

CANADA'S FIRST RECORDED ARBITRATION: *IROQUET V ATIRONTA*, CAHIAGUE, HURON- WENDAT FIRST NATION, 1616

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Canada's first recorded arbitration concerned an international dispute, one that may strike readers as surprisingly "modern". According to Samuel de Champlain, who acted as the arbitrator, it took place in a Huron-Wendat town in the winter of 1616. Leaders of the Huron-Wendat confederacy and Iroquet, the commander of an Algonkian war party, had become locked in a dispute that could easily have led to war between the two nations. While mediation appears to have been a standard way of settling disputes, especially between spouses, arbitration was less common among Iroquoian first nations and their neighbours. Nevertheless, the decision to arbitrate this dispute appears to have been made entirely by the Indigenous leaders, presumably based on concepts that were already part of their legal system. It was also a method dispute resolution familiar to the Indigenous peoples of the Great Lakes-St. Lawrence River region a century later, when an arbitration clause was written into the Great Peace of Montreal of 1701 and used soon afterward, at the request of Indigenous leaders. The role of arbitration in Indigenous law is often underappreciated, and any new codification of Indigenous law should include the use of arbitration. It was clearly a traditional method of resolving disputes, at least with respect to disputes between allies.

On June 26, 1615, Samuel de Champlain, founder of the French trading scheme in the St. Lawrence-Great Lakes region, arrived in the town of Quebec from France. A week later, he left for the interior with his servant and an interpreter, likely Thomas Godefroy, a young French man who had learned

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Indigenous languages by living among the Huron-Wendat for several years in their homeland on southern Georgian Bay. They travelled upriver past Montreal Island (on the Riviere des Prairies), into the Lake of Two Mountains and up the Ottawa River to the portage that leads to the Mattawa River. Crossing the heights between the watersheds of the Ottawa River and Georgian Bay, they canoed down the Mattawa, then crossed Lake Nipissing to the French River, and followed that river to Georgian Bay. From there, they travelled south to the Huron-Wendat country. Champlain visited most of its major towns, meeting with important leaders and being treated to welcoming feasts before setting up his headquarters in the town of Cahiaque, a community of about 5,000-8,000 people west of the modern town of Orillia, Ontario, on August 17.

At the same time, Huron-Wendat leaders, war chiefs of their allies among the Algonkian-speaking peoples living in the Canadian Shield and Ottawa Valley, and leaders of the Susquehanna, an Iroquoian-speaking nation living south of the Haudenosaunee (Five Nations) country, were at Cahiaque, planning an attack on the Iroquois. On September 1, this war party started out through Lake Simcoe and the Kawartha Lakes, roughly following the route of the modern Trent-Severn waterway (which was developed from this canoe route). North of Lake Ontario, a Huron-Wendat man was wounded by musket-fire during a deer hunt, presumably by Champlain, though he dodges the blame by being deliberately vague. Champlain wrote in his *Voyages*, "At this, a great clamour rose among them, which nevertheless subsided upon the gift of some presents to the wounded man, which is the ordinary method of allaying and ending quarrel; in case the wounded man dies, the presents and gifts are made to his family."¹

¹ HP Biggar, *The Works of Samuel de Champlain*, vol 3 (Toronto: The Champlain Society, 1929) at 62. This volume of Biggar's translation of Samuel de Champlain's writings is a direct translation of Champlain's *Voyages*, which were printed in France and became best-sellers. Biggar and

The war party crossed the east end of Lake Ontario and set out by land to a strongly-built Haudenosaunee fort or small village on Lake Onondaga. The promised reinforcements of the Susquehanna war party never arrived, but the Huron-Wendat and their Algonkian allies laid siege to the fort without them. This ended badly for the attackers, who could not break into the village, even though they built European-style siege towers designed by Champlain. Several of the Huron-Wendat and their allies were killed and many more were injured. Among the latter was Champlain himself, who was hit by arrows in his knee and the flesh of his leg. The war party abandoned the siege and hurried northwest toward the Huron-Wendat country as winter closed in. For weeks, Champlain was carried on the back of a Huron-Wendat warrior. Champlain wanted to travel to Quebec through the Thousand Islands and St. Lawrence River, but no one would guide him. Instead, he spent much of the winter with hunting parties in the Kawartha Lakes region before returning with the Huron-Wendat and Algonkians to Cahiague.

Iroquet, who lived in the lower Ottawa Valley,² was one of the commanders of the raid and the leader of the group of Algonkians whom the Huron-Wendat called the Onontcharonon. He had known Champlain since 1609, when Champlain and a few armed Frenchmen accompanied Iroquet and a band of warriors to fight Mohawks at the north end of Lake George, in what is now upstate New York. Champlain fought

the Champlain Society included the original French text and an English translation.

² Iroquet's band seems to have moved seasonally between the Lake of Two Mountains and Allumette Island, near modern-day Pembroke, though that island and the surrounding area were controlled by an Algonkian headman, Tessouat. It is possible that Tessouat and Iroquet were, respectively, civil and war chiefs, in a similar relationship to that of the civil and military chiefs in Iroquoian societies. See Bruce G Trigger, *The Children of Aataentsic: A History of the Huron People to 1660* (Montreal: McGill-Queen's University Press, 1987) at 145-146. Trigger notes that this distinction was common in the horticultural peoples of eastern North America and in pre-contact Mesoamerica.

alongside Iroquet again, on the Richelieu River in the spring of 1610. In 1615, after the bungled siege of the Lake Onondaga village, he and many members of the Algonkian war party spent the winter among the Huron-Wendat.

In mid-February, a very loud and violent dispute broke out between Iroquet and the Huron-Wendat leadership. Champlain, who was travelling among the people living in the region just west of Georgian Bay, tried to stay out of it. He sent an interpreter to Cahaigue, likely Godefroy, who could speak the Algonkian and Huron-Wendat languages, to determine what was happening.³ Two days later, at about the same time the interpreter returned to Champlain to report, a group of “les principaux & anciens de lieu” [chiefs and elders of the place, *i.e.*, the Huron-Wendat leadership] invited Champlain to act “comme arbitre sur ce sujet” [as arbitrator of the subject].⁴

Champlain agreed. The Huron-Wendat leaders and Champlain visited the lodge of the leading Algonkians. After some speeches, leaders on both sides agreed to submit the matter to Champlain and “ci que ie luer proposerois, ils le mettroient en execution” [and to carry out whatever I should propose to them].⁵

Champlain and his interpreter moved freely between the two groups of leaders, gathering facts. First, he determined that both sides wanted peace and were serious about the arbitration. Then he learned the details of the dispute. It was between Champlain’s Huron-Wendat host at Cahiague, Atironta (sometimes called Darontal),⁶ a chief of the Arendarhonon

³ Biggar, *supra* note 2 at 107.

⁴ *Ibid* at 105.

⁵ *Ibid* at 106.

⁶ Both Atironta and Iroquet appear to be hereditary chief names, used in a roughly similar way the Romans employed the name Caesar. There appear to have been three Atirontas between 1615 and 1674, which means the name continued to be used by the Arendarhonon civil chief even after the

(Rock) nation, and Iroquet. Atironta was one of the most powerful people in the Huron-Wendat country. As head civil chief of the largest village of the Arendarhonon, and likely its representative on the Huron confederacy council,⁷ he had considerable political power. The Arendarhonon had been the first nation in the confederacy to establish trade with the French, so, in Huron-Wendat law, his people were “masters of the route.” At least in theory, he was the owner of the French-Wendat trade route.

Atironta had given a Haudenosaunee prisoner to Iroquet and had expected Iroquet to kill the prisoner in a ritualistic torture session.⁸ Instead, Iroquet exercised his right under both Huron-Wendat and Algonkian law to adopt the prisoner as his own son. Some among the Arendarhonon were angered and disappointed by Iroquet’s decision, so they appointed a Huron-Wendat warrior to murder the prisoner.

The Huron-Wendat warrior killed the adopted man in the presence of several of the Algonkian leaders. In turn, the Algonkian killed the Huron-Wendat warrior on the spot. When news of the killings reached the Huron-Wendat, some of them attacked the lodges of the Algonkians, knocking them down and beating many of the Algonkians, including Iroquet. During the brawl, Iroquet was shot with two arrows. The Huron-Wendat also forced the Algonkians to hand over fifty wampum belts containing about two hundred metres of strung shell beads,⁹ a

Huron-Wendat confederacy was destroyed by the Haudenosaunee and its people dispersed in 1650. Most of the Arendarhonon joined the Onondaga. The Atironta of 1650 became a Christian and lived in the Huron-Wendat refugee community near Quebec City.

⁷ For discussions of the appointment and duties of civil chiefs and the source of their power in the community, see Trigger, *supra* note 3 at 54-59 and 102-103.

⁸ Atironta would have received the prisoner from the Arenadarhonon war chief who was co-leader of the failed expedition.

⁹ Biggar, *supra* note 2 at 101-102.

fortune in the currency of the Great Lakes-St. Lawrence region.¹⁰ The Huron-Wendat left the Algonkian camp with two Haudenosaunee women who were prisoners of the Algonkians and stripped the camp of valuable European trade goods such as steel hatchets and copper cooking pots. The Algonkians were stuck in the Huron-Wendat country, surrounded by deep snow and by thousands of people who, they believed, planned to kill them. At the same time, they believed themselves to be the aggrieved party in this dispute.¹¹

Under Iroquoian law, murder placed an absolute obligation on the family of the victim – including kin by adoption – to avenge the victim’s murder, either by killing the murderer or someone closely related to him. On the other side of the ledger, it was the responsibility of a person’s clan and kin to protect people to whom they were related or connected by clan membership, even if the person was being targeted for retribution for a crime they did in fact commit.¹² This forced

¹⁰ These wampum beads were the primary currency of northeastern North America. To put the Algonkian loss in perspective, in the early 1640s, Dutch traders brought just under 1,000 metres of wampum beads to Fort Orange to try to supply the needs of the entire Mohawk nation. See William N Fenton, *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy* (Norman: University of Oklahoma Press, 1998) at ch 16. Wampum was worth four per stuiver in 1640, making it equivalent to about 80 beads per guilder, a one-ounce silver coin. This value estimate was made by the Dutch when wampum was being brought by their traders to the Mohawk country in some volume. It probably had more purchasing power in 1617, when the beads were scarcer in the Great Lakes region. Almost all wampum was made by a band of Algonquins at Governor Bay, New York. These people were left unmolested by all combatants in the 17th century fur trade wars.

¹¹ Biggar, *supra* note 2 at 103.

¹² See Trigger, *supra* note 3 at 62-66. See also Reuben Thwaites, ed, *The Jesuit Relations and Allied Documents* (New York: Pageant Books, 1959) vol 33 at 229-233. There are also frequent mentions of this concept in *The Jesuit Relations and Allied Documents*, letters written in the Wendat country for publication in France. For example, when a faction of Huron-Wendats had a Jesuit volunteer worker Jacques Douart murdered of the Jesuit mission of Ste. Marie in 1648, the Huron-Wendat paid.

loyalty also existed among people of the same village, nation (there were five nations in the Huron-Wendat confederacy), and the confederacy itself.¹³ Presumably, the Algonkians, who were of a different language group and culture, shared the Huron-Wendat attitudes and law regarding murder.

In this case, the entire Huron-Wendat confederacy was expected to line up on the side of the warriors from Cahaigue who had killed Iroquet's adopted son/prisoner and who had, in turn, been killed. At the same time, it was a realistic expectation of the Huron-Wendat that the Algonkians would take up arms to support Iroquet, who had lost an adopted son and had been wounded, robbed, and humiliated.

Homicide, wounding, and theft were crimes that could prompt escalating violence that would result in warfare between villages, nations of the Huron-Wendat confederacy, and between the confederacy and its allies. Huron-Wendat law, which was anchored in the idea that peace in the confederacy was of supreme importance, offered a method of preventing these blood feuds from escalating. In fact, among the Huron-Wendat, blood feuds were considered more reprehensible than the crime of murder itself.¹⁴ Within the confederacy, blood feuds were settled by the payment of reparations by the murderer's clan to the family of the victim. (The murderer faced no personal punishment, except the shame of watching his relatives and clan members hand over a substantial amount of their wealth.) The compensation for a man tended to be equivalent to the value of thirty beaver skin robes, each containing about ten beaver skins.¹⁵

This avoidance of revenge did not apply to killings by foreigners. The Huron-Wendat expected the families of murder

¹³ Trigger, *supra* note 3 at 60.

¹⁴ *Ibid.*

¹⁵ *Ibid* at 748.

victims to clamour for revenge and to organize war parties against foreigners who killed Huron-Wendats. Each side of an international dispute would see revenge killings as fresh atrocities, generating a cycle of violence that could last years.¹⁶

Unless a compensation agreement could be reached between Atironta, Iroquet, and senior members of the leadership on both sides, war between the Algonkians and Huron-Wendat was likely. The attack and humiliation of Iroquet, a famous Algonkian military leader, by the comrades of Atironta, a powerful Huron-Wendat hereditary chief, was an extremely serious breach of the peace between the Huron-Wendat and Algonkians, two groups that placed a high value on honour. This breach could have turned the whole of what is now called central Ontario, the Ottawa Valley, and the upper St. Lawrence Valley into a war zone. Hundreds of people would have died. At the same time, the Huron-Wendat had no way to reach Quebec to trade their furs if the Georgian Bay-French River-Lake Nipissing-Mattawa River-Ottawa River canoe route was blocked. There was also nothing stopping Iroquet and his people from making peace with the Haudenosaunee and opening hostilities against the French. Champlain's dream of an inland fur trade would have been made impossible. Both parties and the arbitrator, therefore, had an interest in resolving the dispute and preventing outright war.

Through the fact-finding process, Champlain continued to affirm that his project had the support of both parties.

Several speeches were made on both sides, and the conclusion was that I should give them my opinion and advice, seeing by their speeches that they referred the whole matter to my decision, as to their father, promising me that if I did so that in the future I could dispose of them as seemed good to me, referring the whole settlement to my discretion. After that, I replied to them that I was

¹⁶ Trigger, *supra* note 3 at 68.

very glad to see them so well inclined to follow my advice, assuring them that it would be only for the good and advantage of the tribes (*peuples* in Champlain's text).¹⁷

Therefore, it appears each side made a preliminary case to Champlain while meeting together, and Champlain then gathered information that he used to craft a settlement. Ethnohistorian Bruce Trigger claims Champlain misinterpreted the chief's request, and that he was expected to be a mediator, rather than an arbitrator. Trigger goes on to say, in his published account, that Champlain makes the false claim that he saw the request as a partial surrender of sovereignty by the affected First Nations to the French Crown.¹⁸ However, it is clear from the primary source material that both of Trigger's claims are false. Champlain's account is adamant that his role was to gather facts and to decide upon an outcome that the parties could live with, not to negotiate one. He describes going back and forth between the parties to gather evidence, then crafting a decision that neither party seemed to like but both were willing to accept. There is no evidence that he felt that the disputing parties had to agree to settle on the terms of his decision in order to make it binding upon them. Furthermore, there is nothing in the passages of Champlain's *Voyages* where Champlain connects his role as arbitrator with his position as a representative of the French Crown, or where Champlain claimed that the parties, by making him part of the dispute settlement process, had recognized French sovereignty over them.¹⁹

Early in the process, Champlain realized the prisoner, upon his adoption by Iroquet, had become a member of the Algonkian

¹⁷ Biggar, *supra* note 2 at 106.

¹⁸ Trigger, *supra* note 3 at 322.

¹⁹ Biggar, *supra* note 2 at 107-114. See also David Hackett Fischer, *Champlain's Dream: The European Founding of North America* (Toronto: Vintage Canada, 2008) (accepting Champlain's account at face value).

chief's family.²⁰ This gave him much more status than when he had when had been a prisoner. In particular, it entitled him to the protection of his adoptive family, clan, and nation. In his decision, Champlain expressed his distress at the loss of Iroquet's son. He acknowledged the Huron-Wendats' grief at the loss of their warrior.²¹ Then he explained the consequences of either party's failure to settle the dispute and to keep their promise to accept Champlain's decision. The deaths and their consequences might bring a great calamity, "from which might have resulted nothing but perpetual warfare between them both, with many serious disasters and a rupture of their friendship".²²

The dispute, Champlain stressed, was unnecessary and "unworthy of reasonable men". Both parties had more important—and consistent—military aims: to suppress the small Haudenosaunee war parties that infiltrated the territories of the Algonkians and Huron-Wendats to seize prisoners; and to continue to work together to make large raids of the Haudenosaunee homeland. "That these enemies, seeing them divided and with civil war in their midst, would urge them on still more and would encourage them and spur them on to form fresh and deadly plans in the hope of soon witnessing their ruin or at least their mutual enfeeblement, which would be really the easiest method of vanquishing them and becoming masters of their territory, since they would not mutually support one another."²³ As well, the French could no longer be counted on as a trading partner if war broke out and the canoe routes became too dangerous. The French would need to find other customers for their axes, guns, metal cooking pots, steel needles, and other goods that were valued by the Huron-Wendat, the

²⁰ This was a practice common to the Iroquoian nations and the Algonkians. See Trigger, *supra* note 3 at 233, 254.

²¹ Biggar, *supra* note 2 at 109.

²² *Ibid.*

²³ *Ibid* at 110.

Algonkians, and the Upper Great Lakes peoples with whom both First Nations traded.

Champlain drove the point home by adding, “for the death of one man they [the Huron-Wendat] were endangering the lives of ten thousand and rendering the rest liable to endure perpetual slavery.”²⁴ The Huron-Wendat needed to understand that the killing of their man was not done “in order to create a civil war between them.”²⁵ It was a spur-of-the-moment killing after “the dead man had given the first offence because he had deliberately killed the prisoner in their [the Algonkian] lodges, and action of too great audacity, even though he [the prisoner] were an enemy.”²⁶ The Algonkians were “carried away with a sudden passion” and had “come forward, unable to restrain themselves or to control their anger, and had killed the man in question.” That did not mean the Algonkians held a grudge against the entire Huron-Wendat people; indeed, Champlain concluded, they “had no purpose beyond this audacious individual, who had well-deserved the fate he had brought upon himself.”²⁷

Champlain then came up with a face-saving story for the Huron-Wendat. The Algonkian eyewitnesses to the killings claimed the dying Onondagan prisoner had been able to pull the Huron-Wendat warrior’s knife from his belly and slash his assailant, “so that it really could not be known for certain if the Algonkians had slain him.”²⁸

As for the Algonkians, their testimony showed they had not liked the prisoner all that much. “Iroquet did not bear him so much affection as they [the Huron-Wendat] had supposed, that

²⁴ Biggar, *supra* note 2 at 109.

²⁵ *Ibid* at 110.

²⁶ *Ibid*.

²⁷ *Ibid*.

²⁸ *Ibid* at 111-112.

they had eaten him because he had stabbed his enemy, a thing unworthy indeed of men but rather the action of brute beasts.” If the Algonkians had known the Huron-Wendat had such strong feelings about the Onondagan’s fate, they would have killed the prisoner.²⁹

As for compensation, Champlain reminded the parties of the two women prisoners, the valuable wampum belts, and the metal trade goods taken by the Huron-Wendat. As a gesture of friendship, Champlain decided, the Huron-Wendat should be allowed to keep what they had taken, after which the matter would be considered settled.³⁰ Both sides claimed to accept this decision, and indeed there was no further bloodshed arising from the killings. However, the Algonkians may have actually seen themselves as the losers. They quietly struck their camp in the Huron-Wendat country and travelled back to their own territory. “In my opinion they showed they were not too well pleased, because among themselves they declared that they would no more winter in these parts, the death of these two men having cost them too dear.”³¹

It is clear from Champlain’s description of the events of February 1616 that the Huron-Wendat and Algonkians were familiar with arbitration, and that it was part of their dispute resolution tool kit. The arbitration at Cahaigue had many of the hallmarks of modern arbitration: angry litigants who still wanted to maintain a business relationship; a serious dispute that could not be settled through negotiation; the seeking out of a neutral third party arbitrator and a promise by the parties to accept the arbitrator’s findings; the collection of evidence; and the issuance of a decision that both parties accepted, even though they were not entirely pleased. Modern codifications of Indigenous law should take this history into account, and should accord arbitration—especially between Indigenous peoples or

²⁹ Biggar, *supra* note 2 at 112.

³⁰ *Ibid* at 112-113.

³¹ *Ibid*.

between Indigenous peoples and the Crown—its proper place as a traditional method of dispute resolution.