

First Nations student deaths inquest: Is the treaty relevant?

'The treaty says the government will provide schools and teachers' salaries', expert testifies

By Jody Porter, [CBC News](#) Posted: Feb 02, 2016 7:00 AM ET Last Updated: Feb 02, 2016 7:13 AM ET

Talking about treaty rights at an inquest into the deaths of First Nations students in Thunder Bay, Ont., might confuse the jury, according to the presiding coroner.

The inquest is examining the deaths of seven young people from remote First Nations who were in Thunder Bay to attend high school, in part because of limited access to secondary schools in their home communities.

Coroner Dr. David Eden interrupted questioning of a witness at the inquest on Monday when Etienne Esquega, the lawyer for the Northern Nishnawbe Education Council, began asking about treaty rights.

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"How does this line of questioning assist the jury in making recommendations?" Eden asked Esquega after the jury had been excused.

Luke Hunter, the director of land rights and treaty research with Nishnawbe Aski Nation had previously testified about educational provisions in Treaty 9 and Treaty 5, which cover the territory from which the students came to Thunder Bay.

"If you read the text of the treaty it says that the government will provide schools and teacher's salaries," Hunter said.

Treaties are disputed in law and have not been ruled on by the courts, Eden said, so the jury could be confused if Canada or Ontario enter contradictory evidence.

"This inquest will not be resolving disputes relating to treaty obligations... it's not something on which the jury can make a finding," Eden said.

"With all due respect, there are 23 First Nations that make up NNEC [Northern Nishnawbe Education Council], all of them are relying on this treaty as the primary source of that right to education," Esquega responded.

"This is not simply going to the Lakehead public school board and saying we need more money for more teachers," he added. "That's not there. This is rooted in all this evidence we're hearing right now."

When the jury returned, Eden told jurors that he had instructed lawyers to make a "distinction between that which is set in law and that which is not decided" when asking witnesses about treaties.


That's a challenging distinction to make without undermining his clients' fundamental beliefs, said the lawyer for the Nishnawbe Aski Nation.

"My clients do not think they need a court to tell them what is their treaty right that their ancestors signed," Julian Falconer said.

The inquest continues on Tuesday with testimony from Lakehead University's vice-provost of aboriginal initiatives, Cynthia Wesley-Esquimaux and Thunder Bay police Deputy Chief Andy Hay.

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