# THE COVID-19 PANDEMIC: INVOKING THE FAMINE AND PESTILENCE CLAUSE TO BE PAIRED WITH THE MEDICINE CHEST CLAUSE FROM THE NUMBERED TREATIES

**Carrie Bourassa**
University of Saskatchewan
107 Wiggins Road
Saskatoon, SK
S7N 5E5

**Keywords**

COVID-19 pandemic, Indigenous Peoples, famine and pestilence clause, medicine chest clause, engagement strategy.

**Abstract**

The COVID-19 pandemic requires specific treaty-based strategies to address the unique position of First Nations communities across Canada within treaty territories. A treaty-based approach is necessary to recognize certain provisions set out in the Numbered Treaties in Canada. These provisions include the Famine and Pestilence Clause and Medicine Chest Clause, both clauses were agreed to during the Treaty #6 signing in 1876. In the Famine and Pestilence Clause the Crown agreed to provide assistance to the "Indian" Peoples in the event of any calamity that came upon them, such as locust raids, storms, starvation, or disease. The Medicine Chest Clause implements the means to provide the medical aid to go along with the Famine and Pestilence Clause. The Government of Canada has a legal obligation to immediately invoke the Famine and Pestilence Clause together with the Medicine Chest Clause in a strategy to address the spread of the COVID-19 pandemic.

**Resumé:**

La pandémie de la COVID-19 nécessite des stratégies directement en lien avec les Traités pour répondre à la situation unique des communautés des Premières Nations du Canada à l'intérieur des territoires visés par ces Traités. Une approche fondée sur eux est primorbdiale afin de reconnaître et d'appliquer certaines dispositions qu'ils contiennent. Ces dispositions incluent celle relative à la disette et à la peste et celle relative à la trousse de soins, toutes deux acceptées dans l'accord ayant mené à la signature du Traité no 6 en 1876. Dans la disposi-

tion relative à la disette et à la peste, la Couronne a accepté de porter assistance aux peuples autochtones en cas de catastrophes, telles que les attaques de criquets, les tempêtes, la famine et la maladie. La disposition de la trousse de soins donne les moyens de fournir de l'aide médicale lors de ces situations de crise, allant de pair avec la disposition de la disette et de la peste. Le Gouvernement du Canada a donc une obligation légale d'invoquer immédiatement ces dispositions ensemble comme stratégie de réponse à la propagation de la pandémie de la COVID-19.

**Introduction**

The spread of the COVID-19 pandemic has the potential to hit First Nations communities with a devastating blow. Initially, the Government was accused of not addressing Indigenous communities quickly enough, indicating they would monitor the communities and respond as needed. In fact, the Indigenous Services Minister was not appointed as a permanent member of the COVID-19 committee, something Prime Minister Trudeau was criticized for (Forester, 2020). A First Nations specific strategy to meet the anticipated needs of the communities including a concrete plan on how funding should be distributed must be implemented. The funding amount must be relevant and based on aspects of equity rather than equality. The need for this funding is based on the pre-existing relationship between the Government of Canada and the First Nations Peoples in Canada, a fiduciary relationship created from the treaty period, and as a result of treaties.

**Treaty Promises**

The treaties in Canada were negotiated with Indian Nations (now referred to as First Nations) in order to open up the land for settlement (Asch, 1997; Jorgenson, 2007; Poelzer & Coates, 2015). In exchange, certain provisions were offered, and others were requested by the Indian negotiators on behalf of their people (Cardinal & Hildebrandt, 2000; Jorgenson, 2007). Treaty #6 was significant because Indian people secured treaty provisions that were vital to their well-being (Krasowski, 2019).

Provisions such as the Famine and Pestilence clause committed the Crown to provide relevant and necessary assistance to the Indian Nations in the event of a national calamity (Morris, 1991). The request for this assistance sought to protect the Indian Nations from any natural disasters or disease that might occur, and the government would come to their aid in these cases. According to Jim Miller (2007),"...the 1876 treaty responded to the worsening conditions on the Prairies with

clauses dealing with famine and health care" (p. 179). The Famine and Pestilence Clause was agreed upon in Treaty #6 along with the Medicine Chest Clause, and together these two provisions would ensure Indian Nations would prosper well into the future. These two clauses must be considered together when looking at the current crisis. They are intertwined and were negotiated in 1876 to be paired together.

The Famine and Pestilence Clause and Medicine Chest Clause were intended to ensure Indian Nations would not suffer as a result of contact with the newcomers. After the treaties were signed however, First Nations Peoples faced health challenges that resulted in higher risk populations in reserve communities and in urban centres. As the name suggests, the Medicine Chest Clause signified the guarantee that an Indian Agent would keep a medicine chest at all times for use by the people residing in the treaty territory's bands. As the treaty was modernized and amended since its original signing in 1876 at Fort Carlton, Saskatchewan, the Medicine Chest Clause has been amended with an additional clause that relevant relief be provided in the case of overwhelming pestilence or famine (University of Saskatchewan, 2020).

**First Nations Health Status**

There are specific health issues which put First Nations Peoples in an impending calamity situation and as such, creates legal obligations of the Government of Canada that must be enacted without delay. The spread of the COVID-19 disease, caused by the Coronavirus infection, is reason to activate the Famine and Pestilence Clause and Medicine Chest Clause to address the emergency needs of First Nations communities. The Assembly of First Nations (AFN) and numerous provincial and municipal jurisdictions have declared a state of emergency as a result of the COVID-19 disease. As outcomes of this COVID-19 pandemic are still unknown, and there is no end yet in sight, Indigenous Peoples in Canada have the right to be confident their needs will be met in the form of a strategy that includes funding and support from the Federal Government now and into the next several months and perhaps years.

Throughout many First Nations communities in Canada, health is understood as a balance between the mental, emotional, physical, and spiritual aspects of a person (Bourassa, McKay-McNabb & Hampton, 2004). First Nations Peoples' health is connected to Canada's history of colonization, resulting in a multitude of health challenges and inequities since contact (Bourassa, 2010). These health challenges range from cultural safety concerns, adequate access to health services, remoteness, and migration into urban centres. The history of colonization has led to the socio-economic state of First Nations Peoples (Palmater, 2020). With the migration to urban centres

in the 1960s First Nations Peoples experienced changes to their socio-economic conditions with homelessness, addictions, apprehension of children, higher rates of incarceration, and increased levels of poverty. The impacts of Residential Schools and the Sixties Scoop added to these challenges and created specific health issues for First Nations Peoples. These health challenges have led to some of the health issues that form First Nations' health status today as articulated by the Truth and Reconciliation Commission (2015) and the Royal Commission on Aboriginal Peoples (1996). Access to adequate health care and delivery of health services for Indigenous Peoples is not the same as it is for the rest of Canada (Forester, 2020). Recently a class action suit was launched for abuse and mistreatment of patients who attended Federally run Indian hospitals (Barrera, 2020).

Since the times of Residential Schools and Indian Hospitals, Indigenous Peoples have been subject to numerous unethical research projects resulting in a distrusting relationship between medical professionals and Indigenous Peoples who have been subject to abusive research practices (Pelley, 2020). Ian Mosby's research made public the nutritional experiments that took place as part of the inhumane treatment of children in Residential Schools (Mosby, 2013). This history of using medical research against Indigenous People is relevant as it caused suspicion and mistrust amongst Indigenous Peoples regarding immunizations, vaccinations, needles and care providers.

These specific health challenges are for the most part, unique to First Nations Peoples and are based on their first hand experiences with the lack of access to health care and the inequities in the healthcare system, along with the treaty relationship that the Indian Nations agreed to in sharing the land with the newcomers. The impoverished socio-economic conditions faced by First Nations Peoples, which are demonstrated in data that is already well known to the Government of Canada and Canadians generally, further compounds the crisis.

From the time of treaty to present day, the substandard living conditions created by the Indian Act have continued to impact Indigenous Peoples in Canada. The 1880s brought challenges to Indigenous Peoples with chronic infectious conditions such as tuberculosis and whooping cough which were then exacerbated by overcrowding in homes as well as lack of access to nutritious food and medicine. Indian agents noted the various incidents of diseases such as the misdiagnosed "land scurvy" (which was actually a glandular infection associated with tuberculosis known colloquially as 'scrofula') sweeping through the Indigenous populations on reserves. It was concluded that the cause of diseases among Indigenous Peoples was a direct result of weakened immune systems from malnutrition and lack of protective immunity which allowed for the manifestation of disease (Lux, 2001). This weakened immune system is attributed to changes in diet and other factors from

colonization including food security. The increasing concerns around food safety and food security exist in most communities today.

The compounding effects of malnutrition, overcrowding, and exposure to novel diseases had a devastating effect on Indigenous Peoples upon initial contact (Lux, 2001). In order to prevent the historical events of epidemics and novel diseases from continuing their devastating effect, Indigenous leaders negotiated a clause which would protect them from any impending or subsequent crises.

Despite facing famine and the officials' response with food rationing in the crisis, Indigenous Peoples as a whole were not weakened as their cultures, ceremonies, and traditions remain vibrant and protect their resilience (Manuel & Derrickson, 2015; Million, 2013). Colonization introduced novel diseases among vulnerable Indigenous populations as they had not been previously exposed to these diseases (Kelton, 2015; Washington Post, 2020). As contact continued and inequities exacerbated, those previously unexposed to diseases like Smallpox and Influenza were prone to devastating epidemics. Kelton states, "Europeans were the opponents, and diseases served as their unwitting weapons" (2015). History cannot repeat itself, when comparing death rate statistics between Indigenous and non-Indigenous people during the 1918 epidemic (Lux, 2001), the need for relevant support from the Federal government for the current pandemic becomes clear.

**Evolving Treaty Relationships**

The incidence of lung infections such as tuberculosis at the turn of the twentieth century, combined with the current health status and chronic health conditions puts First Nations Peoples in an even more precarious position during this COVID-19 pandemic. Individual behaviours and home heating such as tobacco smoking and use of wood burning stoves further compounds the risk for many. Critical environmental factors in First Nations communities such as poor infrastructure and overcrowded housing conditions, water, and food safety and security, all contribute to the potential for the COVID-19 pandemic to escalate at rates higher than the mainstream provincial population. When it comes to implementation of treaty obligations, the Government of Canada has an ethical obligation to address existing health issues as well as a legal obligation under the treaties (Saul, 2014).

The parties created a reciprocal relationship based on both trust and fiduciary obligations; Indian Nations shared the land with the Crown with the expectation that they would nurture this relationship. This meant that through the use of the Sacred Pipe during the treaty negotiations, the Indian Nations could trust the Crown to adhere to their treaty promises, and those treaty promises would cost the Crown money to implement in the years to come.

**Treaty Obligations**

The Numbered Treaties included many provisions, two that are especially relevant are the Famine and Pestilence Clause and the Medicine Chest Clause. Both were negotiated by the Indian Nations in Treaty #6 in 1876 as a form of protection or insurance. During the treaty period not, all Indian Peoples were in favour of the treaties, but this insurance gave them some peace of mind that future generations would not suffer from the decisions they had made. The Famine and Pestilence clause was grandfathered (applied) into the earlier treaties, just as the Medicine Chest Clause was. At the time of its inclusion in the treaty process, the Famine and Pestilence Clause was to be applied in times of calamity and was put forward so Indian Peoples would not be reduced in numbers by the newcomers or as a result of contact with them. The Government of Canada would be responsible to protect Indian Nations against anything the newcomers would bring. Indian People in Treaty #6 recognized the importance of forcing assurances of protection (Krasowski, 2019)

The establishment of reserves in the 1880's was based on the premise that reserves would be held exclusively for Indian Peoples and still applies today. During this pandemic, First Nations reserves must be protected. The Government of Canada must protect reserves and be clear with Canadians that they cannot flee to remote reserve locations in order to escape the pandemic. There have already been cases where Canadians have thought they could squat on First Nations reserves without permission (CBC News, 2020). History is repeating itself where Canada will soon be forced to put forward policy related to protecting reserve lands from outside exploitation.

In 1880 the Crown's Treaty Commissioner, Alexander Morris, wrote about his experiences with some of the Numbered Treaties and he wrote about the Famine and Pestilence Clause in his textbook. In his address to the Indian Nations in Treaty #6 he tells them they would be helped in times of "something unforeseen" (Morris, 1991, p. 241). Further that "in a national famine or general sickness, not what happens in everyday life, but if a great blow comes on the Indians, they would not be allowed to die like dogs (228)". The Famine and Pestilence Clause was included "to relieve the Indians from the calamity that shall have befallen them" (Morris, 1991, p. 354). This Famine and Pestilence Clause was "grandfathered" into the earlier treaties (Treaties #1-5) and those that followed Treaty #6 (Treaties #7-11), just as the Medicine Chest Clause was. The Government of Canada could not apply these clauses to only one treaty, so they were applied to all Numbered Treaties.

It is important to understand that during treaty negotiations Indian Peoples did not expect the Crown to sustain them. However, they did expect provisions in exchange for opening up their land for

settlement and allowing newcomers amongst them (Manuel & Derrickson, 2015; McAdam 2015; St Germain 2005). During this pandemic, First Nations Peoples in the Numbered Treaty territories are faced with shortages of food and supplies, lack of adequate health care (no access to testing), loss of employment, housing shortages and overcrowding in homes. The nation of Canada has a history of portraying themselves as a humanitarian country (Dhillon, 2017). Indigenous leaders are concerned about what is coming. According to Wright (2020), "Indigenous leaders from across Canada have been raising alarms about COVID-19, worried that supports promised by the Federal government to help First Nations, Inuit and Metis might not do enough to prevent the most vulnerable people from falling through the cracks" (para. 2). The Ontario Human Rights Commission has recognized the ways in which COVID-19 can have a unique impact on Indigenous Peoples based on their history of colonization and are calling for a human-rights based approach (Ontario Human Rights Commission, 2020).

**Conclusion**

The Government of Canada is legally obligated to commit and flow financial resources and other supports as identified by the First Nations communities. The ways in which these resources are allocated should depend on an Engagement Plan based on the unique situation of First Nations communities. Engagement Plans should be developed in collaboration with the communities. Engagement Plans would have to be designed depending on the communities' unique needs and their available resources. For example, in northern communities, people are going out on the land and living off the land, so a diversified engagement plan is necessary in those cases. In on-reserve and remote communities the engagement plan will be dependent on factors such as location and size. In urban centres the Engagement Plan involves multiple jurisdictions so it will need to be designed accordingly.

In the long term, development of a treaty-based strategy for the future is necessary to ensure the Government of Canada's response is safe and timely or more realistically, when a public health crisis happens again. As the treaties are legally binding in Canada, it is necessary that the Famine and Pestilence Clause along with the Medicine Chest Clause be enacted immediately in order to address the Spirit and Intent of what the First Nations negotiators were protecting at the time and for generations to come. The Famine and Pestilence Clause and the Medicine Chest Clause do not expire, they exist as long as the treaties exist, and they are to be honoured in perpetuity.

**References**

Asch, M. (ed). (1997). *Aboriginal and Treaty Rights in Canada*. Vancouver, BC: UBC Press.

Barrera, J. (2020) Ottawa eyes 'meaningful resolution' to Indian hospitals class action lawsuit. *CBC News.* January 14, 2020. Retrieved from: https://www.cbc.ca/news/indigenous/indian-hospitals-class-action-lawsuit-1.5425171

Bourassa, C. (2010.) The construction of Aboriginal identity: A healing journey. In Anderson, A., Kubick, W., & Hampton, M. (Eds.). *Torn from our midst: Voices of grief, healing and action from the Missing Indigenous Women Conference*. 75-85. Regina, SK: CPRC Press.

Bourassa, C., McKay-McNabb, K., & Hampton, M. (2004). Racism, sexism and colonialism: The impact on the health of Aboriginal women in Canada. *Canadian Woman Studies*, 24(1), 23-29.

Cardinal, H., & Hildebrandt, W. (2000). *Treaty Elders of Saskatchewan*. Calgary, AB: University of Calgary Press.

CBC News. (2020, March 30). Quebec couple fleeing COVID-19 'endangered' Yukon First Nation, chief says. *CBC News*. Retrieved from: https://www.cbc.ca/news/canada/north/quebec-couple-old-crow-yukon-covid-19-1.5514429

Dhillon, J. (2017). *Prairie rising: Indigenous youth, decolonization and the politics of intervention.* Toronto, ON: University of Toronto Press.

Forester, B. (2020). Mixed reactions to government's plan to address COVID-19 in Indigenous communities. *APTN National News*. March 12, 2020. Retrieved from: https://aptnnews.ca/2020/03/12/mixed-reactions-to-governments-plan-to-address-covd-19-in-indigenous-communities/

Jorgenson, M. (Ed). (2007). R*ebuilding Native Nations: Strategies for governance and development.* Tucson, AZ: University of Arizona Press.

Kelton, P. (2015). *Cherokee medicine, colonial germs: An Indigenous Nation's fight against Smallpox*, 1518–1824 (Vol. 11). University of Oklahoma Press.

Krasowski, S. (2019). *No surrender: The land remains Indigenous*. Regina, SK: University of Regina Press.

Lux, M. (2001). 'Help me Manitou': Medicine and healing in Plains cultures. *Medicine that walks: disease, medicine, and Canadian Plains Native People, 1880-1940* (pp. 71-102). Toronto, ON: University of Toronto Press.

Manuel, A., & Derrickson, R. (2015). *Unsettling Canada: A national wake-up call.* Toronto, ON: Between the Lines.

McAdam, S. (2015). *Nationhood interrupted: Revitalizing nêhiyaw legal systems*. Vancouver, BC: Purich Books.

Miller, J. (2007). *Compact, contract, covenant: Aboriginal Treaty making in Canada.* Toronto, ON: University of Toronto Press.

Million, D. (2013). *Therapeutic nations: Healing in an age of Indigenous human rights*. Tucson, AZ: University of Arizona Press.

Morris, A. (1991). *The Treaties of Canada with the Indians of Manitoba and the North-West Territories*. Markham, ON: Fifth House Publishers. Retrieved from: https://babel.hathitrust.org/cgi/pt?id=mdp.39015026613763&view=1up&seq=5

Mosby, I. (2013). Administering Colonial Science: Nutrition Research and Human Biomedical Experimentation in Aboriginal Communities and Residential Schools, 1942-1952. *Social History*, Volume 46, Number 91 pp. 145-172. Retrieved from: https://muse.jhu.edu/article/512043/pdf

Ontario Human Rights Commission. (2020). Actions consistent with a human rights-based approach to managing the COVID-19 pandemic. Retrieved from: http://www.ohrc.on.ca/en/actions-consistent-human-rights-based-approach-managing-covid-19-pandemic

Palmater, P. (2020). Canada is ignoring the gendered impacts of COVID-19 on Indigenous Women. *Canadian Dimension*. March 25, 2020. Retrieved from: https://canadiandimension.com/articles/view/canada-ignoring-gendered-impacts-of-covid-19-on-indigenous-women

Pelley, L. Mistreated: The legacy of segregated hospitals haunts Indigenous survivors. *CBC News.* Retrieved from: https://www.cbc.ca/news2/interactives/sh/jTCWPYgkNH/mistreated/

Poelzer, G., and Coates, K. (2015). *From Treaty Peoples to Treaty Nation: A road map for all Canadians*. Vancouver, BC: UBC Press.

Royal Commission on Aboriginal Peoples. (1996). R*oyal Commission Report on Aboriginal Peoples*. Retrieved from http://www.aadnc-aandc.gc.ca/eng/1307458586498/1307458751962.

Saul, J.R. (2014). *The comeback*. Toronto, ON: Penguin Books.

St. Germain, J. (2005). Feed or fight: Rationing the Sioux and the Cree, 1868-1885. *Native Studies Review*, 16(1), 71–90

Truth and Reconciliation Commission of Canada. (2015). *Final report of the Truth and Reconciliation Commission of Canada. Summary: honouring the truth, reconciling for the future*. Winnipeg: Truth and Reconciliation Commission of Canada.

University of Saskatchewan. (2020). *Indigenous Saskatchewan encyclopedia*. Retrieved from: https://teaching.usask.ca/indigenoussk/import/treaty_6.php

Washington Post. (March 31, 2020). The world's indigenous peoples, with tragic history of disease, implore outsiders to keep coronavirus away. *Washington Post*. March 31, 2020. Retrieved from: https://www.washingtonpost.com/

world/the_americas/the-worlds-indigenous-peoples-with-tragic-history-of-disease-implore-outsiders-to-keep-coronavirus-away/2020/03/31/98597e3c-6f7f-11ea-a156-0048b62cdb51_story.html?fbclid=IwAR3CdeaZ7VIGTrwDGP-cUi82uTZvJEmHPev7iLxTGTJUBDm5UJWS3qkFDmzA

Wright, T. (2020). Feds poised to call in army to help Indigenous communities fight COVID-19. *National Observer*. April 2, 2020. Retrieved from: https://www.nationalobserver.com/2020/04/02/news/feds-poised-call-army-help-indigenous-communities-fight-covid-19