



THE LAND BENEATH US ◆

The Last Treaty

Season One · Before Canada · Episode 30

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.



KEY DATES

1920 — Imperial Oil strikes oil at Norman Wells
1921 — Commissioner Conroy signs Treaty Eleven in one summer
1974 — Berger Inquiry hears Dene elder testimony

IF A NATION DOES NOT KNOW IT HAS SURRENDERED, HAS IT?

The question Treaty Eleven built — still legally open

From the episode

WILLOW BORN WITH A TOOTH

If you stand on the bank of the Mackenzie River in the Northwest Territories — one of the longest rivers on this continent, draining a territory the size of western Europe — and you ask what deal governs the land beneath your feet, you will get two completely different answers. And both sides will tell you they are right.



SAM CARDINAL

The Mackenzie River valley is Dene country. The Deh Cho — the Big River — that is what the people have called it since long before anyone drew a border on a map. The Dene nations of the valley — the Dehcho Dene, the Sahtúot'íne, the Tłıchǫ, the Gwich'in and their neighbours — fished its waters, hunted the boreal forest, and built nations along its length for thousands of years. When Canada's numbered-treaty era began in the eighteen seventies, the Crown left this valley alone. It was too far north, too expensive to administer, and there was nothing yet that the Dominion needed.

TREATY ELEVEN

Signed 1921 along the Mackenzie Valley — last of eleven numbered treaties

WILLOW BORN WITH A TOOTH

Nothing — until nineteen twenty.



SAM CARDINAL

In nineteen twenty, Imperial Oil sank a drill into the limestone at a place the Dene called Tsá Tué — the maps say Norman Wells — and struck oil. A real deposit, not a trace. Overnight, Ottawa looked at a million square miles of Dene territory and saw something it had not seen before: value it could not legally extract. Canada had been signing numbered treaties since eighteen seventy-one, but the whole Mackenzie valley sat outside any of them. The discovery changed that calculation within months.



WILLOW BORN WITH A TOOTH

So the Crown rushed north. In the summer of nineteen twenty-one, Commissioner Henry Conroy loaded onto a Mackenzie River boat and began working his way downstream — Fort Providence, Fort Simpson, Fort Wrigley, Fort Norman, Fort Good Hope, Arctic Red River, Fort McPherson — signing at each community in turn.



SAM CARDINAL

One summer. The whole journey done in one summer. Fifty years after Treaty One was signed at the Stone Fort on the Red River, Canada closed its numbered-treaty era on the Mackenzie. Eleven treaties, half a continent. Treaty Eleven was the last, and it was also, in the end, the one that asked the hardest question of all of them.

KEY DATES

- 1920 — Imperial Oil strikes oil at Norman Wells
- 1921 — Commissioner Conroy signs Treaty Eleven in one summer
- 1974 — Berger Inquiry hears Dene elder testimony

WILLOW BORN WITH A TOOTH

The written text of Treaty Eleven reads like the others in the series. The Dene — the document calls them Indians — are recorded as having, and I am quoting the actual treaty language here, "cede, release, surrender and yield up to the Government of the Dominion of Canada, for His Majesty the King and His Successors for ever, all their rights, titles and privileges whatsoever to the lands" within the valley. In return: reserves if wanted, annual payments, the right to hunt and fish on unoccupied land.



SAM CARDINAL

And here is where the three records come apart. The written treaty is unambiguous — in the language of English land law, it is a full surrender. The Crown's commission reports from nineteen twenty-one speak of the Dene as welcoming the treaty, cooperative, glad to come in. But the third record — what the Dene elders carried in memory and testimony — tells a completely different story about what happened on that riverbank.

THE CENTRAL QUESTION

Crown's Position

Treaty Eleven transferred land by written surrender

Dene Position

No land transfer agreed — oral promises said otherwise

WILLOW BORN WITH A TOOTH

And we know what the elders said, because half a century later, they were given a formal chance to say it in public.



SAM CARDINAL

In nineteen seventy-four, Justice Thomas Berger of British Columbia was appointed to lead the Mackenzie Valley Pipeline Inquiry — a federal review of a proposed natural-gas pipeline that would run from the Beaufort Sea south through the Mackenzie valley. Berger did something that was unusual then and still remarkable now: he held community hearings in dozens of settlements along the valley, conducted in the languages of the people who lived there. Dene elders who had been children in nineteen twenty-one, or who carried the living memory of those who had been present, testified under oath.

IF A NATION DOES NOT KNOW IT HAS SURRENDERED, HAS IT?

The question Treaty Eleven built — still legally open

WILLOW BORN WITH A TOOTH

What did they say the treaty was?



SAM CARDINAL

They said it was not a land surrender. Elder after elder testified that Commissioner Conroy had told them the treaty would not take their land — that they would be free to hunt and fish and live as they always had, that the Crown wanted friendship and peaceful coexistence, not the ground beneath their feet. The elders were consistent and specific: the word surrender was never spoken on the riverbank. What was spoken was the language of sharing, of living together, of a relationship that would protect them, not displace them. They had not understood themselves to be giving anything away.



WILLOW BORN WITH A TOOTH

And the Crown's own commission papers from nineteen twenty-one do not fully close that gap. Conroy's reports acknowledged that the Dene asked hard questions, and that assurances were given about their way of life continuing unchanged.



SAM CARDINAL

This is the difficult truth that sits at the center of Treaty Eleven, and it is not unique to this treaty — that same gap between the spoken assurance and the written page runs through the numbered treaties from the beginning. But on the Mackenzie it became the sharpest version of it, because the Crown's need was so nakedly obvious and the process so compressed. Whether Commissioner Conroy believed he was softening a difficult truth to ease the signing, or whether he genuinely understood the agreement differently from the lawyers in Ottawa who drafted it, we cannot know for certain. What the Berger testimony established is that two different agreements took place in the summer of nineteen twenty-one. One was recorded on paper. The other was spoken, witnessed by whole communities, and remembered for fifty years.



WILLOW BORN WITH A TOOTH

That gap did not stay in memory. It went to court.

SAM CARDINAL

In nineteen seventy-three, Dene leader François Paulette filed a legal caveat — a formal notice of claim — covering roughly one million square miles of the Northwest Territories on behalf of the Dene and Métis. His argument was straightforward: Treaty Eleven had never transferred the land, because the Dene had never agreed to transfer it, because what was said at the table was not what the paper recorded. Justice William Morrow of the Northwest Territories Supreme Court read the Berger testimony and found the Dene witnesses credible. He upheld the caveat. The federal government appealed, and the Court of Appeal set that decision aside — not by settling the underlying question of what the Dene had agreed to, but on jurisdictional grounds. The question itself was left standing.

WILLOW BORN WITH A TOOTH

So after all that testimony, after all those elders speaking in their own languages about nineteen twenty-one — the core question of what was actually agreed is still legally open.

SAM CARDINAL

Still open in the deepest sense. The Sahtu Dene and Métis reached a comprehensive land claim settlement in nineteen ninety-three that resolved some of the land questions in their part of the valley. Other Dene groups continue to negotiate. The oil at Norman Wells — the deposit that made the Crown suddenly interested in the north in nineteen twenty — was produced commercially for decades, the revenue flowing largely to the Crown, while the underlying question of who held the land sat in unresolved legal territory. The trigger for Treaty Eleven produced wealth. Who that wealth belonged to remained contested.

WILLOW BORN WITH A TOOTH

You said this was the last of the numbered treaties — the closing of a fifty-year chapter. Does it feel like a closing?

SAM CARDINAL

Fifty years. Eleven treaties. The project began in eighteen seventy-one because Canada had just acquired Rupert's Land and needed to open the west to settlement. It ended in nineteen twenty-one because Canada needed to open the north to resource extraction. The Crown used the same machinery from the first treaty to the last — commissioners, printed text, interpreters, the pageantry of the relationship — but what it needed kept changing, and what it was willing to say out loud and what it put on paper kept drifting apart. Treaty Eleven closed the era. And in closing it, it gave the era the question it had been building toward: if a nation does not know it has surrendered something, has it surrendered it?

WILLOW BORN WITH A TOOTH

Justice Berger heard that question from the elders directly. When he published his report in nineteen seventy-seven, he recommended no pipeline be built for at least ten years — time for land claims to be negotiated and for the Dene to have a voice in what happened to their territory. That pause mattered.

SAM CARDINAL

It mattered in law and it mattered in principle. The Supreme Court of Canada has held, in the decades since, that treaties must be interpreted to reflect what both parties understood at the time of signing, that ambiguity is resolved in favour of the Indigenous party, and that the honour of the Crown demands something more than a signature on a document. That doctrine did not fall from the sky. It was built, case by case and argument by argument, on exactly the kind of testimony the Dene elders gave before Justice Berger — people who remembered nineteen twenty-one and were willing to stand up and say what they knew. The land beneath the Mackenzie is still being spoken for. That is the legacy of the last treaty. I'm Sam Cardinal.

WILLOW BORN WITH A TOOTH

The oil is still down there below Norman Wells. The Deh Cho still runs to the Beaufort Sea. And the conversation that began on a riverbank in the summer of nineteen twenty-one — about what was promised, what was agreed, and what the land itself is — has not ended. It moved from memory to testimony to court to negotiating table, and it is still moving. From the Mackenzie valley, I'm Willow Born With a Tooth. We'll see you next time on The Land Beneath Us.

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 Mackenzie River drainage basin is approximately 1.8 million km² — comparable in area to Mexico, not western Europe, which by most definitions covers 3–5 million km². The 'size of western Europe' comparison overstates the basin by roughly a factor of two.

Berger's 1977 report issued two legally distinct recommendations: a 10-year moratorium on a Mackenzie Valley corridor pipeline (pending land-claim negotiations), and a permanent prohibition on any pipeline through the Northern Yukon and Mackenzie Delta. The script's 'at least ten years' captures only the southern-corridor moratorium and omits the categorical northern prohibition.

References & further reading

Treaty No. 11 (June 27, 1921). Primary document. Reproduced in Crown-Indigenous Relations and Northern Affairs Canada, **Canada's Numbered Treaties**.

Fumoleau, René. **As Long as This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870–1939**. Toronto: McClelland and Stewart, 1973. Republished Calgary: University of Calgary Press, 2004.

Berger, Thomas R. **Northern Frontier, Northern Homeland: The Report of the Mackenzie Valley Pipeline Inquiry**. 2 vols. Ottawa: Supply and Services Canada, 1977.

Paulette v. The Queen (1973), NWT Supreme Court (Morrow J.). Upheld a Dene-Métis land caveat covering approximately one million square miles of the Northwest Territories on the basis that Treaty 11 had not effected a valid surrender.

Re Paulette and Registrar of Titles (1976), Alberta Court of Appeal sitting as the NWT Court of Appeal. Set aside Morrow J.'s decision on procedural grounds, finding the Land Titles Act caveat mechanism an improper vehicle for such a claim, without adjudicating the underlying title question.

Sahtu Dene and Métis Comprehensive Land Claim Agreement. Signed September 6, 1993. Ottawa: Indian and Northern Affairs Canada.

R. v. Badger, [1996] 1 SCR 771. Supreme Court of Canada. Affirmed that treaty ambiguity must be resolved in favour of the Indigenous party and that courts must look beyond the written text to what each party reasonably understood at the time of signing.

Helm, June, ed. **Handbook of North American Indians**, vol. 6: **Subarctic**. Washington: Smithsonian Institution, 1981. Authoritative ethnographic and historical reference for Dene peoples of the Mackenzie valley, including pre-treaty land use and governance.