

The Spirit of *Delgamuukw* and Aboriginal Oral Traditions in Ontario

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The Elders have said that things are now not at all what they appear to be; it is also said that things always happen for a reason. More than anything else these notions best characterize the spirit of *Delgamuukw* in Ontario.¹ This paper is a pre-colonial approach to understanding the spirit of *Delgamuukw* in Ontario.

Land Claims are political creatures. *Delgamuukw* has had an impact on my life. Late in 1987, the head of the Ontario Native Affairs Directorate, a lawyer and a former high-ranking public servant in British Columbia, tried to get me to act as an expert witness for the British Columbia provincial government in the *Delgamuukw* case.² He even offered me release time from the Directorate to do the job. When that failed, he got the Deputy British Columbia Attorney General to call me. He called; I said no thank-you. I refused. He was upset, having apparently already been told that I would say yes to his request.

But, if nothing else, the head of the Directorate was persistent. When that did not succeed, early in 1988 he asked one of the lawyers who was acting for the province to call me privately and confidentially.

Notes will be found on pages 278–283.

He told me that I would be useful in this case because of what I had written in my doctoral dissertation about the Fort Victoria treaties, negotiated by Governor James Douglas in the early 1850s, as well as my description of British Imperial Aboriginal policy. I was perplexed by his reasoning but figured simply that he had not read my dissertation. Either he was getting bad advice or he was simply desperate. Be that as it may, I resisted and said no. Our head was infuriated. I was not following orders like a good bureaucrat. And he had lost all credibility with me.³ From then on, we were on a collision course on many land and treaty rights issues—which led to my leaving the provincial government late in 1991, after the Temagami blockades of 1988-1989 and the events of the summer of 1990 at Oka and elsewhere.

The concept of circles of time is a representation of Aboriginal history that is not bounded by time or by place. This notion of history has been an “obsession” of the Mayans. Miguel Leon-Portilla, in his *Time and Reality in the Thought of the Maya*, has provided a thoughtful analysis of the significance and meaning of circles of time. Time is represented symbolically and ontologically by the concept of *kinh*, which means the Sun. Its “travel creates the day.” In this sense, the concept of day “is simply a presence or cycle of the sun.”⁴ Known among the Maya, it also applies to all Aboriginal people, including the First Nations of Ontario.⁵ It is most often seen in their drawings and in their images from their oral traditions, rather than being stated explicitly in their written works.⁶

This idea of circles of time is common to all indigenous peoples including the Anishnabe.⁷ In the mid-nineteenth century, in his writings, *Kahgegahbowh*, George Copway described the concept succinctly: “The Ojibwas, as well as many others, acknowledged that there was but one Great Spirit, who made the world; they gave him the name of good or benevolent; *kesha* is benevolent, *monedoo* is spirit; Ke-sha-mon-e-doo. They supposed he lived in the heavens; but the most of the time he was in the *Sun*. They said it was from him they received all that was good through life and that he seldom needs the offering of his Red children, for he was seldom angry.”⁸ The Sun, the sustainer of life, is also a metaphor of time.⁹

Too often in the past, the continuing power and presence of Aboriginal oral traditions, like Aboriginal spirituality, have been either overlooked, ignored or dismissed as inconsequential. As a result, this history has been written and viewed only through the lens of written history based on documents left by Euro-Canadian visitors about what they believed they saw for a fleeting moment in time within the context of European imperial history. This approach frequently has left a highly distorted portrayal of Aboriginal people. It is epitomized by pen and

ink, as the Elders of the Walpole Island First Nation have reminded us: “When we were created we were made without those advantages; we have no pen or ink to write, we have nothing but a little piece of flesh called a heart, to remember by ...”¹⁰ This metaphor of the heart binds together Aboriginal people and their languages and their cultures. It is altogether different than just history with the written documents left out. Aboriginal cultures are knowledge-based in terms of both land and water.¹¹ First Nations’ oral traditions are a powerful cultural force and part of their toolbox of survival. Aboriginal people have a holistic view of history within which they see circles of time, which are ever expanding and infinite. This is their way of knowing and comprehending their spiritual place in the world of the Creator.¹² In the oral traditions, the landscape, or Mother Earth, is seen as inseparable from their memory of that landscape. It is important to see the inside of events, through the eyes of the sacredness of Mother Earth. Put another way, Aboriginal oral traditions see the history of mankind as one with and inseparable from nature.¹³

Without “pen or ink,” First Nations remember and understand, through their stories, their internal and external landscapes of being and becoming. There are no boundaries and no beginning or end points. In short, there is no periodization of history. Their history is both separate and parallel to the history of Canada, as understood by non-Aboriginal people—the history of the newcomers. In this way, Aboriginal oral traditions also evoke and speak to the European past and have much to offer. They provide a necessary corrective, a balance, as well as a deeper understanding of what we know today as Canada.

For Aboriginal people, circles of time are part of the natural world and nature, of life and living. Every living thing has a relationship to every other, and the events that occur in one’s lifetime have an immediate impact on one’s children and grandchildren. The seventh generation is immediate and close. We are then within circles of time.¹⁴ Aboriginal people have protected and conserved their Homelands—their Territories—since time immemorial. This is understood, and told, from the perspective of the First Nations, by their Elders. They tell who they are and, in spiritual terms, what their lands and waters mean to them. They have used the land and have shared in the harvesting of the uses of the land for thousands of years.¹⁵

The primary objective of Aboriginal people is spiritual—to protect the land, Mother Earth, and the waters of Turtle Island. This is a sacred trust, a trust to protect the land. The continuity and integrity of their lands are important to their survival as an indigenous people. Generations of First Nation members have used the land and have shared in its bounty and its uses. Moreover, they will continue to use this land

and teach their children about the Creator and the Land.¹⁶ So this relationship is all-important. They owe their very survival to it. It is both simple and profound.

The events of the summer of 1990 at Oka and elsewhere across Canada, and since then, occurred in our time at the initiative of Aboriginal people to protect their lands and waters. To do this, they had no choice but to resist those who wished to destroy the land and themselves. Not to do this meant their own destruction, as well as the destruction of their children and grandchildren. It would have meant the end of their cultures and survival as Aboriginal people. They will continue to protect their lands and waters.

The twentieth century has drawn to a close. We are witnessing profound structural changes in the history of the world. The world of nineteenth-century European imperialism is over. Decolonization is continuing apace. This process has been characterized both by forces of construction and destruction. In Canada, to provide but one example, Aboriginal peoples are again reaffirming their inherent right to governance through diverse approaches and a variety of means. Their lands are ever so slowly being recovered, if not always respected. Aboriginal title is beginning to be understood and recognized. Treaties must be honoured and respected. For example, the *St. Anne Island* treaty of 1796, which involves free trade, sovereignty and border-crossing rights, must be honoured, rather than denied as it has been by the federal government to this day.¹⁷

One watershed in the twentieth century was the *Calder* case of 1973. This was a Supreme Court of Canada decision that found that Aboriginal title and rights did exist in the white justice system of Canada. It opened the legal doors for the prosecution of Aboriginal title and rights cases in Canada. *Calder* was followed by many constructive Supreme Court of Canada decisions that reaffirmed Aboriginal title and land rights and Treaties, including *Guerin*, *Simon*, *Sioui* and *Sparrow*, and most recently, *Delgamuukw*, to name but a few. The latter is also a spiritual watershed.¹⁸

On December 11, 1997, thirteen years to the day that Justice Donald Steele brought down his decision on Temagami, the Supreme Court of Canada dramatically rendered its judgment in the *Delgamuukw v. British Columbia* case, also identified as the Gitksan and Wet'suwet'en comprehensive claim.¹⁹ It ordered a new trial based on the palpable errors of the trial judge. Prominent among these errors was the latter's discounting in its entirety the oral history and traditions of the Gitksan and Wet'suwet'en peoples.²⁰ Not to recognize this history is to deny Aboriginal people and their land rights, and to make a palpable error of legal judgment. This error was made both in the

original trial of *Delgamuukw* and also by Justice Steele, the trial judge in the *Temagami* ruling in 1984.

Delgamuukw, like *Temagami*, is a case that rests largely on Aboriginal oral history and traditions. Relying in part on the findings in the Report of the Royal Commission on Aboriginal Peoples (1996),²¹ the Supreme Court of Canada in *Delgamuukw* ruling stated that oral traditions are “not simply a detached recounting of factual events but, rather, are ‘facts enmeshed in the stories of a lifetime.’” Moreover, they are “rooted in particular locations, making reference to particular families and communities.” As a result, Aboriginal oral history is in fact “many histories, each characterized in part by how a people see themselves, how they define their identity in relation to their environment, and how they express their uniqueness as a people.”

The Supreme Court stated that the “laws of evidence” in the Canadian justice system must accommodate Aboriginal oral history and traditions such that it “be placed on an equal footing with the types of historical evidence that courts are familiar with, which largely consists of historical documents. This is a long-standing practice in the interpretation of treaties between the Crown and Aboriginal peoples.”²² Not to recognize this history is to deny Aboriginal people and their land rights, and to make a palpable error of legal judgment. It is also dishonest and blatant racism. This error was made both in the original trial of *Delgamuukw* and also by Justice Steele in the *Temagami* ruling in 1984.²³

If one accepts the oral history and traditions of the Temagami First Nation that it never participated in any Treaty at any time (and the historical evidence now points strongly in this direction), then it is likely that the Supreme Court would have found in favour of the Temagami First Nation, had the case been heard in 1997 rather than in 1991. Coupled with the fiduciary obligations of the Crown, the issue of whether the Teme-Augama Anishnabai (TAA) ever entered into a “passive adhesion” to the *Robinson Huron* treaty of 1850 would have been rendered a moot point.

In retrospect, the Temagami First Nation was too far ahead of the Canadian justice system. Steele discounted the Temagami oral history and traditions, as did the trial judge in *Delgamuukw*. Where is the fairness and justice in all of this? Who is indeed on trial? If one accepts the Supreme Court’s premise that “we are all here to stay,”²⁴ then it is absolutely necessary for the courts to order a new trial for the Temagami First Nation on their Aboriginal title and land rights. Echoing the Covenant Chain of Silver, we are joined together. Circles of time ...

Notes

- 1 An earlier version of this paper has been published as part of the "Introduction" to McNab, *Circles of Time: Aboriginal Land Rights and Resistance*, Wilfrid Laurier University Press, 1999. See also my " 'What Liars those People Are': The St. Anne Island Speech of the Walpole Island First Nation given at the Chenail Ecarte River on August 3, 1815," *Social Sciences and Humanities Aboriginal Research Exchange*, 1, 1, Fall-Winter, 1993,10,12-13,15; "A Few Thoughts on Understanding Propaganda after Oka," *Social Sciences and Humanities Aboriginal Research Exchange*, 1, 1, Fall-Winter, 1993,18-21; "Treaties and an Official Use of History," *The Canadian Journal of Native Studies*, XIII, 1, 1993,139-43; Edited and an "Introduction," (with S. Dale Standen), *Gin Das Winan Documenting Aboriginal History in Ontario*, Occasional Papers of The Champlain Society, 2, Toronto: The Champlain Society, 1996, 66 pps; " 'The Promise That He Gave To My Grand Father was Very Sweet': The Gun Shot Treaty of 1792 at the Bay of Quinte," Research Note, *The Canadian Journal of Native Studies*, 16, 2, 1996,293-314; "Who is on trial? Teme-Augama Anishnabai Land Rights and George Ironside, Junior: Re-considering Oral Tradition," Research Note, *The Canadian Journal of Native Studies*, 18,1,1998,117-34.
- 2 The trial judge's ruling in this case can be found in the *Canadian Native Law Reporter*, Special Edition, 1991, 5 C.N.L.R.,v-381. The trial began in Smithers, British Columbia on May 11, 1987 and after 318 days of evidence, ended on June 30, 1990.
- 3 For a description of the trial in this case see Arthur J. Ray, "Creating the Image of the Savage in Defence of the Crown: The Ethnohistorian in Court," *Native Studies Review*, Special Issue on "Advocacy and Claims Research: Edited by Frank Tough and Arthur J. Ray, Volume 6, Number 2, 1990,13-29.
- 4 Miguel Leon-Portilla, *Time and Reality in the Thought of the Maya*, Second Edition, Enlarged, Norman: Oklahoma University Press, 1988, (1968), pps. xvii-xxii; 18-19.
- 5 See, for example, Olive Patricia Dickason, *Canada's First Nations, A History of Founding Peoples from Earliest Times*, Second Edition, Toronto: Oxford University Press, 1997, pps. 2-3. More often than not, the concept is not explained by Aboriginal people since it is an assumption of their Weltanschauung and the bases of it are oral and not written. See also *Report of the Royal Commission on Aboriginal Peoples*, Ottawa: The Commission, 1996, "People to People, Nation to Nation," Highlights from the *Royal Commission on Aboriginal Peoples*; Volume 1, "Looking Forward, Looking Back."
- 6 See, for example, N. Scott Momaday, *In the Presence of the Sun, Stories and Poems, 1961-1991*, New York: St. Martin's Press, 1992, pps. xvii-xx, 73-107.

The sun is both metaphor and myth, embodying the supernatural as well as the natural worlds. Leon-Portilla has explained that the "sun does not rest, however. When it is apparently "devoured" in chi-kin, its setting, it goes into the lower world, crosses it, and triumphantly is reborn." Time has no beginning and no end; it is not linear. The sun's "cycles only seem

to terminate.” But in reality they do not. Leon-Portilla has written that the “Maya priests computed ‘scores of suns’ dating back hundreds of millions of years and, at the same time, forecast future cycles. If in their thought the day was a solar presence, time was the limitless succession of all solar cycles.” By definition then “*kinh* spontaneously acquired its most ample meaning: duration that cannot be expressed because it has no limits, time, the sum of all possible solar cycles.” To put it even more succinctly, “*kinh* gives life, destroys and recreates without end the reality in which men [meaning mankind] move and think.”

Without “*kinh*,” there is no history. With “*kinh*” the concept of history can be viewed as “circles of time.” Moreover, as Leon-Portilla has argued through the “action of *kinh* all becomes present in time. Its burdens colour the four segments of the world. The countenances of the god-periods are successively oriented toward the great quadrants, determining the destiny and life of humanity and all existing things. Space, and that contained therein, acquire their true meaning due to the cycles of *kinh*. Furthermore from this perspective, “space and time are inseparable.” This concept was all encompassing; it produced the Mayan “chronovision, the conception of a universe in which space, living things and mankind derive their reality from the ever-changing atmosphere of *kinh*.” It also has informed their history as an active entity.

This idea of circles of time is common to all indigenous peoples including the Aboriginal Nations that are the focus of this work, the Ottawa or Odawa, the Ojibwa or Chippewa and the Potawatomi. In the mid-nineteenth century, in his writings, Kahgegagahbowh, George Copway described the concept succinctly: “The Ojibwas, as well as many others, acknowledged that there was but one Great Spirit, who made the world; they gave him the name of good or benevolent; *kesha* is benevolent, *monedoo* is spirit; Ke-sha-mon-e-doo. They supposed he lived in the heavens; but the most of the time he was in the *Sun*. They said it was from him they received all that was good through life. And that he seldom needs the offering of his Red children, for he was seldom angry.” The Sun, the sustainer of life, is also a metaphor of time.

Historical events, as R.G. Collingwood observed, have an “inside” and an “outside.” The outside of an event appears to be bounded by both time and place. However, the inside of an event is circular and is not a prisoner of time. At the same time the sense and character of place becomes extremely significant. Place is nature and the natural world. This world is animate, not dead. It has a life of its own and within nature is time and all living things including mankind. This concept of history is alien to European-trained historians and is not very well understood.

- 7 This idea of history as a circle of time can be seen in the star maps of the Cree and the legends or myths of the Algonquian peoples. What connects them is that they are all dreams of “*Kinh*” within a circle of time. See, for an Ojibwa perspective, Basil Johnston, *The Manitou, The Spiritual World of the Ojibway*, Toronto: Key Porter Books, 1995 and the reference below.

- 8 A. LaVonne Brown Ruoff and Donald B. Smith (editors), *Life, Letters & Speeches, George Copway (Kahgegahbowh)*, Lincoln: University of Nebraska Press, 1997 (1850), page 81.
- 9 Too often in the past the continuing power and presence of the Aboriginal oral traditions, like Aboriginal spirituality, have been either overlooked, ignored or dismissed as inconsequential. As a result this history has been written and viewed only through the lens of written history based on documents left by European visitors about what they believed they saw for a fleeting moment in time within the context of European imperial history. This approach frequently has left a highly distorted portrayal of Aboriginal people. It is epitomized by “pen or ink.”

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For a recent Cree view see Andrew Bainbridge, “The Rise of the Loving Son [Sun],” in *Co-existence? Studies in Ontario-First Nation Relations*, Frost Centre for Canadian Heritage and Development Studies, Trent University, 1992, pps. 6-10. Historical events, as R.G. Collingwood observed, have an “inside” and an “outside.” The outside of an event appears to be bounded by both time and place. However, the inside of an event is circular and is not a prisoner of time. At the same time the sense and character of place becomes extremely significant. Place is nature and the natural world. This world is animate, not dead. It has a life of its own and within nature is time and all living things including mankind. This concept of history is alien to European-trained historians and is not very well understood.

- 10 Dean Jacobs, “‘We have but our hearts and the traditions of our old men’: Understanding the Traditions and History of Bkejwanong,” in David McNab and S. Dale Standen, Editors, with an “Introduction,” *Gin Das Winan Documenting Aboriginal History in Ontario*, Occasional Papers of The Champlain Society, Number 2, Toronto: The Champlain Society, 1996, pps. 1-13.
- 11 For a different view from the perspective of the law see Paul Williams, “Oral Traditions on Trial” in David McNab and S. Dale Standen, Editors, with an “Introduction,” *Gin Das Winan Documenting Aboriginal History in Ontario*, Occasional Papers of The Champlain Society, Number 2, Toronto: The Champlain Society, 1996, pps. 29-34.
- 12 Johnston, *The Manitous*.
- 13 These concepts are gradually having an influence on the way in which Europeans and non-Aboriginal people are now viewing their environment. The historian, Simon Schama, in his environmental approach to the history of landscape and memory in Europe and North America, has remarked on this relationship and its meaning for European-trained historians. He has argued that “the richness, antiquity, and the complexity of our [European and North American] landscape tradition” is a significant one. The environment is important to all of us “to show just how much we stand to lose” if we are not vigilant. Schama has pointed out that “instead of assuming the

mutually exclusive character of Western culture and nature, I want to suggest the strength of the links that have bound them together." This inseparability of culture and nature is one of the beginning points for understanding Aboriginal oral traditions.

- 14 Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories*, Toronto: Belfords, Clarke & Co. (Reprinted by Coles as a Coles Canadiana Reprint Series, 1971), 1880.

Mawedopenais, a Mide Chief of the Ojibwa, spoke to the Crown's commissioner and chief negotiator, Alexander Morris (1826-1889), at the Treaty #3 negotiations. As a spokesperson for the Rainy Lake and Rainy River people in this Treaty-making process, he was clear on the position of Aboriginal Nations and the title to their lands. He drew on the metaphor of the sun-of circles of time: "I lay before you our opinions. Our hands are poor but our heads are rich, and it is riches that we ask so that we may be able to support our families as long as the sun rises and the water runs."

Morris replied, disingenuously, indicating that he did not understand what Aboriginal title and the Treaty-making process meant for the Aboriginal Nations: "I am very sorry; you know it takes two to make a bargain; you are agreed on the one side, and I for the Queen's Government on the other. I have to go away and report that I have to go without making terms with you. I doubt if the Commissioners will be sent again to assemble this nation." This threat, implying the government approach of "divide and conquer" was not, as may be expected, well received by the Ojibwa Nation.

Treaty #3 was eventually negotiated and signed, but not on the basis of the Treaty document or as understood by Alexander Morris. He did not believe, as many people do to this day, that the Aboriginal Nations have been ready to share in the Treaty-making process with the riches in their heads. There was no balance in the "bargain" before or after the Treaty was signed. Morris and the federal government took too much away from the life of the Ojibwa. It has continued to do so here and elsewhere in Canada. From this unequal perspective, the negotiations were not successful. It was not the only Treaty that could be characterized in this fashion. Yet the Treaty issues do not die. They live within a circle of time for later generations. Aboriginal people never forget.

One hundred years later there is still a wide cultural gulf in the Treaty-making process which has intensified and has led to the abrogation of Aboriginal title and treaty rights and to the events of the summer of 1990. But the events at Oka were broader than the events at Kanesatake and Kahnawake. Similar situations also occurred in Ontario and in British Columbia.

The European, so-called scientific western tradition of history has seen, sometimes in its crudest forms, the relationship between people and the land and its uses as a separate category and process. From Aboriginal traditions these categories are wholly artificial and do not really exist. These have a holistic view and see land and man and nature and the uses that one makes of the lands and waters as one within a circle of time. They come from a single source—from the Creator who made all living things and nature. It is not enough to analyze each separately. The sum of the parts does

not in this instance comprise the whole. This approach is simple, yet profound, for the way in which one sees the world.

European-university trained historians also tell stories. But they most often use written records produced by European and North American observers. Sometimes they pretend to speak of "scientific objectivity." These historians create and re-create the past, thereby trying to render what is seemingly incomprehensible, into a form of understanding about the context of their perspectives on time and place. Aboriginal traditions include knowledge about the relationship between people and the natural and the supernatural worlds. It is curiosity and the desire to know about oneself and the world in which one lives. It can through imagination become a vision of the present, embedded in the past and ever-becoming the future.

- 15 For an example see Dean Jacobs, "'We have but our hearts and the traditions of our old men': Understanding the Traditions and History of Bkejwanong," in David McNab and S. Dale Standen, Editors, with an "Introduction," *Gin Das Winan Documenting Aboriginal History in Ontario*, Occasional Papers of The Champlain Society, Number 2, Toronto: The Champlain Society, 1996, pps. 1-13.
- 16 See Mary Laronde, "Co-management of Lands and Resources in N'Daki Menan," in *Rebirth, Political, Economic and Social Development in First Nations*, edited by Anne-Marie Mawhiney, Toronto: Dundurn Press, 1992, pps. 93-106.
- 17 McNab, *Circles of Time: Aboriginal Land Rights and Resistance*, Wilfrid Laurier University Press, 1999; "A Few Thoughts on Understanding Propaganda after Oka," *Social Sciences and Humanities Aboriginal Research Exchange*, 1, 1, Fall-Winter, 1993, 18-21; "Treaties and an Official Use of History," *The Canadian Journal of Native Studies*, XIII, 1, 1993, 139-43; "'Water is Her Life-blood': The Waters of Bkejwanong and the Treaty-Making Process," in *Earth, Water, Air and Fire: Studies in Canadian Ethnohistory*, Wilfrid Laurier University Press, 1998, pps. 35-63.
- 18 McNab, "A Few Thoughts on Understanding Propaganda after Oka," in *Social Sciences and Humanities Aboriginal Research Exchange*, Volume 1, No. 1, Fall-Winter, 1993, pps. 18-21.

At the same time fifteen years of Constitution-making have collapsed into disunity, separatism and regional antagonisms for the white visitors to Canada. The former Meech Lake Accord, the epitome of the old British Imperial centralist model of Confederation, stylishly referred to as "executive federalism," was defeated in the failure of the Meech Lake Accord in 1990. This was a clear Constitutional victory by Aboriginal people. They are in the Canadian Constitution. Although the Charlottetown Accord of 1992 was also a failure, the inherent right of Aboriginal people to Aboriginal governance, as well as their Aboriginal title and land rights, has since been reaffirmed.

Gradually, Canada is becoming similar in structure to what it was in pre-Confederation days. At that time British North America was a series of communities located along the Great Lakes and adjacent waterway systems. It comprised Euro-American and Aboriginal communities in an alliance of Nations within both Aboriginal and British Imperial confederacies.

It was a true meeting ground of diverse languages, cultures and communities. This is an illustration of how the past is an integral part of the present. Aboriginal title, time and resistance movements may well be common themes in Canada's disparate histories of its founding nations.

The foundation exists now for a constructive approach to the making of Canada on a Treaty basis. The Constitution of Canada recognizes Aboriginal people as "Indian, Inuit and Metis." It also shows some grudging respect for "existing Aboriginal and treaty rights." Why then did we have Aboriginal people opposed to the Meech Lake Accord, contributing dramatically to its failure in June 1990? Why did we have, some few weeks later, the violence and the blockades at Kanosatake, Oka and at Kahnawake in Quebec; the blockades of roads and railway lines in Ontario and British Columbia?

The answer lies in our disparate histories and our diverse cultures and understandings of them. To put it simply, Aboriginal people and the rest of Canada speak to one another from differing historical and cultural assumptions and experiences. These include languages, customs, governance, lands and waters as well as time and progress. This also helps to explain the repeated failures of Canada's Aboriginal policy or policies.

19 *Delgamuukw v. British Columbia*, File No. 23799, Heard June 16, 17, 1997 and the Judgment was rendered on December 11, 1997, pps. 31-32.

20 *Ibid.*, *Delgamuukw v. British Columbia*, pps. 31-32.

21 See *Report of the Royal Commission on Aboriginal Peoples*, Ottawa: The Commission, 1996, Volume 1, "Looking Forward, Looking Back," page 33.

22 *Ibid.*, *Delgamuukw v. British Columbia*, pps. 31-32.

23 Denial of the very existence of Aboriginal people is a form of racism. The relationship between the Teme-Augama Anishnabai (TAA), and the province has been characterized by a stubborn rejection of the TAA and their ancestral motherland, N'Daki Menan. After one hundred and fifty years, Ontario has refused to acknowledge their Aboriginal title and rights to their Territory. Negotiations had brought them the Bear Island Reserve, less than one square mile which they had to purchase using their own monies or face eviction by Ontario as squatters on their own lands. Land Cautions (1973) were placed on 4,000 square miles of N'Daki Menan. Such a legal Caution prevents first registration of titles by the Crown and thereby effectively puts a cloud on the title of the lands preventing or inhibiting economic development such as mining and land sales. This was followed by more than a decade of litigation from 1978 to 1990.

The legal case finally ended in seeming defeat in the white man's court of justice. Development was stopped by the "frozen cautions." The status quo ante bellum was maintained until the Cautions were lifted by a court action initiated by the NDP government of Bob Rae in 1993 and then finished off by the Harris government early in 1996. In spite of this recent litigation, the TAA's Aboriginal title and land rights to N'Daki Menan has never been resolved and the situation is much where it was in 1973 when the Cautions were placed on the land. Litigation in the white man's court does not always work.

24 *Ibid.*, *Delgamuukw v. British Columbia*, at 273.