

# MASCARENE'S TREATY OF 1725

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Prior to 1984 there was no known treaty that specifically protected the access of Maliseet people in New Brunswick to fish and game resources. Maliseets were consistently charged and found guilty of violating provincial fish and game laws. The only treaty that did protect their access, and seemed to include the Native people of "St. Johns", was *Dummer's Treaty of 1725*.<sup>1</sup> However, in reality this treaty provided no protection. On the British side, it was signed and ratified only by Massachusetts authorities. It was not known to have been signed and ratified in Nova Scotia, which, at the time, encompassed what is now New Brunswick. As New Brunswick is a successor government to Nova Scotia and not to Massachusetts, *Dummer's Treaty* was never deemed to apply in New Brunswick. Consequently, Maliseets charged with fish and game violations in New Brunswick were generally convicted.

Not only were the known treaties between Nova Scotia and the Maliseets silent on the matter of hunting and fishing, they also contained only the obligations of Micmacs and Maliseets, and few or no corresponding benefits like those found in the better known *Dummer's Treaty*. This raises serious questions as to whether or not they can even be called "treaties". It is an essential requirement of natural law that there be benefits to both sides in any treaty. These questionable treaties included: the mysteriously different version of *Dummer's Treaty* signed at Annapolis in 1728, the same treaty signed at Halifax in 1749,<sup>2</sup> and the 1760 treaty with similar text.<sup>3</sup>

Almost oblivious to this apparently hopeless situation Maliseets continued to cherish the tradition that there had indeed been treaty promises made reserving their access to fish and game. For a people whose culture and survival had always depended on hunting and fishing, and whose land had never been surrendered, there was little choice but to continue fishing and hunting even if no treaty could be found. Whenever Maliseets were taken to court they were challenged to produce the written evidence, the treaty, or accept conviction.

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<sup>1</sup>(1853) 3 Collections of the Maine Historical Society at 416-20 and (1916) 23 Collections of the Maine Historical Society at 186-203 [hereinafter *Dummer's Treaty*].

<sup>2</sup>Canada, Department of Citizenship and Immigration, *Indian Treaties and Surrenders from 1680 to 1903*, vol. 2 (Ottawa: S.E. Dawson, 1904) at 198-201 and P.A. Cumming & N.H. Mickenberg, eds, *Native Rights in Canada* (Toronto: General Publishing, 1972) at 302-06.

<sup>3</sup>RG 1, vol. 36, doc. 48 1/2 and vol. 188, Public Archives of Nova Scotia [hereinafter PANS].

Ironically, the opposite occurred in Nova Scotia. The Micmacs in Nova Scotia did have a treaty, the *Treaty of 1752*, which guaranteed their access to the resources needed for survival, specifically fish and game. Nevertheless, the Nova Scotia government's position, derived from a 1929 court decision,<sup>4</sup> was that Maritime treaties were not true treaties. According to Nova Scotia, they were merely laws imposed by the English, who by 1725 had, supposedly, acquired authority to do so. They argued that these laws did not entrench any hunting and fishing rights, but only recognized them for the time being.<sup>5</sup> This meant they could be changed at any time. Therefore, despite the treaty, Micmacs were also being convicted for hunting and fishing.

In 1982 Native people across Canada feared that patriation of the Canadian *Constitution* would afford the federal and provincial governments even greater opportunity to disregard treaties between Native nations and the British Crown. In the beginning Natives lobbied against patriation. However, when patriation became inevitable, they appealed to the British House of Lords to rule that Canada would inherit a legal obligation to uphold the treaties as successor to Great Britain.<sup>6</sup> The House of Lords agreed and the words "existing aboriginal and treaty rights" were inserted in s. 35 of the new *Canada Act* to specify and confirm Canada's legal obligation.

While Natives were accustomed to having their treaties ignored or not respected, with the principle of Aboriginal and treaty rights entrenched in the *Constitution*, they fully expected to see a change. They were totally unprepared for what subsequently occurred. In 1985 the Supreme Court of Canada overruled Nova Scotia's 1929 *Syliboy* decision, which stated that Maritime treaties were not true treaties. The Supreme Court declared that the *Treaty of 1752* was a valid treaty under s. 35 of the *Canada Act*.<sup>7</sup> In effect, the Supreme Court had upheld the treaty right of Nova Scotia Micmacs to hunt, but incredibly Nova Scotia still refused to respect and honour these treaties. It continued to charge and convict Micmacs under provincial fish and game laws for five more years. In doing so, Nova Scotia authorities not only demonstrated their usual disrespect for Natives, but they also showed a lack of respect for the *Constitution* and the Supreme Court. It was this audacity that shocked Native people.

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<sup>4</sup>[1929] 1 D.L.R. 307 (N.S. Co. Ct) [hereinafter *Syliboy*].

<sup>5</sup>See M. La Forest, "Native Hunting and Fishing Rights in New Brunswick" (1980) 29 U.N.B.L.J. 111 at 117-120; and D. Hurley, *Report on Indian Land Rights in the Atlantic Provinces* (Ottawa: unpublished, 1962) at 10.

<sup>6</sup>See *R. v. Secretary of State for Foreign and Commonwealth Affairs, ex parte Indian Association of Alberta et al.* [1982] 2 All ER 118.

<sup>7</sup>*R. v. Simon* (1985), 23 C.C.C. (3d) 238 (S.C.C.) [hereinafter *Simon*].

In 1984 the missing part of that "mysteriously different version of *Dummer's Treaty*" signed by Maliseets and Micmacs at Annapolis in 1728, was discovered. It was the part containing English promises including one "[t]hat the Indians shall not be molested in their persons, Hunting, Fishing and Planting Grounds."<sup>8</sup> Finally, Maliseets had the treaty the provincial courts had long challenged them to produce. Two hunters, whose case had been in court for some time, were immediately acquitted on the strength of the new documents, and a new day seemed to have dawned.<sup>9</sup>

This discovery provided the Province of New Brunswick an opportunity to take a different and more honourable approach to treaties with Native people. However, the Province chose not to do so. It was at this point that New Brunswick provincial authorities chose to follow the questionable path Nova Scotia was following. They challenged the validity of the newly discovered version of the 1725 treaty and appealed the decision of their own court. Suddenly, the treaty the province had challenged Natives to find was now being disputed in spite of the provisions in the new Canadian *Constitution*. Furthermore, the province continued to pursue this appeal even after the resounding 1985 Supreme Court decision of *Simon*, which recognized the validity of another Maritime treaty. Fortunately, the New Brunswick Court of Appeal also ruled against the appeal on the basis of the newly discovered documents.<sup>10</sup>

A further point to be made is that the newly discovered documents also have enormous significance for the Nova Scotia cases. They seriously challenge the Nova Scotia government's argument that the treaties were merely imposed laws which did not entrench any hunting and fishing rights. Beyond a doubt, the documents show that Nova Scotia colonial authorities fully intended to make treaties in the proper sense of the word, that is, as agreements between Native nations and the British Crown. It is critically important to note that treaties are based on the Law of Nations and on principles of natural law, which state that one nation does not have authority to impose laws on another. Treaties are statements of reciprocal obligations which, once made, are entrenched, have the force of law, and cannot be terminated by one party unilaterally, or by anyone who is not a party to the treaty. Even outbreaks of violence by one side or the other cannot

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<sup>8</sup>*Mascarene's Promises*, PRO, CO 217, vol. 38 at 99 and vol. 4 at 349. The included foldout is a reproduction of *Statute 6 and 7*, Elizabeth 2d, c. 51, from the Public Record Office, England.

<sup>9</sup>*R. v. Paul and Polchies* (1986), 1 C.N.L.R. 105 [hereinafter *Paul and Polichies*]. They had been in court since October 1984.

<sup>10</sup>*R. v. Paul and Paul* (1987), 80 N.B.R. (2d) 1 (N.B.Q.B.) [hereinafter *Paul and Paul*].

justify termination when a mechanism of dispute resolution is built into the treaty.<sup>11</sup>

Two years after the failed New Brunswick appeal, the Nova Scotia courts quietly followed suit. In the case of *R. v. Denny et al.*, the provincial Court of Appeal recognized the Aboriginal right to fish<sup>12</sup> and after a much publicized trial, another court dismissed charges against twelve Micmac hunters.<sup>13</sup> These watershed cases for Nova Scotia Micmacs were followed in quick succession by three other Canadian cases that would irrevocably change the disposition of most hunting and fishing cases.<sup>14</sup> One of these was the famous *Sparrow* case in British Columbia. In this case the court affirmed the Aboriginal right to fish, subject only to conservation concerns, even where there had been no treaty guarantees. It also placed the burden of proof on the Crown to show that such rights had been explicitly extinguished prior to 1982, or surrendered by the First Nation involved.

Of even greater relevance than *Sparrow* was the second of the three cases, *Sioui*, which was decided by the Supreme Court in May 1990. This decision broadened the definition of a treaty to include far more than a formal treaty document. It stated that a formal treaty document should not be necessary as long as there is evidence from both parties showing the intention to create mutually binding obligations, and subsequent conduct reflecting those obligations. The decision went further to state that "a treaty cannot be extinguished without the consent of the Indians concerned." The ramifications of this precedent-setting decision have been far-reaching. Since this decision courts have consistently decided in favour of Native parties on the basis of this expanded definition of "treaty".<sup>15</sup>

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<sup>11</sup>There have been many challenges to the legitimacy of Indian treaties in the past, but courts outside of the Maritimes, in both Canada and in the United States, have generally upheld the view that treaties with Indian nations have the same force and dignity as treaties with other nations. In the few cases when the courts did not uphold this view that Indian treaties were international in nature, they were still viewed as contracts over which provincial legislatures had no power. Only the federal Parliament, it was ruled, had this power, but even then there was assumed to be a strong obligation on Parliament to uphold solemn treaty agreements made in the name of the Crown. See F.S. Cohen, *Handbook of Federal Indian Law* (Albuquerque, n.d.) at 33-34; B. Morse, *Aboriginal People and the Law* (Ottawa: Carleton University Press, 1985) at 122-271; and A. Jacomy-Milette, *Treaty Law in Canada* (Ottawa: University of Ottawa Press, 1975) at 257-95, 278-79, 283-85.

<sup>12</sup>(1990), 55 C.C.C. (3d) 322 (N.S.C.A.). More specifically this case recognized the Aboriginal right of Micmacs to fish for food in priority over all other user groups.

<sup>13</sup>Unreported decision of the Nova Scotia Provincial Court referred to in: "Will Give Up Case" *The Daily Gleaner* (23 March 1990) at 3.

<sup>14</sup>*R. v. Sparrow* (1990), 56 C.C.C. (3d) 263 (S.C.C.) [hereinafter *Sparrow*]; *R. v. Sioui* (1990), 56 C.C.C. (3d) 225 (S.C.C.) [hereinafter *Sioui*]; and *R. v. Horseman* (1990), 55 C.C.C. (3d) 353 (S.C.C.).

<sup>15</sup>See *Sioui*, *ibid.*

**Document A and B: "Articles to be Demanded of the Indians" and "Instructions to Major Paul Mascarene"<sup>16</sup>**

The first two documents under consideration, "Articles to be Demanded of the Indians" and "Instructions to Major Paul Mascarene", contain the secret instructions from the Governor (Lawrence Armstrong) and the Council of Nova Scotia to the province's chief delegate to the 1725 treaty conference in Boston. While the documents list some promises to be made to the Natives, they also reveal the intent of the English authorities in Nova Scotia to use the treaty to take Native lands and impose controls on war-weary Micmacs and Maliseets living within the bounds of what was then Nova Scotia. Critical here is the fact that these lands, part of ancient Acadia, had been ceded by France to England in the *Treaty of Utrecht* (1713) without the consent of the Native people who had inhabited the land since time-immemorial. Among the articles Mascarene was to demand was one insisting on Native submission to English law, another requiring Native agreement that "the British King, his heirs and successors" are "the sole owners ... of Nova Scotia" and another requiring Natives to respect existing English settlements in the Province and those "lawfully to be made." In effect, Native people were to be asked to surrender both their lands and their inherent authority to govern themselves.

**Document C: *Mascarene's Treaty of 1725*<sup>17</sup>**

The resulting treaty, properly entitled *Mascarene's Treaty of 1725*,<sup>18</sup> is actually the

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<sup>16</sup>*Instructions from Armstrong to Mascarene*, 31 August 1725 – Transcript MG 11, CO 220, NS "B", vol. 1, at 41-42, 51-60, PAC.

<sup>17</sup>*Mascarene's Treaty of 1725* as signed 4 June 1726, Annapolis Royal, enclosed in Governor L. Armstrong to Secretary of State, 24 November 1726, CO 217/38 at 115-17 (MG 11, Reel B-1034).

<sup>18</sup>Six sets of these documents (*Mascarene's Treaty*, *Mascarene's Promises*, and *Nova Scotia Ratification*) were sent to the Colonial Office in 1726 on three occasions, July, August, and November, with copies each time to both the Lords of Trade and the Secretary of State. Only two versions of the treaty have all seventy-seven of the Native signatures and appear to be originals. They were sent to England in November 1726. Another set of all the documents was sent by the Lords of Trade and Plantations to the Secretary of State in July 1749. The same Colonial Office references are used for originals in the Public Record Office and photocopies from microfilm in the Public Archives of Canada. Where available, references for PAC transcripts are also included, but it should be noted that accuracy of transcripts varies greatly. All originals went as enclosures in the following letters: Lieutenant Governor Armstrong to Secretary of State (Lord Newcastle) (26 July 1726) CO 217/38 at 95-99, (MG 11, Reel B-1034), transcript MG11, CO 217, NS "A", vol. 16 at 203-10, and vol. 17 at 36-48, PAC; Armstrong to Lords of Trade and Plantations, (27 July 1726) CO 217/4 at 348-53 (MG 11, Reel B-1023); Colonel John Doucett to Secretary of State (16 August 1726) CO 217/38 at 108-10 (MG 11, Reel B-1034); Doucett to Lords of Trade (16 August 1726), CO 217/4 at 316-321, (MG 11, Reel B-1023) and transcript CO 217, NS "A", vol. 17 at 55-57, PAC; Armstrong to Secretary of State (24 November 1726) CO 217/38 at 114-17 (MG 11, Reel B-1034); Armstrong to Lords of Trade (24

same as the "mysteriously different version of *Dummer's Treaty*" that was signed at Halifax in 1728 and printed previously as *Treaty No. 239* in *Indian Treaties and Surrenders: 1608-1903*.<sup>19</sup> The mystery as to why it is so different from *Dummer's Treaty* is now resolved in light of the secret demands the Nova Scotia government was making on Mascarene. In effect, Mascarene was charged with the task of producing a treaty tailored specifically to the desires of colonial authorities in Nova Scotia. Curiously, this treaty shows evidence of many of Nova Scotia's demands, but not all.

The suggested wording of the most contentious demand made on the Indians, that asking for surrender of their lands, appears to have been modified from describing the King as "sole owner ... of Nova Scotia" to "rightful possessor." Since documentation relating to this treaty is sparse, the exact significance of this change of wording cannot be determined at present. It is likely that such modifications were made at the insistence of Natives, for to the Native people of Nova Scotia land was a sacred source of life, like water or air. It could not be owned, bought, sold, or abused, but only respected, used, and shared. For them to give up their land was to terminate their existence, so it is inconceivable that they could have agreed to do so. By the same token, sharing land with all creatures was integral to the Native concept of land, hence one could not refuse a people wanting to live in and share the land in peace and friendship.<sup>20</sup> This, then, was all that Native people could have agreed to do in this treaty. To suggest that they knowingly agreed to anything more in *Mascarene's Treaty* raises the possibility of duress and fraud as factors underlying their participation.<sup>21</sup>

What is most striking about the printed version (*Treaty N. 239*) of *Mascarene's Treaty* is that it contains only the Natives' obligations and appears to lack any reciprocal obligations on the part of the English, as in the better-known *Dummer's*

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November 1726) CO 217/5 at 1-5 (MG 11, Reel B-1023); and Lords of Trade to Secretary of State (27 July 1749) CO 217/32 at 75-88 (MG 11, Reel B-1032).

<sup>19</sup>Canada, *supra*, note 2. From RG1, vol. 12, doc. 4 and RG 17, PANS, with text similar to enclosure in: letter from Armstrong to Lords of Trade (24 November 1726) CO 217/5 at 1-5 (MG 11, Reel B-1023), and letter from Armstrong to Secretary of State (24 November 1726) CO 217/38 (MG 11, Reel B-1034).

<sup>20</sup>See J.Y. Henderson, "The Doctrine of Aboriginal Rights in Western Legal Tradition" in M. Boldt, J.A. Long & L. Little Bear, eds, *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights* (Toronto: University of Toronto Press, 1985) at 185-229; and L. Little Bear, "Aboriginal Rights and the Canadian Grundnorm" in R. Ponting, ed., *Arduous Journey: Indians and Decolonization* (Toronto: McClelland and Stewart, 1986) at 243-59.

<sup>21</sup>A discussion of these treaties and some of the questions of fraud and duress may be found in the following: D.L. Ghere, "Mistranslations and Misinformation: Diplomacy on the Maine Frontier 1725-1755" (1984) 8:4 *American Indian Culture and Research Journal* at 3-26; and in A. Bear Nicholas, "Maliseet Aboriginal Rights and *Mascarene's Treaty*, Not *Dummer's Treaty*" in W. Cowan, ed., *Actes du Dix-Septieme Congres des Algonquinistes* (Ottawa: Carleton University, 1986) at 215-229.

*Treaty*, which was drawn up at the same time and place as *Mascarene's*.<sup>22</sup> For example, *Dummer's Treaty* allows settlers to return to all former English settlements on Native lands in what is now Maine, but carefully disallows any new settlements. However, the *Mascarene* version requires Natives to respect both existing and future English settlements in Nova Scotia. With all obligations on the Natives and all the benefits going to the English, *Mascarene's Treaty* appears to be totally one-sided. To even call it a treaty is presumptuous.

Until the discovery of the complete version of *Mascarene's Treaty*, signed and dated at Annapolis on 4 June 1726, it was not known which version, *Dummer's* or *Mascarene's*, had been signed in Nova Scotia upon the conclusion of *Dummer's War* in 1726.<sup>23</sup> The only known copies of *Mascarene's Treaty* were signed in Nova Scotia on two later occasions, 1728 and 1749 and they did not include *Mascarene's Promises*.<sup>24</sup>

We now know not only which version was signed at Annapolis in 1726, but also who signed it. The seventy-seven signatures (reproduced here) are identified as to which village or river they belonged. What is significant is that they represented the four principal nations of the entire area: Micmac, Maliseet, Passamaquoddy, and Penobscot, and not just a few local groups as asserted by La Forest, in her 1980 study, "Native Hunting and Fishing Rights in New Brunswick."<sup>25</sup> The fact that they came from all parts of the Maritimes, including Maine and Cape Breton, is an indication of far more than a desire to include all nations in the peace. More significantly, it represents how undefined provincial boundaries were at the time. It also represents the colonial authorities' uncertainty as to which Native nations inhabited Nova Scotia proper.

#### Document D: *Mascarene's Promises*

By far the most significant document found in 1984 is the statement of English obligations to Natives, which is clearly a companion document to *Mascarene's Treaty*. A photograph of this document, now known as *Mascarene's Promises*, is reproduced here.<sup>26</sup> Contained in this document are several of the original articles to be demanded of the Indians turned into promises or listed with added rewards or incentives for their fulfilment. For example, the original demand for all

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<sup>22</sup>Boston, December 1725.

<sup>23</sup>See Hurley, *supra*, note 5 at 10-12.

<sup>24</sup>*Supra*, note 8 at vol. 4. See also Canada, *supra*, note 2 at 198-210; and Cumming and Mickenberg, eds, *supra*, note 2 at 302-306.

<sup>25</sup>La Forest, *supra*, note 5 at 118.

<sup>26</sup>*Mascarene's Promises*, *supra*, note 8.

missionaries serving Native people to have government approval is turned into an offer of freedom of religion providing priests are approved by the government.

The most important promise to Native people appears neither in the "Instructions to Major Paul Mascarene" nor in the "Articles to be Demanded of the Indians" which accompanies it. It is the English commitment in *Mascarene's Promises* to respect Aboriginal access to fish and game in Nova Scotia, not as an English-given right, but as an English obligation to recognize and respect the pre-existing and continuing reality of Aboriginal survival derived from the land and its resources. It comprises nothing more than what Natives enjoyed before the establishment of the English in Nova Scotia (peace and the right to share in the fruits of the land by hunting and fishing). By contrast, the benefits to the English from this treaty were to be much greater than they had hitherto enjoyed (the right to share the land in peace).

The discovery of this document containing English promises or obligations raises serious questions about all previous judicial and historical interpretations of the *Treaty of 1752* and other treaties. As a matter of fact, *Paul and Polchies* and *Paul and Paul* have drawn on the fullness of *Mascarene's Treaty* to support the principle of Native access to resources.

#### Document E: Ratification by Nova Scotia

The 4 June 1726 ratification of the treaty by the colonial government of Nova Scotia<sup>27</sup> is not printed here, since it incorporates both the Native obligations in *Mascarene's Treaty* and the English obligations in *Mascarene's Promises*.

#### Conclusion

The existence of *Mascarene's Promises* is incontrovertible evidence that colonial authorities in Nova Scotia were prepared at the time to make a legitimate treaty. While the problem of what constitutes a treaty is no longer at issue because of the *Sioui* decision,<sup>28</sup> one outcome is that these promises and related documents permanently lay to rest the Nova Scotia government's claims that the treaties are not legitimate.

A second outcome of the documents relates to New Brunswick. Before the 1984 discovery of any English promises, the legitimacy of *Mascarene's Treaty* was

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<sup>27</sup>CO 217/38 at 109-10 and CO 217/4 at 321, 350b-351a, PAC. This was signed by acting Lieutenant-Governor and President of the Nova Scotia Council John Doucett on the same day.

<sup>28</sup>*Supra*, note 14.

truly questionable because the lack of these promises was the most often cited reason for demanding Native obedience to provincial fish and game laws.

If anything, it has been the loss of *Mascarene's Promises* and the subsequent repeated references by provincial authorities to this lack of written treaty guarantees that shows the real and unmistakable fraud relating to this treaty. The responses of the New Brunswick and Nova Scotia governments to the discovery of the documents and the 1985 Supreme Court decision in *Simon* speaks volumes. What is most disturbing about the responses is that the two Maritime governments appear to have assumed virtual totalitarian authority unencumbered by judicial precedents or treaty obligations.

## Appendix

### Document A: "Articles to be Demanded of the Indians"

Articles to be Demanded of the Indians in Behalf of His Majesty's Province of Nova Scotia, (or Accadia) whenever they enter into a negotiation for a Peace, Agreed upon by the Govr. & Council at Annapolis Royall the 3rd of November 1724.

1st That they shall Acknowledge That the province of Nova Scotia (alias Accadia) to its outmost Extent and Boundaries, with all its Rivers, Criecks, Bays, & Islands Thereunto belonging, Belongs and appertains unto (not only by Conquest) but as settled at the Treaty of Utricht, to the Crown of Great Britain, and that His Majesty King George and his Heirs and Successors are the sole Owners & the only True & Lawfull Proprietors of the same.

2. That they shall not forever hereafter Trouble, Hinder, or Molest any of His Majesty the King of Great Britains Subjects from settling or doing any of their other affairs within Said Province.

3. That we Expect Restitution to be made to our Traders, whom, they the savages, without any manner of cause given, so frequently Plunder'd, which occasioned the Warr; And that Satisfaction shall be made for all the Losses his Majestys subjects have since sustained through their unjust Depredations.

4. That Whereas they are all of the Romish Persuasion, they shall according to his Majestys Directions Enjoy the Exercise of their Religion but shall not have any other missionaries amongst them than such as his Majestys Government shall approve of; Having had certain Information and Undeniable proofs that the Priests have allways been the chief Incendiarys.

5. That if any of their People shall transgress any of these Articles and behave themselves Disrespectfully to this his Majestys Govrment, And Obstinateley do anything Contrary to Law, That they shall oblige themselves to yeald and Deliver up such person or persons to be punished according to Law.

6. That whereas they have hitherto behaved themselves, notwithstanding of all manner of Kind usage from the Crown of Great Britain, And his Majestys subjects, with so much Treachery, we expect that Hostages shall be given to this his Majestys Govrmt. for a Security of their Sincerity in performing of these and every such Article as shall be Agreed on for ye perpetual continuation of a Peace.

7th That upon their Due and faithfull performance of all & every Article they shall  
always meet with a friendly usage from this Government

John Doucett

A true copy of the Articles Agreed upon in Council at Annapolis Royall the 3d  
of Novr. 1724 attested.

Wm. Shirreff  
acting as Secry

**Document B: "Instructions to Major Paul Mascarene"**

Instructions to Major Paul Mascarene, 31 August 1725

By the Honourable Lawrence Armstrong Esqr Governour & Commander in Chief  
of His Majestys Province of Nova Scotia and Lt. Colonel of the Honourable  
Colonel Richard Philipps' Regimt of ffoot

**Instructions**

To Majr Paul Mascarene one of the Members of his Majesty's Council for the  
Province of Nova Scotia

Sr

Whereas I am Informed by Letters from the Honourable William Dummer  
Esqr His Majesty's Lt. Governour and Commander in Chief of New England That  
a cessation of Arms with that Province and the Indians is allready Agreed upon,  
And a Treaty for Peace now on foot: And in order that this Province may not be  
Excluded from the Benefits of an Honourable, Secure, and lasting Peace.

I have therefore by and with the Advice of the Council, That all affairs  
Tending so much to his Majesty's Interest and the Benefit of his Subjects in this  
Province, may be transacted in conjunction with that Govrment and Duely secured  
& provided for, for the mutual good of Both; Constituted and appointed you Majr  
Paul Mascarene, And do hereby fully Impower you to act in His Majesty's name  
as a Commissioner for this Province at Said Treaty.

You are therefore hereby Order'd to make the best of your way to Boston in  
New England, to which I heartily wish you a Safe Voyage.

At yor Arrivall you are Immediately to wait upon the Govr. the Lt. Govr. or  
Commander in Chief there, and deliver him my Letter.

You are to Acquaint him of these your Instructions, And desire that you may  
be present at all Assemblys and meetings of their Council, or of their  
Commissioners appointed for the negotiation of the Peace with the Indians, and  
desire the Assistance and Concurrence of that Government in ascertaining and

maintaining His Majesty's Crown and Dignity, His Right and Just Title to and Authority in and over this Province of Nova Scotia to its outmost Extent & Boundaries. That the Savages through Evasions may have no pretences to any part thereof, in order to disturb our future Peace, farther than what was agreed upon in their behalf at the Treaty of Utricht between the Two Crowns of Great Britain and France.

You are to Regulate yourself as far as possible by the Articles agreed upon by the Govr and Council at Annapolis Royall the 3d of Novr 1724 to be demanded of the Indians at the negotiation of a Peace, of which a copy is hereunto annexed.

You are moreover to have Inserted in the Articles of Peace, that none of their People shall at any time or upon any acct. whatsoever assist convoy and conduct off any of his Majesty's Soldiers from any of the Garrisons in this Province; But that when they shall meet with any such of his Majesty's subjects, they shall bring them back, which we expect as a Token of the Sincerity of their friendship, because if they do not promise and Engage to perform This, His Majesty's Service, through the means of a Peace, may greatly suffer.

You are to assure the Indians that upon their Due and punctual performance of this, and their faithfull Observation of the Articles Agreed upon, they shall meet with Due Encouragement and Protection from this his Majesty of Great Britains Government who Dont Delight in Warr and Bloodshed, but like good neighbours to live with them in friendship.

That for the maintaining thereof, all cause of offence is to be Carefully Avoided; And if Injury's should at any time happen to be committed on Either side, the person or persons Injured are not to Redress themselves otherways than by application to the government where there shall be no Respect of Persons, and they may Depend, in all their causes of having Strict Justice, And therefore it is Expected that they will agree to and punctually perform what is Required of them in the 5th Article, and submit themselves Intirely like Good subjects and neighbors to his Majesty's Government from which they may assure themselves of Receiving all manner of Kind Usages.

You may also Signifie to them the great Concern and Regard that his Majesty hath for them; That for the Encouragement of Inter-marriages with them and his own natural born Subjects, He hath promised a Reward of Ten pounds Sterling.

You are to aske the assistance and Countenance of the Govr. and Council in proposing and Stipulating all such other things as may be judged necessary for Securing the Right and Authority of his Majesty and the Peace and Quietness of this His Province.

You are if you see cause and find it necessary to have assistance, to take Hibbert Newton Esqr. in conjunction with you, with whom you are to consult the Benefit and Interest of this Province.

You are to acquaint the Govr. & Council That I am Daily in Expectation of hearing from the Indian Chiefs on this side, and of Receiving their proposalls for Peace and that therefore I hope the Governmnet of New England will favour me

with their Demands, that I may have it in my Power to provide as farr as possible for the Wellfaire and Interest of both Governments.

You are to inform me as frequently as possible of your Reception, and all your proceedings, that I may in Respect to the Indians of this Province Regulate Myself accordingly, and lay the same before His Majesty by one of his principal Secrys of State by all opportunitys -- And wishing you good success and that the peace may prove sincere, Secure and Lasting I have hereunto sett my hand and Seal at Canso the 31st Day of August on the twelveth year of His Majestys Reign Anno Dom: 1725

L. Armstrong

By order of his Honl. the Lt. Govr by and with the Advice of the Council.

Wm. Shirref

Acting as Secry.

*Document C: Mascarene's Treaty of 1725*

*Mascarene's Treaty of 1725* as signed June 4, 1726, Annapolis Royal, enclosed in Governor L. Armstrong to Secretary of State, 24 November 1726

WHEREAS by Articles of peace and agreement made and concluded upon at Boston in New England the fifteenth day of December One thousand seven hundred twenty five, by our Delegates & Representatives, Saugarum alias Laurens Alexis, Francois Xavier and Meganumbe, as appears by the Instruments then Signed Sealed and Exchanged in the presence of the great and Generall Court or Assembly of the Massachusetts Bay, by our said Delegates in behalf of us the Indians of Penubscutt, Norrigewock, St. Johns, Cape Sables and the other Indian Tribes belonging to and Inhabiting within these His Majestie of Great Britain's Territories of Nova Scotia and New England, and by Major Paul Mascarene Commissioner from this said Province in behalf of his Majesty, by which agreement it being required that the said Articles should be Ratified here, at his Majesty's ffort of Annapolis Royall, we the Chiefs and Representatives of the said Indians with full power and Authority, by an unanimous consent and Desire of the said Indian Tribes, are come in complizance with the Articles stipulated by our Delegates as aforesaid, and do in obedience thereunto Solemnly confirm & Ratifie the same and in testimony thereof with hearts full of sincerity we have signed and Sealed the following Articles being conforme to what was required by the said Major Paul Mascarene and promised to be performed by our said delegates --

Whereas his Majesty King George by the Concession of the most Christian King made at the Treaty of Utricht is become the Rightfull Possessor of the Province of Nova Scotia or Accadie According to its antient Boundarys we the said

Chiefs & Representatives of the Penubscutt Norrigewock St Johns, Cape Sables and of the other Indian Tribes belonging to and inhabiting within this his Majesty's Province of Nova Scotia or Accadie and New England do for ourselves and the said Tribes we represent Acknowledge his said Majesty's King Georges Jurisdiction and Dominion over the Territories of the said Province of Nova Scotia or Accadie and make our Submission to his said Majesty in as ample a manner as we have formerly done to the Most Christian King –

And we further promise in behalf of ourselves and our said Tribes –

That the Indians shall not molest any of His Majesty's Subjects or their Dependants in their Settlements already made, or Lawfully to be made or in their carrying on their Trade & other affairs within the said Province –

That if there happens any Robbery or outrage committed by any of our Indians the Tribe or Tribes they belong to shall cause satisfaction to be made to the Parties Injured –

That the Indians shall not help to convey away any Souldiers belonging to his Majesty's ffforts, but on the contrary shall bring back any souldier they shall find endeavouring to run away –

That in case of any misunderstanding, Quarrel or Injury between the English and the Indians, no private Revenge shall be taken, but Application shall be made for redress according to His Majesty's Laws –

That if there be any English Prisoners amongst any of our aforesd. Tribes, we faithfully promise that the said Prisoners shall be released & Carefully conducted and Delivered up to this Government or that of New England –

That in testimony of our Sincerity we have for ourselves and in behalf of all and Singular of our said Indian Tribes conforme to what was Stipulated by our delegates at Boston or aforesaid, this day Solemnly Confirmed & Ratified each and every one of the aforegoing Articles which shall be punctually Observed and duly performed by each and all of us the said Indians. In Witness Whereof we have before the Honourable John Doucett & Council for this His Majesty and the Deputies of the French Inhabitants of said Province hereunto sett our hands and Seals at Annapolis Royall this fourth day of June one thousand seven hundred and twenty six and in the twelvth year of His Majesty's Reigne.

Cheif [sic] of	Cheif of	of	Cheif of ye Eastern
Joseph X Nepemioit St. Johns	Jean Baptist (mark) Pon Chickabenedy	Jean Baptist X Cheif Cape Sables	Antione X Egighih Coast
Nicholas X Chiefs of Jecomart X one of ye Cape Sables	Jean (mark) Baptist Paul Etien (mark) fil di Baptist pon of	Matthew X Muse Joseph X Meductick from	Jean X Quaret Simon X Netamoit Jacques X Denis
Joseph Ounagimish X of Sables	Piere X Martine Cheif Rishboucto	Jacque X Pemoiroit Pentaguite	Francois X Spagonoit Jacque X Nighgit Petit Claud X Begagonit
Marquis X of St. Johns	Jirom X Aitnas Cheif of Gidiark	Jeremain X Piere Pisnet X	Jacque X Penalt Claud X Migatou Simon X Spugonoit
Atea X	Joseph Martin X Cheif of	Antione X Nimquarett from	Jacque X Penalt Claud X Migatou Simon X Spugonoit
Piere X Benoit	Piere X Nimquarett Mines	Lewis X Pemoiroit Pentaguite	Lewis X Lawerns Tomas X Piret from Cape
Denis X	Cheif of	Etien X Chigan	Joseph X Chigagunish Breton
Piere X Paul	Philip X Eargamot Chickanecto	Reny X Nictabau Piere X Nimcharett of ye River Indians	Jacque X Chigan
Lewis X			
Francois X			
St. Gastine X			
Joseph X St. Obin			
Andre X			

Simon X	Michel E Eargamot	Baptist X Tomas Cheif
Joseph X	Mark M Antoine	of Annapolis Royale
Joseph (mark)	Joseph (mark) LeGrand	Jean X Pimet
Joseph (mark)	Claud X Grand Glode	Francois X Jermain
Francois X	Rene X Grand Glode	from
Francois X	Francois X Grand Glode	Francois X Xavier
Francois X		Pentaguite
Michel X		from
Joseph (mark)		Noel X Shomitt
Piere Benoit X		Pasamaquady
Charles X		Piere X Nimcharett
Andre X		Piere X Chegan
		Francois X Chicharett
		Antoine X Jecomart
		Philip X Jecomart
		Bernard X St. Abogmadish
		Tomas X Ouitine

#### Document D: *Mascarene's Promises*

By Major Paul Mascarene one of the Council for His Majestys Province of Nova Scotia or Accadie and Commissioned by the Honourable Lawrence Armstrong Esqr Lieut Governour and Commander in Chief of the Said Province for treating with the Indians engaged in the late Warr—

Whereas Sanguarum als Laurens, Alexis, Francois Xavier and Meganumbe Delegates of the Tribes of Penobscutt, Norrigewock, St. Johns, Cape Sables and other Tribes Inhabiting His Majestys Territories of Nova Scotia or Accadie and New England; have by Instruments Signed by them made their Submission to His Majesty George by the grace of God of Great Britain, France and Ireland King deffender of the Faith and acknowledged His Majestys Just Title to the Province of Nova Scotia or Accadie and promised to live peaceably with all His Majestys Subjects and their Dependants with what further is Contained in the Sevrall Articles of those Instruments I do in behalf of His Majestys Said Governour and Government of Nova Scotia or Accadie — promise the said Tribes all marks of Favour protection and Friendship and further Ingage and promise in behalf of the Said Government That the Indians shall not be molested in their persons, Hunting, Fishing and Planting Grounds nor in any other their Lawfull Occassions by His Majestys Subjects or their Dependants nor in the Exercise of their Religion Provided the Missionaries residing amongst them have leave from the Governour or Commander in Chief of His Majestys Said Province of Nova Scotia or Accadie for so doing.

That if any of the Indians are Injured by any of His Majestys aforesaid Subjects or their Dependants they shall have Satisfaction and Reparation made to them according to His Majestys Laws whereof the Indians shall have the Benefitt equal with His Majestys other Subjects.

That upon the Indians bringing back any Soldier endeavouring to run away from any of His Majestys Forts or Garrisons the said Indians for this good Office shall be handsomly rewarded.

That the Indians in Custody att Annapolis Royall shall be released except such as the Governour or Commander in Chief shall think proper to keep as Hostages att the Ratification of this Treaty which shall be att Annapolis Royall in presence of the Governour or Commander in Chief and the Chiefs of the Indians. Given under my hand & Seal att the Councill Chamber in Boston in New England this fifteenth day of December Anno Dom One thousand Seven hundred and twenty five Annoque Regni Regis Georgii Magnae Britanniae & Duodecimo –

P Mascarene

By Major Paul Mascarene one of the Council of His Majesty's Province of Nova Scotia or Acadia and Commissioned by the Honorable Laurence Armstrong Esq. Lieut. Governour and Commander in Chief of the said Province, for treating with the Indians engaged in the late War.

NICOLAS Languarum at' Indians, Alexis, Francois Xavier and Meganumbe Delegates of the Tribes of Malscatt of Arrigewock S. Johns Cape Sables and other Tribes inhabiting His Majesty's Territories of Nova Scotia or Acadia and New England; have by Instruments signed by them, made their Submission to His Majesty George by the grace of God of Great Brittain France and Ireland King defender of the Faith and acknowledge His Majesty's full Title to the Province of Nova Scotia or Acadia and promised to live peaceably with all His Majesty's Subjects and their Dependants with what further is contained in the severall Articles of those Instruments & do in behalf of His Majesty's said Governour and Government of Nova Scotia or Acadia promise the said Tribes all marks of Favour protection and Friendship: and further engage and promise in behalf of the said Government. That the Indians shall not be molested in their persons, Hunting Fishing and Planting Grounds nor in any other their Lawfull Occupations by His Majesty's Subjects or their Dependants nor in the Exercise of their Religion provided the Missions residing amongst them have leave from the Governour or Commandant in Chief of His Majesty's said Province of Nova Scotia or Acadia for so doing.

That if any Indians are injured by any of His Majesty's Subjects or their Dependants they shall have Satisfaction and Reparation made to them according to His Majesty's Laws whereof the Indians shall have the Benefit equall with His Majesty's other Subjects.

That upon the Indians bringing back any Soldier endeavouring to run away from any of His Majesty's Forts or Garrisons the said Indians for this good Office shall be handsomely rewarded.

That the Indians in Custody at Annapolis Royal shall be released except such as the Governour or Commandant in Chief shall think proper to keep as Hostages, all the Ratification of this Treaty which shall be at Annapolis Royal in presence of the Governour or Commandant in Chief and the Chiefs of the Indians.

Witness under my hand & Seal at the Council Chamber in Boston in New Brunswick this fifteenth day of December Anno Domini One thousand seven hundred and twenty five. Unnoque Regni Regi Georgio Magnae Britanniae &c. Duodecimo

Mascarene

