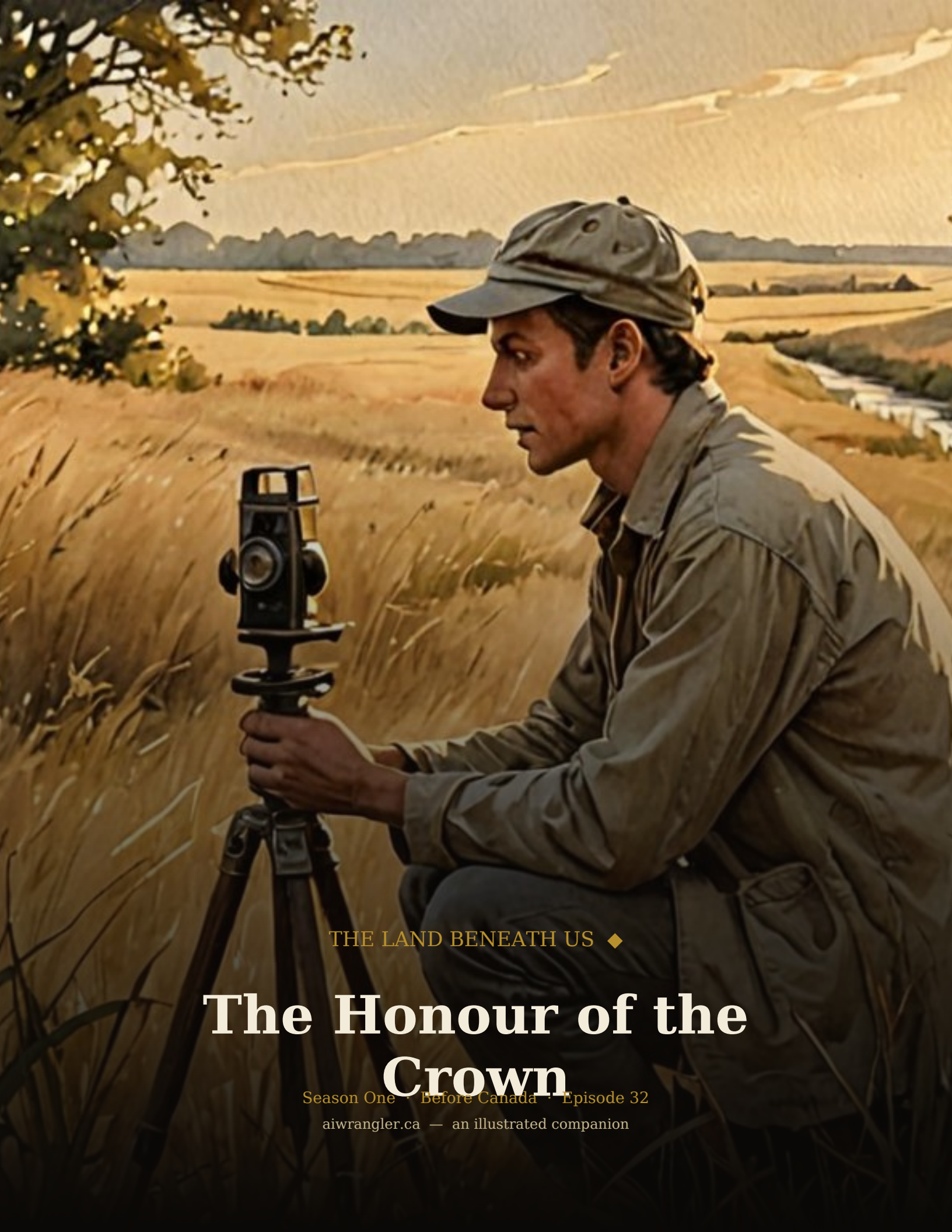




THE LAND BENEATH US ◆

The Honour of the Crown

Season One • Before Canada • Episode 32

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

I'm standing outside Wetaskiwin, Alberta — Treaty Six territory. Behind me, a pump jack is pulling oil out of the ground, and the royalties from that oil go to the province of Alberta. But the treaty that covers this land was made between the Cree nations and the federal Crown, and Alberta was not at the table. So I want to know: what deal gave the province control of what lies under treaty land — and what did that deal do to the promises that were already made here?



SAM CARDINAL

To understand that you have to go back to something most people don't know about the prairie provinces. When Manitoba, Saskatchewan, and Alberta joined Confederation — Manitoba in eighteen seventy, Saskatchewan and Alberta in nineteen oh five — the federal government did something it never did with the eastern provinces. It kept the natural resources for itself: the minerals, the forests, the oil, the public lands. Ottawa held all of that to manage western settlement the way it wanted. The prairie provinces were provinces in name, but for decades they did not own what was under their own ground.

NATURAL RESOURCES TRANSFER AGREEMENTS

1930 constitutional transfer of Crown land and resources to
prairie provinces

WILLOW BORN WITH A TOOTH

And in nineteen thirty, Ottawa gave it back.



SAM CARDINAL

In nineteen thirty, through agreements made with each of the three provinces — confirmed in the Constitution Act of that year — the federal government transferred control of Crown land and natural resources to Manitoba, Saskatchewan, and Alberta. Those are the Natural Resources Transfer Agreements. From that moment on, oil royalties, mineral leases, timber rights — all of it flowed to the provinces. It was a major constitutional change. The nations whose treaties covered that same land were not consulted and had no seat at the table.

THREE RECORDS		
The Agreements Said	The Crown Said	First Nations Said
Provinces must allow Indians to hunt, trap, and fish for food on unoccupied Crown land	The treaty right was preserved by paragraph 12 and equivalent provincial provisions	They were not consulted; the treaty right was not Ottawa's to reassign

WILLOW BORN WITH A TOOTH

Three records. What did the agreements say about treaty rights? What did the Crown say it had protected? And what did the First Nations understand had happened to the promises already made to them?



SAM CARDINAL

The agreements did include a protective provision — paragraph twelve in the Alberta agreement, with equivalent language in the others. It said the provinces must allow Indians their right to hunt, trap, and fish for food on unoccupied Crown land, subject to conservation measures the province might put in place. The Crown said this preserved the treaty right. The First Nations said they had not been asked, and the treaty right they held was not conditional — it had not come from Ottawa's generosity and could not be reassigned to a province that had never negotiated with them. And what the memory of the treaty making held was this: the right to live off the land was the foundation of the agreement, not a footnote a government could quietly revise.

KEY DATES

- 1930 — Natural Resources Transfer Agreements signed
- 1982 — Section 35 affirms Aboriginal and treaty rights
- 1996 — R v Badger: honour of the Crown applied to hunting rights
- 2005 — Mikisew Cree: duty to consult confirmed

WILLOW BORN WITH A TOOTH

And for the next sixty years, hunters went out under their treaties — and came home to charges under provincial game law.



SAM CARDINAL

Case after case. Cree, Ojibwe, Dene hunters charged for doing what their treaties explicitly said they could do, and the question the courts kept circling was fundamental: did the Natural Resources Transfer Agreement replace the treaty right, modify it, or leave it intact — and who had the authority to limit what a sovereign treaty promise meant? That question was building across decades, and the Supreme Court of Canada finally took it on directly in nineteen ninety-six.

HONOUR OF THE CROWN

Guerin v The Queen (1984)

Crown owes a fiduciary duty to Indigenous peoples in managing their lands

Treaty Land Entitlement

Canada acknowledged undelivered reserve acreage; nations can purchase open-market land and convert it to reserve status

WILLOW BORN WITH A TOOTH

R versus Badger. Three Cree hunters from Alberta, charged under the provincial Wildlife Act for hunting on land that had shifted from unoccupied Crown land to private hands. The court had to decide what the treaty right was worth after nineteen thirty.



SAM CARDINAL

The court held that the Natural Resources Transfer Agreement had changed the geography of the treaty right — the right to hunt now depended on whether land was visibly being used and occupied, not just who held the title on paper. That was a real limit. But the court said something else that mattered just as much: any ambiguity in a treaty, any doubt about what the words meant, must be resolved in favour of the Indigenous party. The honour of the Crown required nothing less. The treaty was a solemn agreement made with nations who placed their trust in the Crown, and that trust could not be used as a lever against them.

THE TREATY IS STILL RUNNING

Enforceable commitments — as long as the sun shines, the grass grows, and the rivers flow

WILLOW BORN WITH A TOOTH

The honour of the Crown. That phrase is everywhere in Canadian treaty law now. Where does it actually come from?



SAM CARDINAL

It grew from two roots, a decade apart. In nineteen eighty-four, the Supreme Court decided *Guerin versus The Queen*, involving the Musqueam First Nation in British Columbia — not a numbered treaty, but a land surrender where the Crown had not acted in the nation's interest. The court found the Crown owed a fiduciary duty to Indigenous peoples in how it managed their lands. Then in nineteen eighty-two, section thirty-five of the Constitution Act recognized and affirmed existing Aboriginal and treaty rights — gave them constitutional protection for the first time. The courts now had both a duty and a constitutional foundation, and what grew from those two roots was the honour of the Crown: the principle that the Crown must always act with integrity toward the solemn commitments it made in the treaties, and must never use its own power to chip away at the trust placed in it.



WILLOW BORN WITH A TOOTH

So the eleven numbered treaties suddenly had a constitutional floor underneath them — and the courts could hold the Crown to it.



SAM CARDINAL

In two thousand and five, a case called Mikisew Cree First Nation versus Canada showed exactly what that meant on the ground. The federal government wanted to build a winter road through Treaty Eight territory, near the Peace-Athabasca delta. It gave the Mikisew Cree written notice. The Supreme Court said notice alone was not enough. The honour of the Crown required real consultation — a genuine conversation, not a letter informing the nation of a decision already made. The treaty signed in eighteen ninety-nine was still in effect, still protecting the right to hunt and fish and travel that country, and any action that might diminish that right triggered an obligation the Crown could not skip over. The treaty did not end when the ink dried. It was still running.



WILLOW BORN WITH A TOOTH

A living agreement. And that phrase carries legal weight now, not just ceremony.

SAM CARDINAL

It does. And one of the most concrete places where the living agreement has had to be honoured is in the land itself. Many First Nations under the numbered treaties never received the full reserve acreage the treaties had entitled them to — acreage calculated from population at the time of signing, sometimes set aside years late, sometimes surveyed short, sometimes never completed at all. By the nineteen eighties, researchers and band governments had documented the shortfall, band by band, and the legal pressure was clear. The treaty said a specific amount of land. The Crown had not delivered it. The nations said: you still owe us.

WILLOW BORN WITH A TOOTH

Treaty Land Entitlement. Saskatchewan was first — in nineteen ninety-two, twenty-five First Nations, hundreds of millions of dollars from federal and provincial governments combined, with a mandate to purchase open-market land and convert it to reserve status. Manitoba came to its own framework in nineteen ninety-seven.

SAM CARDINAL

What made those settlements significant was the admission underneath them. Canada acknowledged, in signed agreements, that it had not fulfilled treaty obligations — that the treaty was a real contract with specific terms, and those terms had not been kept. That acknowledgment mattered because it confirmed what the courts were already finding: the numbered treaties are not historical records of something that once happened. They are enforceable commitments. Work in Alberta and the northern territories continued for years after the prairie frameworks were signed, and active negotiations continue today. But the framework agreements established the principle, and the principle, once established in law, does not go away.

WILLOW BORN WITH A TOOTH

There are First Nations still negotiating Treaty Land Entitlement today. There are duty-to-consult cases still moving through the courts. The honour of the Crown is not a problem you solve once and then close the file.

SAM CARDINAL

The work is ongoing because the treaties themselves are ongoing. Eleven agreements, signed across fifty years, from eighteen seventy-one to nineteen twenty-one, covering a span of land that reaches from the Lake of the Woods to the Mackenzie delta. They were made under pressure — the old ways of living off the land were threatened, the settler economy was arriving whether the nations agreed or not, and the choice was to secure what could be secured. The nations signed to protect a future, not to end a relationship. What the courts have found, steadily, across four decades of jurisprudence since nineteen eighty-two, is that as long as the sun shines, the grass grows, and the rivers flow was the actual term of the agreement — and the Crown is bound to meet it. I'm Sam Cardinal.

WILLOW BORN WITH A TOOTH

The pump jack behind me is drawing oil from Treaty Six territory. The road through the delta is Treaty Eight country. The valley to the north is Treaty Eleven. Every numbered treaty is still in force, still in court, still being negotiated. The question we've been asking all season — what deal put this here — has an answer that isn't finished yet. The deal is still being kept, or not kept, right now. And knowing that is where it starts.

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 script says Guerin (1984) and s.35 (1982) are 'a decade apart' — they are two years apart, not a decade. This is a factual error in the narration.

The script attributes 'the honour of the Crown' to Guerin and s.35 as its two roots. This understates the doctrine's development: Guerin established fiduciary duty, not the honour of the Crown per se, and the Supreme Court's most authoritative articulation of that specific doctrine came in *Haida Nation v British Columbia* (2004), which traced it to the Royal Proclamation of 1763 — predating both cited cases by nearly two centuries.

References & further reading

R v Badger, [1996] 1 SCR 771 (Supreme Court of Canada) — held that the Natural Resources Transfer Agreement modified but did not extinguish treaty hunting rights, adopting a 'visible, incompatible use' test for 'unoccupied Crown lands.'

Guerin v The Queen, [1984] 2 SCR 335 (Supreme Court of Canada) — established that the Crown owes a fiduciary duty to Indigenous peoples in managing surrendered lands; arose from a Musqueam land lease in British Columbia.

Mikisew Cree First Nation v Canada (Minister of Canadian Heritage), [2005] 3 SCR 388 (Supreme Court of Canada) — held that the duty to consult required genuine dialogue, not mere written notice, before constructing a winter road through Treaty Eight territory in Wood Buffalo National Park.

Haida Nation v British Columbia (Minister of Forests), [2004] 3 SCR 511 (Supreme Court of Canada) — the leading case articulating the honour of the Crown as a free-standing legal principle, tracing its origins to the Royal Proclamation of 1763.

Constitution Act, 1930, SC 1930, c 26 — constitutionally confirmed the Natural Resources Transfer Agreements with Alberta, Saskatchewan, and Manitoba, transferring Crown lands and natural resources to the provinces.

Constitution Act, 1982, s 35 (Part II — Rights of the Aboriginal Peoples of Canada) — recognized and affirmed existing Aboriginal and treaty rights for the first time in a constitutional instrument.

Alberta Natural Resources Transfer Agreement, Schedule to the Constitution Act, 1930, para 12 — the provision requiring Alberta to allow Indians the right to hunt, trap, and fish for food on unoccupied Crown lands, subject to provincial conservation laws.

Saskatchewan Treaty Land Entitlement Framework Agreement (22 September 1992) — signed by Canada, Saskatchewan, and 25 First Nations; acknowledged unfulfilled reserve acreage obligations and established a mechanism to purchase and convert land to reserve status.