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Sagamok First Nation: A Mining company context

Ron Mulholland wrote this case solely to provide material for class discussion. The author does not intend to illustrate either effective or ineffective handling of a managerial situation. The author may have disguised certain names and other identifying information to protect confidentiality.

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Chief Paul Eshkakogan had a problem. Once again, one of the mineral extraction partners was not living up to the terms of the negotiated agreement. Although the Sagamok First Nation (Sagamok) had negotiated an agreement with company executives, the project manager and purchasing agent apparently did not understand their responsibilities. Their lack of understanding was partly due to personnel changes and to changes in the company’s exploration schedule.

Eshkakogan was pulled out of a meeting to deal with a phone call. He excused himself, left the room, and began to listen to the problem that had been created “this time.” He did not understand why there was a problem at all since Sagamok had signed an agreement with the company to be the preferential provider of site services and security. As the story unfolded, Eshkakogan wondered how many more times he would need to deal with a similar issue before the mine was in full production.

Background

Sagamok was an Aboriginal community located in northeastern Ontario, 100 kilometres west of Sudbury on the North Channel, a body of water along the north shore of Lake Huron. The Sagamok had an area of 11,400 hectares of land, approximately 4 per cent of the size of Manitoulin Island. The reserve lay along the Spanish River south of Massey, Ontario, and extended east along the North Channel to the historic Fort La Cloche. The reserve had been defined by the Robinson-Huron Treaty of 1850 and was further controlled under a federal statute, the *Indian Act*, initially proclaimed in 1876.[[1]](#endnote-1) In 2016, the Sagamok were governed by a chief (Eshkakogan) and 12 councillors.

Sagamok’s population in 2016 was approximately 2,800, of which nearly 1,600 lived on the reserve. The unemployment rate on reserve was in the 30 per cent range compared with well less than 10 per cent in the rest of the region.[[2]](#endnote-2) Economic development and increased employment were obvious goals for the Sagamok’s council.

HistorY

Ancestors of the community had been in the area for thousands of years. The lifestyle before contact with Europeans had been a subsistence existence. Winters were spent in the bush in small groups, each with their own identified territory for trapping and hunting, while summers were spent communally, typically adjacent to a river or lake with abundant food resources where trade and ceremonies were conducted. Indigenous mining in the nearby region of Lake Superior had been going on for hundreds, if not thousands, of years. The discovery of copper and other non-locally originated points on the banks of the Spanish River suggested trading in copper and other materials had been taking place for hundreds of years before contact.[[3]](#endnote-3)

At contact, the Indigenous residents began a trading relationship with the newcomers. However, some conflict arose between the residents and settlers—for example, at Mica Bay, where colonial miners set up operations on traditional First Nations lands without a treaty or permission (see Exhibits 1 and 2). William Robinson was a trader and mining company director known to the First Nations community. The Province of Ontario appointed him to establish a treaty with the First Nations of the Upper Great Lakes, which resulted in the Robinson-Huron Treaty of 1850, the government’s attempt to resolve conflict, regularize relations with the First Nations of Lake Huron, and gain access to mining lands that were being prospected (see Exhibit 3). This agreement established the Sagamok Reserve as it became known, although Sagamok’s traditional land and range encompassed many times the area of the reserve boundaries.[[4]](#endnote-4)

Following the Treaty, in 1876, the government of Canada passed the *Indian Act*, which, among other indignities, required First Nations community members to obtain permission from an “Indian agent” to leave the reserve. Residential schools—a network of compulsory boarding schools for Indigenous Peoples, investigated by the Truth and Reconciliation Commission of Canada from 2008 to 2015—were another painful part of the community’s history (see Exhibit 4).

Mining consultation and accommodation

The rights of First Peoples were recognized under Canada’s *Constitution Act, 1982* and the *Charter of Rights and Freedoms*.[[5]](#endnote-5) The government’s duty to consult with First Nations before accessing or taking up their land was clarified by the courts in *Mikisew Cree First Nation v. Canada*[[6]](#endnote-6) and revisited in several other cases in the first decade of the 2000s. The courts required that consultation with First Nations be fair and meaningful, which included providing fair notice, a sufficient supply of information, and reasonable time to consider and respond to the request.

Ontario’s Ministry of Northern Development and Mines (MNDM) had been criticized by the Ontario Superior Court for failing in its duty to participate in and oversee a consultation process with a First Nation, and, instead, delegating the consultation to a third party—the mining company being challenged, Platinex Inc.[[7]](#endnote-7) The conflict began in 1999 when Platinex became aware that the Kitchenuhmaykoosib Inninuwug (KI) First Nation intended to file a Treaty Land Entitlement Claim on the basis that the calculation of the area of its reserve was inadequate. KI claimed that the land being explored by Platinex was, if the land was assessed properly, part of the KI Reserve. The case played out in the media with injunctions, counter injunctions, blockades, runway confrontations, and so on. Six members of the KI First Nation were sent to jail and the Ontario government eventually had to pay substantive settlements to end the confusing, unstable, and unhappy situation.[[8]](#endnote-8) The government had since developed better consultation procedures, guided by a discussion paper.[[9]](#endnote-9)

All mining companies in the province would have been aware of these issues and how they shaped the context for dealing with First Nations. It was in that context that Sagamok dealt with and made agreements with several mining companies spotted over Sagamok land (see Exhibit 5).

URSA and the Shakespeare mine

URSA Major Minerals Inc. (URSA) was a junior mining company that had issued its first prospectus in June 2000. The company had acquired options from Falconbridge Nickel Mining Limited (Falconbridge) on 28 claims in Shakespeare Township on the northeast side of Agnew Lake, within Sagamok traditional territory. URSA could obtain up to a 75 per cent interest in the Falconbridge claims if a drilling program of US$1.2 million[[10]](#endnote-10) was completed. These were not new claims; exploration had taken place as early as 1920 and at various times since, including in the 1940s, 1950s, and 1980s.[[11]](#endnote-11)

Falconbridge had drilled 47 holes for a total of 22,000 feet[[12]](#endnote-12) of core sample for analysis.[[13]](#endnote-13) The evaluation revealed 0.36 per cent grade nickel and 0.42 per cent grade copper, as well as palladium, platinum, and gold. URSA developed an exploration program and implemented it in early 2002. In light of the promising drilling results, URSA staked additional claims. The additional claims were explored in 2003, revealing nickel and copper grades at 0.49 per cent and 0.47 per cent, respectively.

In 2004, the company earned its 75 per cent interest in Falconbridge’s claims and became a joint venture partner. URSA continued to stake more adjacent properties, owning these outright (100 per cent).[[14]](#endnote-14) At the same time, URSA began discussions with Sagamok, wanting access to Agnew Lake, which was part of the Spanish River—the traditional waterway of the Sagamok.

In 2005, for the first time, URSA included in its annual report the caution, “Property title may be subject to government licensing requirements or regulations, unregistered prior agreements or transfers or native land claims.” URSA, with Falconbridge, had earned an 80 per cent share in the Shakespeare Township property and had staked more than 300 additional claims on adjacent property. A pre-feasibility study performed by mineral industry engineering consultants Micon International Limited had reported positive results.[[15]](#endnote-15)

A bankable feasibility study was completed in 2006. At this stage, a company typically determined whether a mine was financially viable. The feasibility consultant reported that the project “contained an economic mineral reserve worthy of development.” The study envisioned a 4,500 tonne per day open pit mining operation, and nickel prices at $5.48 per pound.[[16]](#endnote-16)

In 2007, URSA entered serious negotiations with Sagamok to fulfill the MNDM’s requirement for consultation and accommodation with the First Nation. By then, Eshkakogan had been elected as chief. He recalled feeling “overmatched” in the negotiations because the community did “not have the capacity” to understand or evaluate the opportunity. The MNDM approved URSA’s plan for mine closure, and the company provided a $260,000 pledge to the MNDM as surety for the closure operation. That same year, URSA produced a 50,000 tonne bulk sample to evaluate the quality of the ore. The sample was shipped to the Falconbridge mill and smelter in the town of Falconbridge for processing.

The revenue realized from the bulk sample in 2007 was $5 million. Nickel prices were at a peak then (see Exhibit 6). Accordingly, the feasibility study was updated, placing nickel at $9.37 per pound.[[17]](#endnote-17) The future of the mine looked very positive.[[18]](#endnote-18)

Sales from a second 50,000 tonne bulk sample in 2008 realized $8 million against $7.2 million in expenses. The drop in nickel prices and the global economic slowdown forced URSA to stop the work plan. In spite of this stoppage, URSA signed an impact and benefit agreement (IBA) with Sagamok in August 2009—the first IBA signed by Sagamok. It had high hopes for training and employment. In addition to financial compensation, the community was looking forward to building capacity for environmental monitoring, making other skilled contributions to the project, and securing contracts for trucking and the provision of site services. The goal was to support a service company development within the Sagamok community in the areas of construction, mine operation, and closure.[[19]](#endnote-19)

Operations at the mine resumed in May 2010, with a nickel grade averaging 0.68 per cent per sample. In its annual report, URSA acknowledged the deteriorating situation in terms of nickel prices and its milling contract with Xstrata plc (which had taken over Falconbridge):

On May 27, 2010, the Company declared commercial production and URSA Major was in production for twenty months until January 27, 2012. On December 13, 2011, URSA Major announced that it had limited operations at the Shakespeare Property to crushing of existing broken ore, ore sampling and trucking operations as a consequence of reduced base metals prices. On February 3, 2012, URSA Major announced it had temporarily suspended operations at the Shakespeare Property following the expiration, on December 31, 2011, of the milling agreement in place with Xstrata and the Company was not able to conclude a new processing agreement.[[20]](#endnote-20)

In early 2012, URSA suspended operations at the Shakespeare property, and in July, Prophecy Platinum Corp. (Prophecy) bought the company. In 2013, Prophecy declared, “The project [Shakespeare] is currently on care and maintenance with all permits in good standing.”[[21]](#endnote-21) In December 2013, Prophecy Platinum changed its name to Wellgreen Platinum to underline its focus on its Wellgreen property in Yukon.

On May 8, 2014, Wellgreen issued a press release retracting the 2006 feasibility study for the Shakespeare project:

Retraction of Shakespeare Feasibility Study and Mineral Reserves

The Company has determined that the January 2006 feasibility study (“2006 Feasibility Study”) in respect of the Shakespeare project, and the information contained therein with respect to mineral reserve estimates, is no longer valid, and that investors should not rely on the viability of economic or production estimates based on the 2006 Feasibility Study because the operating and capital expenditures estimated therein are outdated and no longer reliable. Accordingly, the Company retracts the 2006 Feasibility Study and announces that the Shakespeare project does not currently contain any mineral reserves, as such term is defined for the purposes of NI 43-101.[[22]](#endnote-22)

Just a few months later, in September 2014, Wellgreen announced the Shakespeare property was for sale, as it was no longer core to its operation. This announcement was a bit of subterfuge, as the likelihood of a buyer was zero; however, Wellgreen would not need to expend the funds for closure as long the property remained potentially viable. In its third quarter 2015 report, Wellgreen acknowledged it was committed to making an annual payment to Sagamok, “provided that the Shakespeare Mine and Mill Project is in production and at such time as URSA Major’s aggregate net project operating profits before taxes received from the Shakespeare Project are equal to or greater than its initial capital investment in the Shakespeare Project plus interest.”[[23]](#endnote-23) In other words, there would be no payments in the near future.

Sagamok was not happy with the state of affairs, which included abandoned pits and sedimentation ponds less than 500 metres from Agnew Lake. Although a plan to close the site had been put in place with surety, there was no requirement to enact the plan because the site was not yet abandoned. In its third quarter 2015 financial statements, Wellgreen recognized the closure plan as a liability nearing $700,000; however, there was no indication when and if the liability would be realized.[[24]](#endnote-24)

Upon reflection, Eshkakogan was uncertain whether they should have entered into the agreement at all. He noted that this experience had underlined some important principles for the First Nation, including the need to employ consultants when necessary to augment Sagamok’s capacity to evaluate opportunities. This was considered to be a short-term measure while the community encouraged its youth and other underemployed members to seek the necessary education and training to participate in development and evaluation of future economic and environmental projects.

KGHM and the Victoria Mine

KGHM International Ltd. (KGHM) was a Canadian subsidiary of a Polish state-owned mining company. In December 2011, it made an offer to purchase, subject to shareholder agreement, **Quadra FNX Mining Ltd. (Quadra), a mid-tier mining company with several projects underway.**[[25]](#endnote-25) **Quadra was, at the time, in the process of redeveloping the Victoria mine located on the traditional lands of both the Sagamok** and **Atikameksheng** **Anishnawbek First Nations.**

**Nickel and copper had been mined on the Victoria property since their discovery in 1886. Missionaries had reported that Aboriginal Peoples in the 1600s had mined the minerals along the north shores of Lakes Huron and Superior,**[[26]](#endnote-26) **and in 1856, Alexander Murray of the Geological Survey of Canada discovered nickel-copper sulphide near the subsequently developed Creighton Mine.**[[27]](#endnote-27) **Logger and prospector Rinaldo McConnell began mining development i**n 1886,[[28]](#endnote-28) selling the McConnell Mine (later called Victoria Mine) to Dr. Ludwig Mond in 1899. **Mining continued in the area until 1923 when the mine closed.**

**Mond’s company became part of the International Nickel Company of Canada, Ltd. in 1929, placing the Victoria property under the control of what was renamed Inco Limited. The property lay dormant until Inco reopened it in the 1970s and put it back** in care and maintenance. In 2002, FNX Mining Company Inc. (FNX) acquired the Victoria property along with **four others, and began further exploration. In the initial years, FNX focused on exploration and production of the other four mines, but in 2009, the company increased exploration at Victoria, and in 2010, it announced a new find of nickel and copper south of the historic mine.**[[29]](#endnote-29) **In early 2010, FNX merged with Quadra Mining Ltd.,**[[30]](#endnote-30) **and the merged company was, in the end, subsequently taken over by KGHM.**

In January 2012, KGHM signed memoranda of understanding (MOU) with both Sagamok and Atikameksheng Anishnawbek First Nation, who had the next reserve east of Sagamok. The MOU were the first steps in negotiating IBAs.

Eshkakogan described the negotiations with KGHM as interesting. He and the council were able to use the experience they had gained when negotiating with URSA and had the help of a consultant. The negotiations were with KGHM’s project supervisor. Sagamok was able to bid on contracts for site services, janitorial services, security, and rock haulage. Sagamok was co-operating with Cancom Security Inc., a security firm from Wikwemikong First Nation, on the security contract for the property.

Subsequently, KGHM’s project supervisor was promoted to manage operations Canada-wide; there were also a number of other personnel changes. These changes affected Sagamok’s communications and understanding with the company. For example, the agreement between KGHM and Sagamok was based on plans for advanced exploration, whereas, according to Eshkakogan, the company was already beginning mining operations—a different set of requirements.

Sagamok and KGHM signed an IBA in 2014. Once KGHM had finished its investigation, it was to file a mine closure plan and financial surety.[[31]](#endnote-31) There was some uncertainty with the agreement because of the nature of the company—which was owned by the Government of Poland, so its objectives could change with national elections—the market, and the scope of the project. Changes in plans and personnel also brought difficulties to the local operations. Although extra weight had been given to procuring from local suppliers and working with First Nations companies, the local purchasing agents did not seem to be following the agreement. The agreements seemed straightforward in negotiations, but actions taken by company employees were leading to consternation at Sagamok, and indicated some communication problems within the company.

The company was uncertain of its own development path. In the first half of 2015, it had spent more than $25 million on exploration to develop an engineering study regarding mine development, shaft infrastructure, and electrical infrastructure. The company needed to decide about the development of one or two shafts, but the decision depended, among other things, on the outlook for nickel. By early 2016, nickel prices were still low, and the company announced, “Due to current macroeconomic environment, the Management Board of KGHM Polska Miedź S.A. decided to modify the previously adopted schedule for the project.”[[32]](#endnote-32)

Eshkakogan was resigned to dealing with the company and its communication issues. The project still had potential, unlike the Shakespeare debacle. He still had hope for the project: nickel prices were forecast to rebound from below $4 per pound[[33]](#endnote-33) in 2015 to $5 per pound[[34]](#endnote-34) in 2016, and climb over $6 per pound[[35]](#endnote-35) in 2022.[[36]](#endnote-36) The growth in nickel prices would spur development of the project and Sagamok could realize the benefits detailed in the IBA—a positive result for the community.

Vale and the totten mine

Sagamok had an agreement with Vale Canada Limited (Vale) for its Totten mine. Vale, a Brazilian company, had purchased Inco in 2006. Its assets included Totten along with other mines and mineral processing plants. Like many of the mines in the Sudbury basin, Totten was developed to access a historic ore body, in this situation, the Worthington offset, an ore body that had nickel running as high as 8 per cent.[[37]](#endnote-37) Worthington was first explored and mined from 1889. In 1927, a cave-in effectively closed the mine. Inco had started the Totten mine in 1966 with diamond drilling, and continued subsurface exploration and operations until 1972, after which Inco left the mine to flood. In 2006, when Vale acquired Inco, Vale began refurbishing the Totten mine, which included pumping out the almost 123 million gallons of water (equivalent to the water volume of 185 Olympic-sized pools) that had accumulated in the mine. Vale reopened Totten for production in 2014.[[38]](#endnote-38)

Negotiations between Sagamok and Vale for the Totten mine began in 2007. Vale was represented by John Pollesel, vice-president of production services, and Kelly Strong, vice-president of mining and milling for the North Atlantic region. Eshkakogan described those negotiations as open and positive. He attributed the success of the negotiations to the personalities of Pollesel and Strong, and the company’s will to arrive at a fair agreement. There were some initial stumbles over financial aspects, but once all parties understood the economics of the project, a good outcome resulted.

The IBA was signed in 2012. The agreement provided Sagamok with opportunities for employment and business contracting in addition to the financial benefits. The community could continue with its environmental stewardship, which used traditional ecological knowledge. For its part, Vale built three water treatment plants on-site, demonstrating its commitment to minimal environmental impact. Of Vale’s initial 200 hires, 24 were from Sagamok. The agreement with Inco’s successor was particularly significant for Eshkakogan: his father, Frances Eshkakogan, had been killed at the nearby Inco Crean Hill Mine in 1969. There was some irony in Sagamok having successfully negotiated and reached a fair settlement with Inco’s successor company.

Conclusion

Eshkakogan ended his phone call, having resolved yet another conflict with KGHM. He made a note to set up a meeting with the project supervisor in an attempt to avoid future contract disputes. The Chief hoped that the IBA with KGHM and any future agreements with any mining partner would be modelled after the successful communications and ongoing relationship Sagamok had developed with Vale.

The Chief knew there were more resource development opportunities available to Sagamok, including some within the boundaries of the reserve. Each negotiation was a learning experience as the First Nation’s government grew its capacity to understand the economic, social, and environmental consequences of new developments. Sagamok employees were in the process of writing a job description for a mining and development advisor for the community—one more step in developing the community’s capacity.

The question Eshkakogan was wrestling with now was how to increase his community’s capacity for evaluating and exploiting future natural resource opportunities. This issue joined with a myriad of concerns swirling in his head, not the least of which was dealing with residual social and economic issues.

EXHIBIT 1: Historical Context

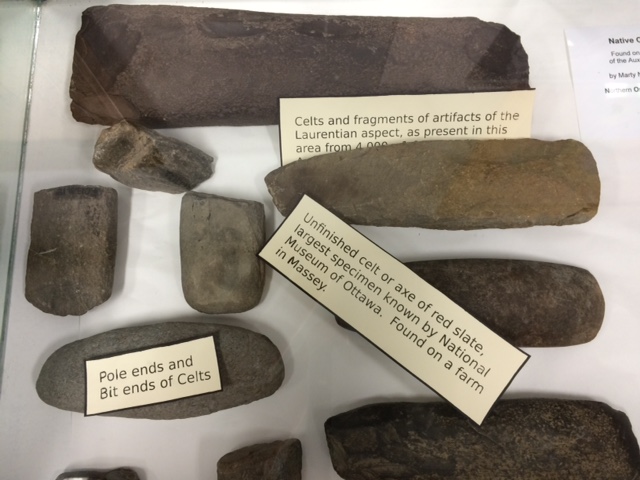
The Sagamok First Nation and other First Nations claimed vast reaches of land as traditional territory that they had occupied for centuries before the first European explorers arrived.

Physical evidence established that a pre-historic people lived on nearby Manitoulin Island at Sheguiandah 9,500 years ago. Although it was not clear whether these people were ancestors of the current peoples in the area, the artifacts found along the Spanish River, such as copper and stone points and other celts or tool fragments, were evidence of early occupation and trading, the copper likely originating from the Lake Superior region.

Native Copper Arrowhead and Stone Points



Native Artifacts



Source: Author’s photographs of exhibit at Massey Area Museum, Massey, Ontario, used with permission; and Patrick J. Julig, *The Sheguiandah Site: Archaeological, Geological and Paleobotanical Studies at a Paleo-Indian Site on Manitoulin Island, Ontario* (Hull, PQ: Canadian Museum of Civilization, 2002).

EXHIBIT 1: Historical Context (CONTINUED)

James Wright outlined trade networks for the Initial Woodland Period (1,400 years ago and earlier) that explained how copper implements may have come to exist in the Sagamok First Nation area. According to Wright, trade was established from the shores of Lake Superior, where copper was mined, along the North Channel and down to Lake Huron in the Midland area, where the Huron First Nation had traditional territory.

The Ojibwe creation story described a westward migration of Aboriginal Peoples that began from the Atlantic Coast 1,100 years ago. The migration followed what came to be known as the Seven Fires Prophecy and included seven stopping places. Manitoulin Island was identified as the fourth stopping place, and Sault Ste. Marie was the fifth. The journey ended at the seventh stopping place, Madeline Island on Lake Superior. The journey had taken approximately 500 years.

Archaeologist Charles Bishop indicated that prior to contact with European explorers, the Ojibwe were distributed along the north shore of two of the Great Lakes, from Michipicoten Bay on Lake Superior, along the North Channel of Lake Huron, to the French River outlet on Georgian Bay. Bishop’s theory correlated with the route of the Ojibwe’s migration story.

Food in the settled areas was plentiful in the form of moose, caribou, and other game, and in the summer, fish were bountiful at locations such as river rapids or outlets. Berries and other flora were picked for food; planting of domesticated crops was superfluous given the abundance of edible vegetation in the environment. Winters were spent hunting and trapping in small family groups, while summers were spent at places where food (particularly fish) were abundant, such as Sault Ste. Marie and adjacent to the rapids on the St. Mary River. Summer villages would have included up to 300 people, with approximately 20 such villages along the shore.

Ancestors of Sagamok were likely present in one or more of those villages at that time. They had extensive trade relations with their neighbours, the Hurons of southern Georgian Bay, and with peoples further west, whose territory included sources of native copper.

Source: James Vallière Wright, *Ontario Prehistory: An Eleven-Thousand-Year Archaeological Outline* (Ottawa, ON: National Museums of Canada, 1972), 49; Edward Benton-Banai, *The Mishomis Book: The Voice of the Ojibway* (Minneapolis, MN: Red School House, 1988); Charles A. Bishop, *The Northern Ojibwa and the Fur Trade: An Historical and Ecological Study* (Toronto, ON: Holt, Rinehart and Winston, 1974).

EXHIBIT 2: Contact

The established networks likely provided the northern Ojibwe with first news of the fur trading visitors in the early 1600s. Samuel de Champlain landed on Canada’s east coast in 1603 and was intent on expanding relations and the fur trade that explorer Jacques Cartier had initiated in mid-1535 and early 1541. Over successive voyages, Champlain employed interpreters and explored further inland. One of Champlain’s young charges, Étienne Brûlé, travelled as far as Sault Ste. Marie in 1621, canoeing past the current Sagamok Reserve where the North Channel (along Lake Huron, north of Manitoulin Island) provided a sheltered route to the west.

With routes from Montreal to the interior of the continent established, the fur trade then began in earnest. In 1670, the Hudson’s Bay Company commenced operations and the fur trade grew. In the late 1700s, the North West Company was formed in competition with the successful Hudson’s Bay Company. The North West Company erected a trading post around 1790 in the traditional territory of the Sagamok First Nation, likely at La Cloche Island. In 1808, the trading post was rebuilt at its final location—the mouth of La Cloche Creek, adjacent to what later became the southeast border of the Sagamok Reserve. The post was taken over by the Hudson’s Bay Company when the two trading companies merged in 1821, and was operated until 1891, when the operations were moved to Sudbury. No doubt, local First Peoples, including ancestors of the Sagamok, engaged in trade with the post during this time; some were likely employed at the post.

Source: Marcel Trudel, “Jacques Cartier (1491–1557),” in Dictionary of Canadian Biography, vol. 1 (Toronto, ON: University of Toronto, 2003), accessed December 14, 2015, www.biographi.ca/en/bio/cartier\_jacques\_1491\_1557\_1E.html; David Hackett Fischer, *Champlain’s Dream* (Toronto, ON: Knopf Canada, 2008); Ernest Voorhis, *Historic Forts and Trading Posts of the French Regime and of the English Fur Trading Companies* (Ottawa, ON: Department of the Interior, Government of Canada, 1930).

EXHIBIT 3: The Treaties

While trade between the First Nations and the French, then British, traders had been ongoing for 100 years, political events between the French, the English, and the Indigenous Peoples were also percolating. The Royal Proclamation of 1763, which followed a period of British–French conflict, set aside lands reserved for First Nations. Recognizing that “great frauds and abuses [had] been committed in purchasing Lands of the Indians,” only the Crown was allowed to purchase land from First Nations. The watershed north of the Great Lakes and the St. Lawrence River, excluding Quebec, was designated as “Indian Territory.”

The country was growing: the population in 1763 was approximately 79,000, and by 1851, it was 2.1 million. Settlers were arriving from Europe, and United Empire Loyalists travelled north following the American Revolution. The early agreements or treaties with First Nations were “designed to provide settlement lands for American Loyalists and other immigrants.” A number of informal treaties were signed to provide land for settlers in what became southern Ontario. The land was surrendered or sold by the First Nations in return for payments and benefits that included rights to reserves and to continue traditional hunting and fishing. This “orderly transfer of lands” was to avoid what was described as the “angry settlement frontier that plagued the United States.”

Establishing Treaties

William Robinson was a fur trader elected in 1830 to the government of Upper Canada, representing the riding of Simcoe. He was later elected to the Province of Canada for Simcoe. Robinson was known as a fair trader among the First Nations, so was chosen in 1843 to negotiate with the local First Nations at Simcoe. A land treaty set aside 700 acres for their use.

In 1850, Robinson was commissioned to make treaties with the Ojibwe of northern Lake Huron and Lake Superior. James Morrison argued that although some historians, and Robinson himself, saw the treaties as a natural progression from the earlier pre-confederation treaties, they were, in fact, a pivot toward a new practice to “regularize settlement” and encourage “mineral exploration.” This was to the disadvantage of the Ojibwe, who protested then and continued to protest to the present. First among the protestors was Chief Shingwakonce (Shingwak), a strong advocate for the First Nations interests.

Politicians of the day chose to expedite the new imperatives of settlement and mineral exploration by having all Aboriginal Peoples move to Manitoulin Island, as had been intended by the treaty of 1836. For many reasons, including geography and traditional livelihood, the First Nations were not inclined to move. Politicians then agreed to make treaties with the First Nations if they could prove their heritage on the land. They were able to do this for the most part, so in the 1850 Robinson-Huron and Robinson-Superior Treaties, chiefs were assigned land based on the number of families in their Nation.

The treaties were in contrast to activities in the United States, where displacement and temporary land assignment was followed by a push to move onto new lands in the west. The American federal government was harsh in countering resistance: treatment ranged from harassment and incarceration to war and even genocide. Estimates of deaths of Indigenous Peoples in the United States caused by the government in this conflict numbered in the many thousands.

With the push for settlement in Canada, treaty talks had been ongoing for five years between the British, local Canadian, and First Nations governments. The settlers were anxious to establish themselves on the land, and mining companies were anxious to explore. Robinson, who was negotiating the treaties, was a director of the Quebec Mining Company, which had interests at Mica Bay on Lake Superior, which were, by 1849, in operation. He also had interest in a tract of land on the north shore of Lake Huron, at the mouth of the Whitefish River near Fort La Cloche.

EXHIBIT 3: The Treaties (CONTINUED)

Challenging the Treaties

It had been known since first contact that copper and other minerals had been found on the shores of Lakes Superior and Huron. The miners were dependent on local Indigenous People who knew where the native copper and other minerals might be found. By 1773, mining had been attempted at Mica Bay on Lake Superior, 70 kilometres north of Sault Ste. Marie. In 1834, the lieutenant-governor of Upper Canada received a present of copper from St. Joseph Island. The gift was sent by an Ojibwe who indicated there was more copper on the shore near present-day Bruce Mines. In 1845, the government began granting licenses to mine along the north shores of Lakes Huron and Superior.

In 1846, the provincial surveyor Alexander Vidal encountered Shingwak, who claimed that the government had not purchased the land as was required by the Royal Proclamation of 1763; thus, Vidal had no right to be on the land. Investigations were carried out while the government proceeded with issuing a land patent allowing the Montreal Mining Company to proceed with their mining explorations near the present-day Bruce Mines. The First Nations protested vigorously. They hired a lawyer, made several presentations, and sent letters to further their case.

The Ojibwe were not against mining; they had, in fact, granted a lease to Allan MacDonell, “a license holder in the Quebec Mining Company,” in return for a 2 per cent annual royalty. The government, however, considered this arrangement illegal because only the government could purchase land or issue long-term leases. The issue was complex. Further communication and investigation led to Vidal and the “Indian Superintendent” of the day, Thomas Anderson, being commissioned to visit each of the First Nations to determine their wishes with respect to a treaty. Vidal and Anderson spoke with 22 chiefs along the north shore of Lakes Superior and Huron, identifying what were First Nations traditional lands and would be acceptable treaty terms.

Shingwak was frustrated by the slow pace of land dispute resolution, especially given that miners were working the land at Mica Bay. In the autumn of 1849, Shingwak organized a party of individuals and made his way to Mica Bay and took over the mine, displacing 160 workers and their families. Shingwak was charged and tried for his actions. The court sessions conveniently occurred while treaty negotiations were ongoing, meaning Shingwak, who was a powerful leader, was excluded from the talks. Robinson was appointed to implement the recommendations of the Vidal-Anderson Report of the previous year. He marginalized Shingwak by enticing those who signed the agreements with gifts, money, and promises of annuities, while threatening those who refused to sign with receipt of nothing. The treaty was signed on September 9, 1850. Among its articles, the treaty established that if any part of a First Nations reserve was sold for mineral or other benefit, it would be “for their sole benefit, and to the best advantage.” The presence of this clause in the treaty made defining the boundaries of the reserves an important legal question.

The land set aside for the Sagamok First Nation was described as follows:

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

Source: “Royal Proclamation, 1763,” Indigenous Foundations, University of British Columbia (website), accessed December 16, 2015, http://indigenousfoundations.arts.ubc.ca/royal\_proclamation\_1763; Anthony J. Hall, “Royal Proclamation of 1763,” Canadian Encyclopedia, last updated July 23, 2015, accessed December 14, 2015, www.thecanadianencyclopedia.ca/en/article/royal-proclamation-of-1763; “Estimated Population of Canada, 1605 to Present,” Statistics Canada, accessed December 14, 2015, www.statcan.gc.ca/pub/98-187-x/4151287-eng.htm; James Morrison, “The Robinson Treaties of 1850: A Case Study,” *Royal Commission on Aboriginal Peoples, Treaty and Land Research Section* (Ottawa, ON: Government of Canada, 1993), 2, 36, 38; Julia Jarvis, “William Benjamin,” in Dictionary of Canadian Biography, vol. 10 (Toronto, ON: University of Toronto, 2003), accessed December 14, 2015, www.biographi.ca/en/bio/robinson\_william\_benjamin\_10E.html; Robert J. Surtees, “Manitoulin Island Treaties,” Treaty and Historical Research Centre, Indigenous and Northern Affairs Canada (website), 1986, accessed December 14, 2015, www.aadnc-aandc.gc.ca/eng/1100100028959/1100100028961#chp2; Dee Brown, *Bury My Heart at Wounded Knee: An Indian History of the American West* (New York, NY: Holt, Rinehart & Winston, 1970); Janet Elizabeth Chute, *The Legacy of Shingwaukonse: A Century of Native Leadership* (Toronto, ON: University of Toronto Press, 1998).

EXHIBIT 4: Traditional Life and Lands

The treaties did not address the Sagamok First Nation’s traditional lands, which ranged far north of the identified reserve on the shore of Lake Huron. Families needed to go north to hunt food and trap for winter survival. Each had their own area, and come spring, they would return south for summer beside the lake.

The *Indian Act*, established in 1876, had been criticized as an act that “effectively treated Aboriginal people as children—a homogenizing and paternalistic relationship.” Aboriginal Peoples were required to obtain permission for many common activities, such as leaving their own reserve. They were also left dependent on the state for subsistence. In return, the Aboriginal Peoples were to stop practising traditional living, including ceremonies.

Chief Paul Eshkakogan confirmed a commission finding that “the legislation against Aboriginal Peoples did not stop Aboriginal practices but in most cases, drove them underground, or caused Aboriginal Peoples to create new ways of continuing them without facing persecution.” Eshkakogan recounted stories of how families maintained the traditions by practising at locations along the lakeshore, far from the reserve proper, to avoid being detected by the Indian agent.

Devastating addenda to the *Indian Act* included the introduction of residential schools, which commenced around 1880. The people of Sagamok First Nation were not immune; many were sent off to one of the residential schools, usually the Garnier School for boys in nearby Spanish, operating from 1913 to 1958, or the St. Joseph Residential School for girls, also in Spanish, operating from 1916 to 1962.

Conditions at the schools were harsh, not least of which was forbidding students from speaking their native language. The table of contents to the history volumes of the Truth and Reconciliation Commission’s final report provided a broad list of other experiences: the deadly toll of infectious diseases, covering up sexual abuse, separating children from parents, suppressing Aboriginal languages, and separating children from their traditions, to name just a few. The Truth and Reconciliation Commission, tasked to investigate the issue of residential schools, concluded that children in residential schools in the early 1900s died at a rate five times higher than in the general population. Earlier, in the late 1800s, the rate was about 10 times higher.

Stripping the First Peoples of their traditions and their children of everything critical to their identity and pride as Aboriginal people had a devastating effect on Sagamok parents and grandparents. The loss of identity, language, and cultural grounding resulted in a context that must be considered in dealings with the government and those with private interests in the resources on traditional First Nations land.

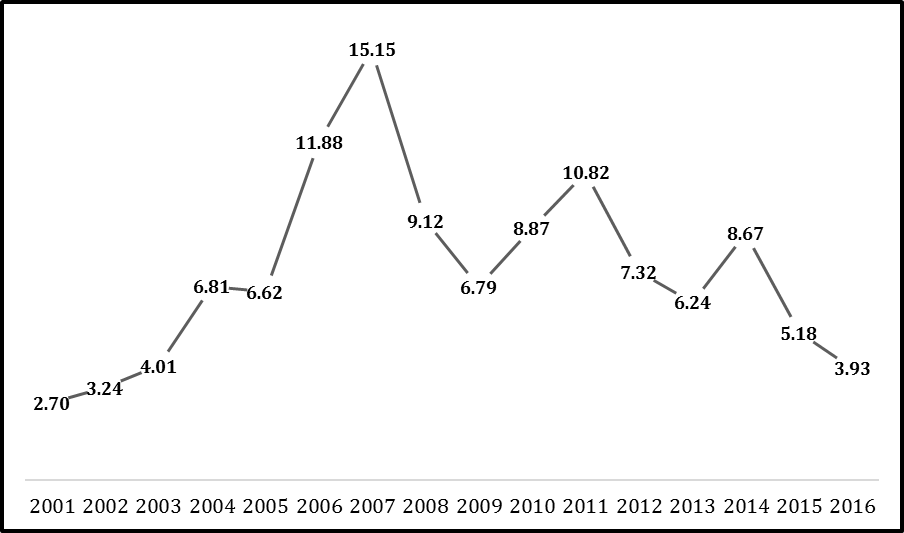
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Exhibit 5: Sagamok Reserve and Traditional Lands



Source: Reproduced with permission from Statistics Canada, accessed May 1, 2016. Annotations by the case author.

Exhibit 6: Nickel Prices 2001 to 2016



Source: Created by the case author based on the price of nickel as tracked by IndexMundi, accessed July 2, 2016, indexmundi.com.

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