In Hindsight: Half a Century of Research Discoveries in Canadian History

Presented by Dr. Donald B. Smith
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Episode 19: Chief Gary Potts and the Temagami Land Claim

In 1969 the recently elected Liberal administration of Pierre Trudeau inadvertently contributed to the rapid expansion of the Indigenous rights movement. The Hawthorn Report had recommended that First Nations people be treated as "citizens plus." The federal government should protect their special status and to quote volume one (page 13), "act as a national conscience to see that social and economic equality is achieved between Indians and White." Trudeau's predecessor, Lester Pearson, had promised that the Indian Act would be revised after prior consultation with First Nations people; but without any meaningful prior consultation, the new administration now proposed to end the Indian Act, the reserves, and "citizens plus." Without any further delay, if parliament accepted the "White Paper" on Indian policy, federal legislation would bring the First Nations immediately into the larger society. The elected band councils would evolve into municipal type institutions such as those in mainstream Canadian society. The new prime minister in a Vancouver address in early August 1969 stated that he did not believe the treaties should continue forever.

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In the White Paper on Indian policy, Minister of Indian Affairs Jean Chrétien called for the end within five years of the Department of Indian Affairs, the repeal of the Indian Act, the elimination of reserves, and the transfer to the provinces of many of the federal government's responsibilities for the First Nations. Assimilation, the goal of Canadian Indian policy since the country's creation in 1867, remained the spirit of the times. For many non-Indigenous Canadians, the end of any special recognition for the Indigenous Peoples was viewed as a progressive policy. In Saskatchewan the goals of the CCF under Tommy Douglas (1944-1961) and his successor as premier Woodrow Lloyd (1961-1964) were virtually identical to those of the White Paper of 1969. Prime Minister Trudeau also announced his government's refusal to negotiate land settlements for the roughly one half of the country that was not under treaty.

Immediately in “Indian country” strong resistance arose to these proposals. The White Paper, in effect, did for the First Nations what Lord Durham's report of 1839 had accomplished for French Canadians, in recommending their eventual assimilation. Over a century earlier they rejected the argument that their progress demanded the elimination of their culture. Immediately young educated First Nations leaders joined ranks with Indigenous elders to oppose the government's position paper. Although unsatisfied with the colonial relationship imposed by the Indian Act, the First Nations leaders realized that the legislation at least recognized their special constitutional status. Without the Indian Act they risked absorption into the mainstream of non-Indigenous Canadian society.

Assisting the Indigenous activists in their cause was the decision of the Supreme Court of Canada in the *Nisga’a* case of 1973. Although the Nisga’a from northwestern British Columba lost their legal case on a technicality, they gained on another front: six of the court’s seven judges recognized for the first time in Canadian

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history the existence of "Aboriginal title to land" in Canadian law. This is the context in which a young graduate student in Canadian history at the University of Toronto began to learn about modern Indigenous land rights.

Throughout the early 1970s I had kept my research on-going on Grey Owl, as a side interest to my Mississauga work. I hoped that perhaps one day I might write his biography (see Episode 3). Several short trips to Temagami had led me to several old-timers who still remembered him from his years there before World War One, and in 1925.

Lake Temagami, one of the most beautiful bodies of water in North America, contains more than 1,200 islands and has a shoreline of 1,000 kilometres. It is roughly 160 kilometres (100 miles) northwest of North Bay. Near the geographical centre of the lake, on Bear Island, live the Teme-Augama Anishnabai, "the Deep Water People." Grey Owl's daughter, Agnes Belaney Lalonde, who then resided in the village of Temagami on the mainland, became a special friend. Several times I stayed at her rooming house in North Bay, after she moved there. Years later her son Albert, after his mother's death, gave me the original copy of the first letter I sent Agnes from Toronto on 2 June 1971, in which I mentioned that "My research is coming along very well." I promised on my next visit to bring "some very good photos with me," then concluded thanking her and her husband, for their "very warm welcome on my last trip to Temagami."

In March 1973 I first met Gary Potts, the newly elected chief of the Teme-Augama Anishnabai. He spoke at a winter conference at Trent University on "Collecting, Sifting, Writing, the History of Temagami Country," on 3 March 1973 to be exact. I promised to forward by regular mail any interesting historical references to Temagami I might find in my Grey Owl work. On one of my early visits to the National Archives, now Library and Archives Canada, in the Indian Affairs papers (R.G. 10), I came across an important

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1907 petition to Ottawa, signed by 50 community members calling for a reserve. This was approximately one half of the community membership. Bluntly Aleck Paul, the second chief, who knew English, and Frank White Bear, head chief, wrote on 23 February 1907, “We have been asking for a reserve on Lake Temagami for years… we do not know of any band but ourselves who have not their own reserves. We have no land that we can settle on.” The Teme-Augama Anishnabai had not participated in the Robinson-Huron Treaty of 1850 south of their hunting grounds, made with the First Nations communities from Lake Nipissing and northern Lake Huron; nor had they participated in Treaty 9 (see Episode 17), north of Lake Temagami.

For a 1972 essay I wrote in a reading course with Ed Rogers at the Royal Ontario Museum, I inserted from my research findings one of the best quotes of all. Aleck Paul in 1913 told the visiting American anthropologist Frank Speck how the Teme-Augama Anishnabai conducted themselves in the forests and on the waters of their homeland. The Anishinaabeg based their land use on their intimate understanding of the environment. Upon his return to the University of Pennsylvania Speck shared the chief’s words, translated into English, with Malcolm Read Lowell of the *Philadelphia Public Ledger*. The journalist quoted Aleck Paul in his 23 November 1913 story about Dr. Speck and his summer findings amongst the Anishinaabeg in northeastern Ontario and northeastern Quebec:

> My grandfather’s land was divided among two sons, my father and Pishabo (Tea Water) my uncle. We were to own this land so no other Indians could hunt on it. Each family had its own district where it belonged and owned the game. That was each one's stock for food and clothes. If another Indian hunted on our territory we could shoot him. This division of land started in the beginning of time and always remained unchanged […] Sometimes an owner would give

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> permission for strangers to hunt for a certain time or in a certain tract. This was often done for friends or when neighbors had had a poor season. Later the favor might be returned. When the white people came they commenced killing all the game. They left nothing on purpose to breed and keep up the supply, because the white men don't care about the animals. They are after the money. After the white man kills all the game in one place he can take a train and go 300 miles or more to another and do the same there. But the Indian cannot do that. He must stay on his own section all the time and support his family on what it produces. So he has to preserve his game stock and live on what is bred on the increase […] You can write this down for me: If an Indian went to the old country and sold hunting licenses to the old country people for them to hunt on their own land, the white people would not stand for that. The Government sells our big game, our moose, for $50 license and we don't get any of it. The government sells our fish and our islands and gets the money, and we don't get any share.

Research-wise in the early 1970s, one worked with original archival documents. (Only a few years later this ended, and only microfilm copies, understandably, were made available.) As my main responsibility in the early 1970s was to complete important thesis research on the nineteenth century Mississauga on the north shore of Lake Ontario, I had to leave the “heavy lifting” on the Teme-Augama Anishnabai to others. Once I left Ontario, I could do no more. Happily, after my departure the Teme-Augama Anishnabai hired my good friend, Jim Morrison, one of Canada’s most skilled Indigenous land claims researchers.

Chief Potts sent me a thank you letter on 11 June 1973. “I now thank you very much for all the material you have sent me.” By the time of his next letter, one year later, dated Bear Island, 25 April 1974, he reported great progress had been made. The chief wrote,

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"I still feel that this land claim case has the potential depth to set a precedent with regards to native rights in the land." He ended his handwritten letter warmly: "I will be looking forward to the time when you can come to Bear Island and will be most likely seeing you in Toronto before you go out west." He knew that I had recently received a job offer from the Department of History at the University of Calgary to teach Canadian history. Then he ended the last letter I would receive from him while I was still an Ontario resident. "I am going in the bush for two weeks over break up and plan on being back by the middle of May."

From distant Alberta and the demands of a full-time teaching job, I could no longer assist, although I did briefly appear in the first trial as an expert for the Teme-Augama Anishnabai. I testified for two days in late February 1983 in Toronto. The trial began in spring 1982 before Aboriginal land and treaty rights became law under Canada's Constitution in 1982. It concluded in March 1984, the longest court case in the history of Ontario to that point. Over 3,000 exhibits were presented as evidence to the court and the proceedings themselves filled 68 volumes (David T. McNab, *No Place For Fairness. Indigenous Land Rights and Policy in the Bear Island Case and Beyond* (Montreal and Kingston, 2009), pages 75-77). The battle was waged at the level of the Ontario Supreme Court.

The entry of Chief Gary Potts into the office of Bruce Clark, a lawyer in Haileybury, in 1973 had begun the land claims fight. Gary and Bruce put together an imaginative strategy. They filed cautions on 110 townships in the Temagami region in the area they knew as N'Daki Menan, thereby placing the land under a development freeze, thus preventing, or inhibiting, economic development. The Anishnabai claimed entitlement to these lands, their ancestral territory. For over a century Ontario had refused to recognize their title and rights to their traditional lands. One of the biggest stumbling blocks in all of this is our constitution. Ottawa is

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responsible for Indian affairs, but the provinces control all public land within their boundaries. More than a decade of litigation followed from 1979 to 1991. A court action initiated by the NDP government of Bob Rae in 1993 and completed by Mike Harris's Conservative administration lifted the cautions.

Historically, improved access to the North created new challenges. A railway pushed north made it less challenging for prospectors, trappers, and tourists to reach Lake Temagami. The new provincial Conservative government favoured Northern development: railways, mines, and the increased extraction of resources in general. At the turn of the century, the Ontario government created a huge forest reserve to protect the pine timber. They still made no attempt provide the Teme-Augama Anishnabai with reserve land. They told the First Nations that they could not cut timber for any purpose. Before even cutting firewood, they must obtain the fire rangers' permission. It was as if they had become squatters on their own land. Once again on 3 September 1917, Chief Aleck Paul requested land. "We think," he firmly stated, "that we deserve something in our reserve. We have been before any government was born in Canada" (cited in Chief Gary Potts, "Last-Ditch Defence of a Priceless Homeland," in *Drumbeat* (Toronto, 1989) page 217). Gradually, the Temagami Forest Reserve was opened for more commercial expansion. No reserve was granted, no official home. As Bruce Hodgins and Jamie Benidickson summarize in *The Temagami Experience. Recreation, Resources, and Aboriginal Rights in the Northern Ontario Wilderness* (Toronto, 1989), page 210: "Although for the most part they resided on Bear Island at the geographical centre of the lake, the Temagami Indians were certainly no longer at the psychological centre of life in the region." The only advance, a tiny one, came in 1943 when Ontario allowed the Department of Indian Affairs to buy Bear Island for the Anishnaabeg, but they could only cut timber and firewood with Lands and Forests permission. The enforcement of Ontario game regulations caused continual friction.

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Gary Potts knew this bitter conflict well. Born in 1944, he spent his childhood trapping with his dad.

Finally, the Teme-Augama Anishnabai had enough. They lost patience. In the wake of the important *Nisga'a* case of 1973, they began legal action. I participated in a three-day gathering at Bear Island in late July 1982 on aspects of the land claim. The trial had begun several months earlier in Toronto. Many aspects of the Anishinaabeg history in Lake Temagami area were reviewed. Evidence establishes that the Teme-Augama Anishnabai have existed as a self-governing community for centuries. They did not sign a treaty with the Crown.

Two years later, the trial judge ruled against the Teme-Augama Anishnabai. In part, he based his decision on the fact that some years after the Robinson Huron Treaty some Teme-Augama Anishnabai accepted the small annuity or payment offered, four dollars a year. This meant, Mr. Justice Steele argued, that they had adhered to the treaty. Legal professor Kent McNeil has written a most useful review, "The High Cost of Accepting Benefits from the Crown; A Comment on the Temagami Indian Land Case," *Canadian Native Law Reporter*, Volume 1992, number 1 (1992), pp. 40-69. After the first decision, the case went to the Ontario Court of Appeal. It also went against the Teme-Augama Anishnabai. Then followed the greatest blow of all. In 1991, the Supreme Court of Canada heard the case but refused as an appeal court to re-examine any of Steele's factual findings. It agreed with the lower courts that the Teme-Augama Anishnabai had adhered to the Robinson Treaty by accepting annuities and a reserve, but also held that the Crown had breached its fiduciary or trust obligation to the Teme-Augama Anishnabai by failing to fulfill all the Treaty obligations. (As of 2023 the negotiations of these breaches still have not been concluded.)

Only six years later, in the 1997 Delgamuukw case, the Supreme Court of Canada recognized oral histories as legitimate evidence

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alongside written records, a much more generous outlook in contrast to the hardline, legalist approach favoured by the Ontario courts in the 1980s. After the court decisions, Gary and other Teme-Augama Anishnabai unsuccessfully pursued the goal of a treaty of co-existence between Ontario and the "Deep Water People," arguing that the territory around Lake Temagami should be jointly managed by the Indigenous societies, guided by the Anishinaabeg philosophy of the land. He and others strongly opposed old growth logging in N'Daki Menan. Gary Potts was awarded an honorary doctorate by Trent University, which is where I first met him on 3 March 1973.

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