. 1

38. Vankoughnet to Superintendent General, 5 November 1883, RG 10, vol. 4006, file 241209-1

appeared imminent.³⁹

Although the nascent agricultural settlement may not have warranted a treaty, questions remained about how to handle the pleas for relief in the absence of a treaty. This situation became urgent in the period 1886-1888 as the government was informed about the wide spread famine occurring in the district. The circumstances appeared to warrant some action. As a result, Superintendent General Thomas White once again prepared a factual note for the Privy Council describing the circumstances and setting the stage for the negotiation of a treaty.⁴⁰ At the same time, Deputy Superintendent General Vankoughnet prepared a lengthy memorandum for the Superintendent General. Vankoughnet wrote:

The Hudson's Bay Company carried on a fur trade with these Indians long prior to the transfer of the country to the Dominion. The Indians of these regions live by trapping fur bearing animals the skins of which they sell to the traders. The transfer of the Hudson's Bay Company interest in the country to the Dominion in consideration of value received for the same by the said Company has not practically up to the present time altered in any respect the relations of the Company to the Indians of that portion of the Territories the Indian title to which remains unextinguished. No white settlement has been effected in those regions in consequence of said transfer. Consequently, the country still remains as the hunting grounds of the Indians and the game and fur-bearing animals have not been diminished in number through any action of the Government in settling the country. The Hudson's Bay Company have, therefore, insofar as those regions are concerned profited by the payment made to them for their interest therein without any benefit having accrued to the Dominion on account of the transfer...

The Hudson's Bay Company before the transfer to the Dominion would in the case of the sick and destitute Indians naturally provide for them when they were unable to provide for themselves, and while in the opinion of the undersigned it is quite proper where white settlement has taken place in the portion of the Territories transferred to the Government, and where such settlement has affected the revenue of the Hudson's Bay Company by the diminution in the number of fur-bearing animals consequent upon such settlement, that the Government should be at the expense of providing for the sick, aged, and destitute Indians, the undersigned does not however see that the Hudson's Bay Company can have any equitable claim to be relieved of the care of the sick and aged Indians in those portions of the Territories which they have transferred to the Government but where no white settlement has affected and no interruption of their trade with the Indians has been caused by Government works or by settlers taking up lands, etc. The Hudson's Bay Company, it appears to the

39. Dewdney to Superintendent General, 25 April 1884, RG 10, vol. 4006, file 241209-1. J.A. Macdonald rejected the recommendation for treaty in a note on the file 27 May 1884.

40. Superintendent General to Privy Council, 19 January 1887, RG 10, v. 4006, f. 241209-1

undersigned, stands exactly in the same position practically to the Indians as it did before the transfer of its interest in the country to the Government.

With regard, however, to the question of making Treaties with the Indians through whose country it is contemplated to construct Railways and other public works, the undersigned is decidedly of opinion that before such construction takes place, Treaties should be made with the Indians to prevent trouble with them, hereafter ...⁴¹

It is not clear if Vankoughnet's memorandum had any impact, but a margin note on the Privy Council notification indicates that Prime Minister Macdonald decided to set aside the issue until after the general election set for that year.⁴²

In the absence of Canadian government action, however, the HBC refused to offer relief. Instead, it reestablished practices related to indebteding the First Nation traders. Reporting on the circumstances of the winter, Wm. McKay wrote: "The Manager ... [at Hudson's Hope] felt the necessity of giving them supplies, chiefly provisions and ammunition, in debt.... At Dunvegan, Sturgeon Lake and Battle River, debts in provisions and ammunition were given to enable the Indians to hunt and prevent casualties that would have been serious and unpleasant. However much averse to the debt system, I could not blame the managers for giving these supplies under the circumstances, and I am glad to be able to state that a considerable proportion of these have been paid when the Indians arrived in the summer."⁴³

Despite evidence that the HBC refused to offer relief given the transfer, Vankoughnet continued to reject calls for Canada to act in the absence of a treaty. He wrote that the First Nations of the Peace River country were: "outside of the treaty limits and that the Government had never interfered in any way with their hunting grounds, and as the Government had no treaty with those Indians, it had not felt it incumbent upon it to assist them, as it had Indians with whom it had treaty."⁴⁴ Indeed, in his various memoranda Vankoughnet continued to insist that responsibility for relief remained with the HBC since Canada had taken no steps to interfere with their trade in the district. But the HBC no longer believed that it was financially or morally responsible for such aid and it no longer had a monopoly on trade.⁴⁵

In the midst of the crisis, the Department of Indian Affairs had received an editorial

41. Vankoughnet, Memorandum, 19 January 1887, RG 10, v. 4006, f. 241209-1

42. Margin note, 31 March 1887 on Superintendent General to Privy Council, 19 January 1887, RG10, v. 4006, f. 241209-1

43. Post Reports - Lesser Slave Lake, 1888, HBCA, B115/e/7

44. Vankoughnet to Superintendent General 21 January 1888 and 19 May 1888, RG 10, v. 3708, f. 19502 pt. 1; for a full discussion about the issues of relief see also Vankoughnet to Dewdney, 3 June 1887 and A. Desmarais to Dewdney, 2 January 1888, RG 10, v. 3781, f. 39830; Memorandum to Accountant, 9 June 1887 and Vankoughnet to J. Gough Brick, 11 July 1887, RG 10, v. 3779, f. 39478; Hayter Reed to Superintendent General, 4 Nov. 1887, RG 10, v. 3784, f. 40775 (See margin note)

45. Clark to Vankoughnet, 10 January 1888, RG 10, v. 3708, f. 19502 pt. 1

comment from the *Edmonton Bulletin*. The newspaper acknowledged that Canada had no treaty obligation to offer assistance but the editor remarked:

as long as Canada claims jurisdiction over the Peace River country – and if the demand was made that jurisdiction should be relinquished what a howl would be raised – so long it is under a moral obligation to assist the people whether whites or Indians when they are in extremity. If the matter is looked at squarely it is surely a fearful thing that any community under Canadian rule should perish for lack of assistance that it is possible to render.⁴⁶

Missionaries made similar comments. The Roman Catholic Bishop of Athabasca, Isidore Clut complained that Canadian customs duties on products sent from Europe had increased the burden upon his missions. Yet "the Canadian government on the other hand has but very scantily extended its solicitude and paternal care to our population."⁴⁷ According to a story in the *Evangelical Churchman*:

The Indian Question throughout Athabasca is becoming a serious one, and considering that the Dominion Government have now mapped it out and formally included it as a portion of the North-West Territories of Canada, I think they should not delay in undertaking measures for their relief.⁴⁸

In a meeting with Vankoughnet, Anglican Rev. J. Gough Brick similarly argued that Canada, having created the Athabasca district, should assume responsibilities similar to those in the southern districts. This reasoning appears to have convinced Vankoughnet. Although he insisted that the government did not bear any obligation for relief to First Nations outside of treaty, he acknowledged that the government might consider providing relief "not in connection specially with their status as Indians but as forming part of the general population of the North West Territories."⁴⁹ Following upon this discussion, the government decided to offer emergency relief.

In his memorandum for the Privy Council, the Superintendent General reviewed the catastrophic conditions in the Mackenzie and Athabasca districts and acknowledged that the HBC refused to accept responsibility for the provision of relief since it no longer retained a monopoly on trade. Although the Government had not previously "considered it expedient to furnish relief" to non-treaty First Nations, the "exceptional circumstances" warranted "a departure from this rule for at least one year."⁵⁰ Lacking any mechanism to deliver relief, the

46. *Edmonton Bulletin*, 22 January 1887; the story was reprinted in the *Calgary Tribune*, 8 February 1887 and a copy is in the files of the Department of Indian Affairs, RG10, v. 4006, f. 241209-1

47. Clut to Superintendent General, 18 May 1888 and Vankoughnet to Superintendent General, 30 May 1888, LAC, RG10, v. 3708, f. 19502 pt. 1

48. Richard Athabasca in *Evangelical Churchman*, 3 May 1888, 616-18 copy in RG 10, v. 3708, f. 19502-1

49. Vankoughnet to Superintendent General, 19 May 1888, LAC, RG10, v. 3708, f. 19502 pt. 1

50. Memorandum of the Superintendent General, 7 July 1888, OIC 1714(a), LAC, RG2, Series 1, v. 398

government decided to provide the HBC with \$7000 to supply relief and assistance to those non-Treaty First Nation people facing starvation. The money was to be charged to unforeseen expenses and came with a significant caveat. The HBC was not to inform the Indigenous people regarding the source of the money.

... the transactions in connection therewith be regarded as of a strictly confidential nature, and the Chief Commissioner of the Hudson's Bay Company to be requested not to inform the officers of the company or the Indians that the money sent for relief purposes comes from the Government as it is of the highest importance that there should be an avoidance of the establishment of a precedent for the Government affording relief to the Indians with whom it has not treaty relations.⁵¹

The HBC was to supply receipts for the expenses and provide descriptive information regarding the condition of those to whom assistance had been granted. The government rejected claims for relief offered prior to the authorization of the grant.⁵²

At the same time as the government decided to take responsibility for providing relief, it accepted responsibility for educating Indigenous children. As early as 1877, Anglican and Catholic missions had opened schools at their missions in Fort Vermilion, Shaftesbury, Fort Chipewyan, and Lesser Slave Lake but the government had rejected their appeals for governmental grants.⁵³ Feeling the strain of offering help in the famine crisis, missionaries renewed their appeals. From Lesser Slave Lake, for example, Father Desmarais protested that his school received no support because: "the Government has not yet jurisdiction over such matters at Lesser Slave Lake. If the Government wishes to have jurisdiction over Lesser Slave Lake and the surrounding countries, it would be good to show to our people how ready he is to promote their welfare in anyway whatever and at any time, and not wait that he be in possession of their land before doing any good."⁵⁴ Vankoughnet now responded favourably noting that "the Government would materially benefit the Indians of that region by giving a substantial encouragement to the projects... The establishment of a school for the children at which they will be boarded, clothed and kept will also, it is submitted, tend greatly to the advancement of the Indians of that section of the country."⁵⁵ As a result, the government decided to offer small grants to assist schools at Fort Chipewyan and Fort Vermilion in 1887 and, after 1892, to schools at Lesser Slave Lake. The funds for these schools were allocated from miscellaneous spending at Indian Affairs.⁵⁶ Missionaries resented the ad hoc na-

51. OIC 1714, 11 July 1888, LAC, RG2, Series 1, v. 398

52. Vankoughnet to Wrigley 14 October 1889 and Wrigley to Superintendent General, 30 November 1889, RG 10, v. 3708, f. 19502 pt. 1

53. David Leonard, *Delayed Frontier*, 104-109. Vankoughnet to S.G.I.A., 6 June 1877 and E.A. Meredith, Deputy Minister of the Interior to Bishop Henri Faraud, 11 June 1877, LAC, RG10, v. 3649, f. 8185; E. J. Lawrence to Minister of Agriculture, 6 Dec. 1879 and Bishop Bompas to Laird, 15 February 1883, LAC, RG 10, vol. 3707, file 19446 pt. 3.

54. A. Desmarais to Dewdney, 2 January 1888, LAC, RG10, v. 3781, f. 39830.

55. Vankoughnet to Superintendent General, 16 May 1887, LAC, RG10, v. 3779, f. 39478.

56. *Annual Report for the Department of Indian Affairs*, 31 December 1892 (Ottawa: 1893), 52 and 306-07; *Annual*

ture of these grants and sought a normalized relationship. In the same year that the government authorized the making of Treaty No. 8, the Anglican and Catholic mission schools at Lesser Slave Lake were listed as boarding schools by the Department and offered a standard per capita annual grant; Father Fahler sent his first report to the Department of Indian Affairs on conditions at the St. Bernard Mission Boarding School at Lesser Slave Lake.⁵⁷

Starvation, however, remained an on-going problem particularly along the Peace River. From Fort St. John Inspector J. Macdougall wrote: "[In]dians were unfortunate last winter hunting food animals, and [co]nsequently had to trade most of their furs during the winter for [pr]ovisions; others who had no furs had to receive provisions in [de]bt to keep them from starving."⁵⁸ And from Dunvegan he reported: "The Beaver Indians of this Post are disappearing very fast. In the last five years more than half of them have died and very few children are growing up. They are highly scrofulous and consumptive, and for a few years back suffered from starvation... Last winter, several saved their lives by eating their horses, while others passed the Winter on what they begged from the Company and Missionaries, principally potatoes and grain."⁵⁹ The trader at Fort St. John summarized the sorry state of affairs in his journal entry for 31 December 1892. "It has been a very hard one on the Indians owing to the sickness (La Grippe). Since last spring there is 10 young children all under 1 year old and 3 grown up people all passed in their checks and gone to the happy hunting grounds. Some of the Indians pitched off last fall and lots of them were sick but as none had arrived from far out it is hard to say how they are getting along."⁶⁰ Following his visit in 1894, H. Somers Somerset remarked that the Dane-zaa people were: "behind the Crees in their manners and habits, which are very disgusting... They are most unhealthy, suffering much from indigestion, consumption and scrofula... It is said, moreover, that they are rapidly becoming extinct."⁶¹ Inspector E. Beeston lamented from Fort St. John in the summer of 1897 that: "During the previous winter considerable distress existed among the Indians. Rabbits and Moose were very scarce while fires had done much damage in driving away fur-bearing animals. There was a good deal of starvation, it was stated by Mr. Gunn, and several horses had to be killed for food."⁶²

The decision to provide relief through the HBC, however, had generated problems. The HBC tried to use the funds to recoup relief delivered in the 1886-87 rather than use the money for future problems. While Canada rejected these claims, the agreement of 1888 produced additional problems. Free traders who competed with the HBC believed the decision offered the company a competitive advantage. From Dunvegan, HBC Inspector J. Macdougall reported:

Report for the Department of Indian Affairs, 30 June 1893 (Ottawa: 1894), 288-295.

57. *Annual Report for the Department of Indian Affairs*, 30 June 1898, (Ottawa: 1899), 300 and 374-79.

58. Fort St. John Inspection Report, 1891, HBCA B.189/e/2

59. Dunvegan Inspection Report, 1891, HBCA B.56/e/4.

60. Fort St. John Journal, 31 December 1892, HBCA B.189/a/5

61. H. Somers Somerset, *The Land of Muskeg* (London: Heineman, 1895), 36-37.

62. Fort St. John Inspection Report, 1897, HBCA B.189/e/4

In the winter of 1888/89 the Company had to convey a number of them [First Nations from the Peace River district] to Lesser Slave Lake, where fish were to be obtained, which saved their lives. The following year the Government paid the Company nett [sic] cost-landed value of provisions they were obliged to issue to starving Indians, but the following year refused to pay any part of the expenses, which amounted to about \$600.00. It may be stated that the Indians were told by the traders and others in the country that the provisions were sent by the Government for use of the Indians, and as all believed they were entitled to a share, considerable ill feeling arose against the Company's officers for refusing to supply those who were not in need.⁶³

Thus First Nations, it appeared, were informed that the relief originated with the government despite its efforts to keep this practice a secret. And the HBC found itself facing increased demands for support. As additional claims mounted, the recently appointed Superintendent General Edgar Dewdney believed the government to "be funding the Indians to work for the HBC."⁶⁴ As a result, the government agreed to allow the HBC to carry forward unspent funds for a year, but it rejected requests to provide additional funds.⁶⁵

When apprised of further requests for assistance in 1896, Commissioner Forget would remark: "There would be ground for objections to placing the dispensing of gratuitous issues of food in the hands of a trading corporation, the more so that there are now so many independent traders scattered throughout the unceded territory, who would, with reason, take exception to such a course as placing in the hands of their opposition, the means of exercising undue influence upon the Indians."⁶⁶ Coincidentally, that same year, the government had decided to send patrols of the North West Mounted Police into the district to enforce liquor and game laws. From Fort Chipewyan in 1897, Inspector William Jarvis reported that he had offered relief to starving First Nation people. The NWMP subsequently invoiced the Department of Indian Affairs.⁶⁷ Understanding that distributing relief through the HBC created an unfair trading advantage for the company, Commissioner Forget recommended that all further relief distributions occur through the police patrols.⁶⁸ Following his patrol in 1898, Inspector A.E. Snyder warned that the government should expect widespread suffering as berries, fish, and rabbits were all in bad shape.⁶⁹ The next year, Canada and the First

63. Dunvegan Inspection Report, 1891, HBCA, B.56/e/4.

64. See Dewdney's margin note on Vankoughnet to Dewdney, 27 February 1890 and Vankoughnet to Dewdney, 29 March 1890, LAC, RG10, v. 3708, f. 19502 pt. 1

65. The government demanded the balance of the \$7000 provided in 1888 be returned by O.C. 272, 3 February 1890, RG 10, v. 3708, f. 19502 pt. 1

66. Forget to Secretary, 24 November 1897, RG10, v. 3708, f. 19502 pt. 3

67. Jarvis to Officer Commanding, 2 March 1897, RG 18, v. 128, f. 23-37; F. White to J. Smart, DSGIA, 17 June 1897 and Acting Secretary (DIA) to White, 25 June 1897, RG 10, v. 3708, f. 19502 pt. 3

68. J.D. McLean to C.C. Chipman, 2 June 1897; Forget to Secretary, 2yth [sic] November 1897 and McLean to White, 3 December 1897, RG 10, v. 3708, f. 19502 pt. 3. Subsequently, the government authorized emergency relief from the HBC to areas beyond the Peace River and Athabasca region. D.C. Scott, Memo to Secretary, 9 November 1899, RG 10, v. 3708, f. 19502 pt. 3

69. Snyder to Officer Commanding, 19 July 1898, RG 18. v. 1427, f. 188-90

Nations made Treaty No. 8 and the Metis were granted scrip through an associated Metis Scrip Commission.

Canada thus had decided to financially support the provision of supplies to relieve starvation and distress in the region in the absence of any treaty obligation to First Nations. Similarly, it undertook to financially support mission schools. It is possible, as historian Robert Coutts suggests, that the arrangement to fund relief in 1888 was orchestrated by the HBC to relieve it of the social responsibilities of its business model.⁷⁰ Indeed, Vankoughnet and Dewdney both indicated their belief that the HBC retained that responsibility. But the decision to offer relief also indicates that Canada understood that it had a moral responsibility that originated in its sovereignty over the district. It suggests that the emerging consensus among legal scholars regarding the relationship of treaties to the assertion of sovereignty may not align with the historical record.⁷¹ The government's decision also needs to be considered in light of Canada's relationship with Indigenous people generally. While the scholarship of Daschuk and Tobias has raised significant questions about Canada's willingness to offer assistance to Indigenous people, in this case Canada did not behave like a genocidal state willing to use control of relief and rations as a method for imposing a treaty settlement upon the First Nation people. What is more, Canada demonstrated that its emergency decision in 1888 to offer relief through the HBC was not the preferred option for handling such concerns and as its governing presence in the district increased, it took steps to deliver relief through government agents. The assertion of sovereignty through the provision of assistance, referred to by some scholars as welfare colonialism, remained an important aspect of Canada's assertion of sovereignty throughout the north into the 20th Century.⁷²

70. Robert Coutts, "'We See Hard Times Ahead of Us,'" 446-449

71. Kent McNeil, "Sovereignty and Indigenous Peoples in North America," *UC Davis Journal of International Law and Policy* 22, no. 2 (2016)

72. Robert Paine, *The White Arctic: Anthropological Essays on Tutelage and Ethnicity* (Toronto: University of Toronto Press, 1977), 7-28; Kenneth S. Coates and William R. Morrison, "In Whose Best Interest? The Federal Government and the Native People of Yukon, 1964-1991," in Anne-Marie Mawhiney, ed., *Rebirth: Political, Economic, and Social Development in First Nations*, ed., (Toronto: Dundurn Press, 1993), 19-33