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A Genealogy of Law: Inherent Sovereignty and First Nations Self-Government

John J. Borrows

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A Genealogy of Law: Inherent Sovereignty and First Nations Self-Government

Abstract

First Nations self-government in Canada has often been regarded as extinguished or delegated from the British Crown or the Canadian federal government. First Nations self-government among the Chippewas of the Nawash Band in southern Ontario has not been extinguished or delegated, but continues to exist as an inherent exercise of community sovereignty. The idea of existing Aboriginal self-government in modern-day Ontario contrasts with many prevailing notions about Native society in Canada today. The inherent and unextinguished nature of self-government among the Nawash Band is demonstrated by examining the events of the author's ancestors and community in their interactions with foreign settlers. The investigation of this history is undertaken from a Native perspective to access and establish an alternative vision of the political and legal status of First Nations self-government. The particular interactions between Native and non-Native societies that establish a continuing, inherent exercise of sovereignty are: the War of 1812; the acceptance of Christianity; the preservation of traditional Native health care, education and language; the entering into of treaties; and the maintenance of self-government under the federal Indian Act through the exercise of statecraft and economic development. The author argues that recounting these interactive experiences from a Native perspective can infuse legal and political discourse with different alternatives and can grant to First Nations people the liberty that they desire to continue to pursue their aspirations according to their collective goals.

A GENEALOGY OF LAW: INHERENT SOVEREIGNTY AND FIRST NATIONS SELF-GOVERNMENT[©]

BY JOHN J. BORROWS*

First Nations self-government in Canada has often been regarded as extinguished or delegated from the British Crown or the Canadian federal government. First Nations self-government among the Chippewas of the Nawash Band in southern Ontario has not been extinguished or delegated, but continues to exist as an inherent exercise of community sovereignty. The idea of existing Aboriginal self-government in modern-day Ontario contrasts with many prevailing notions about Native society in Canada today. The inherent and unextinguished nature of self-government among the Nawash Band is demonstrated by examining the events of the author's ancestors and community in their interactions with foreign settlers. The investigation of this history is undertaken from a Native perspective to access and establish an alternative vision of the political and legal status of First Nations self-government. The particular interactions between Native and non-Native societies that establish a continuing, inherent exercise of sovereignty are: the War of 1812; the acceptance of Christianity; the preservation of traditional Native health care, education and language; the entering into of treaties; and the maintenance of self-government under the federal *Indian Act* through the exercise of statecraft and economic development. The author argues that recounting these interactive experiences from a Native perspective can infuse legal and political discourse with different alternatives and can grant to First Nations people the liberty that they desire to continue to pursue their aspirations according to their collective goals.

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I. INTRODUCTION

From time immemorial, the Chippewas of the Nawash First Nation in present-day southern Ontario have constantly exercised a measure of political control over their affairs.¹ Anciently, as a people,

¹ The Chippewas of the Nawash consist of some sixteen hundred people who are primarily of Ojibway heritage, with some members tracing their ancestry from the Pottawatomi, Ottawa, and Haudenosaunee (Iroquois) nations. For a description of the Ojibway Nation written by our people

we were custodians of an area of land which covered millions of acres.² On that land, we administered the complex relations of our internal community and entered into agreements and diplomatic relations with external communities.³ The Chippewas of the Nawash considered it their duty and responsibility to preserve these prerogatives for their children's children. With the arrival of an alien people who were intent on settling in the midst of First Nations people, the governing structures of our society were challenged and the ability of our people to perpetuate the task of governance was tested. This article explores the persistence of First Nations self-government among the Chippewas of the Nawash during the period of contact between Native and settler societies: it identifies how the entitlement to self-government has been sustained by our people and demonstrates how self-government continues to operate today.

The continued existence of self-government among the Chippewas of the Nawash is significant to the aspirations of Native people in our quest for greater autonomy. Its enduring existence suggests that self-government is an inherent obligation which First Nations people must continue to exercise in order to preserve our world view. The continued existence of self-government also implies that it is an existing Aboriginal right which is protected under section 35(1) of the *Constitution Act, 1982*.⁴

see, generally, P. Jones or Kahkewaquonaby, *History of the Ojibway Indians: With Especial Reference to Their Conversion to Christianity* (London: A.W. Bennett, 1861); W. W. Warren, *History of the Ojibway Nation* (Minneapolis: Ross & Haines, 1970); G. Copway, or Kah-ge-gah-bowh, *The Traditional History and Characteristic Sketches of the Ojibway Nation*, 1850 ed. (Toronto: Coles, 1972).

² The area in which our ancestors lived is now known as the Bruce Peninsula. Our people were located on over two million acres of land in south-western Ontario in a line running east from Goderich to Arthur and north from Arthur to Owen Sound. Today the Chippewas of the Nawash are confined to a small promontory consisting of 15,586 acres half-way up the Bruce Peninsula jutting out into Georgian Bay. The Chippewas of the Saugeen, another contemporary Ojibway First Nations community, shared the same history and territory with the Nawash.

³ For a description of Ojibway sovereignty and our people's relationship with other First Nations in the period before contact, see J.J. Borrows, *A Genealogy of Law: Inherent Sovereignty and First Nations Self-Government* (LL.M. Thesis, University of Toronto, 1991) at 32-42 [unpublished].

⁴ "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11, s. 35.

In this article, I write about the continued efforts of my ancestors to maintain self-definition and self-government. I trace the interactions, connections, and confrontations between my ancestors and the people with whom they came into contact to show that, in every instance of contact, the Chippewas of the Nawash maintained a measure of self-government. In particular, one sees through events, such as the War of 1812; the spread of Christianity; the preservation of culture through indigenous health care, language and education; the signing of treaties; and the imposition of the *Indian Act*,⁵ that First Nations peoples have reacted to preserve their status as a distinct society by maintaining a measure of control over their affairs. The preservation of self-government entails that we have the spiritual⁶ and legal⁷ authority to govern ourselves without requiring an external delegation of power.

⁵ *Indian Act*, R.S.C. 1985, c. I-5 [hereinafter *Indian Act*].

⁶ This proposition is expressed by the Joint Council of the National Indian Brotherhood, "A Declaration of the First Nations (1981)" in M. Boldt & J.A. Long, eds, *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights* (Toronto: University of Toronto Press, 1985) 359, adopted by the Joint Council of Chiefs and Elders of the Assembly of First Nations in December 1980:

We the Original Peoples of this Land know the Creator put us here.

The Creator gave us Laws that govern all our relationships to live in harmony with nature and mankind.

The Laws of the Creator defined our rights and responsibilities.

The Creator gave us our spiritual beliefs, our Language, our culture, and a place on Mother Earth which provided us with all our needs.

We have maintained our freedom, our Languages, and our traditions from time immemorial.

We continue to exercise the rights and fulfil the responsibilities and obligations given to us by the Creator for the Land upon which we were placed.

The Creator has given us the right to govern ourselves and the right to self-determination.

The rights and responsibilities given to us by the Creator cannot be altered or taken away by any other Nation.

⁷ The basis of this legal authority has been expressed in Assembly of First Nations (AFN), "First Ministers' Conference on Aboriginal Matters: The Case for Indian Self-government" (2-3 April 1985) in AFN, *Our Land, Our Government, Our Heritage, Our Future* (Ottawa: AFN, 1990) 17 at 18 as follows:

As Indian First Nations we have an inherent right to govern ourselves.

We had this right from time immemorial (*i.e.*, centuries before the arrival of the Europeans) and this right exists today.

Neither the Crown in right of the United Kingdom nor of Canada delegated the right to be self-governing to the First Nations. It existed long before Canada was itself a nation.

The inherent right of North American Indians to sovereignty was first recognized by the Two-Row Wampum in 1650, and later, by the *Royal Proclamation of 1763* which speaks of "The several Nations or Tribes of Indians with whom We are connected ..." and by subsequent treaties. The purpose of that Proclamation and the treaties was not to give rights to the First Nations but to give rights to the European settlers.

However, the persistent existence of self-government does not signify that reform is unnecessary. Our people are suffering.⁸ Native structures are operating under a burdensome stratum of alien regulation⁹ even though the legitimate source of power of our government extends from sovereign Aboriginal entitlement.¹⁰ The governing structures and sovereignty of our community must be liberated from the multiple tiers of imposed administration under which they operate.¹¹ Inherent First Nations sovereignty must be protected further by explicitly entrenching it in the Canadian *Constitution*.¹² The

⁸ Our socio-economic difficulties have been catalogued so frequently that I do not consider it constructive to enumerate them here. The material and spiritual carnage of our people can be studied elsewhere; see, e.g., Indian and Inuit Affairs Program, *Indian Conditions: A Survey* (Ottawa: Ministry of Indian Affairs and Northern Development, 1980).

⁹ For example, the *Indian Act* contains many statutory provisions which affect our lives. See, generally, D.L. Hawley, *The Annotated 1990 Indian Act* (Toronto: Carswell, 1990) for an overview of the way in which the *Act* has been interpreted.

¹⁰ This notion of inherent sovereignty has been stated in J. Mathias, "Statement at Meeting of Ministers, Ottawa, 20-21 March 1986 on Behalf of the Assembly of First Nations" in AFN, *supra*, note 7 at 2 as follows:

When we express the notions of sovereignty or sovereign title to our lands we emphasize that, prior to 1763, at 1763 and up to today, the chain of sovereign existence of our peoples has been unbroken; it continues now, comes to us from the past and it will continue in the future. The intervention of settlement in this country these past three to four centuries has not broken that sovereign existence of our peoples. Our point of departure lies in our basic understanding that we have no other way to relate to Canada except as sovereign peoples.

¹¹ Patrick Macklem has argued that hierarchy must not continue to structure First Nations/Canadian relations. See P. Macklem, "First Nations Self-Government and the Borders of the Canadian Legal Imagination" (1991) 36 McGill L.J. 382 at 425 as follows:

The task facing decision makers is not to devise ways in which self-government can be accommodated within the current rubric of legislative supremacy, but rather to acknowledge that legislative supremacy, as a way of understanding and structuring native reality in law, must itself be accommodated and adapted so as to create constitutional spaces in which First Nations self-government can flourish.

¹² The need for an explicit Constitutional recognition of the inherent right of self-government was expressed in G. Erasmus, Grand Chief of Assembly of First Nations, "Address (First Ministers' Conference on Aboriginal Constitutional Matters, 26-27 March 1987)" in J.A. Long & M. Boldt, eds, *Governments in Conflict? Provinces and Indian Nations in Canada* (Toronto: University of Toronto Press, 1988) 256 at 257 as follows:

[T]he AFN is often asked why we pursue further amendments to the Canadian Constitution while subsection 35(1) already recognizes and affirms our existing aboriginal and treaty rights. That subsection is protecting our rights ... includ[ing] ... our inherent right of self-government. But because of the history of our relations with past federal and provincial governments, as well as the way we have been treated in the Canadian legal system, we have to insist, for greater certainty, on explicit recognition of our rights.

emancipation of Native institutions must be done with respect for, and acceptance of, the agreements into which Canada and First Nations peoples have entered historically. Eventually, new arrangements must be made that will confirm the connections and divisions which characterize our shared, and separate, traditions and aspirations.¹³ This article, by investigating the existing self-government of the Chippewas of the Nawash, portrays the background against which ancient agreements should be kept and contemporary treaties should be made.

II. METHODOLOGY

In this article, the term "self-government" does not require a legal or technical definition because I do not refer to self-government as an abstract, futuristic institution. I identify self-government with particular events in which our people have exercised specific instances of control in their internal and external societal relationships. As Frank Cassidy and Robert Bish have noted in their examination of Aboriginal self-government, "Government starts with people, people who have problems in the course of social and economic life, problems they must solve in an authoritative and general way. Self-government takes place when people control their governments."¹⁴ In recognition of this truth, "Indian peoples in Indian communities across the country are using their governments to meet needs such as education, health, child welfare, local services, economic development, resource management, and policing."¹⁵ As well, "Indian people are currently practising a significant amount of self-government."¹⁶ I hope to locate self-government in existing manifestations of inherent power and inherent control which

¹³ A good example of a relationship that acknowledges the ancient and modern aspirations of First Nations and a government in the Canadian state is found in the Statement of Political Relationship, (April 1991) [unpublished] signed by Ontario and the First Nations living within the province.

¹⁴ F. Cassidy & R.L. Bish, *Indian Government: Its Meaning in Practice* (Lantzville, B.C.: Oolichan Books and the Institute for Research on Public Policy, 1989) at 3.

¹⁵ *Ibid.* at x.

¹⁶ *Ibid.* at xi.

Native people exercise in their collective lives, not in projected, abstract phenomena that have yet to exist.¹⁷

Native society has long been written about from a Western perspective, specifically in the areas of religious life,¹⁸ social customs,¹⁹ economic practices,²⁰ historical genesis,²¹ political routines,²² and legal customs.²³ These accounts of Native society have often portrayed us in a way that does not capture the active and transformative role that we have played when reacting to settler institutions.²⁴ We were not passive

¹⁷ This approach should not limit future exercises of First Nations political jurisdiction to the areas in which I establish that there is historical precedent for a certain practice. My approach allows for the continued evolution of First Nations political dominion because the assumption of Aboriginal inherent jurisdiction entails that Native people possess the ability to participate in the definition of their own boundaries without exclusive reliance on subsequent alien elements of political regulation.

¹⁸ E. Graham, *Medicine Man to Missionary: Missionaries as Agents of Change among the Indians of Southern Ontario, 1784-1867* (Toronto: Peter Martin Associates, 1975).

¹⁹ J.G.E. Smith, *Leadership Among the Southwestern Ojibwa* (Ottawa: National Museums of Canada, 1973).

²⁰ R.W. Dunning, *Social and Economic Change Among the Northern Ojibwa* (Toronto: University of Toronto Press, 1959).

²¹ D. Jenness, *The Indians of Canada*, 7th ed. (Toronto: University of Toronto Press, 1977).

²² A.R. Radcliffe-Brown, *Structure and Function in Primitive Society* (New York: Free Press, 1965).

²³ K.N. Llewellyn & E.A. Hoebel, *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence* (Norman, Okla.: University of Oklahoma Press, 1941).

²⁴ Traditional accounts of the interaction between Native and non-Native society often overlooked the transformative affect that Native people had on settler political institutions. Generally, Native contributions have either been ignored or reduced to one paragraph in accounts of North American "history."

Two examples from well-respected Canadian and American historians illustrate this neglect. In his sweeping history of Canadian society, K. McNaught, a prominent Canadian historian, writes in one of his five or six references to Native people:

Each of the four major groupings of Indians who were spread more or less evenly across Canada in the sixteenth century lived in one form or another of stone-age culture. Hunting and fishing were the main activities, and although the Iroquois and one or two other groups had developed a quasi-settled life and a primitive agriculture, the nomad was never far beneath the Indian skin.

K. McNaught, *A Pelican History of Canada* (Markham, Ont.: Penguin Books, 1982) at 19.

Similarly, four well-known American historians neglect Native influences on settler institutions and write, "None of the Indians of the eastern woodlands (or, for that matter, the entire continent north of Mexico) showed a talent for political organization at all comparable to that of the Aztecs or the Incas. The nearest thing to it was found in the Iroquois league of five nations." R.N. Current *et al.*, *American History: A Survey*, 6th ed. (New York: Alfred A. Knopf, 1983) at 17.

objects of colonial policy, but were active agents and creators of our own history.²⁵ Thus, to show the unbroken chain of self-government residing in the Chippewas of the Nawash, I propose to reconstruct Native experience and to incorporate a Native perspective²⁶ in the above-mentioned areas, particularly with regard to law, history, and politics.²⁷

The standpoint from which I undertake this venture is twofold. First, as a descendant of a lineage in which there has been a chief for the past five generations, I have access to information about my family's lives in this area of study.²⁸ My ancestors were leading figures in the structuring of, and the response to, relations between settler society and their Native community.²⁹ Therefore, I am able to achieve an insight into my ancestors' perspectives and experiences through the written and oral information about their lives which has been passed down to me.

For a critique of western history and an account of the transformative role which First Nations had on North American politics and diplomacy, see R.A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990).

²⁵ J.R. Miller, "Owen Glendower, Hotspur, and Canadian Indian Policy" in J.R. Miller, ed., *Sweet Promises: A Reader on Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1991) 323.

²⁶ For a detailed description of the insights and challenges of writing from a Native perspective, see Borrows, *supra*, note 3 at 10-31.

²⁷ For a similar approach to writing about First Nations peoples and law, see P. Monture, "A Vicious Circle: Child Welfare and First Nations" (1989) 3 C.J.W.L. 1; P. Monture, "Ka-Nin-Geh-Heh-Gah-E-Sa-Nonh-Yah-Gah" (1986) 2 C.J.W.L. 159; M.E. Turpel, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences" (1989) 6 Can. Hum. Rts Y.B. 1; B. Richardson, ed., *Drumbeat: Anger and Renewal in Indian Country* (Toronto: Summerhill Press, 1989); and P.G. Allen, *The Sacred Hoop: Recovering the Feminine in American Indian Tradition* (Boston: Beacon Press, 1986).

²⁸ The chronological order of chiefs in my immediate lineal family is Kegedonce, 1770-1831 (my great-great-great-grandfather); Peter Kegedonce Jones, 1812-1907 (my great-great-grandfather); Charles Kegedonce Jones, 1852-1952 (my great-grandfather); Alfred Jones (my grandfather's brother), and Howard Jones 1947-present (my uncle). Unfortunately, there is not as much written information about my grandmothers. This lack of information exists because most written records which deal with my people were transcribed and preserved by Western writers who were not interested in recording the sentiments of Ojibway women. For information about my grandmothers' lives, I have relied on oral testimony which chronicles their actions but not their actual conversations. I have tried to overcome this potential imbalance by recording their endeavours and accomplishments, yet I regret that their individual "voices" cannot be included alongside the words of my grandfathers.

²⁹ See P.S. Schmalz, *The History of the Saugeen Indians* (Ottawa: Ontario Historical Society, 1977) at 24: "Peter Kegedonce Jones [my great-great-grandfather] was the most famous elected chief of the Newash Band."

Second, as a person who is a status Indian and who feels a Native identity, I have had experiences that have influenced the way in which I view myself and others, and that have affected my perception of events which take place around me. These two perspectives form the basis of a Native self-understanding which is necessary to demonstrate the contrast with traditional historical and legal explanations involving First Nations self-government.³⁰

I hope that what I offer here through this reconstruction will be the scaffolding upon which differences between First Nations people can be sketched and drawn together.³¹ In particular, I am proposing a structure around which other Native people can present their experiences to illustrate the historic continuity of self-definition and self-government that has existed since contact within First Nations all across Canada. The structure that I suggest consists of Native people recounting relevant incidents of contact with settler society from the Aboriginal perspective and demonstrating how, in the face of intrusions, their particular society dealt with encroachments on their traditional ways while preserving a measure of their self-government. Events that provide a common framework of historical experience which can bring us together include: the wars involving European powers fighting on our soil; the effect of Christianity; the preservation of culture through institutions such as indigenous health care, language, and education; the signing of treaties; and the imposition of the *Indian Act*.

While our grandmothers' and grandfathers' reactions to the above events usually have taken a different course, these directions were often pursued to preserve the political, social, religious, legal, and economic integrity of our societies: they were taken to preserve self-government. As other Aboriginal people speak about their ancestor's

³⁰ Contrast is important in challenging accepted understandings about different races and cultures. See Borrows, *supra*, note 3 at 7-10 and C. Taylor, *Philosophy and the Human Sciences: Philosophical Papers*, vol. 2 (Cambridge: Cambridge University Press, 1985) c. 4.

³¹ I have drawn upon insights from feminist literature in constructing a paradigm which allows for the expression of common collective concerns and which also respects the diversity that exists in First Nations communities. See, generally, S. Benhabib, "The Generalized and the Concrete Other" in S. Benhabib & D. Cornell, eds, *Feminism as Critique: On the Politics of Gender* (Minneapolis: University of Minnesota Press, 1987) 77; N. Duclos, "Lessons of Difference: Feminist Theory on Cultural Diversity" (1990) 38 Buffalo L. Rev. 325 at 359; C. Weedon, *Feminist Practice & Poststructuralist Theory* (New York: Basil Blackwell, 1987); A.C. Scales, "The Emergence of Feminist Jurisprudence: An Essay" (1986) 95 Yale L.J. 1373; and *Feminism in the Law: Theory, Practice and Criticism* (1989) U. Chi. Legal F. 1-218.

interactions, connections, and confrontations with settler society, we can place our narratives beside one another, and thus assert our common place as self-defining and self-governing societies. Thus, this narrative hopefully constitutes one strand in a prospective body of information written by other Native people of First Nations affiliation that will capture the various forms of being Native and will unite us in elements of common experience.

III. MY GREAT-GREAT-GREAT-GRANDPARENTS

Widow Sakeon,³² my great-great-great-grandmother, and Kegedonce,³³ my great-great-great-grandfather, were born and matured in the period before the War of 1812. I demonstrate the maintenance of self-government through the influence of two events that occurred while

³² I do not know my great-great-great-grandmother's name: I only know her as Widow Sakeon. Sakeon (spelled also as Zahko or Sako) was her second husband, and, in 1869, she is listed as an eighty-five-year-old Ojibway widow. Public Archives of Canada [hereinafter PAC], Department of Indian Affairs, RG 10, vol. 416, p. 1 at 95, Schedule of Authorized Occupants of Lands Belonging to the Ojibway Band in the Cape Croker Reserve (*circa* 1869). This would mean she was born in 1784.

³³ Kegedonce (also written as Keketoonce and Kecedoons) was a Shawnee Indian on one side of his lineage. He seems to have been adopted by the Ojibway at some point and became their chief. Thus, I refer to his tribe as his people because he was accepted by them as one of theirs and was their leader and spokesperson (Kegedonce translated means orator). That at least one of his ancestors was not originally of the Ojibway is evidenced by the following statements.

See L.A. Keeshig, "Historical Sketches of the Cape Croker Indians" *The Canadian [Warton, Ontario] Echo* (8 January 1931): "Going back to the days of Tecumseh, the great Shawnee chief, whose name has gone down in the pages of Canadian history as the ally of the British during the War of 1812, we find that Tecumseh had an elder brother, Shawenoh, and a younger, Kegedonce."

See letter from C. Van Dusen to Lord Bury, Supt. Gen., Ind. Affrs (28 February 1855) Newwash Mission House, Owen Sound reprinted in Enemikeese or C. Van Dusen, *The Indian Chief: An Account of the Labours, Losses, Sufferings and Oppressions of Ke-zig-ko-e-ne-ne (David Sawyer), A Chief of the Ojibway Indians in Canada West* (London: William Nichols, 1867) at 63 as follows:

I wish also to state, (at their request,) that a few Indian families (Pottawatamies and Sioux) from the United States, came to this country about the year 1829, and were adopted by the Indians as members of this tribe, and allowed to share in their annuities. These parties have principally all settled at Owen Sound, and compose a part of the Newwash Band. Peter Jones Kegedonce [the son of Kegedonce], the second chief of this band, is a descendant of these foreigners.

See also letter from C. Van Dusen to J.S. Hogan, Esq., M.P.P. (15 April 1858) Newwash Mission House, Owen Sound, *ibid.* at 127.

they lived—the War of 1812 and the preaching and reception of Christianity.

A. *The War of 1812: The Perseverance of Self-Government*

Kegedonce originally came from the place that is now called Ohio.³⁴ Widow Sakeon and Kegedonce, chief of the Band, lived in the Ohio Valley when the War of 1812 broke out. Lawrence A. Keeshig, a great-grandson of Widow Sakeon and Kegedonce, tells the story of my ancestor's involvement in the War of 1812.³⁵ When the battles of the war began, Kegedonce's elder brothers, Tecumseh and Shawenoh, gathered together all available warriors to fight against the Americans to defend Aboriginal lands and the Aboriginal way of life. Kegedonce, being younger than his brothers, was commissioned by his brothers to withdraw from the scene of the hostilities with the women, children, and incapacitated men. Accordingly, Kegedonce's people made their way up the shores of Lake Huron³⁶ and finally settled near Chief's Point at the mouth of the Sable River.³⁷

During the war, in 1813, Tecumseh lost his life in defence of Moraviantown. This loss was a substantial blow to the Indian and British causes. After the war had ended, Shawenoh,³⁸ the new leader, sent messages north to instruct Kegedonce to return south so that the Band could to return to their former home. Kegedonce and Widow Sakeon were unwilling to relocate their people again: they remained

³⁴ Schmalz, *supra*, note 29 at 23.

³⁵ *Supra*, note 33.

³⁶ My great-great-grandfather, Peter Kegedonce Jones, was born on this journey north, near the site of present-day Goderich, Ontario. *Ibid.*

³⁷ "The portion of Amabel township at Sauble Beach jutting into Lake Huron, now known as Chief's Point, was named in honour of Peter Jones's father who lived at the mouth of the Sauble River." See F. Barkey, "Grandfather-in-law of the Present Cape Croker chief Peter Jones lived to be 97" *Owen Sound Daily Sun-Times* (circa 1950-51).

³⁸ Shawenoh later settled at Walpole Island and his genealogy can be traced from there. See Nin.Da.Waab.Jig (D.M. Jacobs), *Walpole Island: The Soul of Indian Territory* (Windsor: Commercial Associates/Ross Roy, 1987) at 26. This information is also preserved in the oral traditions of both the Cape Croker and Walpole Island communities.

and settled at Chief's Point after the war was over.³⁹ Here, Kegeponce remained chief of the people.⁴⁰

The War of 1812, from an Indian perspective, was fought to maintain areas of lands free from European influence. The principles that motivated Kegeponce's family and people to fight contain important insights into the continued existence of self-government.

The engagement of Kegeponce's family in the War of 1812 and his relation to Tecumseh,⁴¹ who was a leader in this conflict, reveal a conception of community that favoured self-rule. Tecumseh attempted to "unite all the tribes of the Mississippi Valley, resist the advance of white settlement, and recover the whole Northwest, making the Ohio River the boundary between the United States and Indian country."⁴² Tecumseh maintained that the settlers had no real title to the land that they had claimed since the land belonged to all tribes and, therefore, no single tribe could rightfully cede the land without the consent of the rest.⁴³ Tecumseh had tremendous success in persuading many of the tribes of the region to form a united front against the Americans.⁴⁴ Tecumseh received such deep support because he offered a vision of life that allowed people to continue to practice many of their traditional

³⁹ A probable reason for their decision not to go back to the United States was that "[t]he Americans had no love for the Indians of this region, who had supported the British in the recent conflict. They made no secret of their feelings, promising future confiscation of lands held by these tribes." W.R. Wightman, *Forever on the Fringe: Six Studies in the Development of the Manitoulin Island* (Toronto: University of Toronto Press, 1982) at 10.

⁴⁰ Kegeponce was named chief of this region in 1820. See Graham, *supra*, note 18 at 113.

⁴¹ For a history of Tecumseh, see R.D. Edmunds, *Tecumseh and the Quest for Leadership*, ed. by O. Handlin (Toronto: Little, Brown & Company, 1984).

⁴² Current, *supra*, note 24 at 229.

⁴³ *Ibid.*

⁴⁴ Edmunds, *supra*, note 41 at 164-98.

values which European settlement now threatened.⁴⁵ In effect, he fought for the continued self-government of his people.

Though Tecumseh and his people failed to keep the Ohio Valley free of settlement, the Indians' exertions during the war preserved an area in which self-government could continue. Self-government was preserved because the British government showed a stronger commitment than the Americans⁴⁶ to principles, such as those embodied in the *Royal Proclamation*, which affirmed Indian self-rule.⁴⁷ Furthermore, the efforts of Kegeedonce in isolating his people from European intrusion in the area where the *Royal Proclamation's* principles still operated indicate that self-government was preserved in this period despite losing the war.

For the Indians, the War of 1812 was merely a continuation of the conflict that had been ongoing in their territory since the *Royal Proclamation of 1763*.⁴⁸ The war was fought by my people to establish their right to live on their own land with their own systems of government, free from European intervention. My people fought on the side of the British "not as instruments of European policy but as agents in pursuit of their own interests."⁴⁹ For example, Tecumseh fought alongside the British because his people did not have sufficient weapons themselves.⁵⁰ The Indians were resolute in their goal of removing white

⁴⁵ While the preservation of traditional Indian values was at the centre of Tecumseh's beliefs, the manner in which he tried to accomplish his goals went against Indian customs in many ways. For example, Tecumseh's idea of Pan-Indianism, where different tribes and nations united together to repel the Europeans, was a new concept to the Indians. See Edmunds, *supra*, note 41 at 109 and 224.

Furthermore, Tecumseh's belief that Indians possessed a common title to the land evolved from a European concept of possession. *Ibid.* at 98 and 109. These ideas often put Tecumseh in conflict with some of the elder leaders of the indigenous nations because it undermined the structure and authority of their tribes. *Ibid.* at 124.

⁴⁶ The principles embodied in the *Royal Proclamation of 1763*, R.S.C. 1985, App. II, No. 1 [hereinafter *Royal Proclamation*], were later affirmed in United States Supreme Court jurisprudence. See *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832); *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543 (1823); *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87 (1810).

⁴⁷ It is arguable that this area would not have been retained by the British and the Indians if the Indians had not helped the British.

⁴⁸ J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989) at 86.

⁴⁹ *Ibid.*

⁵⁰ Edmunds, *supra*, note 41 at 182.

settlement from west of the Ohio Valley.⁵¹ Unfortunately, when Tecumseh was killed near modern-day London, Ontario in 1813, many Indians lost faith in their ability to clear white settlement and their forces dwindled.⁵²

The impetus for First Nations involvement in the War of 1812 is evidence of the desire of Indian people to continue to exercise responsibility over their people, their institutions, and their surroundings. This interpretation contrasts with standard "Western" interpretations of the motivations of First Nations in fighting this war.⁵³ It is often felt that First Nations relinquished their powers of government to the British by siding with them during the war. However, when one approaches this history from a First Nations perspective, Aboriginal involvement in the War of 1812 indicates that my ancestors strove to retain inherent responsibility to define and govern themselves as a people.

B. *Religion and Tradition*

Another event in my great-great-great-grandparents' lives which illustrates their interactions with settler society and the preservation of self-government is their reception of Christianity. While my great-great-great-grandparents' experience with Western religion is not representative of all Native people, it is exemplary of the original impact of Western religion on our people.⁵⁴ Though the reception of Christianity occurred for many reasons and had many implications, it

⁵¹ As evidence of the strength of support which Tecumseh enjoyed, over five thousand Indians were present when Detroit fell to the Indians and the British.

⁵² Miller, *supra*, note 48 at 86.

⁵³ See G.F.G. Stanley, "The Indians in the War of 1812" (1950) 31 Can. Hist. Rev. 145, for an example of a standard account of Native involvement in the war. These orthodox accounts portrayed Native people as patriotic to Britain and as loyal subjects of the Crown. This interpretation has been challenged by revisionist historians in recent years; see Miller, *supra*, note 48 and E.P. Patterson, *The Canadian Indian: A History Since 1500* (Don Mills, Ont.: Collier-Macmillan Canada, 1972).

⁵⁴ For a general discussion of the impact of Christianity on our people, see J.W. Grant, *Moon of Wintertime: Missionaries and the Indians of Canada in Encounter since 1534* (Toronto: University of Toronto Press, 1984).

marks yet another chapter in the Indians' quest for, and maintenance of, self-definition.

Christian missionaries were among the first Europeans to make contact with our people.⁵⁵ Kegedonce's reception of Christianity represents the complications which Native people faced in their relationships with European institutions. The account of his conversion is related below.⁵⁶

In 1829, Peter Jones,⁵⁷ a famous Ojibway methodist missionary, "went to Saugeen and found about twenty-five Indians living in two camps."⁵⁸ He stayed for several days amongst these people and preached to them. Accompanying Peter Jones as a missionary was Thomas Big Canoe,⁵⁹ one of Kegedonce's sons. Peter Jones explained Christianity to Chief Kegedonce who responded:

Brothers! I have listened to your words. I believe what you say. I will take your advice and worship with you in the Christian religion.

Brothers! I thank you for telling me the words of the Great Spirit. I thank you for remembering me, a poor, wretched and lonesome man. I have heard from afar that all my brethren around me are turning to the service of the Great Spirit, and forsaking their old religion. I do not wish to stand alone. Brothers! I will arise and follow them. I will be a Christian. It may be while I stretch out my hands to the Great Spirit for the blessings which my Christian brethren enjoy, I may receive a handful of the same before I die ...

Brothers! Becoming a Christian I shall desire to see my children read the good book. As for myself, I am too old to learn; and if I can only hear my children read, I shall be satisfied with what I hear from them.

Brothers! I shall tell all my young men your words—that I shall obey your instructions and become a Christian. It shall also be my desire to have my people settle where we may learn to serve the Great Spirit, and till the ground.⁶⁰

⁵⁵ *Ibid.*

⁵⁶ From Graham, *supra*, note 18 at 19; see also D.B. Smith, *Sacred Feathers: The Reverend Peter Jones (Kahkewaquonaby) & the Mississauga Indians* (Toronto: University of Toronto Press, 1987) at 110-11.

⁵⁷ For a full account of Peter Jones's life, see Smith, *supra*, note 56.

⁵⁸ Graham, *supra*, note 18 at 19.

⁵⁹ He later settled on Georgina Island and became a chief on the Georgina Island reserve. Many of the Big Canoe family still reside in Simcoe County, Ontario today. This information is from the oral traditions of the Georgina Island and Cape Croker communities. The Big Canoe Papers are in the possession of Cynthia Wesly-Esquimaux and Ian Johnson of the United Indian Councils in Barrie, Ontario. This collection contains primary documents written by members of the Big Canoe family over the past 150 years.

⁶⁰ Graham, *supra*, note 18 at 19.

After his conversion, in December of 1829, Kegedonce travelled overland with twenty of his people to see the Mississauga Indian Christian settlement at the River Credit. Kegedonce was impressed by what he saw at the settlement and rose at a prayer meeting to tell his hosts:

My brothers and sisters whilst in my own country I heard what the Great Spirit had done for you, so I came to see for myself what all this meant. I have opened my ears to the words spoken by your ministers & what I had heard by the hearing of the ear I now see with mine own eyes. Brothers & Sisters, the Great Spirit has planted a tree at this place whose top reaches the skies—you have found this tree and are climbing up towards the abode of the Great Spirit.⁶¹

As Donald B. Smith writes, “Most of the Saugeens in Kegedoons’s group converted to Christianity at the Credit. By the spring of 1831 nearly half of the two hundred Saugeens, including Kegedoons himself, had joined the Methodists.”⁶²

Many accounts of First Nation conversions to Christianity, from both the Western⁶³ and Native⁶⁴ perspectives, have depicted the preaching and the reception of religion as instruments of assimilation.⁶⁵ Although there is no doubt that Christianity sometimes had the consequence of assimilating First Nations people into settler society, Christianity also prevented assimilation, and it occasionally helped to

⁶¹ P. Jones, *Life and Journals of Kah-ke-wa-quo-na-by* (Rev. Peter Jones) (Toronto: Anson Green, 1860) at 268; P. Jones, Anecdote Book, anecdote no. II, [Peter Jones Collection, Victoria University Library] (PJC, VUL) as quoted in Smith, *supra*, note 56 at 111.

⁶² *Supra*, note 56 at 111.

⁶³ For a Western perspective about the assimilating features of Christianity on the Indians, see J.A. Price, *Native Studies: American and Canadian Indians* (Toronto: McGraw-Hill Ryerson, 1978) at 94-112. Price writes, “Just as there were religious *revitalistic* reactions to White conquest, there have been religious *repressive* movements led by White religious leaders. By a religious repressive movement I mean an organized and coordinated attempt to use the diverse institutions of the conquering state to destroy the aboriginal religion.” *Ibid.* at 99 (emphasis in original).

⁶⁴ For a Native perspective on the assimilating features of Christianity, see H. Cardinal, *The Unjust Society: The Tragedy of Canada’s Indians* (Edmonton: M.G. Hurtig, 1969) at 80-95. According to Cardinal, “The church ... worked hand in hand with existing government officials in plotting the life of the Indian ... The government needed the church to control the Indians by persuading them to live peacefully on reservations.” *Ibid.* at 84-85.

⁶⁵ For two well-documented accounts of the role of religion in the purported assimilation and conquest of Native peoples, see F. Jennings, *The Invasion of America: Indians, Colonialism, and the Cant of Conquest* (New York: W.W. Norton & Company, 1975) and Williams, *supra*, note 24.

preserve self-government.⁶⁶ This perspective is in perspicuous contrast to the standard accounts of Christianity.

Kegedonce's reception of Christianity illustrates that, in one facet of his conversion,⁶⁷ he was attempting to give his descendants power to deal with the settlers by learning their customs. He hoped that by achieving his desire to have his people "learn to serve the Great Spirit, and till the ground"⁶⁸ that they would acquire the skills necessary to maintain their self-government and self-definition. Kegedonce's visit to the River Credit would have confirmed this idea because there he saw a self-regulating Indian community which resembled a settler community.

Kegedonce's resolve to preserve self-government through gaining skills that the settlers possessed is further evidenced in his statement at conversion: "As for myself, I am too old to learn; and if I can only hear my children read, I shall be satisfied with what I hear from them."⁶⁹ His excitement in seeing "what the Great Spirit had done"⁷⁰ for the people at the Credit also indicates that Kegedonce was impressed by the measure of self-control that could be exercised by the Indians while living in religious/agricultural communities. Kegedonce had understood through his family's involvement in the wars that fighting with the settlers did not bring the peace that the Indians desired to sustain their sovereignty. They had maintained their sovereignty, but only at the high cost of bloodshed, migration, and dispossession from their ancestral lands. The model community at the Credit offered a possibility of preserving their self-government through means other than war. Therefore, my ancestors felt that Christian religion, farming, and

⁶⁶ Graham, *supra*, note 18 at 91.

⁶⁷ In the paragraphs that follow, I focus on the material aspects of conversion that motivated Native people to accept Christianity because these aspects show their desire for the power to continue to be self-governing people. However, I do not wish to undermine the spiritual aspects of conversions. Many of my ancestors accepted Christianity on its own terms with a desire for spiritual salvation: see Graham, *supra*, note 18 at 49-61. For example, the Chief of Grape Island said upon his conversion, "Before I got religion I was very wicked. Brother Sunday took great deal of pains, told me about Jesus. I feel very bad; did not know what to do with myself ... Brother Sunday then prayed to the Great Spirit for me. I feel some good in my heart." *Ibid.* at 53.

⁶⁸ Graham, *supra*, note 18 at 19.

⁶⁹ *Ibid.*

⁷⁰ Smith, *supra*, note 56 at 111.

education could provide the strength necessary to retain much of what they already enjoyed as self-governing peoples.⁷¹

Kegedonce was at the end of his life when he received Christianity and saw that he stood alone as he "heard from afar that all [his] brethren ... [were] forsaking their old religion."⁷² One can almost detect a note of sadness when Kegedonce expresses the difficulties that the European intrusions had brought. He converted, not because he had given up his desire for his people to live free, but because he saw that he must use other means to conserve liberty for his people. In the restructuring of Aboriginal society today, many Indian people also realize that some of what we have learned from settler society will be integrated with our society to provide the fullest measure of opportunity for the maintenance of self-definition and self-government.

Unlike my great-great-great-grandfather, some Native groups have steadfastly rejected the acceptance of Western institutions. This strand of defiance by Native people towards Western forms of control in the assertion of sovereignty is also apparent in our community. Two historical examples from my ancestors' lives capture the rejection of Western institutions by some Native people.

The first is found in the experiences of Kegedonce. Many traditionalists who lived during the time of Kegedonce avoided all things Christian.⁷³ In fact, these traditionalists periodically displayed violence towards Indians who had become associated with Western religions and institutions. This was the case in the life of Kegedonce. While most of his people converted to Christianity, there were other First Nations

⁷¹ Aboriginal people in other places at other times also accepted Christianity in order to preserve autonomy. See *Gitksan-wet'suwet'en Land Title Action*, [1988] 1 C.N.L.R. 14 at 42-44 for an example of how Native people in a British Columbia community accommodated Christianity in order to preserve self-government. In the opening address of the plaintiffs in this action, it was stated:

The evidence will show that despite missionary activity and the diseases by which they were proceeded and aided, the Gitksan and Wet'suwet'en did not give up their own systems. In turning to or accepting Christianity, the chiefs did not abandon their own authority, rather they sought to supplement it or adapt some of its terms of reference.

Ibid. at 42-43.

⁷² Graham, *supra*, note 18 at 19.

⁷³ Smith, *supra*, note 56 at 110.

people around him that disliked his conversion. In the fall of 1831, Chief Kegedonce disappeared.⁷⁴ Later that year,

near the new settlement of Goderich the Indians found his lifeless body, bruised and mangled in such a way as to make it evident that he had been murdered. In Chief John Assance's words, "we do not believe the whites would do this but fear some unknown people of our own colour—lurk about to shed our blood." A century later Kegedoons's great-grandson still believed he had been murdered.⁷⁵

The second example of the maintenance of self-definition and self-government, while less categorical than the first, is nonetheless demonstrative of the persistence of Native people in using traditional ways of preserving power over their affairs. When Kegedonce was murdered, Widow Sakeon married Sakeon (Zahko). Sakeon's origin is not known but he was present when Kegedonce's group resettled to Nawash from Chief's Point. Sakeon eventually moved with the Band from Nawash to Cape Croker.⁷⁶ An incident from the life of Sakeon illustrates First Nations people using traditional methods to exercise leadership and self-government in their society.

The incident Sakeon was involved in is as follows:

I also heard ... from Cape Croker, told by ex-chief [Charles Kegedonce Jones], ... [that] His great-grandfather, accompanied by a few members of his tribe, were in an early spring sugar camp which was shut off from their home across the bay, still ice bound. He made a small cedar paddle on which he drew the sun with charcoal. He laid the paddle on a rock and lifting his voice, prayed to the great spirit, "O grant me the fulfilment of my dream to save my people." Later he aroused the camp to set out for home, and lo far across the bay straight as an arrow, the ice cracked leaving a path of open water. Sakeon, the Chief, ordered his Indians to paddle their canoes with all their might for the way would open for only an hour. For seven miles the birch bark canoes literally flew through

⁷⁴ *Ibid.* at 111.

⁷⁵ *Ibid.* For additional reports of Chief Kegedonce's disappearance, see *ibid.* at 293 n. 76 as follows:

Of a Speech from the Chief, John Aisence to his Lordship Bishop McDonald (sic), Coldwater, 28 February 1832 in the *Courier*, 14 March 1832; Substance of a speech from the Chief John Aismer [Assance] to Bishop McDonnell, Coldwater, 28 February 1832, in *Canadian Freeman*, 5 April 1832; Lawrence A. Keeshig, "Historic Sketches of the Cape Croker Indians," *Canadian Echo* [Warton, Ontario] (8 January 1931). William Case contended that Kegedoons had drowned; see *CG* [*Christian Guardian*] (14 August 1833).

⁷⁶ Fred Jones, Kegedonce's great-grandson, repeated this oral tradition to the author. Widow Sakeon and Sakeon are buried around Jones Point on McGregor Harbour on the Cape Croker reserve. There is also the name of Peter Sakou (Sackou) listed as a pensioner at Cape Croker which I assume refers to Widow Sakeon's second husband. PAC, RG 10, vol. 413, p. 195, cheque 673 (17 April 1857) and PAC, RG 10, vol. 413, p. 195 (10 April 1858).

the water. Upon reaching the opposite shore, the Indians looked back: their way to safety had entirely disappeared.⁷⁷

One can see from this incident that the traditional beliefs of the group were the means of leadership used to govern the people's actions. The people followed Sakeon and were led out of trouble because of their trust in Aboriginal concepts of nature. Sakeon's petition and answer originated from traditional Native sources. In this instance, one could conclude that self-government was preserved without the influence of Western religion or institutions.

The murder of Kegedonce for his acceptance of Christianity and Western institutions and Sakeon's use of traditional religion to lead his people illustrate that some Native people did not agree that the acceptance of Christian institutions was the best way to preserve their sovereignty. They believed that Western institutions polluted their society, and they attempted either to exterminate the agents of change amongst them or to continue with their traditional practices undiminished.

Two views evident in the lives of Kegedonce and his opponents are powerful testimony to a potential conflict that drives to the heart of First Nations self-government today. Do we preserve our sovereignty and self-government through the rejection of Western modes of management or do we maintain our responsibilities and privileges by accepting Western practices? While it is recognized that neither view will ever prevail in its pristine form, there is much discussion and dissension over what weight to accord each view in the revitalization of First Nations self-government.

Despite opposing views on the role and place of non-Native practices, this conflict does not threaten the view that First Nations self-government is an existing institution. The acceptance of either perspective would confirm that Native sovereignty was not extinguished. For example, if one reason that we accepted Christianity was because of the measure of control it would allow us to exercise in our lives, the embracing of Christianity simply confirms self-government. On the other hand, those of us who rejected Christianity did so for precisely the same reasons. Thus, the debate over the embrace or rejection of non-Native practices such as Christianity becomes a debate over what means

⁷⁷ D.P. Savage, "Memories of Chesley: Chesley news linked with Cape Croker" (1972) Bruce County Hist. Soc'y Y.B. 34.

ought to be emphasized to achieve an objective that both views share—the maintenance of self-government.⁷⁸

IV. MARGRET MCLEOD AND PETER KEGEDONCE JONES (1813-1927)

The next generation of my people, which included my great-great-grandfather and great-great-grandmother, faced other events which further challenged their resolve to preserve the entitlement to self-government. In particular, the maintenance of indigenous culture and social services such as health care and education; incidents such as the participation in the treaty process; as well as the impact of Canadian regulation tested the tenacity with which we would hold on to our liberties.

When Kegedonce died, his son, Peter Kegedonce Jones, was still a young man. Peter, my great-great-grandfather, was born in 1808.⁷⁹ He

⁷⁸ I would argue that the stance I am taking in this narrative overcomes the potential conflict of traditional versus adopted self-government because it mediates the two perspectives and allows them to work side by side. I am asserting, through retelling specific instances of contact in our society, that the relational and transformative nature of contact between the two societies produced a *sui generis* set of conditions in the governance of each society. Each society was different after contact because it had to react to circumstances it had never encountered before. Therefore, when sovereignty was exercised and government power was used by either the settlers or the First Nations, it was done in a way that was distinctive to the local conditions.

This claim mediates the potential conflict as to whether to employ adopted or traditional forms of government in the exercise of sovereignty because I argue that the power exerted in the maintenance or current exercise of self-government was neither adopted, nor of a purely traditional extraction. It had to incorporate the connections which life together on the same continent demanded. Therefore, the argument as to whether to accept or reject Western institutions in the exercise of self-government is misleading. While the exercise of power may have its source in the inherent right of self-government, the exercise of the power transpires in a fashion that is completely new to the people employing it. The exercise of authority is neither adopted nor traditional, but is an amalgamation of the two perspectives.

⁷⁹ There are four sources for Peter's birth date. In R.M. Vanderburgh, *I am Nokomis Too: The Biography of Verna Patronella Johnston* (Don Mills, Ont.: General, 1977) at 45, it states that Peter said that he was ninety-nine in 1906, the year of his death, which would indicate that he was born in 1807. The Census of 1869 states that Peter was fifty-two in 1869 which would imply that he was born in 1817: see PAC, RG 10, vol. 416, p. 95, Schedule of Authorized Occupants of Lands belonging to the Ojibway in the Cape Croker Reserve, Saugeen Peninsula, Township of Albermarle (1869). The Census of 1891 of Cape Croker states that Peter was seventy-four years old in that year which would also imply that he was born in 1817: see Archives of Ontario [hereinafter AO], microfilm, reel T-6328, Dominion of Canada Census of Ontario, Bruce County North, Cape Croker,

died in 1907 when he was ninety-nine.⁸⁰ Margret McLeod, Peter's spouse, was born in 1824 and died in 1927 when she was 103.⁸¹ These two people lived during a period when settler society was increasingly intruding into First Nations society in southern Ontario. The history of Peter's and Margret's lives leading up to the treaty cessions on and around the Bruce Peninsula reveals these incursions by settlers on the Native way of life.

A. Margret McLeod: Ojibway Women and the Preservation of Self-Government

Margret's life demonstrates how Ojibway women maintained self-government through preserving traditional techniques of life management. Margret was born in the place now called Alberta: she was the child of an Ojibway mother and a Scottish father.⁸² Her father's name was Joseph McLeod,⁸³ and he was sent from England to be a Hudson Bay employee in the North-West in the early 1800s.⁸⁴ When Joseph McLeod's work was finished in the North-West, he left his Native family and returned to Europe to live on the Isle of Sky.⁸⁵

With the desertion of her father, Margret was raised by her Ojibway mother in the traditional Ojibway manner. The family eventually migrated across the prairies and settled at La Cloche. They ultimately heard that Peter Kegeponce Jones was taking people into his community, and the McLeods moved from La Cloche to settle at

Ontario (1891). A monument outside of the United Church at Cape Croker gives Peter's birth and death dates as 1812 and 1906 respectively.

⁸⁰ Vanderburgh, *ibid.* at 45.

⁸¹ Margret's birth can be deduced as being in 1837 from the 1891 Census, *supra*, note 79. However, Verna Johnston states in Vanderburgh, *supra*, note 79 at 45-46, that Margret was born in 1824 and died in 1927. I follow Verna Johnston's recollection because it is more consistent with other oral evidence which places her death as occurring when she was close to one hundred years of age. To gain a sense of the oral tradition, one could talk to the elders at Cape Croker, or one could listen to two separate interviews by H. Macmillan: AO, Interview with Nadjiwon and McLeod (1968). Mrs. Peter Nadjiwon and Norman McLeod were both direct descendants of Margret.

⁸² Vanderburgh, *supra*, note 79 at 46.

⁸³ Fort MacLeod, a modern-day town in southern Alberta, was named after him.

⁸⁴ Interview with McLeod, *supra*, note 81.

⁸⁵ *Ibid.*

Nawash.⁸⁶ Margret married Peter in the 1840s when she was in her early twenties.⁸⁷

Margret had many skills that she developed throughout her life that helped to preserve self-government within our community. She was a medicine person, linguist, and teacher. These skills are representative of similar abilities that other women developed which helped to preserve Native self-definition and self-government. I will explore how these skills helped to preserve self-government.

1. Health care

Margret was a medicine women and possessed a tremendous knowledge of herbal remedies used for curing ailments of the body, mind, and spirit.⁸⁸ She often would spend her time in gathering the natural harvest of flora, fauna, herbs, roots, and other vegetation along the shores of the lakes, on the grasslands, and in the forest. These plants were necessary to create her remedies.⁸⁹ With these medicines, she would provide strength and power to those who accepted them. Margret also provided health care as a midwife: she helped deliver many children in her community. Physical and spiritual health care was an important aspect of Ojibway self-governance because it provided for the maintenance and improvement of its community members.

Health care was prominent and unique in Ojibway society because it was not dependant solely on the knowledge of plants and their curative properties and powers, but was based on a personal healing power.⁹⁰ Boys and girls who were deemed to possess this power were chosen early in life to be apprenticed under a medicine person. Those

⁸⁶ Margret arrived at Nawash with her mother, brother, and sister.

⁸⁷ Interview with McLeod, *supra*, note 81. This was also verified through speaking with Fred Jones and Chick and I.O. Akiwenzie, elders from Cape Croker.

⁸⁸ Vanderburgh, *supra*, note 81 at 46.

⁸⁹ There is a collection of recipes for traditional Native medicines which was compiled at the turn of this century that preserves many of these remedies. It was written by a Christian missionary living amongst our people, but it is taken from interviews with Native women and contains ingredients written in the Ojibway language. See AO, MS 108, Cape Croker Reserve Records, Box 103.

⁹⁰ The following comments on Ojibway medicine are drawn largely from B. Johnston, *Ojibway Heritage* (Toronto: McClelland and Stewart, 1976) at 71.

individuals with a personal healing power would be taught the properties and powers of different plants. At first, this was the only knowledge which was necessary in healing. However, as the curative characteristics of each plant became known and this knowledge multiplied, it was necessary for medicine people to teach and share their new knowledge and understanding. As a result, herbalist/philosophers acquired new skills in the sharing of knowledge, which was necessary to impart guidance and principles to others so that general well-being could be secured.

Basil Johnston has written about the development of the place of the medicine person in Ojibway society:

They reasoned, and by so doing, brought another element into medicine, that the well being of the body was directly related to the well being of the inner being of a person. Sickness, at least certain forms, were construed as the physical form of inner turmoil. Consequently, the healing of an ailment included, in addition to herbs, inquiry into the nature and character of dreams.⁹¹

With this knowledge, medicine people eventually set up the Midewewin religion which had a code for upright living that the healers lived and taught to increase the general well-being of First Nations bands.⁹² Thus, the knowledge of the medicine people was both feared and respected. It was used by the sick as well as the healthy since its application could help prevent inner turmoil and physical sickness. Therefore, physical and spiritual health care was an important aspect of preserving self-government because it provided for the maintenance and improvement of its community members and shaped their conduct.

2. Language

Margret also helped to preserve self-government through her role as a teacher and educator in our community. Margret spoke three languages: Ojibway, French, and English. She spoke Ojibway in the community, French in her home, and English when she went off the reserve. The preservation of language is an important aspect of self-government which allows for the protection of values, ethics, and

⁹¹ *Ibid.*

⁹² For a fuller description of the Midewewin, see *ibid.* at 80-93. See also B. Johnston, *Ojibway Ceremonies* (Toronto: McClelland & Stewart, 1982) at 93-112 and 179-80.

concepts which are distinctive to our society. Without our language, we would lose some of the notions that make our community worthy of continuing as a self-administered group.

Furthermore, language can be viewed as a tool of self-government used to preserve culture. As stated by Native author Penny Petrone:

The culture inherited by any group of people is more accurately determined by its language than by any other media known. No society can be more advanced or complex than its members have language to express. Indian languages are remarkable for their complexity of structure and the precision with which they can be used.⁹³

Margret's preservation of Ojibway language helped sustain self-government because it produced and reproduced our culture.

Central to our language is the power of the word. In Indian language,

[t]he word carried the power to create, to make things happen—medicine to heal, plants to grow, animals to be caught, and human beings to enter the spiritual world. Through this sacred power of the word, aboriginals sought to shape and control the cosmic forces that governed their lives ... Words did not merely represent meaning. They possessed the power to change reality itself.⁹⁴

Language is an important instrument of self-government because it enables us to conform, adjust, and adapt to the world around us. Margret and Ojibway women and men like her, who were accomplished in linguistics, contributed to the maintenance of self-government through their mastery of the word.

3. Education

As Margret grew older, she also became a repository of the traditions, myths, parables, and legends of our people,⁹⁵ which assisted in the maintenance of self-government. "It was the elders, grandmothers and grandfathers who taught about life ... They were the

⁹³ P. Petrone, *Native Literature in Canada: From the Oral Tradition to the Present* (Toronto: Oxford University Press, 1990) at 9.

⁹⁴ *Ibid.* at 10.

⁹⁵ V.P. Johnston, *Tales of Nokomis* (Don Mills, Ont.: Musson Book, 1975) preface. (Nokomis translated means grandmother.) The book consists of stories passed down to Verna through Margret McLeod from Margret's great-grandparents.

ones who had lived long enough and had had a path to follow, and were deemed to possess the qualities for teaching—wisdom, knowledge, patience and generosity.”⁹⁶ Margret’s possession and communication of stories were important functions in the community because these traditions represented the collective, accumulated wisdom of our people.⁹⁷ As such, these stories provided an important link to the past and an important means for dealing with daily challenges and events. The stories provided power to First Nations because their lessons supplied proven solutions to the questions that troubled our people. Copway wrote about the educational value of Ojibway stories:

The Ojibways have a great number of legends, stories, and historical tales, the relating and hearing of which, form a vast fund of winter evening instruction and amusement ... These legends have an important bearing on the character of the children of our nation. The fire-blaze is endeared to them in after years by a thousand happy recollections. By mingling thus, social habits are formed and strengthened.⁹⁸

One can see that education through stories was an important aspect in the preservation of self-government because it provided for the inherent exercise of authority by resolving issues through community generated answers.

4. Ojibway women: traditional status and self-government

The use of traditional medicine, language, and traditions throughout the period of Margret’s life contributed to the preservation of self-government because it provided for self-regulation in health care, culture, and education of Native society. Margret’s life also reveals the status of women in traditional Ojibway society as it contributed to preserving sovereignty. Women, like Margret, exercised power and authority in the preservation of self-government.

Ojibway women lived a less formal existence than did their male counterparts in society.⁹⁹ Male development was marked by a series of

⁹⁶ Johnston, *supra*, note 90 at 69.

⁹⁷ These stories are loosely analogous to common law precedent as they provide culturally tested guidance in resolving challenges that the community faces.

⁹⁸ Copway, *supra*, note 1 at 95-97.

⁹⁹ R. Landes, *The Ojibwa Woman* (New York: W.W. Norton & Company, 1971) at 1-50.

ceremonious events that delineated their development from childhood to adulthood. Two significant events which marked transition in men's lives included receiving a vision and spirit guardian through fasting, and hunting and killing their first animal.¹⁰⁰ Men were coached and encouraged in these rites of maturation from an early age. The more intense public recognition given to men in the pursuit of these activities created a limited division between what was considered male and female work in Ojibway society.

On the other hand, women were entitled to pursue the same achievements and positions as men, but the road to these ranks was more a matter of personal choice for women. There are many examples of Ojibway women taking up "all the skills regardless of whether or not they were prescriptively male or female."¹⁰¹ The following quotation summarizes the level of informality that shaped the gender politics in traditional Ojibway society, but it also illustrates how this informality offered a bridge of choice for women to pursue their own aspirations within the community:

Just as boys are carefully coached to secure power by a special technique of fasting, so they are carefully coached in special economic and honorific pursuits. Just as girls pick up power by the way, adopting suggestions which fall about their ears but which they are not pressed to adopt, so they pick up the economic and honorific pursuits of men. Traditionally, however, there is a cleavage between the pursuits of men and those of women. Men occupy themselves outside of the home: they hunt, trap, fish, hold religious performances, and engage in war. Women are supposed to stay at home and convert the fruits of hunting and fishing into edibles and clothing ... Whenever men fulfil their duties creditably, they are lauded. In company they tell endless stories about their adventures ... The women themselves live in a world of values all their own, a world closed to men. Mother and daughters discuss the merits of their work just as men do the merits of theirs, and when the village quarter of the year comes about, the various families visit, and wider groups of women discuss their own interests. But these discussions and boasts are not formal, as the men's are.¹⁰²

One can see from the structure of Ojibway society—illustrated in the above sociological description and by Margret's life—that Ojibway women had much choice in the pursuit of tasks which contributed to community development and preservation. As a result of the power which women had in Ojibway society, they could, and did, assume a role

¹⁰⁰ This information is from oral tradition. See also *ibid.* at 12.

¹⁰¹ *Ibid.* at 8.

¹⁰² *Ibid.* at 10-11.

which provided for the maintenance of self-government and self-definition.

B. Peter Kegedonce Jones: Decision Making, Treaties, and the Preservation of Self-Government

Peter Kegedonce Jones, Margret's spouse, was also involved in events which helped to preserve self-government. These events included participation in the treaty process and administration of a society burdened by a layer of colonial regulations.

1. Peter's early years away from Nawash

Peter was the hereditary chief of the Nawash band through his father's lineage.¹⁰³ In 1837, when he was twenty years of age, Peter attended school at Beaverton, Ontario on the shores of Lake Simcoe. While he was there, the Rebellion of Upper Canada led by William Lyon MacKenzie took place. Peter's experience in the rebellion was recounted by his grandson as follows:

I can still recollect hearing him tell the story of his experiences at this time,—how he was recruited as one of MacKenzie's supporters, given a blanket, a musket, powder horn, powder and shot, and after months of weary waiting, was finally taken with others, to the vicinity of Toronto and York, as it was then called. Here they waited, but never had the chance to get into action.¹⁰⁴

One can see that Peter had some early experience in participating in non-Native society.

While Peter was growing up and was away at school, two chiefs functioned as leaders of the Chippewas of the Nawash Band. One was

¹⁰³ See Copway, *supra*, note 1 at 140. "The rulers of the Ojibways were inheritors of the power they held." However, this statement should be compared with the following quotation which indicates that hereditary power was not always the means by which a person became a chief.

[L]eadership was not always offered to those trained for it or to those born into the leadership totem. Merit was the criteria for assessing the quality of a candidate. Thus, if a person, born of another totemic group were deemed to possess a greater capacity for leadership than one so prepared, he would be preferred.

Johnston, *supra*, note 90 at 63.

¹⁰⁴ Keeshig, *supra*, note 33.

Newash, after whom the band was named, and the other was Wahbahdick.¹⁰⁵ After the migration of Kegedonce's people from Chief's Point, the Band resided at Cape Croker for eight to ten years.¹⁰⁶ However, the government of the day persuaded the Band to move from Cape Croker to Nawash because the Hudson Bay post at that location was more convenient for trading and for distributing presents. It was then that the Band was officially called the Nawash.

The most important event that took place amongst our people while Peter was away at school was the establishment of Treaty No. 45^{1/2} in 1836.¹⁰⁷ Although Treaty No. 45^{1/2} did not extinguish our exercise of sovereignty, it was the first treaty that we entered which dealt with the cession of our land in what is now south-western Ontario.¹⁰⁸ The treaty relinquished 1,500,000 acres of land to the Crown and reserved 450,000 acres of land for the Indians. This exercise of self-government precipitated our move to a place called Nawash, contemporarily known as Owen Sound.

2. Treaties and self-government

a) *Treaty No. 72: the cession of the Saugeen (Bruce) Peninsula*

Upon the Band's settlement at Nawash, Peter returned from school to take up his responsibility as leader of his community.¹⁰⁹ After this resettlement, our people again felt pressure to move. Settlers were encroaching on Nawash lands and the Band felt external pressure from the colonial government to surrender the lands to them. As a result of the pressure from settlers and the colonial government, our Band

¹⁰⁵ For a description of the events in Wahbahdick's life, see Schmalz, *supra*, note 29 at 28-43.

¹⁰⁶ Keeshig, *supra*, note 33.

¹⁰⁷ "Treaty No. 45^{1/2}" in *Canada: Indian Treaties and Surrenders*, 1891 ed. (Toronto: Coles, 1971) vol. 1 at 113 [hereinafter *Treaties and Surrenders*].

¹⁰⁸ For more detail concerning Treaty No. 45^{1/2} and our community's exercise of self-government relative to this agreement, see Borrows, *supra*, note 3 at 94-97.

¹⁰⁹ Keeshig, *supra*, note 33.

entered into Treaty No. 72 with the Crown on 13 October 1854.¹¹⁰ This treaty surrendered to the Crown over 500,000 acres of prime land in south-western Ontario. Through examining the circumstances surrounding the negotiating and signing of the treaty, one can again detect that self-government was not extinguished by the process of treaty making.

An early indication of the government's desire for my ancestors' land is evidenced in a meeting between Superintendent of Indian Affairs, T.G. Anderson, and the Nawash Band on 28 June 1852. Anderson wrote to his superior General Bruce on 10 July 1852 about the purpose of this meeting in the following words:

I took occasion to represent to them the evil and folly of keeping so much wild land which only served as a harbour for Muskitos and snakes without yielding to the owners one penny of profit whereas if they were to hand it over to the Government to be sold for their benefit they would in a short time have a large amount of interest coming in that would be very acceptable and enable them to supply the want of presents.¹¹¹

Evidently, Anderson felt that it was "folly" for my people to use their land by hunting on its grasslands and forests or by fishing in its streams and lakes when they could sell their land and receive money.

The local pressure to surrender lands increased as the regional agent for Crown lands began to send letters to the Indian Department regarding the Saugeen tract. On 15 October 1852, A. McNabb wrote a letter about the Indians' unwillingness to surrender their lands stating that he

had a hope that he might persuade them to surrender but Regret to say without success ... they appear determined to hold possession—poor Creatures they have strange views with regard to the land, it is doubtful whether even the next generation will derive a greater benefit than the present, still they hold on.¹¹²

Once again one sees the Crown's idea that my ancestors had a "strange" view of land; yet my people did not consider their view strange. They wanted to retain possession of their land to ensure that there was

¹¹⁰ For the text of this treaty, see "Treaty No. 72" in *Treaties and Surrenders, supra*, note 107 at 195-96.

¹¹¹ PAC, RG 10, vol. 197, p. 115698 at 115702, letter from T.G. Anderson, Superintendent of Indian Affairs, to Lt. Colonel R. Bruce, Superintendent General of Indian Affairs (10 July 1852).

¹¹² PAC, RG 10, vol. 412, p. 541 at 542-43, letter from A. McNabb, Crown Lands Agent, to the Indian Department (15 October 1852).

enough to provide fish and game for their community's present and future economic requirements. My people also did not want to surrender their land because the Creator had placed them there and they felt a stewardship towards it. My ancestors hoped to retain their land to create a place where all Ojibway could gather and enjoy their traditional pursuits.¹¹³ Still the government persisted: it attempted to convince our people to surrender and "reap an immediate benefit from it instead of leaving it as it now is and deriv[ing] no advantage from it."¹¹⁴

Eventually, at a council held on 2 August 1854 to discuss surrender, our people reluctantly expressed a willingness to consider an arrangement which would give the government rights to allow settlers to live on our lands.¹¹⁵ At that meeting, the Band was promised "that from the sale of the land they would soon have a large income, that they would all be able to ride in carriages, roll in wealth, and fare sumptuously every day."¹¹⁶ With such promises in mind, our people acquiesced to a surrender of some of their land to the government under certain conditions. The Band wanted large reserves,¹¹⁷ "interest payable

¹¹³ See Schmalz, *supra*, note 29 at 83 quoting from AO, Colonial Office, p. 3-4, Copies or Extracts of Recent Correspondence in the Respecting Alterations in the Organization of the Indian Department in Canada (May 1856) as follows: "Anderson also felt it was not a valid argument when they stated 'We expect Indians to come here to settle.'"

Further accounts of the desire of the Ojibway people to create a homeland on the Saugeen Peninsula at the same time as the treaty are found in Copway, *supra*, note 1 at 146-50. There was a meeting between all the members of the Council of Three Fires about which Copway states:

The object of this convention was to devise plans by which the tract of land then held by the Saugeen Indians, could be held for the sole use of the Ojibway nation; ... to ascertain the views and feelings of the chiefs in relation to forming one large settlement among themselves at Owen's Sound, where they might live, and to attend to other things of minor importance ... There were forty eight chiefs present from Canada west alone.

Ibid. at 146. The desire to create a homeland was frustrated by the government's pressure on the Indians to cede the peninsula.

¹¹⁴ PAC, RG 10, vol. 540, p. 69 at 69-70, letter from T.G. Anderson, Superintendent of Indian Affairs, to Charles Keeshig (18 March 1854).

¹¹⁵ *Enemikeese*, *supra*, note 33 at 51.

¹¹⁶ *Ibid.*

¹¹⁷ See PAC, RG 10, vol. 541, p. 101 at 104, letter from T.G. Anderson, Superintendent of Indian Affairs, to the Chiefs of the Central Superintendency (2 August 1854):

[W]e see the quantity of land reserved for ourselves as marked in the map is not large enough therefore we beg our Great Father to increase the quantity to the pencil lines which we have drawn on the map embracing the Fishing Islands and Cape Croker with the tract from the

annually to us and our posterity for ever,"¹¹⁸ and actual settlers to purchase the land.¹¹⁹ However, when the government came to speak with our people, it was not willing to submit to the requirements that had been proposed for surrender. Superintendent Anderson responded to our propositions with the following:

After talking nearly all day yesterday and nearly all last night on the subject of your reserve, you have concluded not to cede your land to the Government for your benefit—now if you did not understand the matter or that you did not expect to derive a benefit from the proposal your obstinacy would not be wondered at, but as the speeches both from the whites and those Indians who are in favour of the project,^[120] have brought the matter so clearly to your attention, everyone must believe that you are resolved to oppose the Government even at great sacrifice to yourselves and Children, or that you are influenced by persons who pretend to be your friends while in fact they seek your ruin ...

You complain that the whites not only cut and take timber from your lands but that they are commencing to settle upon it and you can't prevent them, and I certainly do not think the Government will take the trouble to help you while you remain thus opposed to your own interest—the Government as your guardian have the powers to act as it pleases with your reserve, and I will recommend that the whole excepting the part marked on the map in red be surveyed and sold for the good of yourselves and your children.

The money once secured in your Great Mothers strong box will be safe to you for future generations Whereas, if it is not sold the trees and land will be taken from you by your white neighbours and your children will then be left without resource.¹²¹

Anderson's response to our Nation's requirements for surrendering our lands was insulting to our people for two reasons. One reason is that Anderson did not understand nor acknowledge our legitimate interest in maintaining possession of our lands. He suggested

Owen Sounds to the Head of Colpoy's Bay these are the three reserves marked in pencil we want to keep for ourselves and Children on the main land, The Island we say nothing about as they belong to us and we wish to keep them.

¹¹⁸ See *ibid.* at 105. "We want a written paper from the Government saying that the principle coming in for the Reserve will be funded for ourselves and the future generation and that we and they shall receive the interest of it every year."

¹¹⁹ See *ibid.*:

The white people are wise speculators we know that lands laid out into villages or mill sites the whites speculate upon—a spirit of speculation is getting up among us. We wish the land now ceded to be immediately laid out into lots and that there be no time lost in making a sale of them to actual settlers so that the interest will shortly be coming in and not be waiting so long as for the little strip we lately sold.

¹²⁰ Peter Kegeponce Jones was one of those Indians that favoured a treaty. See Schmalz, *supra*, note 29 at 81.

¹²¹ PAC, RG 10, vol. 213, p. 126356 at 126356, letter from T.G. Anderson, Superintendent of Indian Affairs, to the Owen Sound and Saugeen Indians (2 August 1854).

that our actions in wanting to retain our lands were motivated by treason-like opposition to the Crown. This assumption was offensive to our people. Our Nations were the original possessors of the land and as such considered that they had the responsibility to preserve its resources for their children. Our people also found Anderson's letter repugnant because he used threats to persuade them to surrender the land. Anderson stated that he could not protect the Band from settlers overrunning the land unless they surrendered it.¹²² This tactic was loathsome. It violated a previous treaty between our people and the government that had stated "your Great Father engages for ever to protect you from the encroachments of the whites."¹²³

Further evidence of the indifference and disrespect which Anderson had for our people's objectives in maintaining their land is found in his report to his superior about the outcome of the surrender council meeting of 2 August 1854. He stated, "they did not advance one good argument why the Reserve should not be sold beyond, 'we don't want to sell our land, we want to keep it for our children.'"¹²⁴ Since Anderson did not accept that our people wanted their children to have land so as to maintain their heritage and dignity, he recommended "that the Government as their guardian *assume* the *absolute control* of their affairs as parents over their Children, and *insist* upon their doing that, which may wisely be determined upon for their good."¹²⁵

Thus, knowing that our people were against any surrender which did not include the conditions that they had outlined, Anderson proposed that our lands be taken from us and sold to settlers for our own good. Anderson felt any contrary opinion of the non-Natives to the coerced surrender of Aboriginal lands was designed to "keep the Natives

¹²² Aside from the above quotation, further evidence of the government's unwillingness to fulfil their 1836 treaty obligation to prevent white encroachment on Indian land is as follows:

I think stirring times are coming round upon you and upon all Indians—emigrants are coming so thick that I do not believe that the Government will be able to retain for you all your reserves—at Owen Sound the municipal Council is already petitioning the Government upon that subject.

PAC, RG 10, vol. 541, letter from Anderson to Saugeens (16 August 1854) as quoted in Schmalz, *supra*, note 29 at 84.

¹²³ "Treaty No. 45½" in *Treaties and Surrenders*, *supra*, note 107 at 113.

¹²⁴ PAC, RG 10, vol. 213, p. 126312 at 126314, letter from T.G. Anderson, Superintendent of Indian Affairs, to L. Oliphant, Superintendent General of Indian Affairs, Quebec (16 August 1854).

¹²⁵ *Ibid.* (emphasis added).

in ignorance in order the more easily to impose upon them and enrich themselves."¹²⁶ The Crown—*supposedly* acting on its honour and under its fiduciary duty—was not anxious to protect our society from people who enriched themselves at our expense.¹²⁷ Despite the Crown's intentions in surrendering our lands for us, the effect of the government's policy was to give our people a very limited scope in dealing with their ancestral lands in any surrender. The Crown was prepared to use the legal subterfuge of wardship to steal our lands.

b) *Treaty No. 72: governmental pressure*

With the above information of the correspondence and meetings between the government and our people as a backdrop, I am now prepared to examine the actual surrender of the Saugeen (Bruce) Peninsula. L. Oliphant, who was Anderson's superior, rejected Anderson's advice to take our land outright, but seems to have accepted Anderson's use of intimidation and duress to secure possession of the Saugeen. On 13 October 1854, Oliphant proceeded to Saugeen, bypassing Nawash, to negotiate Treaty No. 72. In a report to the Governor General about the Treaty No. 72 negotiations, Oliphant outlined his tactics to compel us to relinquish our lands:

Immediately on my arrival I despatched messengers for the Chiefs of the Saugeen Band who were absent at their fishing grounds, as well as those of the Owen Sound and Colpoy's Bay Bands ... On the noon of the day following my arrival the Chiefs of the Saugeen Band arrived. As I looked for the strongest opposition from the Head Chief of this band who entirely influences its opinion, I immediately sent for him privately, and in a long interview prepared him for the proposals I was about to make. He left me with a strong expression of dissent. Shortly after the Chiefs of the other bands arrived, and anxious not to allow them an opportunity of consulting either among themselves or with the Europeans, I called a Grand Council ...

¹²⁶ *Ibid.* at 126315.

¹²⁷ The Crown's failure to protect us from others who were enriching themselves at our expense was confirmed upon surrender when a Crown officer stated:

I have therefore ventured to submit a statement of the annual expenditure for the support of the department as well as the amount of revenue accruing to the Indians from various sources with a view to showing the practicality of ultimately relieving the Imperial Government of the burden of contributing towards the superintendence or support of the Indian Tribes of the Province of Canada.

PAC, RG 10, vol. 117, p. 169150 at 169161, Report on Negotiation Proceedings Regarding surrender of the Saugeen Tract (Treaty No. 72) (3 November 1854).

I opened the proceedings by stating to them the reason which I had induced Your Excellency to recommend the surrender of so large a portion of their territory ... They were compelled to admit that squatters were even then locating themselves without permission either from themselves or the Department upon the reserve. I represented to them the extreme difficulty if not impossibility of preventing such unauthorized intrusion. On the other hand I explained the advantage which would accrue to them from so large an augmentation of finances as must result from the sale of their lands, by which they would be enabled to erect schools, extend their farms and purchase many comforts of which they were now deprived ... I finally promised that those Chiefs who were prepared to meet the government in this measure so productive of benefit to their bands would be rewarded by Your Excellency with medals. I was met with the most decided opposition on the part of Alexander Madwayosh, principal Chief of the Saugeen Band, whom I have mentioned before and with whom I maintained an animated discussion, none of the other Chiefs taking any part in the proceedings. It was clear, however, that public opinion, more especially with the Chiefs of the Owen Sound Band, was turning against him, And I therefore passed on to explain to them the limits of the Reserves proposed by the Government. As soon as the discussion was fairly diverted from the question of the propriety of the surrender to a consideration of the limits of the Reserves I retired for an hour in order to allow time for private debate.

Upon returning to the Council I found that Chief Alexander Madwayosh had been entirely out-voted. Some of the other Chiefs now came forward to stipulate increased limits to their reserves and fresh privilege in consideration of their willingness to adopt the views of the Government ... By one o'clock A.M. the signing, sealing and affixing of totems was concluded and the Council broke up.¹²⁸

Oliphant also completely disregarded our requirement that only actual settlers be permitted to buy the land. He wrote that although "the advantages of confining the sale to actual settlers was much pressed upon my consideration at Saugeen and Owens Sound[,] ... it would seem a wiser course that no condition of actual settlement should be attached to the sale of these lands."¹²⁹

From this report, it can be determined that Oliphant engaged in many irregularities to secure surrender of the Saugeen Peninsula. First, Oliphant did not allow our people the opportunity to call an internal council to discuss the "propriety of the surrender." Two years earlier in a General Council resolution, the Saugeen and Nawash Bands had decided that they would only cede their lands if mutual consensus existed.¹³⁰ Yet Oliphant was "anxious not to allow them an opportunity of consulting either among themselves or with the Europeans." The preclusion of an opportunity for the two bands to consult with each

¹²⁸ *Ibid.* at 169151-55.

¹²⁹ *Ibid.*

¹³⁰ This council meeting was held 30 October 1852. Enemikeese, *supra*, note 33 at 53-57.

other at this stage of the negotiations was questionable. This tactic violated the privilege of an informed discussion about the course of action that our people were being persuaded to take and cast a cloud over future interpretations of Treaty No. 72.

Furthermore, two months earlier our people stated that they did not want to surrender their land unless the government met the three conditions that they proposed to Anderson regarding reserves, annuities, and actual settlers. A modern court has stated, "It ill becomes the Crown ... to obtain a surrender of the Band's interest ... [and] ignore those [the Band's] terms at will."¹³¹ Since our people did not want to surrender their land unless the government met the criteria that they had put forward, Oliphant's conduct was a breach of the Crown's fiduciary duty because he obtained a surrender which ignored our stated terms at will. Oliphant did not want the Band to strongly reassert these interests; thus, he deterred them from an opportunity of discussing their position amongst themselves and reaffirming it to him.

A second inequity in which Oliphant engaged while negotiating for a surrender of our land was to bypass our leadership throughout most of the negotiations. Although, at the outset, Oliphant did meet with the Chief who expressed the strongest dissent to surrender, Oliphant ignored him at Council in front of the rest of the Band when public opinion appeared to be turning against Chief Madwayosh. Furthermore, the chiefs of our other two bands on the peninsula did not "tak[e] any part in the proceedings" until after the issue of the propriety of the surrender was considered. These chiefs arrived too late to discuss the appropriateness of the cession. Oliphant's conduct violates the spirit of the *Royal Proclamation* because the timing of the surrender had the effect of excluding two bands and the Saugeen Chief from reiterating their earlier proposed conditions. Therefore, the council called by Oliphant subjected an inexperienced class of people at Saugeen to undue influence and duress by forcing them to make a decision about relinquishment of their lands.

The illegalities in which the government engaged are confirmed in other sources referring to the negotiations of Treaty No. 72. Conrad Van Dusen, an Owen Sound missionary, published the following account of the Saugeen surrender:

¹³¹ *Guerin v. R.*, [1984] 2 S.C.R. 335 at 354.

When Mr. Oliphant, superintendent-general of Indians' affairs, came, two or three months after this, to treat with the Indians for the surrender of their peninsula, he passed by the band at Newash without even letting them know of his arrival, or the object of his visit, and proceeded about twenty miles to Saugeeng ... Perhaps Mr. Oliphant thought it was *fair* not to allow the Indians to have an opportunity to consult, even among themselves, in reference to the surrender of their lands. But the more intelligent part of them happened to think otherwise. And how Mr. Oliphant could suppose the council "was attended by the chiefs of the different bands," as he states in his Report, is another mystery; for there was not one chief from Colpoy's Bay that attended on that occasion, from first to last. And from Newash, they did not reach Saugeeng till the next day, after nearly all the arrangements had been completed. They arrived from Newash just in time to sign the treaty; and there is no doubt that many who did sign it would have done so, if it had been their death warrant. They knew nothing about the value of land, nor of the proper mode of transacting business. But they considered it unfair to hurry the business through, without even giving timely notice to the Indians at Newash and at Colpoy's Bay ... But if the Indians had been permitted to act upon the Resolution adopted by their General Council, October 30th, 1852, and allowed time to call together the chiefs and principal men from the three bands at Newash, Saugeeng, and Colpoy's Bay, in General Council; and then had Mr. Oliphant laid his business before them, they undoubtedly would have understood the matter much better, and arrangements would have been made much more intelligibly and satisfactorily. But this was not done. The deliberations were hurried through in a summary way. On the arrival of the Indians from Newash it was too late to propose any new arrangements; and the two chiefs from the Newash Band could neither read nor write, and understood but few words in English.¹³²

Oliphant engaged in many irregularities while securing the surrender of the Saugeen Peninsula. The vital question for this narrative is, how did our people preserve self-government given the disregard that Oliphant had for our leadership and our desires as they concerned our land? The answer is that, even though the Crown engaged in dubious conduct, we made a treaty that we thought protected our earlier expressed terms and conditions. Our chiefs and principal men from Saugeen and Nawash—including my ancestor Peter Kegeдонсе Jones—affixed their signatures to Treaty No. 72. This determination was an exercise of self-government; although, in retrospect, the decision may have been a poor one because of the government's subsequent denial of our conditions for surrender.

We attempted to consult amongst ourselves in the exercise of our sovereignty. We held general councils to agree on principles that were to direct our dealings with our land. When given the opportunity, we talked with one another to decide how we would deal with proposals that were put to us. In fact, our internal government caused the Indian

¹³² Enemikeese, *supra*, note 33 at 53-56 (emphasis in original).

Department much frustration because “[our] affairs [were] governed by the voice of the people, hence the difficulty experienced by the Indian department.”¹³³ Thus, while Treaty No. 72 has not always been interpreted with reference to the conditions that we stipulated, it was our decision, reached through several domestic councils, to release our land to the Crown.

To affirm that the surrender of the Saugeen Peninsula was an exercise of self-government on the part of the Nawash, one needs to explore my ancestors’ subsequent correspondence. This correspondence determines the conditions, motivations, and intentions that the Nawash stipulated to the government in relinquishing their land. These documents give a better knowledge of my ancestors’ understanding of the treaty because they establish that self-government was exercised by our people in the treaty process.

c) *Treaty No. 72: aboriginal understandings*

On 27 February 1855, five months after the surrender, the bands sent a petition to the Governor General asking that settlement duties be required from purchasers of the surrendered land. Settlement duties were required to ensure that the government curbed speculation and that settlers actually dwelt on the land that they had purchased. These were two of the conditions of surrender that the bands had submitted to Anderson¹³⁴ and Oliphant.¹³⁵ Four chiefs and twenty-two individuals signed the petition which read as follows:

We the Chiefs, Councillors and principle Indians composing the Ojebway Tribe in the Owen Sound and Saugeen Country wish to say a few words to our great Father—the Governor General.

We fully believe, it will not only promote the general interest of this part of the country, but greatly increase the value, and sale of the land we have recently surrendered, by requiring actual settlement upon all farm lots that may be disposed of for our benefit.

¹³³ PAC, RG 10, vol. 541, letter from Anderson to Lord Bury (26 November 1855) as quoted in Schmalz, *supra*, note 29 at 84.

¹³⁴ See PAC, RG 10, vol. 541, p. 101 at 105, letter from T.G. Anderson to Chiefs of the Central Superintendency (29 July 1854). “We wish that there be no time lost in making sale of them to actual settlers.”

¹³⁵ See PAC, *supra*, note 127 at 169156. “The advantages of confining the sale to actual settlers was much pressed upon my consideration at Saugeen and Owens Sound.”

By this means, the settlement, in these countries will be rapidly expanded, and private speculators will be prevented from securing large blocks of land, which may remain for years uncultivated, and unoccupied, and thus prevent the rising value of the remaining part of the territory, and also be a great hinderance to the speedy extension of Settlement.

We therefore hope our Great Father will be pleased to hear these words of his Red Children, and require actual settlement on the land when sold, and also allow us to have something to say in the appointment of an Agent in whom we can fully confide, in disposing of the land to our advantage, under the control and direction of the Government.¹³⁶

One can see from this petition that our people did not resent settlement around them *if* it would increase the benefits that they were to receive in accordance with the treaty conditions. The specific benefit which the Band sought was that money from sale of the land go into their interest account.¹³⁷ We were concerned that there be actual settlement after sale so that speculation would be prevented and so that land would not lie vacant and cause adjacent land to decline in value. This decision shows that we were exercising self-government when we surrendered the Saugeen Peninsula because the conditions that we imposed for surrender provided for our best interests.

The above petition also illustrates a further act of self-government. After the signing of the treaty, the bands made a request for "something to say in the appointment of an Agent." This request demonstrates self-government because it shows our desire to continue to administer the lands that were to be sold for our benefit by having an agent whom we could work with and influence.

A letter sent by the Nawash to the Governor General in May 1855 contains further evidence of our exercise of self-government both in entering into Treaty No. 72 and subsequent to its signing. In this letter, we expressed our concerns about the interpretation of the 1854 treaty and about the management of our affairs. In particular, we submitted points about reserve size,¹³⁸ actual settlement,¹³⁹ agricultural

¹³⁶ PAC, RG 10, vol. 216, p. 127715 at 127715, Petition to Sir Edmund Head, Governor General of Canada (27 February 1857).

¹³⁷ PAC, RG 10, vol. 266, p. 163 at 309, memorandum from General Nawash Council to the Queen (17 April 1860).

¹³⁸ Letter from Chiefs of Newash and Saugeeng Bands to His Excellency Sir Edmund Head, Bart., Governor General of Canada (16 May 1855) reprinted in Enemikeese, *supra*, note 33 at 84.

When we surrendered our land, and made the treaty with Mr. Oliphant in October last, Mr. Oliphant, with ourselves, walked upon a road open from our village (Saugeeng) about one

lots,¹⁴⁰ schools,¹⁴¹ requisition for funds,¹⁴² and sanction for acts undertaken by the Band Council,¹⁴³ as well as questions about the interpretation of a paragraph of the treaty.¹⁴⁴ The Band posed these questions acting as a self-governing body: we understood that we had an entitlement to what we requested under the terms of the treaty. The statement of Oliphant is to be remembered, "I explained the advantage which would accrue to them from so large an augmentation of their finances as must result from the sale of their lands, by which they would be enabled to erect schools, extend their farms and purchase many comforts of which they were now deprived."¹⁴⁵

mile in a straight line to the shore of Lake Huron. This road, we supposed, ran northward; and was to be the boundary between the land we surrendered, and that which we reserved adjoining Saugeeng village. But when the surveyors commenced their work, it was found that a line running due north from the village, does not reach the shore of Lake Huron till it extends about five miles and a half from the boundary agreed on by Mr. Oliphant and ourselves. By this survey we are shut out from the water of the lake, greatly to our inconvenience and damage.

¹³⁹ See *ibid.* "In a former Treaty made with Captain Anderson last summer, it was fully expressed and understood that when our land would be sold, actual settlement should be required; and we thought the same condition was implied in the Treaty made with Mr. Oliphant last October." Notice how the Indians felt that the negotiations with Anderson and Oliphant constituted the same treaty.

¹⁴⁰ See *ibid.* at 85:

Having no more hunting ground, from choice, as well as from necessity, we wish to turn our attention, more than ever before, to the cultivation of our land; and therefore hope our great father will encourage us in this, by giving to each in our tribe a *title deed* for one hundred acres of land, as prayed for in our memorial of last April.

¹⁴¹ See *ibid.* "We also beg the privilege of speaking to our great father about the propriety of taking immediate steps towards establishing at Saugeeng, and at Newwash, 'manual schools' for the benefit of our youth."

¹⁴² See *ibid.* "We also wish to present a 'requisition' for one hundred pounds out of our 'Contingent Fund,' for the payment of our expenses, &c., according to the decision of our General Council held at Saugeeng on the 5th inst., a copy of the proceedings of which we have to present." Note the exercise of self-government in holding meetings to decide how to allocate funds from our interest account.

¹⁴³ See *ibid.* "We also wish to make some statements to our great father, setting forth our wishes to secure his sanction to the acts of our General Councils from time to time, when considered by the Governor in Council, calculated to secure the harmony, and promote the interest, of our tribe."

¹⁴⁴ See *ibid.* at 85-86. "We also wish to make some inquiry as to the purport and meaning contained in a certain paragraph in the Treaty drawn up by Mr. Oliphant."

¹⁴⁵ PAC, *supra*, note 127 at 169152.

Our people travelled as a delegation to Quebec to present the grievances outlined above to the Governor General and the legislature to insure the fulfilment of these promises. We were virtually ignored in our pleas.¹⁴⁶ However, the government's response to our exercise of self-government does not change the fact that our people were acting as a self-governing community in attempting to get satisfaction for the government's broken treaty promises.

Our people again exhibited self-government in a petition sent to the Legislative Assembly of Canada later the same month. In this document, one can see that the treaty was understood by our people to have been executed under the conditions that they had established. We stated:

when the Superintendent General of Indian Affairs visited Saugeeng in October, 1854, to consummate a Treaty with the Ojibway Tribe of Indians, for the surrender of their Peninsula ... he made verbal promises which have not been fulfilled. And several conditions and considerations were expressed, and understood by the Council at that time, which do not appear in the written Treaty.¹⁴⁷

Other petitions were sent which express the same point.¹⁴⁸ Our people were steadfast in their claims relating to cession and felt that they had made their views clearly known.

However, the government chose to ignore our pleas for an honourable interpretation of the treaty. Superintendent Anderson, the person who wanted to confiscate our land for our benefit and who was not even present at our treaty negotiations with Mr. Oliphant, replied to our grievances with incredible irony given the government's disregard for our position:

I feel it my duty to explain to you some points which you do not appear to understand, and in the first place I would remind you that in former days, before you became

¹⁴⁶ Schmalz, *supra*, note 29 at 90-91.

¹⁴⁷ Petition from C. Van Dusen; A. Madwayosh, Chief; J. Katguckum, Chief; J. Thomas Wahbadick, Chief; and D. Sawyer, Chief to the Legislative Assembly of Canada in Provincial Parliament (17 May 1855) reprinted in Enemikeese, *supra*, note 33 at 87-89.

¹⁴⁸ See PAC, RG 10, vol. 218, p. 129251 at 129259, letter to His Excellency Sir Edmund Head, Governor General (22 June 1855):

In a word the verbal promises made to them when the Treaty was consummated last October have not been carried out. Actual settlement on the land was a condition expressed in the former Treaty made last July, and the Indians expected it was implied in the one consummated in October ... They therefore ask that actual settlement be required. Indeed they claim it—they expect it.

Xtians[sic], any agreement you made, no matter with whom, you stuck to it, and nothing could make you deviate from it—How much more then, now that you profess to serve the Great Spirit, should you honestly adhere to your Engagement, when you know that it is displeasing to the Great Spirit to act otherwise.

My friends ... some white men who were not only your enemies but also enemies of the Government made you believe that the Govt wanted to cheat you, which you know is not the truth for the Govt have always been your best friends but your advisers would like to make a “Cats paw” of you in order to get something for themselves—As you may not understand the story of the Cats paw I will tell you a monkey was going along when some potatoes were roasting in the ashes, he wanted very much to get some of them, and tried hard but it was too hot to draw them out with his own hand and therefore borrowed the Cats paw to do it—the consequence was that her paw was burnt but the monkey got the Roast potatoes and did not care how much the Cat suffered. And so it is with those people who advise you to oppose the wishes of the Govt they are the “Monkey” and they make you the Cats and don’t care how much they injure you to accomplish their object of getting from you pieces of land for nothing.

I have told you this story in hopes to make you understand that your only real friend is the British Government, ... But still you take the advice of bad men and unwisely continue to speak disrespectfully of the Government and to quarrel with your brethren—How is this? did not you smoke the “Pipe of peace” ... Are you become so bad, that even Your Solemn word uttered with the Pipe of Peace in your hand is no longer considered sacred.¹⁴⁹

Anderson’s reply to our legitimate grievances about the government’s disregard for the conditions of the treaty was very condescending. He spoke to us in the same manner that scolding parents would speak to their children. In response to the ill-treatment which we received from the Crown, violence was very much on the minds of some of our people. Two people from Owen Sound “considered it a wonder the entire white population of Owen Sound was not wiped out by the Indians when [our] deputation returned from Quebec.”¹⁵⁰

It is difficult to appreciate how repulsive the behaviour of the government was to our people. The government endeavoured to ignore our conditions for surrender, to steal our land by acting “for our own good,”¹⁵¹ to subvert our leadership in negotiations, to discredit those who were attempting to help us, and to castigate us for petitioning them to fulfil their obligations. Our response throughout the treaty process,

¹⁴⁹ PAC, RG 10, vol. 411, p. 31 at 32-33, letter from Anderson to Saugeen and Owen Sound Indians (October 1855).

¹⁵⁰ Schmalz, *supra*, note 29 at 91. Schmalz also writes that “although this was an exaggeration, had the situation not changed, bloodshed could have resulted.” *Ibid.*

¹⁵¹ *Supra*, note 124 at 126315.

demanding that the government discharge their obligations to us, confirms that our prerogative of self-government continued to exist.

d) *Treaty No. 82: the surrender of Owen Sound*

After the government secured a surrender of our lands on the Saugeen Peninsula, it wanted to move us off the remaining land that the Nawash had reserved to themselves.¹⁵² Our response to this proposal further illustrates that we reacted to preserve our identity and government despite the meagre circumstances in which we were living. With the insistence for more land escalating, the government proposed that we cede our remaining reserves and settle at the Cape Croker reserve. The Saugeen Band resisted removal from their reserve,¹⁵³ but the reserve at Nawash yielded to the pressure, surrendered their land, and resettled at Cape Croker.

Because much of our hunting and fishing grounds had been surrendered under Treaty No. 72 and because inadequate compensation was being received in return for these lands,¹⁵⁴ we had little land or remuneration left for subsistence. Although we had survived on our lands for thousands of years, we were pushed to the verge of starvation when we surrendered our traditional lands.¹⁵⁵ Despite this financial pressure, Peter and the other Indians had no desire to surrender their land and refused to part with it when the government first requested that they do so. The Band realized that ceding their lands would not improve their material circumstances since it had not done so in the past.¹⁵⁶

Ultimately, the immediate proximity of settlers at Nawash convinced Peter to treat with the government for the surrender of Nawash. As a result, when Peter and one quarter of the band were invited to Toronto to enter into treaty negotiations for the surrender of Nawash, they acquiesced to the government's request for surrender and

¹⁵² For a description of the government's resolve to remove us, see Borrows, *supra*, note 3 at 124-28. See also PAC, RG 10, vol. 230, p. 136615, R.T. Pennefeather (19-20 November 1856).

¹⁵³ Schmalz, *supra*, note 29 at 130-31.

¹⁵⁴ *Wesleyan Methodist Report* (1857) XXIII in Schmalz, *supra*, note 29 at 98.

¹⁵⁵ Schmalz, *supra*, note 29 at 102.

¹⁵⁶ *Ibid.* at 99.

attended a conference there for that purpose.¹⁵⁷ Thus, on 9 February 1857, Treaty No. 82 was signed.¹⁵⁸ This treaty is also known as the Jones Treaty, named after my great-great-grandfather, Peter, who was the lead signatory of that document.

Why would the proximity of settlers cause Peter to cede the prime agricultural land of Nawash and to relocate his people to the rugged and rocky land at Cape Croker? It certainly was not a unanimous decision on the part of the Band to depart. Many people of our Band had cleared land and built houses; they were prosperous and content living at the head of the Potawatomi River at Nawash.¹⁵⁹ Peter acquiesced to the resettlement from Nawash because of the destructive surroundings that existed for Native people at this community.

Alcohol was available in abundance from the settlers, and Peter felt that it was the most destructive thing that Indian people had faced.¹⁶⁰ Peter would have known Cape Croker was an environment where this influence could be avoided because he had lived there for a few years after he came from Chief's Point.¹⁶¹ All available evidence indicates that Peter would also have been acquainted with Cape Croker because he had moved there again four years prior to the cession of Nawash.¹⁶² Since Peter would have known the territory around Cape Croker, he would have considered it an excellent location for our people to live unconstrained by settler influence. Therefore, one can see that the desire to maintain self-government by decreasing external influence was an extremely important motivation in entering into Treaty No. 82.

¹⁵⁷ *Ibid.* at 104.

¹⁵⁸ See "Treaty No. 82" in *Treaties and Surrenders*, *supra*, note 107 at 213.

¹⁵⁹ Schmalz, *supra*, note 29 at 114.

¹⁶⁰ Oral tradition told to the author by Peter's great-grandchildren, Irene Akiwenzie and Fred Jones.

¹⁶¹ Keeshig, *supra*, note 33.

¹⁶² Peter and Margret's first son was born at Cape Croker in 1852. O.I. Jones Akiwenzie, "Chief Charles Kegeponce Jones: A Great Man My Father" (1980) Bruce County Hist. Soc'y Y.B. 42.

e) *Summary: Treaties No. 72 & No. 82*

The Chippewas of the Nawash were under extreme pressure from the settlers and their government to cede Nawash land to the non-Native people for their use. In response to this insistence, we demanded, and were promised, certain benefits for transferring our rights to the settlers who were to reside on our lands. We considered these terms of relinquishment to form a compact which would govern the relationships between two societies. We entered into these treaties by utilizing our powers of self-government. Through internal resolutions and external negotiations, we arrived at our own assessment of our best interest relative to the cession of land. Subsequent to the surrenders, we continually applied to the Crown to fulfil the obligations which they had undertaken for us. We never surrendered our sovereignty on our reserved lands, and we expected certain benefits from the Crown in exchange for the benefits that they had received from us.

In fact, after the surrenders, all we desired was to be left alone on our reserves to exercise our powers of self-government undisturbed by the Crown. Significant evidence of this desire is found in a petition signed by my great-great-grandfather Peter, as first signatory, and twenty-six others. This petition, addressed to Queen Victoria, stated:

In the year 1857 Mr. Pennefeather ... came for the purpose of holding a special Council among us to surrender the tract of land we reserved containing ten thousand acres of Land more or less—We refused to give it up but were willing to give part and they said Our Great Father must have the whole, at the same time expressing very hard words against us.

However, we made up our minds to surrender on the following conditions—1st—that we would have the privilege of purchasing land—2nd that our yearly annuities would continue to increase every year. 3rd—that comfortable houses would be built every year until every family would be supplied with one, 4th and that a church also be erected.

The houses were built of inferior material, and the workmanship quite defective—none of these promises having been fulfilled.

That the proceeds of our Land payments have been expended very wastefully, as will appear by reference to the accompanying statement from the Department of Expenditures ...

We consider also that we ought to have account of our monies, how they are expended ...

According to an old Treaty we have documents shewing that hunting of various kinds was never surrendered being the main living with most Indians, but now the Canadian Parliament has passed an act to encourage the forfeiters of the privilege of hunting and fishing, which the Indians used to, and was to enjoy for ever ...

For a period of three years our Island Fisheries have been leased and a small remuneration is made half yearly—we think it would be more beneficial for us to repossess these fishing grounds ourselves when the given time expires in 1862.

In the war with the United States [1812] we are informed by history as well as by traditions that your Petitioners or their fathers did a great deal of good ... at that time promises were made to us that we would receive a portion of land, in commission with the rest of the soldiers, but this has not been fulfilled.

IF WE COULD ONLY HAVE THIS PRIVILEGE OF ALL THAT WE SHOULD CALL OUR OWN—HAVE THE SOLE MANAGEMENT OF OUR LANDS, OUR FISHERIES, OUR HUNTING, OUR TIMBERS, OUR MONIES, we would be satisfied and we do not see why we cannot be able to do so, while we have persons of our own blood who can do all this, in any respect exactly the same as a white man.

In conclusion your humble petitioners would not forget to state something about the old Treaties made before the Indians long ago—with regard to their presents, and promises—promises which have never been fulfilled—The Treaty states—“That as long as the water runs and the grass grows these presents will and shall ever continue.” We regret to say these promises have not been kept.¹⁶³

This petition, addressing Queen Victoria for fulfilment of obligations undertaken by her government in North America, can be discerned as an exercise of self-government by a First Nation.¹⁶⁴ We were acting as would any government in an international forum. We were asking their sovereign for redress of the inequities which their government had perpetrated. Our desire for a greater measure of self-government also can be detected when we requested that we be given the sole management of our various affairs. While complete autonomy has not yet been granted fully, the above document and the documents surrounding Treaties No. 72 and No. 82 confirm that we were acting as we had always acted—in a self-governing manner to secure the greatest benefits for our society.

C. After the Surrenders: Life at Cape Croker

After the Chippewas of the Nawash moved to Cape Croker in 1857, they attempted to re-orient themselves to the new world around them. This was not an easy task. The Nawash Band was confined to eighteen thousand acres of land on their new reserve, whereas before they had hundreds of thousands of acres to fulfil their needs. In the four years previous to 1857, the Band had surrendered over 500,000 acres of land in addition to their farms and households at Nawash, yet the

¹⁶³ PAC, RG 10, vol. 266, p. 163303 at 163303-09, petition of Cape Croker to Queen Victoria (17 April 1860) (emphasis added).

¹⁶⁴ These complaints were answered in an unsigned communication in November 1860. *Ibid.*

annuities being paid as remuneration for the surrenders were insufficient to compensate for this loss. For example, the reserve contained poor agricultural land. It was previously unworked and initially provided only meagre sustenance.¹⁶⁵ The Band also could not hunt freely because the settlement of their traditional territories was driving out game. Fishing too was more difficult because the commercial fishing of the settlers was depleting the stock of fish. The Chippewas of the Nawash might have perished in 1858 if the government had not provided food for us.¹⁶⁶

The world was a different place for us after our removal to Cape Croker. The next challenge now stood before us—the preservation of self-government under reduced circumstances and in the face of regulations enacted to transform our traditional way of life. These regulations were formulated by Canada when Britain's North American colonies entered into a confederation to form the Dominion. In section 91(24) of the *Constitution Act, 1867*, the federal government was given the responsibility of legislating in regard to "Indians, and Lands reserved for the Indians."¹⁶⁷ The *Constitution* made the federal government heir to the responsibilities and obligations of previous colonial administrations. In fulfilling its responsibilities, the new Canadian government enacted *The Indian Act, 1876*.¹⁶⁸

While it is common knowledge that the *Indian Act* transformed our society, this alteration did not affect our inherent power to arrive at and implement decisions through community generated methods.

¹⁶⁵ See *Wesleyan Methodist Report* (1859) XVII as quoted in Schmalz, *supra*, note 29 at 114. "The land here is very poor, and exceedingly hard to labour. The Indians have sustained great loss in surrendering their land at Newwash."

¹⁶⁶ See PAC, RG 10, vol. 427, letter from Sawyer to Bartlett (2 November 1858). "We will need flour and pork to prevent actual starvation."

¹⁶⁷ *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3 [hereinafter *Constitution*].

¹⁶⁸ *The Indian Act, 1876* (U.K.), 39 Vict., c. 18, as am. R.S.C. 1985, c. I-5.

V. CHARLES KEGEDONCE JONES AND THE *INDIAN ACT*: MAINTAINING SELF-GOVERNMENT UNDER IMPOSED REGULATIONS

A. *Charles Kegedonce Jones 1852-1952: Political Perspective*

My great-grandfather, Charles Kegedonce Jones, was Chief of the Chippewa of the Nawash for over thirty-five years. While he was a hereditary chief, he was also elected as chief under procedures prescribed in the *Indian Act*.¹⁶⁹ His life exemplifies the efforts expended by our people to preserve self-government.

Charles was the first child born at Cape Croker after the Band's resettlement there.¹⁷⁰ He was born in 1852 in a wigwam on the shores of McGregor Harbour and weighed two and a half pounds. He was kept alive his first winter by being wrapped in moss and rabbit skins and being rubbed daily with racoon oil. He was raised in the traditional Indian way although both his parents had embraced Christianity. There were no deer at Cape Croker when his family moved there so every winter they made camp "in the heart of the forest" of Grey County "to trap and hunt Native food."¹⁷¹ The winter camp consisted of a wigwam of cedar bark with a fire in the middle of the structure and a hole in the ceiling to let the smoke out. At age one hundred, he could still remember his first success in hunting at ten years of age when he brought down a bear for his family.¹⁷²

¹⁶⁹ The current statutory scheme for the election of Chiefs and Council is found in sections 74 to 80 of the *Indian Act*. Charles was elected chief under a similar legislative scheme.

¹⁷⁰ The following information about Charles is taken from both oral history and articles written about him. For the oral history, the author has tape-recorded conversations with two of his children, Irene Akiwenzie and Fred Jones.

The articles which speak about him are: Akiwenzie, *supra*, note 162; D. Deans, "Chief Charles Jones, Cape Croker, Like a Legendary Figure of the Finest Traditions of the Redman" *Owen Sound Daily Sun-Times* (17 August 1935) 9; G.C. Stockland, "Created by Treaty as Indians Left Newwash, Owen Sound North Cape Croker has 555 Indians" *Owen Sound Daily Sun-Times* (21 June 1950) 10-11; Barkey, *supra*, note 37; "Ex-Chief C. Kegedonce Jones, 100 Years Old, Son of Chiefs, Is Man of Wide Experience" *Owen Sound Sun-Times* (13 September 1952) 12; and "Ex-Chief of Cape Croker C. Jones Dies" *Owen Sound Sun-Times* (20 December 1952) 1.

¹⁷¹ "Ex-Chief of Cape Croker C. Jones Dies," *ibid*.

¹⁷² Oral tradition as told to author by O.I. Akiwenzie Jones.

When he was a teenager, Charles attended school in Markdale and Hagersville, Ontario. He obtained both a classical and practical education. He studied literature and could speak three languages: Ojibway, French, and English. He also acquired "an excellent working knowledge of higher mathematics"¹⁷³ and learned the trade of a carpenter.

During his life, Charles utilized what he had learned from both his Indian upbringing and his formal education to advance our self-determination. Besides being a Councillor and Chief at Cape Croker for over fifty years, Charles belonged to national and regional political organizations that represented Aboriginal concerns to the federal government in Ottawa. These organizations included the Grand Council, the National Indian Brotherhood (NIB), and the Union of Ontario Indians.¹⁷⁴ Charles was active in the political sphere well into his nineties. His work required substantial travel, and Charles came to know many Native leaders from across Canada. "He became a spokesman for his people and was well known in Grand Council meetings and the Indian Affairs Department in Ottawa, where he went many times, seeking justice for Indians across Canada."¹⁷⁵

Charles's views on political matters were similar to those of his brother Thomas, who was president of the Union of Ontario Indians and a representative of the NIB. Charles and Thomas often expressed their opinions about the inferior status given to Indians under Canadian law. An interview with Thomas revealed:

"Its not enough that I'm not a citizen" he said bitterly when the question of citizenship came up. "I'm not even recognized as a person." He went to his desk and brought out a red-covered copy of the *Indian Act* (1938). "Look at this" he said indicating "section (i)" of the list of interpretation of terms contained in the text of the Act: "Person means an individual other than an Indian. This same ill-worded section has been shown to me with equal indignation by Indians of the Blackfoot, Sarcee, Stoney, Blood, Piegan, Cree, Haida, Tsimshean and Klinglit."¹⁷⁶

The interviewer observed that:

¹⁷³ "Ex-Chief C. Kegeponce Jones, 100 Years Old, Son of Chiefs, Is Man of Wide Experience," *supra*, note 170.

¹⁷⁴ Oral tradition as told to author by O.I. Akiwenzie Jones and Fred Jones.

¹⁷⁵ Akiwenzie, *supra*, note 162.

¹⁷⁶ Stockland, *supra*, note 170.

one does not have to talk to Thomas very many minutes to realize that he is an ardent exponent of Indian rights; that he believes Indians have received and are still receiving a "raw deal" from the Indian department and the people of Canada as a whole, and that he deeply resents the inferior status he and other Indians occupy in Canadian citizenship.¹⁷⁷

Through the efforts of people like Charles and his brother, one can appreciate the endless hours which were expended to bring our proper position as self-governing peoples to the attention of the wider Canadian society.

B. *Perspicuous Contrast*:¹⁷⁸ *The Extinguishment of Self-Government*

To demonstrate that autonomy continued to be exercised under the *Indian Act*, I survey the decisions made by the Band Council of my people in the period from 1890 to 1920. Most of the decisions undertaken by the Band Council under the *Act* were community generated and were established to preserve the power of a self-administering community. This view will be in perspicuous contrast to the prevailing notions about Native self-government under the *Indian Act*.

Unfortunately, the received wisdom, that Aboriginal self-government was extinguished by the passage of the *Indian Act*, is even espoused by one of the leading historians of the Ojibway of southern Ontario, Peter Schmalz. Dr. Schmalz has concluded, "self-determination was generally taken away from the Ojibwa by government agents who became the overseers of almost every aspect of their lives."¹⁷⁹ This grave misconception in an otherwise admirable text on

¹⁷⁷ *Ibid.*

¹⁷⁸ See Taylor, *supra*, note 30 and Borrows, *supra*, note 3 at 7-10 for a description of the concept of perspicuous contrast.

¹⁷⁹ P.S. Schmalz, *The Ojibwa of Southern Ontario* (Toronto: University of Toronto Press, 1991) at 180. Dr. Schmalz further observed at 208-09 (emphasis added):

The *Indian Act* was administered in the Indian communities by the Indian agent. He has been described by some Indians as a cork on a bottle, the bottle being the reserve. Nothing entered it or went out from it without the official sanction of the agent. The past president of the National Indian Brotherhood, George Manuel, saw the agent as a usurper of aboriginal power: "It was the job of these new white chiefs to displace our traditional leaders in their care over our day-to-day lives in order to bring our way of life into line with the policies that had been decreed in Ottawa." No chief among the Ojibwa ever had the sweeping powers of the Indian agent ... Their duties involved carrying on all correspondence with the department, even

the Ojibway of southern Ontario is an example of scholarship that neglects to engage in a deep examination of the motivations and self-descriptions of those people under study. Once one examines how the Chippewas of the Nawash reacted to, and subverted, the imposition of the *Indian Act* to maintain self-government, it is clear that self-determination was *not* taken away from the Ojibway despite government agents who were hierarchically placed to attempt to control almost every aspect of our lives.

C. *Enduring Autonomy: Statecraft and Economic Development*

It is clear that several decision-making powers of the Band helped to maintain self-government despite the burdens imposed by the *Indian Act*. These powers can be categorized under the following labels: statecraft, economic development, education, civic procedural practices, social services, and the administration of justice.¹⁸⁰ To provide examples of our continuing autonomy under the *Indian Act*, I now examine how the Chippewas of the Nawash maintained an inherent exercise of power in the areas of statecraft and economic development.

involving the most trivial matters. He bought all supplies, including cattle, seed, and implements, from off the reserve for the band, and sold all farm produce. He was responsible for taking tenders for building construction and overseeing the work. He acted as judge in civil disputes, was responsible for the moral conduct of the band, and was the inspector of education on the reserve. Such a position required a man of great *education and ability*, but both were *often lacking*. The "wisdom" of the appointments was dictated by party patronage ... This was clearly illustrated when the Cape Croker Reserve received its agency appointments.

The above statement gives too much credit to the Indian agents in their exercise of power over our people. Though the agent no doubt had an influence over the Band, I argue that the lack of ability of the agents and the extraordinary ability and motivation of some of our people created a situation where the agent did not exercise a sufficiently broad degree of control so as to extinguish self-government. An agent could not continually run afoul of the Band's desires and retain control. In the wider perspective, an agent could only function effectively when he was considerate of the Band's goals and implemented their decisions.

¹⁸⁰ See M.S. De Mille, "Ethnohistory of Farming at Cape Croker" Appendix, (University of Toronto, M.Phil. thesis, 1971) [unpublished] for a transcript of Cape Croker Band Resolutions from 1890 to 1920.

1. Statecraft

Despite the imposition of the *Indian Act*, the Band still engaged in many exercises of statecraft by trying to secure political advantage from other governments. Statecraft was performed in concert with other bands and through the sole efforts of leaders within the Band.

Acting with other bands, the Chippewas of the Nawash belonged to a larger organization of Native people who attempted to improve their position relative to Canadian society at large. The organization employed to engage in this improvement was called the Grand Council; it was composed of the Ojibway and Iroquois peoples of Ontario.¹⁸¹ My great-grandfather, Charles Kegeponce Jones, was involved in many resolutions to send members of our Band to these councils,¹⁸² and he himself attended as a representative at times.¹⁸³ This council usually met every two years to consider topics that were important to our people in their relationship with the Canadian government and to discuss the development of their internal resources.

¹⁸¹ There is no central place to find a compilation of the minutes of the proceedings of the Grand Council. One must look in Band Council minutes, newspapers from the period [eg., *The Canadian [Warton, Ontario] Echo* (1879)], and printings published to report single conferences [eg., *Minutes of the Eighth Grand General Indian Council Held Upon the Cape Croker Reserve* (10-15 September 1884)].

¹⁸² See AO, MS 108, Cape Croker Reserve Records, Cape Croker Band Council Meeting Minutes (14 July 1890) [hereinafter Reserve Records]. “moved by Paul Johnson. 2nd by ... Jones that chief Toman ... be appointed as delegates from this band to attend the Grand Council at Hagersville in Sept. Carried.”

¹⁸³ Note the following motions in the Cape Croker Reserve Records:
“appoint Charles Jones as delegate to the Grand Council at Caradoc. carried.” AO, Reserve Records (27 April 1908).

“that Chas. Jones be appointed delegate for the Grand General Council to be Held at Walpole Island Reserve next June. carried.” AO, Reserve Records, motion 2 (7 May 1919).

“this council agree to send delegates to the Garden River Grand Indian Council 2nd week of June carried ... that ... Chas Jones ... Do attend Grand Council at Garden River.” AO, Reserve Records, motion 3 (4 May 1912).

“that undersigned officers are appointed to attend Grand Council at Parry Island on the 16th of June. Chief Jones.” AO, Reserve Records (1 June 1914).

“Appoint Chief Charles Jones ... as delegates to the Grand Council to be held at the Rama Reserve carried.” AO, Reserve Records, motion 2 (8 May 1916).

“this council appoint Charlie Jones ... to attend Indian Grand Council to be held at Chemong Reserve on Oct. 2, 1917 carried.” AO, Reserve Records, motion 1 (10 September 1917).

“that we send two delegates to the Grand Council this summer namely chief Chas. K. Jones.” AO, Reserve Records, motion 9 (6 May 1918).

While the Grand Council was sometimes pirated by settler society to “lead” the Indians¹⁸⁴ and was the forum for articulating divisions in Native society,¹⁸⁵ it also served the useful purpose of informing the federal government of our position on issues affecting the Aboriginal community. The Grand Council stated its purpose in this way:

The objects of the League is to bring together at Grand Conventions, representatives of all tribes, and in this way get acquainted, be as brothers, sympathize and learn each others wants and work for each other; aiming at all times to accomplish some good for the general peace, happiness and welfare of all. By the Union we will be strong in making our representations for redress of any grievances we may have to the Government; and be equally united and strong to help ourselves gradually into a better state of moral, social and industrial life. By union we see what unions can do for fellow members in all walks of life. Equally united will we be able to uphold our treaty rights and privileges as British subjects, and by legitimate means demand more freedom and latitude in the management of our local affairs.¹⁸⁶

The council made many petitions to the government in striving to “uphold [their] treaty rights.” For example, the council as a committee petitioned:

We the Grand General Indian Council assembled at Wikwemikong Indian Reserve, June 16th [1920], do hereby petition the Government of Canada to adjust the Treaty rights of Indians in Ontario concerning hunting and fishing privileges as stipulated in various treaties and surrenders.

That when the Indians surrendered their lands to the Crown, the fish and game were not surrendered, and in certain treaties it states that these provisions [are] to hold good as long as the grass grows and the water flows, and as long as the British Government is in existence ...

And, further, to allow the said Chiefs and their tribes the full and free privilege to hunt over territory now ceded by them and to fish in the water thereof, as they have heretofore been in the habit of doing. That in view of these facts and reasons, we petition the Government of Canada to adjust the grievances of the Indian Race of this country.¹⁸⁷

¹⁸⁴ Schmalz, *supra*, note 179 at 196.

¹⁸⁵ My great-great-grandfather, Peter Kegeedonce Jones, stated that he was “joyful” when the Iroquois no longer dominated the Council because he felt more could be accomplished without their influence. His brother, Charles Big Canoe, a chief at Georgina Island, also expressed a similar opinion. *The Canadian [Warton, Ontario] Echo* (17 August 1879) 4.

¹⁸⁶ *The League of Indians of Canada* signed on behalf of the executive, Chief F.L. Loft, President (Toronto: 1918).

¹⁸⁷ Abstract of the Proceedings of the Grand General Indian Council of Ontario (16-19 June 1920) at 5-6. Charles Kegeedonce Jones attended this meeting as Chief of Cape Croker.

Besides making their views known to the government relative to treaty obligations, the Grand Council also resolved to frequently petition the government to obtain “more freedom and latitude in the management of [their] local affairs.” An example of this form of lobbying is found in the proceedings of a 1900 Grand Council meeting. The minutes of the meeting read:

Moved by F. Lamorandiere and Chief Wm. Wawanosh, that a very serious mistake were too often made [sic] by the Government and a very great misfortune for the Indians to have appointed to guard and watch over their interest, men, as Indian Agents, who are known to be habitual drunkards, and request the authorities, in the future, to exercise more care in choosing sober men to such positions.¹⁸⁸

The Grand Council at another time asked for greater prerogatives in managing their affairs by requesting:

Whereas the Indians of Canada number about one-sixteenth of the population, whereas they are taxed just to the same extent as most of their white fellow subjects, whereas since they are denied equal enjoyment of the franchise, they suffer the grave injustice intolerable to a free people of taxation without representation, and have no voice in public affairs as all their fellow subjects have, and whereas the Grand Indian Council resolves to ask the Government of the Dominion in common to give the Indians of Canada representation in Parliament as the Government of New Zealand has given representation to the Maories by permitting them to elect one or more members of Parliament in proportion to numbers of the population. Carried.¹⁸⁹

One can see from the foregoing examples that the Grand Council was a vehicle for the exercise of self-government. In concert with other Native peoples in Ontario, we were able to make known our views relative to our Aboriginal and treaty rights regarding hunting and fishing, and sovereignty. When one remembers that this council was a successor to the Council of Three Fires¹⁹⁰ and an extension of the League of Six Nations, one can appreciate that our people continued to

¹⁸⁸ Minutes of the Sixteenth Grand General Indian Council Held Upon the Indian Reserve at Wikwemikong (7-12 June 1900) at 12.

¹⁸⁹ Minutes of the Eighteenth Grand Indian Council of Ontario, Held Upon the Saugeen Indian Reserve (9-13 June 1904) at 7-8.

¹⁹⁰ The Council of the Three Fires was succeeded by the General Council of Christian Ojibways. See Copway, *supra*, note 1 at 146 for a description of the Council of Three Fires's activities in trying to secure an Ojibway homeland in Saugeen territory. This council was then replaced by the General Grand Indian Council of Ontario. In the mid-1900s, the Grand Council was replaced by the Union of Ontario Indians.

exercise traditional forms of community empowerment through the practice of statecraft.

Statecraft by the Nawash Band without the assistance of other Native people also was engaged in by our people at Cape Croker.¹⁹¹ The subject of our petitions and delegations was usually the Indian Department's mismanagement of their responsibilities towards us. In particular, we voiced frequent complaints to the federal authorities about the incompetence of Indian agents and the misuse of annuity payments.

One such instance of dissatisfaction was with the Indian agent, John McIver. The Band made known their objections regarding his performance:

Moved by James Solomon, seconded by J.W. Keeshig that owing to the constant absence from the reserve of our agent who is attending to the work of his farm six miles away with gross neglect of his duties as an Indian agent, the interest and welfare of the band suffers in consequence thereof upon the following grounds: First, we have grievances and torts that cannot be settled except by an agent according to the law. Secondly, our moral welfare suffers the most of all other infractions that require quick and immediate action to be exercised by the agent and there is none here and our offenders go free and are ready to do worse. Thirdly, our finances also suffer from the fact that collections are made by the agent on timber and otherwise are retained by him an indefinite and unnecessary length of time, thereby losing the interest that might accrue. Fourthly, the grants of our moneys obtained from the department for works to improve the reserve for our benefit are retained by him till such times as it suits his convenience or the business of his farm. Sometimes the work has to be left over till the following year and he has the use of the money at that time for nothing. Fifthly, we have repeatedly found him under the influence of liquor, which alone is sufficient to disqualify him from holding the position. Sixthly, the agency house has been occupied by a white man and his family who enjoyed privileges herein taking his firewood from our forest and pasturing his cattle, etc., all this was done by the agent. Seventh, the agent trades and barter with the Indians which is entirely prohibited by the rules of the department. Eighth, a magistrate has to be imported from Warton to administer the law here, a duty that devolves upon the agent. Ninth, this delinquency of duty has now existed for years so that the band and council are at present completely wearied out by such conduct of the agent. The Band have their all at stake while he has nothing. Tenth, having lost all confidence in our agent therefore, we want all correspondence emanating from us to pass through the hands of the secretary till such time as change is made. Eleventh, we the Band in Council assembled most earnestly urge upon your department to remove without the loss of time our present Indian agent from his position, as his usefulness is gone, and appoint another of good

¹⁹¹ We would often send our chiefs to Ottawa to present our grievances relating to the Indian Department's discharge of their responsibilities. For example, "We appoint a delegation to be composed of as follows. Mr A.J. Duncan and chief Charles Jones and Councillor Peter Nadjivan to go interview Hugh Clark the provincial member on some grievances of the Newash Band the expenses to be paid from our funds. carried." AO, Reserve Records, motion 8 (7 July 1915).

moral and sober character and competent to hold the office, having no regard to political supporters.¹⁹²

When one reads this petition, one might conclude that the Indians exercised no self-government under the *Indian Act* due to their apparent dependence on the Indian agent. When this observation is combined with the fact that the above petition did not result in the removal of the agent from office,¹⁹³ it appears that self-government was extinguished amongst our people.

Despite the indifference that the government showed to our circumstances, this petition is evidence that self-government had not been extinguished. We were operating virtually free from any outside governmental influence. With no functioning agent in place, the decisions that we made and implemented were entirely within the control of the Band. If self-government involves people solving their own problems in an authoritative and general way,¹⁹⁴ the *Indian Act* certainly did not extinguish this ability. The inadequacy of the *Act* and the incompetency of those administering it required that we deal with our problems in an autonomous way. That is what we did. Though under a layer of alien regulation, we administered the affairs of our community from a position of inherent, not delegated, authority, and we continued to find solutions to our problems from within the community, as we had done for thousands of years.

Our complaints about the management of our funds also demonstrate the continued exercise of self-government.¹⁹⁵ At one level,

¹⁹² AO, Reserve Records (7 July 1905).

¹⁹³ Schmalz, *supra*, note 179 at 218.

¹⁹⁴ See Cassidy & Bish, *supra*, note 14.

¹⁹⁵ Note the following Band resolutions:

That a deputation of head men go and interview the government about the shortness of annuities in the last few distributions ... that the band are not satisfied of the smallness or the decrease of the capital, they request the department to give an explanation and if not satisfactory a deputation will go interview the Dept. the figures to laid down to go back as far as 1880. Car'd.

AO, Reserve Records (1 May 1899).

"that the department be requested to Sanction the visit of a deputation from this band for the purpose of ascertaining the reason of the shortness of their funds and the fast increasing expenditures taken from their money and Several other items mentioned which they want explained to them." AO, Reserve Records (2 February 1903).

"that ask the Indian Dept. of our money being small at the last two pays & the reason why so advise. carried." AO, Reserve Records, motion 6 (1 December 1913).

it might appear that self-government was extinguished because other people had the control of our fiscal resources. However, governments often have their fiscal resources tied up in another country's possessions.¹⁹⁶

Although our petitions regarding finances were not immediately effective, they too demonstrate self-government. It is true that we did not obtain immediate satisfaction relative to the management and disposition of our funds; however, the chronicle of our objections now forms a record which will enable us to establish that our funds were mismanaged. The value of this record should not be underestimated. If one takes our longer view of our history, the ineffectiveness of our petitions or the postulated extinguishment of our self-government cannot be established by reference to contained time periods. Our expressions of dissent regarding finances assist in preserving our self-government because it leaves a trail for us to trace in reclaiming our entitlements.

Therefore, our people were able to maintain self-government through the exercise of statecraft in concert with other First Nations and within the Nawash Band. Our petitions and delegations show that our responses to regulation under the *Indian Act* did not dislodge the inherent exercise of community generated management and sovereignty.

2. Economic development

In the field of economic development, my great-grandfather and his people continued to exercise powers of governance over their material and physical needs. One should not ignore the decisions of the community which helped to provide the sustenance that the Band needed to survive, even though, by the standards of settler society, many of my people were impoverished. Food, and money for food, were

See also PAC, RG 10, vol. 2840 and vol. 2208 for many examples of the reduction in the sale price of Indian lands and the waiving of timber dues. These reductions resulted in the loss of a substantial sum of money.

¹⁹⁶ For example, many self-governing entities have the control of their financial resources placed in the hands of other institutions or governments, yet we would not consider their power of self-government extinguished for that reason. See T. Hayter & C. Watson, *Aid: Rhetoric and Reality* (London: Pluto Press, 1985) for a description of how the World Bank and the International Monetary Fund control the financial resources of many self-governing entities.

provided in three principal ways: farming, lumbering, and hunting and fishing. Band resolutions for the maintenance of these methods of subsistence were passed regarding: the lease and pasture of farm land,¹⁹⁷ the acquisition of seeds for cultivation,¹⁹⁸ the purchase of livestock,¹⁹⁹ negotiations over sales of timber on our lands,²⁰⁰ and the harvesting of their fisheries.²⁰¹ The detailed decisions of the Band relating to their food—as evidenced in their minutes over a period of forty years²⁰²—demonstrates that the Band did not have its power of material development extinguished by the *Indian Act*.

A short review of the preservation of our fisheries—one of three means of sustenance—provides an example of how self-government in the area of economic development was not extinguished. Pressure on Ojibway fisheries existed from the earliest settlement of Europeans in Ontario. As early as 1797, the British government was made aware of

¹⁹⁷ See AO, Reserve Records (2 June 1902).

That hand bills be printed and circulated announcing the willingness of the band to open the pasture cattle in the vacant land of the reserve at the rate of fifty cents pr month pr head ... that any cattle trespassing on the reserve shall be put in the pound when it is ascertained that the fees required have not been paid.

¹⁹⁸ See AO, Reserve Records (5 March 1900).

[T]hat owing to some of our people being in want of seed and no means to obtain it the Department is asked if they would be willing to grant a sum of money out of our funds not to exceed one thousand dollars to be given to those who would make good use of same & paying it back with interest out of their shares if interest money in two payments.

¹⁹⁹ See AO, Reserve Records (5 December 1898).

That with a view to encourage the pursuit of agriculture and make use of the vast area of pasture lands in the reserve and assisting in making the homes industrious Indians more comfortable & attractive We ask the department to allow our agent to obtain good stock, in cows, sheep & pigs or even horses etc. and have it so arranged that they cannot sell the same for a certain time, this privilege to be given to those deserving of help and to those who attain a proficiency in economy or may be helped to get lumber in the same way.

²⁰⁰ See AO, Reserve Records, motion 7 (20 July 1914). “[T]his band requests the Indian department to pay expenses incurred by Peter Nadjiwan and Chief Jones to Walkerton in regard to timber carried.”

²⁰¹ See AO, Reserve Records (7 October 1907). “That we appoint Ed Johnston to act as fishery overseer on the north westerly side of Cape Croker & on the Easterly side Paul Johnson to act & see that no white man nor a french man to fish on Indian fishing grounds. Carried.”

²⁰² For a detailed and extensive record of community decisions relative to our maintenance and development, one should refer to the Cape Croker Reserve Records, MS 108 microfilmed and preserved at the Archives of Ontario.

the problems created by settler encroachment on Indian fishing grounds.²⁰³ At first, the rapid influx of settlers nearly destroyed the Ojibway fisheries.²⁰⁴ Only the insistence of our people and the early support of the federal government permitted us to maintain control over our fishing rights.

In 1884, settlers started to move around the Nawash reserve in greater numbers; they desired rights to fish in the nearby waters.²⁰⁵ The Band made numerous petitions requesting the preservation of their fishing grounds.²⁰⁶ These petitions, while often supported by the government, reveal that the impetus for the management of fisheries was inherent and community generated. The Band Council addressed the ambitions of these settlers in one such petition:

It has come to the ears of the Indians that the white fishermen around here with the help of the Fishery Inspectors of the Owen Sound and Saugeen District are going to apply to the Government to have the Indian Fishing grounds abolished and if this movement is carried out will deprive the Indians of one of their principal means of support.²⁰⁷

The Indian Department through its agent supported us in our petition and stated, "The fishing privileges given them by your department is so beneficial that they could not do without it."²⁰⁸ Thus, through our petitions and the government's assistance, our fisheries were officially free from settler incursions for a while.

The Canadian government further respected our views regarding our fisheries as evidenced by the letter of a departmental official in 1875. He stated:

The Cape Croker Indians have been for many years in possession of the limits named in this letter without payment of any fee. There are about 450 Indians residing here and depend largely upon fishing for there winter supplies ... these restrictions really involve nothing inconsistent with the spirit of any treaties. The Minister, whilst insisting on the

²⁰³ The British governmental officials pursued a policy of protecting the fishing places and burying grounds of the Mississaugas. E.A. Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe with allied documents relating to his administration of the Government of Upper Canada* (Toronto: Ontario Historical Society, 1923-31) vol. 4 at 239.

²⁰⁴ Schmalz, *supra*, note 179 at 150.

²⁰⁵ PAC, RG 10, file 5530, microfilm, reel C-11125 (10 December 1884).

²⁰⁶ *Ibid.*

²⁰⁷ PAC, RG 10, vol. 1972, file 5530, microfilm, reel C-11125, petition from Mr. Miller to the Minister of Marine and Fisheries (27 April 1876).

²⁰⁸ *Ibid.*

legal construction of these treaties, desired to be distinctly understood that the circumstances and the views of the Indians in connection with the same, will always be considered in a liberal and paternal spirit ... These provisions ought certainly to ensure them full enjoyment of fishing privileges contemplated by these treaties.²⁰⁹

Our expression of the value of the fisheries helped us to maintain power over them and thus to preserve a primary means of sustenance.

Besides sending petitions to the government for the preservation of our Aboriginal and treaty rights regarding our fisheries, our people also actively engaged in the protection of our fisheries through direct action. The protection of our fisheries was formally monitored by people within the Band employed for this very purpose.²¹⁰ As one official noted, "The Indians have held these waters for nobody knows how long. They have spent their time and labour in clearing and protecting the fishing grounds."²¹¹

Sometimes the protection of our fisheries brought us into conflict with the society around us. For example, a regional newspaper reported that we had "committed outrages" by taking the nets of people who were fishing in our waters.²¹² We were unjustly accused of theft and of breaking the laws of Canada, yet we were only enforcing our entitlement to our fisheries. We were using direct action to ensure that our inherent decision-making powers regarding the means of sustenance were maintained. We did not rely solely on the Canadian government for the preservation of our sovereignty over our fisheries: we also used direct methods to ensure our fisheries remained productive.

While the first decades of the twentieth century saw much of our fishing grounds disappear as settlers continued to press the government

²⁰⁹ PAC, RG 10, vol. 1972, file 5530, microfilm, reel C-11125, letter from William Plummer, Superintendent of Indian Affairs, to E.A. Meredith, Minister of Interior (9 March 1876).

²¹⁰ Note the following Band resolutions:

"that Louis Nawash be fishing guardian around White Cloud [Island] and that side of the Cape ... that John Akiwenzie be fishing guardian around for the Hope Bay side of the Cape Croker fishing ground, car'd." AO, Reserve Records (5 October 1896).

"that there are people hauling Sein at Sidney Bay and Hope Bay on Indian fishing Ground & that it may be reported to the fish overseer of that place." AO, Reserve Records (1 August 1904).

"that we appoint Ed Johnson to act as fishing overseer on the north westerly side of Cape Croker & on the easterly side Paul Johnson to act & see that no white man nor a French man fish on the Indian Fishing Grounds. Carried." AO, Reserve Records, Minutes (14 October 1907).

²¹¹ PAC, RG 10, vol. 1972, file 5530, microfilm, reel C-11125, letter from William Plummer, Superintendent of Indian Affairs, to E.A. Meredith, Minister of Interior (2 June 1870).

²¹² "Indian Outrages" *The Collingwood Enterprise* (28 September 1875).

for concessions, the Band continued to assert its sovereignty over its fisheries. It stated in 1902:

Having read the letter of the Department bearing date 18th July, 1902, and having seen the place showing territory which the fishing licence issued to the Indians is intended to cover, this Band solemnly protests against diminution or curtailment of their rights and privileges enjoyed and that the reasons assigned for reducing the area are considered to be insufficient, unacceptable and unjustifiable; and the Band looks for speedy restoration of their undoubted rights with as little delay as possible through the Department of Indians Affairs their rightful protector and guardian of rights.²¹³

Even though the department was not as vigilant in supporting the protection of our fisheries as it had been previously, the assertion of our sovereignty demonstrates that we continued our unbroken chain of control over our economic resources. Our fisheries remain important to us today. That we never relinquished this claim and that we constantly sought to enforce it²¹⁴ demonstrate that our powers of self-government relating to economic development were not extinguished under the *Indian Act*.

Our exercise of self-government in the areas of statecraft and economic development has increasingly been strengthened and continues to proceed along an upward course today.

VI. CONCLUSION

This article demonstrates that self-government has never been extinguished among the Chippewas of the Nawash First Nation. I have traced the circle of our power by creating an understanding of events faced by my ancestors through their eyes. Our people existed as an autonomous nation from time immemorial. Our sovereignty extends from community generated questions and answers to the opportunities and obstacles which we encountered.

During the life of my third great-grandmother and great-grandfather, Widow Sakeon and Kegedonce, events—including the acceptance of the *Royal Proclamation*, the War of 1812, and the

²¹³ AO, Reserve Records (13 August 1902).

²¹⁴ For a description of the importance of the fisheries of the people even at this late date, see L. Keeshig, "Historical Sketches of Cape Croker" *The Canadian [Warton, Ontario] Echo* (February 1931).

acceptance of Christianity—demonstrate that our approach in contending with such incidents continued to be influenced by our aspiration to remain free to direct the path that our community would follow. The *Royal Proclamation* illustrates our desire to remain undisturbed by settler society in our own lands. The War of 1812 shows that we were willing to engage in warfare to preserve our territories. The acceptance of Christianity evidences an attempt to use different structures of organization to preserve the power that we had over our decisions.

The lives of Margret McLeod and Peter Kegedonce Jones similarly demonstrate the preservation of self-government in our community. Margaret exemplifies the role of Ojibway women in maintaining self-government through the practice of health care, linguistics, and education. These skills provided internally generated, community methods of solving the problems that we experienced. Peter Kegedonce Jones also participated with his people in the preservation of sovereignty through entering into treaties with settler society that were intended to improve our material circumstances and shield us from the imposition of external control. From our perspective, Treaties No. 72 and No. 82 were negotiated as an exercise in self-government to provide for the continued sovereignty and prosperity of our Band. We continue to expect the government to honour its promises and our sovereignty in the interpretation of these treaties.

Finally, one sees through the eyes of my great-grandfather that the imposition of the *Indian Act* did not extinguish our ability to continue to exercise inherent decision-making power. While the *Act* did impose a layer of regulation that was burdensome for us, we nevertheless continued to develop answers to our questions based on the wishes of our people. Community generated decisions are exemplified by examining the continued practice of statecraft, and the protection and enhancement of economic development.

The above conclusions support a finding of an inherent, unextinguished, and continuing exercise of self-government among the Chippewas of the Nawash First Nation. These conclusions are in contrast to prevailing opinions about the status of our sovereignty. The received wisdom in many legal and political circles in Canada today is either that our sovereignty has been extinguished or that it is delegated from the federal government. The information that I have presented, when placed beside accounts of Native society that do not recognize the

existence of continued sovereignty, demonstrates that an alternative vision of life must be given space in Native/Canadian political discourse.

Traditional discourse can be reinterpreted to create a new vision of Native self-government which recognizes and affirms the Aboriginal position as inherently self-governing peoples. In particular, this reinterpretation in understanding Native self-government suggests that the validation of our inherent sovereignty can be utilized to rejuvenate and endow our society with the power that it requires to emancipate our people from the structures of debilitating hierarchy and dominance in which we find ourselves under the *Indian Act*. Specifically, the validation of sovereignty through the recognition, entrenchment, and promotion of our historical entitlement to self-government would allow us to create a society which confers on us greater liberty in the pursuit of our collective goals. These proposed actions would incorporate my ancestors' understanding of history and would infuse Western history and thought with alternatives in restructuring society. The inclusion and promotion of our perspective relative to our place in this land would assist in diminishing suffering amongst our people and would provide the foundation upon which we could once again attain harmony among ourselves and with others to share in the abundance of Mother Earth. The stories of my ancestors will not die. Let us give their voices a place reconstructing our world.

