BUFFALO DAYS AND NIGHTS, PETER ERASMUS & HENRY THOMPSON (CALGARY: FIFTH HOUSE, 1999)

— A ROUNDTABLE —

THE HONOURABLE JUSTICE RUSSELL BROWN,
ANNALISE ACORN, DARCY LINDBERG, JOSHUA NICHOLS,
ERIC PENTLAND, AND BROCK ROE*

I. INTRODUCTION

Peter Erasmus, born in 1833, was the translator for Treaty 6. He knew six Indigenous languages as well as English, Latin, and Greek. His father was a Dane who had fought at the battle of Waterloo and his mother was Cree-Métis. His book *Buffalo Days and Nights*,[1] written with journalist Henry Thompson, is a fascinating account of life in Western Canada from the mid-nineteenth century to the end of the open plain. Erasmus recounts his time as guide and interpreter with the Palliser Expedition, the devastation of smallpox and the disappearance of the buffalo for Indigenous people, as well as the negotiations leading up to Treaty 6 and its aftermath as well as the North-West Rebellion.

Panelists offered reflections on the book after which all were invited to participate in a discussion.

II. REFLECTIONS OF ANNALISE ACORN

A. *BUFFALO DAYS AND NIGHTS* AND INDIGENOUS/EUROPEAN RELATIONS IN THE PALLISER EXPEDITION

I would like to make some observations about what *Buffalo Days and Nights* says about relations between Indigenous people and white Europeans during the Palliser Expedition. Erasmus was an interpreter with that expedition from 1858 to 1859.

First, Erasmus' observations about race relations are those of a man who straddles, and attempts to mediate between, the two cultures. With a Danish father and a Cree-Métis mother, Erasmus appears to have been seen as Indigenous from the point of view of the settlers, if not white from the point of view of Indigenous people. Many of Erasmus' observations reveal a man whose inner life is deeply ambivalent as between the two cultures. And it is an ambivalence tinged with anxiety.[2] Yet the dominant strain in Erasmus' account is, I think, a critique of the brutality and the hypocrisy of white, European, English, Christian settler culture accompanied by an elaboration of the Indigenous people's sense of irony

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1 Peter Erasmus & Henry Thompson, *Buffalo Days and Nights* (Calgary: Fifth House, 1999).

2 We see that anxiety, I think, both where he almost coerces the Reverend Woolsey into drinking broth mixed with a medicine prepared by an Indigenous medicine man when Woolsey perilously ill (*ibid* at 153–54) and also in his reactions to his adopted son's interpretation of his own dream about a white horse dying as an omen of the beginning of rebellion (*ibid* at 272–73).

around that hypocrisy and brutality. Erasmus is a sharp observer of race and cultural relations. Let me see if I can bear that out with reference to his description of the Palliser Expedition.

First of all, throughout his discussion of the expedition, Erasmus derides the failure of historians to recognize how utterly vulnerable the white explorers would have been without Indigenous guides. Erasmus writes:

> The travelling fame credited to most white men ignored the fact that they were usually warmly wrapped in buffalo robes with a blazing fire ready and a carpet of spruce boughs laid for them to step on before they left the cozy warmth of the toboggan. Many of the early famous travellers would have been hopelessly lost … without the guidance and advice of the Indians and half-breeds.[3]

Even today, the Wikipedia page for the Palliser expedition begins by saying: "The expedition was led by John Palliser, and accompanied by a party of four other men: James Hector, Eugène Bourgeau, Thomas Blakiston and John W. Sullivan," mentioning the Indigenous guides only briefly, and several paragraphs later.[4] The Canadian Encyclopedia does not mention the Indigenous guides at all.[5]

Erasmus also documents the assistance the expedition received from Indigenous people they met along the way. He writes, "[w]e were lucky in finding an old Stony Indian who drew a map for us on birch bark that proved to be an invaluable aid in our search for a pass."[6] Who knows how much the expedition's much vaunted discovery and mapping of the various passes (North Kananaskis, North Kootney, and Kicking Horse) relied on that Stony's birch bark version.

Erasmus relates another story of a time when the expedition had virtually run out of food. Erasmus and the other Indigenous guides were trying urgently to find and kill some game. Finally, a Stony guide nicknamed Nimrod, whom Erasmus describes as "the smallest but the most courageous of us all," managed, despite a very serious injury to his ankle, to shoot a moose.[7] The nickname Nimrod is apt — not in the lexicon of current slang but in its biblical origin; the name Nimrod from comes from Genesis, chapter 10, verse 9: "He was a mighty hunter before the LORD: wherefore it is said, Even as Nimrod the mighty hunter before the LORD."[8] Nimrod's kill saved the whole expedition from starvation.

So following this triumph, one Mr. Brown, who was from Erasmus' description a white European of "dark, swarthy" complexion with "bristling black eyebrows," congratulated and thanked Nimrod in the following terms: "From now on, Nimrod, you're my brother. If my name was White instead of Brown, I'd give you my name, for I think you are the whitest friend any man could have."[9]

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3 *Ibid* at 75.
4 Wikipedia, "Palliser Expedition," online: <en.wikipedia.org/wiki/Palliser_expedition>.
5 The Canadian Encyclopedia, "Palliser Expedition," online: <www.thecanadianencyclopedia.ca/en/article/palliser-expedition>.
6 Erasmus & Thompson, *supra* note 1 at 74.
7 *Ibid* at 79–80.
8 King James Bible, Gen 10.9, online: <www.kingjamesbibleonline.org/Genesis-10-9/>.
9 Erasmus & Thompson, *supra* note 1 at 79.

This obtuse attempt at a compliment is reminiscent of one found in Shakespeare's *Othello.* There the Duke of Venice consoles Desdemona's father Brabantio who is distraught over his daughter's marriage to the moor Othello. He says, "If virtue no delighted beauty lack, Your son-in-law is far more fair than black."[10]

Virtue cannot be without beauty. Beauty cannot be other than white. Therefore, a virtuous person must be white. It does not appear that Shakespeare intends to expose or critique white arrogance here. And Othello himself registers no objection. But, as with the white man's congratulation of the Stony, the clear imputation is that kinship across lines of racial difference can be forged in circumstances where extraordinary virtue of the racialized person brings them within the elevated category of whiteness.

When Erasmus translates the statement to Nimrod, Nimrod first laughs and then instructs Erasmus to give this reply: "I would rather be Red than White; it is closer to your colour than White, and tell him I am proud to be his friend, for he is more like my people than his own."[11]

With masterful wit and acuity, Nimrod has accepted the offer of friendship (though not kinship), rejecting (while also playing with) the race assumptions of the compliment. Nimrod exposes the wrong thinking both as regards skin colour-coding and as regards the respective virtues of Indigenous and white culture. As to skin colour itself, Nimrod begins by making fun of the swarthy white man's self-inclusion in the category of whiteness. Then, with great irony, and yet with good nature and the seeming desire to keep good relations on track, Nimrod makes the white man's skin colour the standard to which Nimrod aspires. And that, Nimrod claims, is more red than white. Then, appropriating the logic that personal virtue of an outsider can warrant exceptional inclusion in the worthier culture or race group, but turning it on its head, Nimrod says Brown is worthy of Nimrod's friendship because his virtue also makes him more like an Indigenous person than a white man.

Needless to say, Nimrod wins the encounter. But as Erasmus relates the story, the relation between the two men remains in a hearty and convivial register. "Brown got a big laugh out of my interpretation and shook the Stony's hand again."[12]

Still the conflation of whiteness and virtue seems to have pervaded the European understanding of the relation between the two groups. Palliser himself, by Erasmus' account, reprimanded a white man who had become the leader of a group of the Snake Band encountered by the expedition as follows: "You are a disgrace to your white blood and a bad example to the Indian."[13]

The Snake band rides off without incident. Palliser seems to have thought that his rebuke did the trick. "The captain [Palliser] flushed with anger but said nothing more, very well satisfied that he had avoided trouble without endangering the lives of his men."[14]

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10 William Shakespeare, *Othello*, Act I, Scene iii.
11 Erasmus & Thompson, *supra* note 1 at 80.
12 *Ibid*.
13 *Ibid* at 103.
14 *Ibid* at 104.

Erasmus' account paints a picture of a confluence of, on the one hand, a confined conferral of equality and respect by white Europeans on the Indigenous men, and on the other, an incontrovertible racism at the bottom of the European attitude toward the Indigenous guides. Nowhere is this tension more evident than in Erasmus' account of Palliser's invitation to him to return to England with him and Dr. James Hector (a man whose stamina Erasmus greatly admired).[15] Erasmus explains the perils of any dependency on his English friends as follows:

> Having a great respect for the captain and feeling a strong friendship for the doctor were my greatest motives for accepting their offer. These men had always treated me as an equal, but I knew in England this might be different. As a dependent on their good will, I would be a curiosity to their associates and would probably be viewed in the same way as the specimens so carefully preserved by the party.[16]

By contrast, here is the picture Erasmus paints of the condition of dependency of the English as he is contemplating going with Palliser and Hector to England:

> Most Englishmen of my acquaintance considered themselves made of superior cloth; even the most ignorant and pitiably helpless individuals faced with the ways of living of the West all looked down on the native inhabitants as inferior beings, even though they knew their very lives were dependent on the good will and resourcefulness of our people.[17]

The common dependencies were not equivalent. Erasmus as a dependent would be as a geological or horticultural specimen. The English as dependents could, somehow, though that sheer English self-satisfaction, still fancy themselves superior.

Erasmus' intuition that he ought not to go to England was confirmed by Palliser's reaction to his refusal. Palliser says: "Too bad.… You are a man of good sense. With your disposition and ability, you would be an ornament to your people."[18] Erasmus articulates his own reaction to Palliser's remark: "The very use of the captain's word 'ornament' proved that my refusal was the correct decision.… I would soon hate my position and in all likelihood would give physical expression to the condescending mannerism of the people and thereby bring disappointment and trouble to these good men."[19]

Erasmus knows he'd end up beating the crap out of a few fine Englishmen. And he is in no doubt about his ability to do so. But in an ironic play on English gentlemanliness (not to Palliser himself, but as a kind of aside to the reader) he casts disappointing his English friends as the core evil to be avoided. By slightly over-performing the norms of gentlemanliness, Erasmus highlights, with an admirable lightness of touch, that it is his dignity and independence as an Indigenous person that is the core value to be protected. And here it becomes clear that both in the realm of gentleness and manliness, Erasmus wins.

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15 There is a wonderful letter from Peter Erasmus to Dr. James Hector written in 1900 that gives greater richness to our understanding of the depth of that relationship. See *ibid* at xx–xxi.

16 *Ibid* at 112.

17 *Ibid*.

18 *Ibid*.

19 *Ibid* at 112–13.

III. REFLECTIONS OF THE HONOURABLE RUSSELL BROWN

When about 12 or 13 years ago I first read Peter Erasmus' memoir *Buffalo Days and Nights*, it displaced what had previously been my favourite memoir of life in long-ago Western Canada, which is Wallace Stegner's account in *Wolf Willow*[20] of growing up in Eastend, Saskatchewan, along the eastern slope of the Cypress Hills. In that book — and I realize this is a symposium on Erasmus' book, but bear with me for a moment — Stegner laments the history lessons taught to him and his classmates, focused as they were upon "five thousand years of Mediterranean culture and two thousand years of Europe."[21] As a result, they saw their surroundings in a distorted way — as a new thing, just beginning, and not as a place in which their presence was "but a stage in a long historical process."[22]

And yet, as he wrote, "history is a pontoon bridge. [Everyone] walks and works at its building end, and has come as far as [one] has over the pontoons laid by others [one] may never have heard of."[23] He then made this plea for an appreciation of the history of the West:

> Seldom, anywhere, have historical changes occurred so fast. From grizzlies, buffalo, and Indians still only half possessed of the horse and gun, the historical parabola to Dust Bowl and near-depopulation covered only about sixty years. Here was the Plains frontier in a capsule, condensed into the life of a reasonably long-lived man.[24]

It is almost as if he had Peter Erasmus in mind. And, were I a school's superintendent in Alberta — and certainly in central Alberta — I would make *Buffalo Days and Nights* part of a mandatory history or social studies curriculum. I know of no other single volume that encapsulates that remarkable, and in many ways devastating, half-century of human activity — that part of the pontoon bridge that we inherited — that (to mix my metaphors a little) swept our region of the country so comprehensively. "Comprehensively," because the experience of Peter Erasmus was broad enough to encompass that of almost everyone except those who, as he put it, "have a handle to their names," such as "factors, ministers of the church, and priests."[25] His experience was, at various times, that of the literate and well-educated missionary, schoolmaster, polyglot interpreter, guide, trapper, traveller, trader, and buffalo hunter.

It is, I expect, a common observation that, in acquiring that experience, Erasmus straddled both the white settler and Indigenous worlds, although it appears to me as I read the book that he was no neutral observer, but had strong views, often in line with the settler standpoint, on contemporary events. But his insights are nonetheless those of someone with close connections to the Indigenous people who populated central Alberta. His account, then, of crucial events during the rapid settlement of the West — the Palliser expedition, the smallpox epidemic of the 1870s, the extirpation of the buffalo, and the signing of Treaty

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20 Wallace Stegner, *Wolf Willow: A History, A Story, and a Memory of the Last Plains Frontier* (New York: Penguin Books, 2000).
21 *Ibid* at 24.
22 *Ibid* at 29.
23 *Ibid*.
24 *Ibid* at 29–30.
25 Erasmus & Thompson, *supra* note 1 at 42.

No. 6 — is deeply informed by his observations as something of an insider within settler culture and the product of training in the English church *and* by his close connection with Alberta's Indigenous communities. This, remarkably, given his history at Whitefish Lake, included connections developed during time spent living with the Siksika, although as one Indian Affairs official noted, he continued to wear around his waist the "traditional half-breed sash."[26]

It is difficult, and probably impossible, to do justice in a few minutes of remarks to the scope of Erasmus' memoir and the complexity of his place in the world he recounts. So let me focus on one single aspect of the memoir that might spawn some discussion afterwards and which I think is representative of its contribution to our understanding of how we got to here from there. And that is the extirpation of the buffalo.

Of course, we already know quite a lot about that extirpation — particularly during the time when it really began to gather steam in the 1870s, once treaty-making became the first order of the day for the Dominion government (in part because it was a term of acquiring Rupert's Land, and in part because it was a practically necessary precondition to large-scale settlement). But the personal insight from Erasmus into what we would today call "the impact on the ground" is, in light of the ultimate significance to the Indigenous peoples of the plains of the loss of the buffalo, haunting. In fact, I find it a somewhat disturbing read, in the light of where we all know this would prove to lead.

Erasmus' account reveals both the joy that comes with abundance and the worry that comes with scarcity. He recalls that, following the westbound trail to Fort Edmonton in 1856, when "[t]here were no settlers in any part of the area … and nothing to spoil the natural beauty of the land in its primitive state. We saw herds of buffalo every day in bunches of twenty-five or so."[27] This was the high point. He never again would see a "large herd like the one we stampeded on my first hunt," adding ominously that "I was destined to pass over this trail many times but never again to witness the plenty that met my vision on every hand that year of 1856."[28]

In fact, Erasmus was by that time already alert to the impending catastrophe. His father (also a buffalo hunter), had warned him that the fertility of the prairie soil would eventually attract settlement, meaning that "the vast herds of buffalo would someday be replaced with domestic animals and other agricultural pursuits."[29] Erasmus' father had died in 1849 and so would have given this warning fully a decade before Erasmus records the same warning given by James Hector, "geologist, naturalist, and medical man to the Palliser expedition,"[30] as the two of them crossed what is now southern Alberta and witnessed "huge herds of buffalo that blocked [their] passage."[31] These herds grazed along the US-Canada border and deep into US territory, but their days were also numbered; this was late in a decade in which the population of Minnesota increased from 6,077 to 172,023 and only five years before the

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26 *Ibid* at xxxi.
27 *Ibid* at 35.
28 *Ibid*.
29 *Ibid* at 5.
30 *Ibid* at xix.
31 *Ibid* at 71.

establishment of Idaho Territory (from which Montana Territory would be carved out a year later). Erasmus records not just Dr. Hector's concern for the inevitable effect of this settlement on the buffalo, but his identification of the deliberate policy that underlay that effect:

> The Indians of this territory will be the first to suffer from the scarcity of buffalo. The vast herds we have seen have, by natural increase, been forced to move northward for better feeding grounds. Their natural feeding and breeding area is south of our border…. Domestic cattle from the huge herds of cattle in Texas and the southern States will replace the buffalo. A great migration of people will follow the big herds. Cities and towns will stand where but a few native teepees now occupy big territories. Even now the fighting tribes across the line are being forced back into areas they never used before. These herds are the last means of maintaining their resistance.[32]

Both the effect and the intent were affirmed to Erasmus by another member of the expedition, one Sutherland, who had personally observed the slaughter of herds of buffalo by American hide-hunters. "[T]here's a growing belief among all the Indians," he records, "that the American Government is authorizing these hide hunters to exterminate buffalo to break up Indian resistance, because practically everything that an Indian needs in shelter, clothing, and food is contained in the live buffalo of the plains."[33]

Most of us — or at least most of us who are reasonably well-read in the history of western Canada in the nineteenth century will, I expect, be familiar with the disappearance of the buffalo through the 1870s. In the matter of eight or nine years, the herds were depleted to almost nothing — which is probably the most significant fact for the prairies and its people in a decade that, even aside from the extirpation of the buffalo, would bring massive change — beginning with the transfer of Rupert's Land to Canada, the Manitoba Resistance of 1869–70, the Numbered Treaties of the 1870s, the land surveys, the arrival of the North-West Mounted Police, and the ricochet effects of the Battle of the Little Big Horn and the collapse of Lakota resistance south of the border. What Erasmus also documents, however, is (first) that the move towards extirpation was already manifest by the 1850s and (second) its impact on the plains-dwelling Indigenous people, particularly those in places not far from Edmonton. By the late 1860s, for example, he observed that no buffalo could be found "in the timber country fifteen to twenty miles north" of the North Saskatchewan river (near Vegreville),[34] and that he was travelling more than 30 miles south of the river to find even a small herd of buffalo.[35] By the early 1870s, he reported that the depletion of buffalo herds necessitated the exceedingly risky enterprise of hunting in the territory of the southern tribes — the Siksika, the Kainai, and the Piikani.[36] This exposed them not only to the risk of attack but — as they discovered on coming across a camp of Siksika near the Battle River, silent save a lone man who warned them from approaching — smallpox.[37]

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32 *Ibid.*
33 *Ibid* at 85.
34 *Ibid* at 213.
35 *Ibid* at 182.
36 *Ibid* at 201.
37 *Ibid* at 203–204.

So what, as lawyers, can we learn from all this? I do not wish to speak about the law as it relates to the extirpation of the buffalo, since for all I know I might someday be asked to ascribe a particular legal significance to it. But it seems to me that Peter Erasmus, in expressing his own observations or by recording the insights of others, gives us a deeper understanding of the process and significance of that extirpation because he *localizes* it. There is, unfortunately, some truth to Stalin's chilling observation that while a single death is a tragedy, a million deaths is a statistic. Meaning, while a single, localized impact is a dreadful thing to experience, relate, or even just read about, larger scale injustices are, well, larger scale injustices. Think of the loss of the buffalo. The basis for viable human existence — absent large scale cultivation and animal husbandry — on the plains was gone. Countless buffalo-dependent people were lost to hunger and disease. For those who survived, everything changed, and all of us — all of us treaty people (and we are all treaty people, since it takes two to treat) — still live in one way or another with the aftershocks of the destruction that came with it.

But recounting it in this way, in generalities that speak about the loss of a way of life and nearly 150 years of misery that follows, does not really convey in plain terms what it entailed for those who experienced it. And so, many of us do not really understand it. The significance of the loss of this species of animal from the plains is not, speaking for myself at least, fully appreciated from ten thousand feet. For the buffalo to disappear from *the plains* is one thing. But for the buffalo to disappear from Saddle Lake, or Whitefish Lake, or Lac St-Anne, or Whitemud Creek, or the Battle River valley, is quite another. Peter Erasmus takes us into the lives of families in some of those places at the very time when this was happening and allows us to see from their standpoint what the depleting herds meant, as I say, "on the ground."

So, perhaps the lesson for us lawyers in all this is that all politics is local. Our law and our procedural tools are not particularly well-suited to abstract consideration about the disappearance of a species and of the political and social order that depended on it. I used to tell my students that I loved reading torts cases because cases tell stories about people. Not classes of people, or races of people, or nations of people. Just people, each with a story to tell about a problem he or she had. We all bring to our work our predispositions or preconceived notions of how things should be. But at least for trial lawyers and trial judges, those predispositions and notions can be put to one side more easily if we focus on what happened *here*. Tort law, after all, was not reshaped by massive social or political upheavals such as the Highland clearances or the partition of India. Rather, it was reshaped by an impoverished woman, who wore the legal status of a pauper, and whose friend bought her an opaque bottle of ginger beer.

Thank you for allowing me to say these few words.

IV. REFLECTIONS OF BROCK ROE

Thank you for introducing me, and also for the reference to the Indigenous peoples' lands that the University of Alberta law school is located upon.

And thank you too to some of my extended family members that are in the audience today. It is always nice to meet another descendant of Peter Erasmus.

I was invited here because of a birthright, being a descendant of Peter Erasmus who wrote *Buffalo Days and Nights*. My connection to Peter Erasmus is not that remote. Sometime after Peter's first wife Charlotte Jackson died, he married a second wife named Mary Stanley who was Nehiyaw (Cree) from the Red Pheasant First Nation. Peter and Mary had three daughters, one of them being Sarah Erasmus. Subsequently, Sarah Erasmus married my great-grandfather, Edward Whitford. Edward and Sarah Whitford (née Erasmus) married and had many children, one of them being my paternal grandfather, Arthur Whitford, who was born in Cork, Alberta, just north of the Saddle Lake Cree Nation reserve. Though my grandpa Art Whitford passed away in 1996, his sister, Amelia Whitford, is still alive today and lives in a seniors home in north-central Alberta. It is interesting to think that her grandfather and grandmother (on her mother's side) is Peter Erasmus and Mary Stanley.

I was asked to share my thoughts on *Buffalo Days and Nights* with the audience today and to participate in a general discussion regarding the book afterwards.

I have broken down my thoughts on the book into a few key themes.

A. FIRST IMPRESSION

My first impression of the book occurred while I was an undergraduate student at the Faculty of Native Studies at the University of Alberta sometime around 2004–2006. At the time I was working for Dr. Frank Tough as a young research assistant first with the Métis Aboriginal Title Research Initiative (M.A.T.R.I.x), which was later re-organized as the Métis Archival Project (M.A.P.), and my interest in a critical understanding of the settlement of Western Canada was at its peak.

I had always wanted a copy of *Buffalo Days and Nights* but could not find a copy to purchase at the bookstores on campus and within Edmonton. It was only by chance that I happened to be walking through an airport (I forget where and when), and I came across an entire rack of Buffalo Days and Nights, and so I purchased a single copy.

As soon as I had time, I started to read the book and I finished reading it within two or three sittings. To me, and given the context of where I was at in my undergraduate education and research assistant work I was doing, this book was an absolute page turner. I was fascinated with the book and how the story unfolded from one page to the next. This was a story about a part of my family history. It was easy for me to picture what those journeys and adventures described in the book were like. The story was not dull, like a Pierre Burton novel. Rather, it is an interesting read because it involves humour that is familiar to Indigenous peoples and describes a life, from a male-gendered perspective, of the fur trade

era prior to the extensive settlement of Western Canada. In sum, the life of Peter Erasmus portrayed in the book sounded like a life full of fun, adventure, and hard work.

However, now that I have a more critical understanding of the book, my view has changed somewhat in that the tale that is told aligns with the "disappearing Indian" representations that remain popular as well as the representation that "settlement" was inevitable and that Indigenous peoples of that era had to adapt themselves or face extinction. Nevertheless, the book remains a popular read to me and I enjoyed reading through it again prior to this panel discussion.

B. MOVEMENT

The book was also interesting to me because of a theme of "movement" of Peter, and other Indigenous peoples, throughout the country to work and live. This "movement" occurred across Western Canada and involved the lands that would become part of Treaty Nos. 6, 7, and 8. The interesting part of this "movement" is that this is still largely occurring in my family today. I come from northern Treaty 8 territory where the oil and gas industry dominates the labour market. My family is no stranger to the need to go to a remote location in the "bush" and live in "camp" while working on a drilling rig or building a pipeline or other related infrastructure. This type of work also includes long hours of driving to get to their work locations and then driving back on the same day. I feel like this is something worth mentioning because my family just seems to carry this "movement" for work and living on as a tradition of sorts.

In the book, Peter's life is supported not only by his contracted enagements with various employers but also by his ability to live "off of" the land. In other words, the way I read this is Peter, and other Indigenous peoples who are a part of the story, use the lands they are on to make a living. In Nehiyawewin (Cree language) this is expressed as *pimâcihowin*. And notwithstanding the interpretations of Treaty No. 8 clauses in settler courts, *pimâcihowin* is still vital to the Cree of Treaty No. 8 and a part of our lives.

C. GENDER

It is quite clear that the book reflects the gender bias of the times it was written — as a *generous* male perspective. However, this is not an acceptable excuse for the lack of the voice of women in the book. Women do not feature as prominently as men in the book, even though women were a crucial group of people that existed at this interesting time in history on these lands. It would be interesting to read a critical feminist introduction to this book and to also read an analysis that examines in a critical way the threads of representations of women who were also on these lands at the points in time written about in the book, to counter the clearly male-dominated representations of the era of Western Canadian settlement.

D. PEOPLE

Another theme that was very interesting to me is that the names of people that are discussed in the book are familiar names today to many Indigenous peoples that are still a

part of the lands that Peter Erasmus visited. Names that today are held by people who walk the halls of the University of Alberta as students. For example: Makokis, Whitford, Cardinal, Jackson, Steinhauer, Bull, Shirt, and Erasmus (to name a few). These names read like a list of people visiting from around Saddle Lake or Lac La Biche. Many of my current legal peers and colleagues also share these last names. It is encouraging to see, and I want to make it very clear that these names that are written of in *Buffalo Days and Nights* are still used by living, breathing, Indigenous people that are still on these lands. We did not go anywhere since this book was written. We are still here. And we are in places like the University of Alberta, in its law school, its Native Studies faculty, its education faculty, its science and engineering faculties, and so on.

E. PROFIT

In addition to the many critiques of the book heard here today, which I accept as valid critiques of course, is that I wonder who profited from the story of Peter Erasmus? The details regarding how Henry Thompson worked with Peter to prepare a manuscript are less clear when it comes down to who held the rights to publish and receive profits from Peter's story? And how much of Peter's story is filtered by Henry Thompson? What details were cut out? What was emphasized?

Thanks again for inviting me here to speak today.

V. REFLECTIONS OF ERIC PENTLAND

I would like to speak briefly about the value of this work for Treaty Rights negotiation and litigation in comparison to the written accounts of Crown officials and as a supplement for oral evidence.

There are a number of subjective elements involved in the interpretation of the historic Treaties between First Nations and the Crown: the intention of the parties, the parties' understanding of the agreement at the time it was entered, and the various aims, hopes, and expectations of the parties that may convey the purpose of the solemn promises exchanged.[38] Evidencing these subjective elements is one of the more challenging aspects of historic Treaty interpretation.

The account of a translator is a comparatively more reliable source of determining what was actually communicated to the First Nation than an account of someone being translated. For that reason alone, this narrative is a valuable source for comparison to Treaty Commissioner Morris' account of the Treaty No. 6 negotiations and for assessing what the Indigenous signatories would have understood the Treaty promises to mean at the time they entered the Treaty.

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[38] *R v Marshall*, [1999] 3 SCR 456 at paras 14, Binnie J, 78, McLachlin J (as she then was) (dissenting on another point); *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 at paras 71–83.

Erasmus' account has the additional virtue of recording the speeches given by Big Child and Star Blanket at the meeting of the Cree Chiefs. These speeches provide a great deal of insight into their points of view. For instance, Star Blanket's speech shows that he understood that the agricultural benefits and assistance offered would be sufficient for his people to take up a new way of life and strengthen their Nation.[39] Having recorded these two speeches is possibly the greatest virtue of Erasmus' account of the Treaty.

I also believe that Erasmus is a careful observer who recollects reactions and motivations that struck him as interesting. As a number of the other presenters have noted, the narrative includes a number of troubling biases about Indigenous peoples; however, Erasmus' attention to the actions and motivations of particular individuals is consistently more nuanced then his views of Indigenous people collectively. For example, he tells us that only Big Child cared to know what was in the written Treaty document while the other Chiefs appeared satisfied that the promises would be carried out to the letter.[40] His careful observation also extends to the Treaty Commissioners. For example, he notes that Alexander Morris heavily emphasized the money each individual would get when entering the Treaty.[41]

Historical records of negotiations kept by Crown officials and employees do not consistently provide insight into these subjective elements. Accounts of interactions with Indigenous groups might simply sum up the Indigenous side of the negotiations by saying that someone gave a long speech, that there was much talk, or, if things went the Crown's way, that the Indigenous people were completely satisfied by the explanation.[42] While Alexander Morris outperforms his peers in providing insight into his Treaty partner's motivations, his account glosses over the significant statements of intention, understanding, and purpose that he does include. For instance, he gives a brief summary of Sweetgrass' acceptance of Treaty No. 6 seemingly only to highlight its eloquence of symbolism and does not provide any context or observations useful for determining what to make of the stringent responsibility that Sweetgrass charges him with when he holds his hand over Morris' heart and says "use your utmost to help me and help my children so that they may prosper."[43] This glossing-over makes it difficult to determine whether the parties are forming a common intention regarding the standard of fulfillment for the Crown's solemn promises or merely solemnizing the Treaty. I have chosen this example to demonstrate that Erasmus, while better by degree, is not innocent of the practice of writing off instead of writing down: in his account, he sums up Sweetgrass' remarks by saying "Sweet Grass made a speech of some length, expressing his willingness on behalf of his people to accept the treaty terms."[44]

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39 Erasmus & Thompson, *supra* note 1 at 250.

40 *Ibid* at 254.

41 *Ibid* at 243.

42 See for example Butler's description of people being "highly satisfied with the explanations offered" for the North-West Mounted Police arriving on the Prairies and future Treaty Commissioner Christie's cryptic allusion to having "otherwise satisfied" people in the prefatory materials included in Chapter IX of Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories Including the Negotiations on Which They are Based, and Other Information Relating Thereto* (Toronto: Willing and Williamson, 1880) at 168–69. See also *Restoule v Canada (Attorney General)*, 2018 ONSC 7701 at para 326 for an example where the Crown lost its records of the Indigenous signatories' speeches.

43 Morris, *ibid* at 191.

44 Erasmus & Thompson, *supra* note 1 at 260.

A further difficulty in looking for common intention in Crown records is that officials tended to highlight elements of disagreement that never amounted to solemn promises. In Morris' account of Treaty No. 6, a large portion of the Indigenous viewpoints that are recorded deal with terms that are never accepted such as the (apparently) trivial colour of a coat (somehow not quite trivial enough for Morris to budge on) or amounts to dissent that does not factor into the Treaty promises as solemnized; this focus applies to the dissent of those who enter the Treaty such as Poundmaker, those who hold out such as Big Bear, and those who Morris believes to already be covered by the Treaty such as the Chippewa. In this regard, Morris is unexceptional: in the official report for the Montreal Lake Adhesion to Treaty No. 6 we learn little about motivations for entering the Treaty and a great deal about the dispute concerning back pay of annuities that the parties do not reach an agreement over.[45] The combination of distilling Indigenous viewpoints into brief summaries of material and practical interests and focusing on areas of disagreement makes it difficult to find textual evidence for subjective elements used in Treaty interpretation in the Crown's accounts and greatly increases the value of other accounts for legal argument.

While it is possible to rely on oral accounts to evidence the subjective elements required for Treaty interpretation, in many circumstances this is impractical or disappointing. First there are admissibility and credibility hurdles for oral evidence that remain challenging to navigate or overcome.[46] In a case that Brock has shared, *Chief Victor Buffalo v. Her Majesty the Queen*, a 2005 Federal Court case, Justice Tietelbaum demonstrates this with a thorough examination of the genealogy of each oral history admitted, requiring a plausible lineage to a first-hand attendee at Fort Carlton or Pitt in order to assign any weight to the evidence.[47] In the same judgment, he determines that the *Buffalo Days and Nights* narrative is reliable (despite the narrator's tendency toward self-aggrandizement).[48] The comparative ease of having weight assigned to textual evidence is not only strategically advantageous, it also takes the pressure off of individuals to provide the only evidence supporting the Indigenous intention, understanding, or purpose (as the case may be) and allows them to seriously consider whether or not they are comfortable participating in a process where someone is empowered to decide that their oral history is too unreliable to receive any weight.[49]

For these reasons, I feel that this narrative bolsters Treaty Rights interpretation. And, while most of the content of Big Child and Star Blankets speeches — which are the greatest asset of Erasmus' account — deal with their expectations and understanding of what Treaty No. 6 promises in terms of intergovernmental relations and these expectations are not currently being seriously pursued or considered, the work of Treaty implementation and fulfillment is only just beginning.

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45 OC 1889-0893, online: <www.bac-lac.gc.ca/eng/discover/politics-government/orders-council/Pages/item.aspx?IdNumber=34399>.

46 See Bruce Granville Miller, *Oral History on Trial: Recognizing Aboriginal Narratives in the Courts* (Vancouver: UBC Press, 2011) for a comprehensive analysis of the past and persisting challenges.

47 2005 FC 1622 at paras 458–94 [*Buffalo v Canada*].

48 *Ibid* at para 506.

49 For practical considerations in disclosing oral traditions in legal proceedings, see Darwin Hanna, "Oral Traditions: Practical Considerations for Communities in Light of the *Delgamuukw* Decision" (Assembly of First Nations, 2005), online: <fngovernance.org/ncfng-research/considerations.pdf>.

VI. REFLECTIONS OF DR. JOSHUA NICHOLS

I will be confining my remarks to the chapter on the negotiation of Treaty No. 6. This chapter highlights some of the basic problems we must confront when reading this text. To my mind, the first problem we are confronted with is a structural one. The front cover of the book presents Peter Erasmus as the author, but it is written by Henry Thompson and then published in an abridged form. This is by no means a novel arrangement when it comes to biographies. But, when their subject matter deals with live constitutional issues and they are being read within the context of a law school, this familiar form poses some very thorny interpretive issues. As soon as we attempt to get a more fine-grained view of who is saying and seeing what, we are confronted by a kind of intractable Plato-Socrates telephone game.

Even if we set this issue to the side and focus on the content, the text is overburdened with a kind of heavy-handed later-Victorian romanticism that, in my view, easily maps onto Edward Said's critical analysis in Orientalism. We are invited to view Indigenous peoples in the North-Western Territories as a set of noble, nomadic children who must struggle to stop bickering among themselves long enough to see the writing on the wall (such as the extermination of the Buffalo, the purported universal justice of the Red Coated North-West Mounted Police, and so on) and accept the generosity of the Crown. This skewed view also paints Poundmaker and a mysterious Ojibwa as "troublemakers." This is doubtlessly one of the views that were present in the Treaty No. 6 negotiations, but it is only that: a particular view from a limited perspective. This means that all of the Romantic brushwork that is used to colour in the viewpoints of other historical actors is just that: brushwork. And due to the structure of the text, we cannot say if the embellishments are from Erasmus' own viewpoint or Thompson's recording of it.

This interpretive problem goes further than the structure of the text and the view of the narrator. In the Treaty No. 6 negotiations, Peter Erasmus serves as translator for both Indigenous nations and the Crown. While some would seek some measure of apology for this dubious arrangement by appealing to the common practices of the time, this simply attempts to resolve a problem by way of generalization. The fact is that the position of a translator in treaty negotiations between groups that do not share a common language is of pivotal importance. As we well know, the common law tends to push semantics past the bounds of everyday speech. The result is a specialized and highly technical use of language. Given that the legitimacy of treaties (and indeed all forms of contract) are grounded on the notion of consent, the mutual intelligibility of both the negotiation process and the resulting agreement are the minimum requirements for the creation of a legally binding agreement. This is doubtlessly one of the most demanding positions a translator can occupy. If they waiver in their translation and a misunderstanding is folded into the agreement, the seeds of a constitutional conflict are sown. It is a situation that demands a kind of disinterested neutrality that is Herculean when undertaken with the imperfect tools of natural languages. Yet, in this text, we are informed that Erasmus is being paid by both sides and is clearly taken by one view over others.

Given that we are reading this in a law school, I would say that the issues are easy enough to spot. The conflict of interest here is blatant, and it casts a long and dark shadow. This is compounded by the fact that it is difficult to characterize the situation of the

Indigenous peoples who were at the negotiations as anything other than duress (that is, pressed by Indian wars to the south, the pressure of the expanding settler population, the disappearance of the buffalo, and so on). So, this brings me to ask what the potential consequences of having an interpreter with such a blatant conflict of interest could possibly be?

We can get a sense of the kind of semantic divergence possible in legal translation by considering the indictment read at the trail of Chief One Arrow following the North-West Resistance. In English it read that he, "together with [diverse] and other evil disposed persons … armed and arrayed in a warlike manner, that is to say with guns, rifles, pistols, bayonets and other weapons, being then wickedly and feloniously assembled and gathered together against our said lady the Queen … and against the peace of our said Lady the Queen, her Crown and dignity."[50] The indictment as translated into Cree informed One Arrow that he had "knocked off the Queen's bonnet" and "stabbed her in the behind with his sword." Upon hearing this he was, as we can easily imagine, confused, and he then angrily demanded to know if the interpreter was drunk. After all, he had never even met the Queen.[51] The puffed-up Victorian absurdity of the exchange could easily be mistaken for something out of Lewis Carroll's work, but this is an actual trial for treason. The issue here is not the unintentional comedy of mistranslation, but the incommensurability of these perspectives. A Crown that believed it could acquire subjects by unilateral assertion alone and the Indigenous peoples who were confronted by the cruel absurdity of the reality that assertion gave birth to. How can one rebel against an invader? How can one commit treason against a foreign Queen? The Crown itself exposed its awareness of this absurdity when it chose to charge One Arrow with "treason felony" and not "high treason" (as they did with Riel); they simply could not prove the *mens rea* of the offence.

So, what are the implications of this conflicted text? It is clear that there is an irreducible conflict at its center: are these the words of Erasmus or Thompson? Was the translation offered by Erasmus neutral or partisan? No amount of interpretive digging will get us out of this position and onto the clear ground of mutual understanding.

But, I believe that we can find a helpful reminder of just how deep this problem and what may be needed to get past it in Sidney L. Harring's *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence*.[52] He devotes a chapter of his text to the settlement of the Prairies. In it he reminds us that the *Indian Act* was legislated just prior to the negotiations for Treaty No. 6.[53] In fact, in a memorandum written the day before Treaty No. 6 was signed (22 August 1876), the Deputy Superintendent of Indian Affairs (L. Vankoughnet) stated that "the legal status of the Indians of Canada is that of minors, with

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50 Sidney L Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto: University of Toronto Press, 1998).

51 *Ibid* at 240.

52 *Ibid*.

53 *Ibid*.

the Government of Canada as their Guardians."[54] What can this legal status mean in the context of treaty negotiations? As Harring helpfully points out,

> At its legal core, the Indian Act was inconsistent with the ongoing treaty-making process. If Indians were legally children in the eyes of the law, dependents without the capacity to negotiate contracts, then they could not sell their land to anyone, not even the crown. If the crown was their legal guardian, then it was a conflict of interest for it to sell their lands to itself at any price. To sell Indian lands to itself at very low prices was not only a violation of fiduciary duty but fraud. The crown's legal view of this matter denied any actual Indian ownership of the land, recognizing the treaties as merely political documents.[55]

Thankfully, he does not simply leave us to sort out the legal significance of the Crown's "merely political documents." Rather, he closes his text with a kind of imperative that, to my view, has not lost any of its force since it was published in 1998:

> Modern Canadian law and legal history must include indigenous legal history, the lived legal history of Indian people. This tradition includes both First Nations traditional law as well as First Nations oral history, their memory of legal encounters, such as the treaties, that now are recalled inconsistently by two sides. What is needed is a new common law that recognizes indigenous law and legal tradition as well as Anglo- and Franco-Canadian law and legal tradition. To create such a common law will require great creativity and legal imagination.[56]

VII. REFLECTIONS OF DARCY LINDBERG

A. IMAGINED ABSENCES OF INDIGENOUS FACULTY IN FILM AND LITERATURE

Because of the inevitable stereotypes that arise within them, for Indigenous people, an interest in film and literature must be tempered with coping strategies in navigating works of art that delves into Indigenous issues. One coping mechanism I have developed is an affinity for *amusement movies.* To be amused is not to find that a film or book is not particularly great for its substance, but to find amusement in how it portrays Indigenous lifeworlds, Indigenous peoples, and perhaps most significantly, Indigenous and non-Indigenous interactions. One of my more dubious amusement movies is *Dances with Wolves*.[57] The mid-1990s contact narrative is dripping with romanticized imagery of the "dying Indian"[58] against the inevitability of Euro-American law and society. In the movie, Lt. Dunbar (played by Kevin Costner), works as an intermediary between the two worlds, *becoming Indian just enough* to let the audience in on a glimpse of the writer-imagined Sioux life before it is forever altered by America's westward march.

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54 John F Leslie, *Assimilation, Integration or Termination?: The Development of Canadian Indian Policy, 1943-1963* (PhD Thesis, Carleton University, 1999) [unpublished] at 49, n 64.

55 Harring, *supra* note 50 at 262.

56 *Ibid* at 278–79.

57 *Dances with Wolves*, 1990, DVD (Santa Monica, Cal: Metro Goldwyn Mayer, 2004).

58 For a greater exploration of the trope of the "dying Indian" in art, see Thomas King, *The Inconvenient Indian: A Curious Account of Native People in North America* (Minnesota: University of Minnesota Press, 2012).

I am most amused by these films and books for their audacity. They have a particular audacity to pursue these romanticisms, often to illogical ends. Consider the most audacious of these occurrences in *Dances with Wolves*. When some Sioux boys attempt to steal Lt. Dunbar's horse and succeed in drawing it away from Dunbar's home, the loyal horse abruptly turns back on the prairie, bucking its young rider off. When asked by another boy what happened, the bucked rider responds, "I don't know. My arm doesn't work." As though an adolescent boy would not know what a broken arm or torn shoulder is. Such audacity to imagine the absence of this knowledge amongst the Sioux.

These are the imagined absences in the Indigenous lifeworld that popular North American art and literature continues to propagate. In reading through portions of *Buffalo Days and Nights*, I am reminded of these imagined absences and their necessity to further contact narratives that romanticize the death of prairie Indigenous lifeworlds, societies, and legal practices. Written by Edmonton journalist Henry Thompson, based on Peter Erasmus' recollections of life on the prairies in the nineteenth century, the book contains hallmarks found within dying Indian narratives. This narrative approach is as old as North American literature itself, beginning with James Fenimore Cooper's "Leatherstocking Tales" in the mid-nineteenth century.[59] Canada has its own take on this tradition, with Archibald Belaney shapeshifting from English-Canadian into Grey Owl, an imagined Indigenous conservationist who moralized on the vanishing woods of Canada, linking Indigenous and animal extinction together.[60] The continued use of this narrative tradition since has kept the non-Indigenous consumer primed for these old romanticisms, much like the public was for Kevin Costner to emerge as Lt. John Dunbar in *Dances with Wolves*, straight to Oscar glory.

Thus when the dialogues in *Buffalo Days and Nights* carry similar romantic speeches about Indigenous assimilation, I question the logic of their broad explanatory nature regarding the socio-political position of Plains Cree peoples at the time. Chiefs Mistawasis and Ahtakakoop were high leaders amongst the Plains Cree, and there is no doubt that they offered influential voices during these negotiations. However, their respective narratives in the book are suspiciously more suited for a non-Indigenous 1930s audience than they would be for an 1871 Plains Cree audience, who would have lived through all the things the two Chiefs recall as though they are providing new information.

Consider how Mistawasis (Big Child) envisions the coming of forts with European settlement, despite forts being around for 80 years.[61] Or how he then goes on to speak about and the benevolence of the RCMP towards Indigenous peoples, a myth propped up by other literature around the time of the book's writing rather than a sentiment held by Indigenous peoples in 1871.[62]

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59 Eve Tuck & K Wayne Yang, "Decolonization Is Not a Metaphor" (2012) 1:1 Decolonization: Indigeneity, Education & Society 1 at 14–15.

60 David Chapin, "Gender and Indian Masquerade in the Life of Grey Owl" (2000) 24:1 American Indian Q 91.

61 Erasmus & Thompson, *supra* note 1 at 247.

62 See Daniel Francis, *The Imaginary Indian: The Image of the Indian in Canadian* Culture (Vancouver: Arsenal Pulp Press, 1992) at 61–82, where Francis details the creation of the myth of the RCMP as a force created to protect Indigenous peoples.

Ahtahkakoop's speech contains similar romanticisms, as he starts with: "Yes … I have carried the dripping scalps of the Blackfoot on my belt."[63] And finishes with: "Can we stop the power of the white man from spreading over the land like the grasshoppers that cloud the sky and then fall to consume every blade of grass and every leaf on the trees in their path? I think not."[64]

Most concerning is the book's reliance on stereotypical views of Plains Cree society as pre-legal and simply customary in nature. On Indigenous laws, *Buffalo Days and Nights* states: "The Indian's own rules were handed down from the dim past, their oldest traditions accepted without question."[65]

This statement is of course unacceptable today. It has been the work of many Cree law and governance scholars (for instance see Harold Cardinal,[66] Shalene Jobin,[67] Janice Makokis,[68] Pauline Johnson,[69] Sylvia McAdam Saysewahum,[70] Matthew Wildcat,[71] Winona Wheeler,[72] Harold Johnson,[73] and Danika Littlechild,[74] to name only a few) as well as other legal scholars (for example, Hadley Friedland,[75] Val Napoleon,[76] and John Borrows[77]) to erase this myth. In this manner, the present-day reader is impoverished by this book as Erasmus (or his proxy, Thompson) missed an opportunity to explore Plains Cree law, governance, and the legal procedures used during the negotiation of Treaty No. 6. Perhaps Erasmus acknowledges this shortcoming as he states: "Our approach to the Governor's tent was delayed by certain ceremonial proceedings that have been far better described than I feel capable of doing."[78]

The ceremonialism that accompanied the negotiations was a significant procedure for Plains Cree law. It gives treaty its sacredness, longevity, and legality.

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63 Erasmus & Thompson, *supra* note 1 at 249.
64 *Ibid* at 249.
65 *Ibid* at 239.
66 Harold Cardinal & Walter Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations* (Calgary: University of Calgary Press, 2000).
67 Shalene Jobin, *Cree Economic Relationships, Governance, and Critical Indigenous Political Economy in Resistance to Settler Colonial Logics* (PhD Thesis, University of Alberta, 2014) [unpublished].
68 wahpimaskwasis (Little White Bear) Janice Alison Makokis, *nehiyaw iskwew kiskinowâtasinahikewina – paminisowin namôya tipeyimisowin: Cree Women Learning Self Determination Through Sacred Teachings of the Creator* (MA Thesis, University of Alberta, 2005) [unpublished].
69 Pauline R Johnson, *E-kawôtiniket 1876: Reclaiming Nêhiyaw Governance in the Territory of Maskwacîs through Wâhkôtowin (Kinship)* (PhD Thesis, The University of Western Ontario, 2017) [unpublished].
70 Sylvia McAdam (Saysewahum), *Nationhood Interrupted: Revitalizing nêhiyaw Legal Systems* (Saskatoon: Purich, 2015).
71 Matthew Wildcat, *Miyo Wahkotowin: Self-Determination, Colonialism and Pre-Reserve Nehiyaw Forms of Power* (MA Thesis, University of Victoria, 2010) [unpublished].
72 Winona Wheeler, "Cree Intellectual Traditions in History" in Alvin Finkel, Sarah Carter & Peter Fortna, eds, *The West and Beyond: New Perspectives on an Imagined Region* (Edmonton: AU Press, 2010) at 47.
73 Harold Johnson, *Two Families: Treaties and Government* (Saskatoon: Purich, 2007).
74 Danika Billie Littlechild, *Transformation and Re-formation: First Nations and Water in Canada* (LLM Thesis, University of Victoria, 2014) [unpublished].
75 Hadley Louise Friedland, *Reclaiming the Language of Law: The Contemporary Articulation and Application of Cree Legal Principles in Canada* (PhD Thesis, University of Alberta, 2016) [unpublished].
76 Val Napoleon, "Thinking About Indigenous Legal Orders" in René Provost & Colleen Sheppard, eds, *Dialogues on Human Rights and Legal Pluralism* (Dordrecht, Netherlands: Springer, 2013).
77 John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010).
78 Erasmus & Thompson, *supra* note 1 at 240.

B. THE TROUBLE OF CONTACT NARRATIVES AND LEGAL PROCEEDINGS

Of course *Buffalo Days and Nights* was not crafted for a courtroom. Though historical non-fiction, it is a commercial book. Its use of common literary devices that fetishize Indigenous peoples as fatalistically hurdling toward assimilation should cast doubts on the objectivity of Thompson's framing of Erasmus' story as it pertains to treaty. Yet despite its subjective shortcomings, it was relied upon in *Buffalo v. Canada*[79] as a contemporary documentary account of Treaty No. 6. Its perceived reliability contrasts the treatment of Plains Cree accounts of treaty during this trial. Consider the Court's dismissal of elder Pete Waskahat's testimony. Waskahat is the carrier of a Treaty No. 6 narrative.[80] In describing to the Court Plains Cree oral narrative practice, Waskahat acknowledged that "an oral tradition may be told differently because of how the storyteller perceives the audience."[81] This seems like a tacit observation, that how the treaty story is told to children at a school (for example) would be different than retelling it to the Federal Court. However, this leaves Justice Teitelbaum "very disturbed," and "cannot place much, if any, weight" on his treaty knowledge.[82] Despite Erasmus' account being penned by a second person 48 years after the events it describes, *Buffalo Days and Nights* is afforded a reliability that Plains Cree oral narrative is not. Largely because it is in written form, it escapes similar interrogation.

In the trial, ample evidence from the Plains Cree understanding of treaty was brought before the Court. Much of it was discounted, for similar issues of reliability (in that the Court was not persuaded that the internal accountability mechanisms within Plains Cree oral traditions were reliable). This was a missed opportunity to broaden the narrow historical view of the Indigenous laws and governance that were at play in the making of Treaty No. 6 and what is portrayed in texts like *Buffalo Days and Nights*. There is power, of course, in maintaining a narrow view of history. This power manifests materially for Canada, as the narrow view of what the Court considers valid documentation of Treaty No. 6 in *Buffalo v. Canada* allows for a static view of the Treaty and what was ceded by Indigenous peoples to hold. While it may be a valuable source of historical information and descriptions of prairie life in the nineteenth century, courts should consider Erasmus' narrative on the specific words of Plains Cree peoples (as it is written in *Buffalo Days and Nights)* during treaty making cautiously. Further, Plains Cree law and legal processes, especially those that pertain to treaty, can provide a fuller, more respectful consideration.

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79 *Supra* note 47.
80 *Ibid* at para 232.
81 *Ibid* at para 494.
82 *Ibid* at para 494.

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