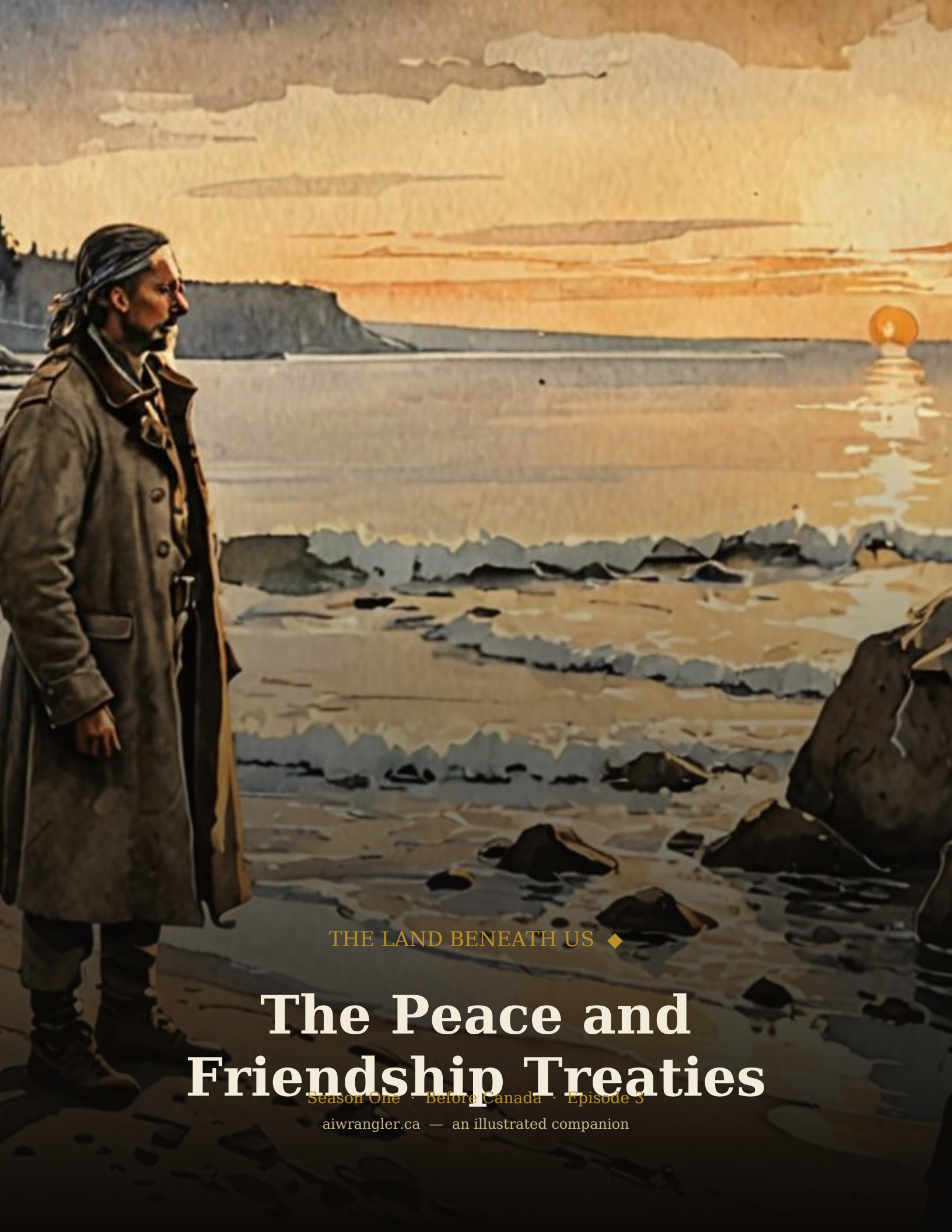




THE LAND BENEATH US ◆

The Peace and Friendship Treaties

Season One · Before Canada · Episode 3

aiwrangler.ca — an illustrated companion

Every date, term, and quotation in this series is drawn from the historical record. This companion is the full episode narration, illustrated.



From the episode

WILLOW BORN WITH A TOOTH

Welcome. I'm standing at the waterfront in Annapolis Royal, Nova Scotia — a small town on the shores of the Annapolis Basin, and just about three hundred years ago, the seat of British power on this entire coast. Behind me there's a tidal river, a weathered fort, and water that has been fished by the Mi'kmaq people since long before any European ship found its way here. Today's question: in seventeen twenty-six, in a room very close to where I'm standing, a treaty was put to paper. And for three centuries, the people who signed it have been reading it in two fundamentally different ways. What did they each think they were agreeing to?

SAM CARDINAL

The territory we're talking about — Mi'kma'ki — stretches across what is now Nova Scotia, New Brunswick, Prince Edward Island, and parts of Quebec and Maine. The Mi'kmaq people had lived here for thousands of years, and the Wolastoqey — whose name, put simply, means the people of the beautiful river — had made their home along the great river we now call the Saint John. These were nations with their own governance, their own law, their own deep relationship with the land and the sea. And in the Mi'kmaq and Wolastoqey understanding, a treaty between nations is not a document that closes a deal — it is a living covenant, one that must be tended and renewed. That understanding is the frame through which they came to the table at Annapolis Royal.



WILLOW BORN WITH A TOOTH

The Mi'kmaq had been allied with the French for well over a century by the time the British started pressing hard for control of this coast. That alliance made the British uneasy, and the Mi'kmaq were formidable. When decades of fighting along the coastline finally wore both sides down, the British came looking for peace.

SAM CARDINAL

There had been earlier moments of reaching toward agreement, earlier promises made and strained. But the treaties we're examining today took their lasting shape in seventeen twenty-five and seventeen twenty-six. In seventeen twenty-five, Mi'kmaq and Wolastoqey delegates travelled to Boston, where an agreement was made with the colonial government of Massachusetts. Then, in seventeen twenty-six, delegates came here — to this basin, to the British garrison at Annapolis Royal — to ratify formally what had been promised. A British officer named Paul Mascarene oversaw that ratification. He was experienced, he was careful, and he believed he was witnessing something of great consequence. He was right about that — just not in every way he imagined.



WILLOW BORN WITH A TOOTH

So what does the written treaty actually say? Because that's always where we start — the paper.

SAM CARDINAL

The written text is brief, and it rewards slow reading. The Mi'kmaq and Wolastoqey promise not to molest or disturb the British subjects in their settlements, their trade, or their fishery. They acknowledge British rule — those words are there on the page. And in return, the Crown promises to protect their rights to hunt and fish and gather in their usual places and seasons, as they had always done. What the text does not say — and this is the silence that carries three hundred years of consequence — is anything about land. Not one acre is described. Not one territory is named as given up or surrendered. The land is simply absent from the document.



WILLOW BORN WITH A TOOTH

That absence is striking. So let's put the three records side by side — because the written text is only one of them. What did the Crown's own negotiators report back to their superiors?

SAM CARDINAL

Mascarene and the colonial officials in Boston understood the treaty as an act of submission. In their reading, the Mi'kmaq and Wolastoqey were acknowledging that British sovereignty over this coast was now settled, and they filed their reports in those terms. The British legal and political frame of the time held that once a people acknowledged the Crown's authority, questions of governance — and ultimately of land — followed from that acknowledgment. When they wrote "submit to British rule," they meant it as the permanent resolution of a political question: who, in the end, governs this territory.



WILLOW BORN WITH A TOOTH

And what did the Mi'kmaq and Wolastoqey understand themselves to have agreed to?

SAM CARDINAL

What the Mi'kmaq and Wolastoqey delegates carried home from those meetings was something their communities have stated with consistency for three hundred years. They understood themselves to be making peace — agreeing to live alongside the British without war, to allow British settlements and British fishermen on the coast, and to continue living as they always had on their own land and waters. Sovereignty was not something they had placed on the table. The land itself had not been raised as a subject, had not been offered, had not been accepted. In the Mi'kmaq relationship to the land, the territory does not belong to any person or nation to give away — it is held in responsibility, in relationship. You cannot sign away what you do not own in that way.



WILLOW BORN WITH A TOOTH

And there it is — the gap opens, right there, in that room in seventeen twenty-six, while both sides put their names to the same paper. One side understood: we have made peace. The other side understood: they have submitted.

SAM CARDINAL

That gap is worth sitting with carefully, because both sides brought something real to it. The British were not fabricating their reading — it was genuinely what their political and legal framework required them to hear, and they had prepared their documents accordingly. The Mi'kmaq and Wolastoqey were not confused or outmanoeuvred — they were experienced diplomats who had been navigating European relations for over a century, and they knew precisely what they had and had not agreed to. The written text, read plainly, supported their position: the land is not there. What the two sides could not fully see, standing in that room, was that they were operating from two entirely different understandings of what a treaty does — and that difference would matter enormously in the centuries to come.



WILLOW BORN WITH A TOOTH

So what did these promises mean in practice — did they hold?

SAM CARDINAL

For a time, the peace held — the immediate goal of stopping the violence was achieved, and that was real. But as British settlement expanded across Mi'kma'ki, as generations passed and Canada became a country, the treaty promises about hunting and fishing and gathering were frequently set aside in practice. Reserves were drawn. Regulations arrived. The old ways of life were crowded and sometimes criminalized. But none of that erased what had been agreed, because these treaties contain no land cession. That is not an accident; it is not an oversight; it is what was negotiated. A right that was never surrendered does not simply disappear because it becomes inconvenient.



WILLOW BORN WITH A TOOTH

Which brings us to nineteen ninety-nine — because these three-hundred-year-old agreements did something remarkable. They walked into a Supreme Court of Canada courtroom.

SAM CARDINAL

Donald Marshall Junior was a Mi'kmaw man from Membertou First Nation in Cape Breton. In nineteen ninety-three, he went out and caught and sold eels without a federal licence and out of season by federal regulation, and he did so deliberately — because he believed his treaty right gave him the authority to do it. He was charged under the federal Fisheries Act. And in nineteen ninety-nine, the Supreme Court of Canada ruled in his favour. The court found that the Peace and Friendship Treaties of seventeen sixty and seventeen sixty-one — which renewed the same foundational promises first made in seventeen twenty-six — protected the Mi'kmaq right to earn a moderate livelihood from hunting, fishing, and gathering. The right was real. It had endured. Three centuries of being pushed aside had not erased it.



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The decision set off one of the most significant fisheries disputes in Canadian history — Mi'kmaq fishers went out on the water, non-Indigenous fishers pushed back hard, there were confrontations on the docks, and the country was forced to face what it actually means when a living treaty right shows up at a working wharf.

SAM CARDINAL

That reckoning is still underway, and it has not been simple. The court subsequently issued supplementary reasons clarifying the scope of the ruling, and questions about what a moderate livelihood means in practice — who regulates, under what conditions, and how — are still being worked through in negotiations and in courts today. But the foundation held: this was a treaty of peace and shared use, not of surrender. When the Supreme Court read those documents — the same silence about land that had always been there, right on the page — it read them the way the Mi'kmaq had always read them. The Peace and Friendship Treaties are the only major treaties in what is now Canada that contain no land cession. That is not a footnote. That is the whole point.



WILLOW BORN WITH A TOOTH

I keep coming back to that. Three hundred years. The Mi'kmaq carried their understanding of this treaty across all of that time — in families, in communities, in the people who kept saying: we never gave the land away. And a courtroom in Ottawa, three centuries later, said: you were right.

SAM CARDINAL

What moves me is that the document itself bore that out. Not a single acre, not a single word of surrender — the silence was always there, for anyone willing to read carefully and honestly. The people who signed that treaty at Annapolis Royal in seventeen twenty-six were making a promise about how two peoples would share a coast. They were not selling a country. The Mi'kmaq and Wolastoqey knew that when they put their names to it, and they have said so in every generation since. History, in this case, sided with the people who remembered. I'm Sam Cardinal.

WILLOW BORN WITH A TOOTH

And I'm Willow Born With a Tooth. The next time you're on the Atlantic coast — watching the tide come in, or buying fish at a market, or just driving through a small Nova Scotia town — you're moving through a territory where the treaty was never broken, even when it was ignored, even when it was forgotten. These were the first promises made on this land. They are still in force. We'll see you next time.

Sources & Notes

The Land Beneath Us is built on the historical and documentary record. Where that record is contested, we say so.

A note on the record

The Peace and Friendship Treaties are the only major treaties in what is now Canada that contain no land cession — a point affirmed by the Supreme Court of Canada, not merely asserted by tradition. The 1725/1726 agreements (often called Mascarene’s Treaty, out of the earlier Dummer’s Treaty negotiated at Boston) were renewed in the treaties of 1760–61, which are the specific instruments the Court read in *R. v. Marshall*.

References & further reading

R. v. Marshall, [1999] 3 S.C.R. 456 (Marshall No. 1) and [1999] 3 S.C.R. 533 (Marshall No. 2) — the Supreme Court of Canada affirming a Mi’kmaq treaty right to a “moderate livelihood” from fishing, hunting and gathering, and clarifying its scope.

“Peace and Friendship Treaties (1725–1779).” *The Canadian Encyclopedia*; and Crown–Indigenous Relations and Northern Affairs Canada, treaty texts.

William C. Wicken. *Mi’kmaq Treaties on Trial: History, Land, and Donald Marshall Junior* (Toronto: University of Toronto Press, 2002).

Paul Mascarene’s ratification at Annapolis Royal, 1726, of the peace concluded with Massachusetts at Boston in 1725; Donald Marshall Jr. was a member of Membertou First Nation, Cape Breton.

The 1725/26 treaty texts acknowledge British rule and mutual peace but describe no cession of land — the documentary silence this episode turns on.