

Kisa'muemkewey¹

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I am the son of the late William Frederick Young and Veronica Phillips, both of Waycobah & later centralized to Eskasoni. My parents later moved to live at Malagawatch reserve where I grew up on my mother's trapline and lived on the land. We hunted, fished, trapped, and peddled items in different communities in Cape Breton and Northern mainland NS.

I graduated from various educational institutions such as the Eskasoni Indian Day School to the James E. Rogers College of Law at the University of Arizona. In 2001, I became the first L'nu⁴ speaking lawyer called to the bar in Nova Scotia. Today, in addition to having a private legal practice with several different First Nations as my clients, I also teach L'nu studies at Cape Breton University. My research interests are primarily in L'nu governance institutions and in Indigenous Peoples Health.

Kisa'muemkewey

This paper is about kisa'muemkewey and the steps needed to get to kisaknutmaqan⁵. The closest translation of kisa'muemkewey into English would be the phrase "Treaty Diplomacy". When thinking about treaties, one has to recognize that there are different diplomatic processes or understandings that lead to the treaty itself. You can think of kisa'muemkewey as the process of treaty making or treaty diplomacy and it can include the actual treaty agreement itself. It is important in not only to think about how to interpret the treaty or to find which interpretation principles apply that will help in understanding the treaty, it is just as important to think about kisa'muemkewey as much as the actual written text of the treaty itself.

¹ "To come to an agreement" www.firstnationshelp.com/ali/lexicon.pdf at pg 22.

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³ "Who am I?"

⁴ I use the original name of my people: L'nu instead of Mi'kmaq. This means "People of the Same Tongue or People Who Speak the Same Tongue."

⁵ "Treaty or Agreement." There is not really a consensus as to which word refers to treaty. Some say it is "keta'matultimk" while others say it is "anku'kamkowel." I prefer the term kisaknutmaqan as it refers to a completed discussion where agreement or consensus has been reached among the parties.

To begin with, I will start with explaining L'nuwita'simk⁶ or the Mi'kmaq Worldview that will help in interpreting and informing others about the L'nu treaties.

L'nuwita'simk

L'nuwita'simk is how the L'nuk⁷ see and experience the world surrounding them. The worldview comes from their understanding and experiences of the different life forms and forces that live in kemitkinu⁸ or otherwise referred to as Mi'kma'kik.⁹ This area encompasses what is also known as Atlantic Canada, Gaspé region of Quebec and the northern border of Maine. L'nuwita'simk can be found wherever the language is spoken among the L'nuk.

L'nuwita'simk is also expressed through language, stories, ceremonies, rituals, dances, songs and the chants of the L'nuk. The teachings, values, customs, knowledge and legal principles of the L'nuk are all found in these expressions of L'nuwita'simk. Thus, it is important to start here in trying to understand the concept of kisa'muemkewey.

All of our relationships, including the ones made in treaty diplomacy, are enfolded into L'nuwi'simk¹⁰ or the language. The language is seen as sacred and contains the relationship links that can be seen as binding or linking all of the treaties together. One has to understand how kisaknutmaqan can be seen from the L'nu perspective in order to place it in the proper context. This can be particularly difficult to do especially when the historical and colonial records are only in the English language. There does not seem to be any komkwejwikasikl¹¹ or petroglyphs that depict the treaties or the treaty diplomacy process. However L'nuwisimk is very rich in providing us with words, concepts, understandings of both kisa'muemkewey and kisaknutmaqan.

In addition to the language, we need to look towards other expressions of L'nuwita'simk, in particular, the a'tukwaqnk¹² to help us find the true and accurate L'nu understandings of kisa'muemkewey and the kisaknutmaqank. We need to listen carefully to the stories and the oral histories of L'nuk who remember what our parents, grandparents, great grandparents had told them about the treaties and the relationship with our treaty partners.

A'tukwaqnk

There are many stories about the treaties, some are recent while others go back hundreds of years. All of these stories illustrate the L'nu treaty interpretation principles that need to be applied when looking at the treaties and how are they to be interpreted. Many of the stories are about upholding the honour and the intent of the treaties. Some are about the expectations regarding the clauses in the treaties while others are about the resistance and the

⁶ “To think like an L'nu.”

⁷ Plural of L'nu.

⁸ “Our homeland” “the land of the L'nu” “the traditional territory of the L'nu people.”

⁹ Another phrase that is used to describe the traditional territory of the L'nu people.

¹⁰ “To speak L'nu” or the Mi'kmaq language.

¹¹ “Hieroglyphic writing system of the L'nu people. A writing system using symbols.

¹² “ To tell a story, a legend, a tale.”

insistence of L'nuk in upholding the peace and friendship relationship. It can be a bit disheartening to hear or listen to these stories, especially when the stories tell about past difficulties in the treaty relationships between the colonists and the L'nuk. Not all stories end in happy ever after.

Mawiomi¹³

Another way that L'nuwita'simk is expressed is in ceremonies and the kisa'muemkewey is rich in ceremonies. It is important to point out and emphasize the various ceremonial practices that accompanied kisa'muemkewey. Since the treaties are primarily about creating and maintaining relationships and alliances, it is significant to note that part of why alliances are needed is that the survival of one is always seen as related to the other. An important duty of the L'nuk is to find, develop, foster alliances and relationships. Treaty making is a natural extension of that duty.

Relationships are seen as being in constant motion, requiring constant attention and renewal. This is usually done through renewal ceremonies, gift exchanges, feasting and speeches. Whenever a treaty has been agreed upon and entered into, ceremonies were conducted and done through the entire kisa'muemkewey process. The treaty educator must not forget about these renewal ceremonies as these are very much part of the kisa'muemkewey and the resulting kisaknutmaqan.

Treaty making is not a new idea that was introduced to the L'nu in the 18th century. It was already in place long before the first colonist arrived in Mi'kma'kik. L'nuk already knew how to enter into mutually beneficial relationships with other tribes and with other life forces. Often these relationships were entered into at a formal process at a mawiomi and the kisa'muemkewey incorporated the building or renewal of the relationship into it.

The first place to locate L'nuwita'simk is in the language and in the stories. Once you have done this, you can now start to add the flesh to the bones of treaty education so that the concept of kisa'muemkewey can be fully understood as part of reaching kisaknutmaqan.

Piluwa'mukl Etekl Kisaknutmaqank¹⁴

There is different type of treaties and one of the first lessons to be stressed is that none of the treaties in Atlantic Canada give up or cede any land. Not a single treaty in Mi'kma'kik cedes any land to anyone. This is why you will hear various land acknowledgement phrases that are now stated at many gatherings: *"We acknowledge that we are on **unceded** L'nu or Mi'kmaq territory."*

¹³ A formal gathering, either a powwow, a feast or a political gathering. Every mawiomi brings the L'nu together in ceremony to discuss issues —local, regional, national, global —of common concern.

¹⁴ "Different type of treaties"

L'napsuk¹⁵

L'napsuk is one of the earliest form of treaty that the L'nuk made with their treaty partners. The L'napsuk is made from the shells of pkwe'w¹⁶ or muskasej¹⁷ and it is usually strung along on a looped sinew or beaded into a large belt. An example of the L'napsuk treaties is the Eastern Algonquin Wabanaki Confederacy¹⁸ also known as the Putuswaqan.¹⁹



Many of the Confederacy meetings would begin with the recounting or recollection of the L'napsuk that had been brought to the Council. One of the most famous and well known examples of Wampum is the "Wampum at Niagara" where the Two-Row Wampum was first used by the Haudenosaunee and subsequently adopted by over 200 tribes, including the L'nu, in 1764.²⁰

In addition to the L'napsuk, the L'nuk also have written treaties with the British Crown that are commonly referred to as the Peace and Friendship Treaties. Generally the first one that is commonly accepted as the earliest Peace and Friendship treaty is the 1725 kisaknutmaqan or the Treaty of 1725. The partners in this treaty promised to keep the peace, cease hostilities, return any captives, engage in trade with each other, not disturb the L'nuk in their hunting or fishing, and a dispute resolution clause.

The remaining treaties generally follow the same script and generally have the same clauses, with some variation. These treaties link the 1725 treaty to each other and form the entire chain that make up the Peace and Friendship treaties. Each one ratifies or renews the 1725 Treaty and are known as the Treaties of 1727, 1728, 1749, 1752, 1754, 1760, 1761, 1763, with the last treaty being the Treaty of 1779.²¹

¹⁵ "Wampum, either in the form of strings or belts. Most are made from shells of Pkwe'w (quahogs) and Muskasej (whelks).

¹⁶ "Quahog"

¹⁷ "Whelk shells"

¹⁸ The Alliance consisted of the L'nu, the Wolastoqiyik, the Passamaquoddy, and Penobscot.

¹⁹ Meaning Convention Council.

²⁰ John Borrows, one of Canada's leading Indigenous Legal Academics writes about the renewal of the Two Row Wampum at the Great Council at Niagara in the summer of 1764 where the tribes adopted the Royal Proclamation into their councils.

²¹ For more information and archived copies of these treaties, see <https://novascotia.ca/archives/mikmaq/results.asp?Search=AR5&SearchList1=all&TABLE2=on>

Some of the Peace and Friendship Treaties are more well known than the others as a result of court cases such as the *R. vs. Sylliboy*²² of 1928, *R v. Simon* case of 1985²³ and *R v. Marshall*, 1999.²⁴ However, folks should strive to understand that all of the treaties are linked together and need to be understood in their entirety using the metaphor of a linked chain. Indeed the Peace and Friendship Treaties are also known as the Covenant Chain of Treaties.

L'nuwite'tasikl Kisaknutmaqank

One of the primary ways that the L'nu pass down knowledge about the treaties is through the A'tukwaqnk. One of the stories that tell of the L'napsuk between the Kenepek was passed down to Peter Tony (Antoine) and refers to a feast, games and a peace between the two tribes.²⁵ Other stories can be found about the Peace and Friendship treaties and to find out more, we just have to go the trial of *R v. Sylliboy* to find out how these stories and memories about the kisaknutmaqank have been passed down from one generation to the next.

At this trial, Kjisagamaw Gabriel Sylliboy (Waycobah) Joseph Christmas (North Sydney), Andrew Alex (Potlotek), Andrew Bernard (Waycobah), Francis Gould (Eskasoni), and Ben E. Christmas (Membertou)²⁶ all testified about what they knew about the kisaknutmaqankl. All of their testimonies were in the form of a'tukwaqnk and the oral knowledge about the treaty. The L'nu had kept the memory of the Peace and Friendship Treaty Relationship alive, even related the memory of particular clauses. This was done through the a'tukwaqnk. Here is some of their testimony related to how they obtained and kept alive the treaty relationship:

“Heard that according to treaty we had right to hunt & fish at any time...Heard it from our grandfathers. Heard that King of England made treaty with Micmacs, with the whole tribe...Remember hearing that goods were given-blankets-under treaty...Big coats and old fashioned guns & powder horns also.”

“Since I was a boy heard that Indians got from King free hunting and fishing at all times. Still believe Treaty good...Under treaty get from Gov't blankets and flour and some shoes and long coats...In Spring, get seeds. Gov't put up and maintain school on every

²² Kjisagamaw Gabriel Sylliboy was the first to argue and use the treaty of 1752 as a defence to the charges of hunting muskrats and possession pelts out of season. Sylliboy was convicted and his treaty defence was dismissed by the court in 1928.

²³ James Matthew Simon of Sipekne'katik also used the treaty of 1752 as a defence to the charges of illegal possession of a rifle and shotgun shells outside of the hunting season. Simon was acquitted by the Supreme Court of Canada in 1985.

²⁴ Donald Marshall, Jr. of Membertou was charged with fishing eels without a license, fishing during a close season, and selling eels without a license. Marshall used the treaties of 1760 and 1761 as a defence and was acquitted by the Supreme Court of Canada in 1999.

²⁵ A brief account of this feast can be found on page 92 of the book “The Old Man Told Us!” by R.H. Whitehead.

²⁶ It appears that many of the members of the Sante' Mawiomi or the Grand Council testified at this trial. Gabriel Sylliboy was the newly elected Grand Chief, Joseph Christmas is described as the deputy chief (likely the Kjikeptin), Andrew Alex was likely the Putus, while Andrew Bernard, Francis Gould and Ben Christmas were likely Keptins.

reservation. Putting up home in Shubenacadie. All by virtue of Treaty. In Treaty promised to teach us.”

“Remember my father receiving flour coats gun powder & shots fish spears...Micmacs can fish or shoot anything they want all year round. Father told me that. Got right from King.”

“Remember my grandfather going to Sydney and & getting blankets long coat corn gun powder flour sometimes seed corn beads for moccasins. He told me that he got these from the King. Under the Treaty. We promised to keep Treaty & got these things in return. That is what my grandfather told me.”

“Treaty still in force. Nothing ever pd. Indians for cancellation or revoking of treaty. Treaty never revoked so far as they are concerned. Still believe they have rights of hunting and fishing at all times.”

Following the conviction of Sylliboy (later granted a posthumous pardon), it seemed that the memory of the treaties ebb and flow from memory until the *Simon* case of 1985 where the 1752 Treaty was affirmed by the Supreme Court of Canada. In 1986, Kjisaqamaw Donald Marshall Sr. issued a call for all L'nuk to renew the kisaknutmaqankul at a ceremony in Halifax.

Renewal Ceremonies.

L'nuk believe that all life is in state of flux and is filled with energy, including relationships or alliances with other life forces. This energy can be seen as running down and needs to be replenished or renewed from time to time. This renewal ceremony or process is applicable to the Treaty relationships. To illustrate just how important these renewal ceremonies are to the kisa'muemkewey process, one just has to look a bit closely at some of the ceremonies conducted during the actually signing of the treaties.

One ceremony that does not get too much attention but was known and the story of it was passed down through the a'tukwaqnk is the burying of the hatchet and the sword at Mulgrave Park.²⁷ Another important ceremony that was done was the symbolic washing of the war paint from the faces of the L'nuk.²⁸ The treaties, the notes, records and a'tukwaqnk that document the process of kisa'muemkewey refer to the treaty partner relationship as a type of kinship or family terms. When reading the treaties or listen to the a'tukwaqnk about the treaties, you will see or hear references to 'brotherly love and affection, "Father", "Brethren, "friend, ally," and all other kinship terms highlight the importance that the L'nuk place on kinship relationships.²⁹ The use of kinship terms in the kisa'muemkewey illustrates the value that L'nuk place on relationships and consider the family alliances as being one of the strongest.

²⁷ This ceremony was told to Jeremiah B. Alexis by Maggie Paul in the early part of the 20th century. This ceremony is also mentioned in the promises made by Jean-Baptiste Major Cope in 1752.

²⁸ This washing of the face and burial of the hatchet ceremony is mentioned in Thomas Akins "History of Halifax City" as he described the 1760 Treaty ratification ceremony that took place at Spring Garden Road where the current court house now stands. It is also mentioned in the description of the ratification of the 1761 Treaty in the book "The Old Man Told Us!"

²⁹ There is numerous detailed descriptions of how relationship kinship terms were used during the kisa'muemkewey in the history book "The Old Man Told Us by R. H. Whitehead.

Why the British Wanted Treaties!

To truly understand the *kisaknutmaqankl*, folks have to also understand why the *aklasie'wk*³⁰ wanted to enter into treaties. The primary motivation was the desire to seek out peace with the L'nuk. After waging long and protracted wars with the French and the other Algonquian tribes, including the L'nuk, the British wanted peace. In addition, the British wanted to establish trading relationships with the L'nuk. Thus, the treaties could be seen, not just as Peace and Friendship but trade and commerce treaties. Entering into the *kisaknutmaqan* ensured the British gained a permanent foothold with settlements and a trading relationship with the L'nuk who would become their treaty partners.

Elisknuasik³¹

Various metaphors have been used to try and explain to help folks understand the L'nuwita'simk understandings of the Peace and Friendship Treaties. The most common metaphor is the use of a chain analogy where each treaty is a link in the overall chain. This paper suggest using the chain metaphor but also bring in a braid metaphor. The interpretation principles used to help understand the relationship is akin to a three plait braid. One strand uses L'nu understandings while another strand uses the Canadian interpretations principles while the remaining strand picks up the international legal interpretation principles. All are woven together to form the braid which makes up the entirety of the treaty relationship.

You really cannot look at treaties from one particular perspective as this will only give you a limited understanding or the totality of the meaning of the whole relationship. You have to reframe the conversation to reflect both the L'nuk and the British (subsequently Canada's) understanding of what was contemplate and understood as being part of the *kisa'muemkewey*. You can almost see the treaty relationship as being *Elisknuasik*. This relationship is braided with L'nuk, Canadian and International legal principles, laws and interpretations approaches that can provide direction as to how to examine and fully understand *kisa'muemkewey* and *kisaknutmaqan*.

Conclusion

Kisa'muemkewey is a significant part of the creation of the *kisaknutmaqan* and needs to be presented as part of any treaty education presentation. This diplomacy forms the foundation of the treaties relationship included the use of L'nuk renewal ceremonies and the creation of a new kinship relationship among the treaty partners. Although the primary focus of treaty education will be about the Peace and Friendship treaties, it is important to stress that these are not the only type of treaties that the L'nuk have. There are other types with other nations and tribes and that *Kisa'muemkewey* was practiced long before the L'nuk entered into any treaties with the British. History also tells us that, despite the terrible impacts of colonization, the L'nuk, through L'nuwita'simk, had kept the memory of the treaty relationship alive in the *A'tukwaqan* & the *Wi'kupaltimk*.

Finally, any Treaty Education process needs to start from the understanding that the treaties, whether they are L'napsuk or the Peace and Friendship treaties, that these are not land

³⁰ Meaning the English or the British. Derives from the French word *anglais*.

³¹ "Braided or made into a braid."

cessation treaties. All of the L'nuk treaties are all about entering into, building, maintaining and celebrating our relationships with each other.