



Freedom, Dependence and Nation Building

Tracking the ever-changing relationship
between Mi'kmaq and Canadian governments

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In the Beginning— a proud and free nation

Prior to European contact, the Mi'kmaq were an independent Nation with a sophisticated (complex) system of government. They used diplomacy with other First Nations and they were skilled negotiators. As members of the Wabanaki Confederacy (which included the Mi'kmaq, Maliseet, Passamaquoddy, Penobscot and Abenaki tribes), they worked together to resolve various issues.

The Mi'kmaq and the other members of the Wabanaki Confederacy often held meetings. They recorded their agreements on a series of Wampum Belts. The Wampum Belts were made of shells arranged in a special pattern. These belts told the story of the Mi'kmaq and the treaty agreements they had with other First Nations. The Wampum belt was the responsibility of the Pu'tus who knew how to record and read the messages of the belt.

First Nations peoples believed that everything was interconnected—meaning, connected to everything else. Their goal was to create and maintain harmony among all living things and to avoid conflict. This worldview was reflected in the Wampum Belts, which were used to record the treaties between First Nations and the European settlers.

The Treaty Relationship

Prior to Confederation in 1867, a number of treaties were signed between the Mi'kmaq and the Colonial government.

In the 1700s the Mi'kmaq signed a series of “Peace and Friendship” treaties called the Covenant Chain of Treaties. These agreements recognized friendly and respectful relations between the Mi'kmaq and the Europeans. They were based on a shared understanding of mutual independence and trade. In exchange for their loyalty to the Europeans, the treaties guaranteed that the Mi'kmaq would be able to continue hunting and fishing in their territory. These treaties have been recognized by the Supreme Court of Canada as legal and binding documents and have been referenced in many recent court decisions.

**Andrew Alex holding
a Wampum belt**



History Collection, Nova Scotia Museum, Halifax

1752

Enclosure in letter of Governor Hopson
to the
Right Honourable The Earl of Holderness 6th of Dec. 1752
Treaty or
Articles of Peace and Friendship Renewed

BETWEEN

His Excellency Peregrine Thomas Hopson Esquire Captain General and Governor in Chief in and over His Majesty's Province of Nova Scotia or Acadie Vice Admiral of the same & Colonel of One of His Majesty's Regiments of Foot, and His Majesty's Council on behalf of His Majesty.

AND

Major Jean Baptiste Cope Chief Sacham of the Tribe of Mick Mack Indians, Inhabiting the Eastern Coast of the said Province, and Andrew Hadley Martin, Gabriel Martin and Francis Jeremiah members & Delegates of the said Tribe, for themselves and their said Tribe their heirs and the heirs of their heirs forever. Begun made and Concluded in the manner form & Tenor following, viz.

1. It is agreed that the Articles of Submission & Agreements made at Boston in New England by the Delegates of the Penobscot Norridgewolk & St. John's Indians in the Year 1725 Ratified and Confirmed by all the Nova Scotia Tribes at Annapolis Royal in the Month of June 1726 and lately Renewed with Governor Cornwallis at Halifax and Ratified at St. John's River, now read over Explained & Interpreted shall be and are hereby from this time forward renewed, reiterated and forever Confirmed by them and their Tribe, and the said Indians for themselves and their Tribe, and their Heirs aforesaid do make and renew the same Solemn Submissions and promises for the strict Observance of all the Articles therein Contained as at any time heretofore hath been done.
2. That all Transactions during the Late War shall on both sides be buried in Oblivion with the Hatchet, And that the said Indians shall have all favour, Friendship & Protection shewn them from this His Majesty's Government.
3. That the said Tribe shall use their utmost Endeavours to bring in the other Indians to Renew and Ratify this Peace, and shall discover and make known any attempts or designs of any other Indians or any Enemy whatever against his Majesty's Subjects within this Province so soon as they shall know thereof and shall also hinder and Obstruct the same to the utmost of their power, and on the other hand if any of the Indians refusing to ratify this Peace shall make War upon the Tribe who have now Confirmed the same; they shall upon Application have such aid and Assistance from the Government for their defence as the Case may require.
4. It is agreed that the said Tribe of Indians shall not be hindered from, but have free liberty of Hunting and Fishing as usual and that if they shall think a Truck house needful at the River Chibenaccadie, or any other place of their resort they shall have the same built and proper Merchandize, lodged therein to be exchanged for what the Indians shall have to dispose of and that in the mean time the Indians shall have free liberty to being to Sale to Halifax or any other Settlement within this Province, Skins, feathers, fowl, fish or any other thing they shall have to sell, where they shall have liberty to dispose thereof to the best Advantage.
5. That a Quantity of bread, flour, and such other Provisions, as can be procured, necessary for the Familys and proportionable to the Numbers of the said Indians, shall be given them half Yearly for the time to come; and the same regard shall be had to the other Tribes that shall hereafter Agree to Renew and Ratify the Peace upon the Terms and Conditions now Stipulated.
6. That to Cherish a good harmony and mutual Correspondence between the said Indians and this Government His Excellency Peregrine Thomas Hopson Esq. Capt. General & Governor in Chief in & over His Majesty's Province of Nova Scotia or Acadie Vice Admiral of the same & Colonel of One of His Majesty's Regiments of Foot hereby promises on the part of His Majesty that the said Indians shall upon the First Day of October Yearly, so long as they shall Continue in Friendship, Receive Presents of Blankets, Tobacco, some Powder & Shot, and the said Indians promise once every year, upon the first of October, to come by themselves or their Delegates and Receive the said Presents and Renew their Friendship and Submissions.
7. That the Indians shall use their best Endeavours to save the Lives & Goods of any People Shipwrecked on this Coast where they resort and shall Conduct the People saved to Halifax with their Goods, and a Reward adequate to the Salvage shall be given them.
8. That all Disputes whatsoever that may happen to arise between the Indians now at Peace and others His Majesty's Subjects in this Province shall be tried in His Majesty's Courts of Civil Judicature, where the Indians shall have the same benefits, Advantages & Priviledges an any others of His Majesty's Subjects.

In Faith & Testimony whereof the Great Seal of the Province is hereunto appended, and the Partys to these Presents have hereunto interchangeably Set their Hands in the Council Chamber at Halifax this 22nd day of Nov. 1752 in the 26th Year of His Majesty's Reign.

P. T. Hopson
Chas. Lawrence
Benj. Green
Jno. Salusbury
Willm. Steele
Jno. Collier

Jean Baptiste Cope, his Mark
Andrew Hodley, his Mark
Francois Jeremie, his Mark
Gabriel Martin, his Mark

Some of the well-known treaties include:

1725—Treaty with the Mi'kmaq and Maliseet signed in Boston. It was the first of several treaties to be signed between the British and the Mi'kmaq to establish a peaceful alliance.

1726—The 1725 Treaty was ratified and confirmed by all the Mi'kmaw tribes in NS during talks at Port Royal. This was the first of what is now known as the Treaties of Peace and Friendship.

1728—Further ratification of the 1725 Treaty.

1749—Treaty signed with the Aboriginal peoples at Chebucto and St. Johns River renewing the Treaty of 1725.

1752—The Treaty of 1752, signed by Jean Baptiste Cope and Governor Hopson of Nova Scotia, made peace and promised hunting, fishing and trading rights.

1753—Ratification of the Treaty of 1752.

1760/61—Treaties of Peace and Friendship were made by the Governor of Nova Scotia with Mi'kmaq, Maliseet, and Passamaquoddy communities. They include the rights to harvest fish, wildlife, wild fruit and berries to support a moderate livelihood.

1762—Belcher's Proclamation described the British intention to protect the just rights of the Mi'kmaq to their land.

1763—The Royal Proclamation of 1763 is a complicated document that reserved large areas of land in North America as Indian hunting grounds and set out a process for cession and purchase of Indian lands.

It should be noted that the treaties were written in English and the Mi'kmaq were not fluent in that language at the time they signed them. This meant that they were open to interpretation.

Many Mi'kmaq recalled other spoken agreements and ceremonies with the Europeans. They also considered these agreements to be like treaties. However, there are very few records of these ceremonies and spoken agreements in existence today.

From Freedom to Dependence— How did it happen?

The first European settlements began to spring up around Nova Scotia in the late 1700s. Large British settlements included a fort at Annapolis and a fishing station at Canso. The French settled in Port Royal. Early relationships and treaties between the Mi'kmaq and the Europeans were mostly about trade. The City of Halifax was founded in 1749 and by the 1780s the British Loyalists began to arrive in Nova Scotia. The population of Europeans in Nova Scotia grew quickly as they settled on the land and began to establish their own economies.

With the arrival of large numbers of settlers, the Mi'kmaq soon became dispossessed. Land grants were given to the newcomers by the British crown to encourage them to settle in the "new world." The newcomers set up their own Colonial government and took control of the area.

Over the years, the newcomers made many attempts to assimilate the Mi'kmaq and control their lands. By the 1830s, the Colonial Government tried to relocate the Mi'kmaq on small areas of land throughout Nova Scotia known as Indian Reserves. However, the Mi'kmaq did not want to move to reserves because it didn't suit their traditional seasonal lifestyle. The lands set aside for Indian Reserves were inadequate and isolated.

Following the Confederation of Canada in 1867, many further government acts and policies to control the Mi'kmaq were enacted. They included:

The Indian Act (1876)—This act made Native peoples the wards (dependents) of the federal government. The point of the Indian Act was to train the Mi'kmaq people to abandon their language, culture and religion and force them to assimilate into Canadian society.

The Centralization Movement—The policy began in the 1910s. In the 1940s Mi'kmaq in Nova Scotia were forced to move to two large reserves—in Shubenacadie and Eskasoni. Although the Centralization policy was not completely successful, many Mi'kmaq did move to these reserves. Today these two First Nations have the largest Mi'kmaq population in Nova Scotia.

Indian Status and Registration—From the 1850s onward, the Mi'kmaq continued to lose their identity. It became the job of the

federal government to decide who was and who was not Indian. The Mi'kmaq could no longer even decide who they were on their own terms. There was a ban on all cultural activities between 1884 to 1951.

Residential Schools—With the Residential School movement of the 1930s, many Mi'kmaq had their language and cultural practices taken away from them.

Left with poor-quality land reserves, community membership decided by the federal government, and the Indian Act dictating all aspects of their life, the Mi'kmaq of the 19th and 20th centuries became almost totally dependent on the federal government. From total independence to complete government dependence—the Mi'kmaq became a broken nation.

Re-building a Nation

During the last part of the 20th century, the relationship between the government and the Mi'kmaq slowly began to change.

Policies and Legislation

In 1969, the Liberal government, under the leadership of Pierre Elliot Trudeau introduced the White Paper Policy. This policy proposed complete assimilation so that the Aboriginal people would be treated and viewed as all other Canadians. This would mean the loss of status, community and culture.

It was this policy that gave the Mi'kmaw Nation a wake-up call. Realizing that they were in very real danger of being assimilated, the Mi'kmaq began to work together to get back their independence. Their goal was to preserve their culture and their communities. Fortunately, the White Paper Policy was withdrawn and never became law. However, to this day, First Nations continue to believe that the government may still be working to assimilate the Aboriginal culture.

The Constitution Act of 1982 added Section 35(1) to the Constitution of Canada. For the first time, existing Aboriginal and Treaty rights were affirmed as constitutionally protected rights. This secured the position of all Aboriginal people in Canada, stating their special position as Canada's first peoples.

In 1985, the federal government passed Bill C-31 to reinstate Native women who had, in accordance with the Indian Act (pre-1985), lost Indian status by marrying non-Native men. Although many welcomed the opportunity to regain their status, Bill C-31 had several negative impacts.

- There were now four different "classifications" imposed on First Nations, which has sometimes led to lack of unity within communities:
 - Mi'kmaq, who had status even before Bill C-31

- Mi'kmaq who have had status restored under Bill C-31
- Mi'kmaq who are descendants of those who were reinstated, and
- Non-status Mi'kmaw persons of Mi'kmaw ancestry who are not eligible for Indian Status.

- This resulted in an immediate increase in First Nations population with no corresponding increase in land and resources. The First Nations population increased by 100,000 across Canada.
- While the population ballooned shortly after Bill C-31, the provisions under this legislation have the potential, over time, to dramatically decrease the number of people who have Mi'kmaw status. This is seen as a threat to the future of the culture. It limited the ability of children with one Native and one non-Native parent to pass on status to their children if they marry outside of the culture. If the Mi'kmaq continue to marry outside the culture, assimilation may happen within the next two generations. The future may see Reserve lands occupied by people with no Indian status. This threat of assimilation has motivated the Mi'kmaq to work toward building a nation that defines "status" on its own terms.



Bill C-31 further divided status into two classifications:

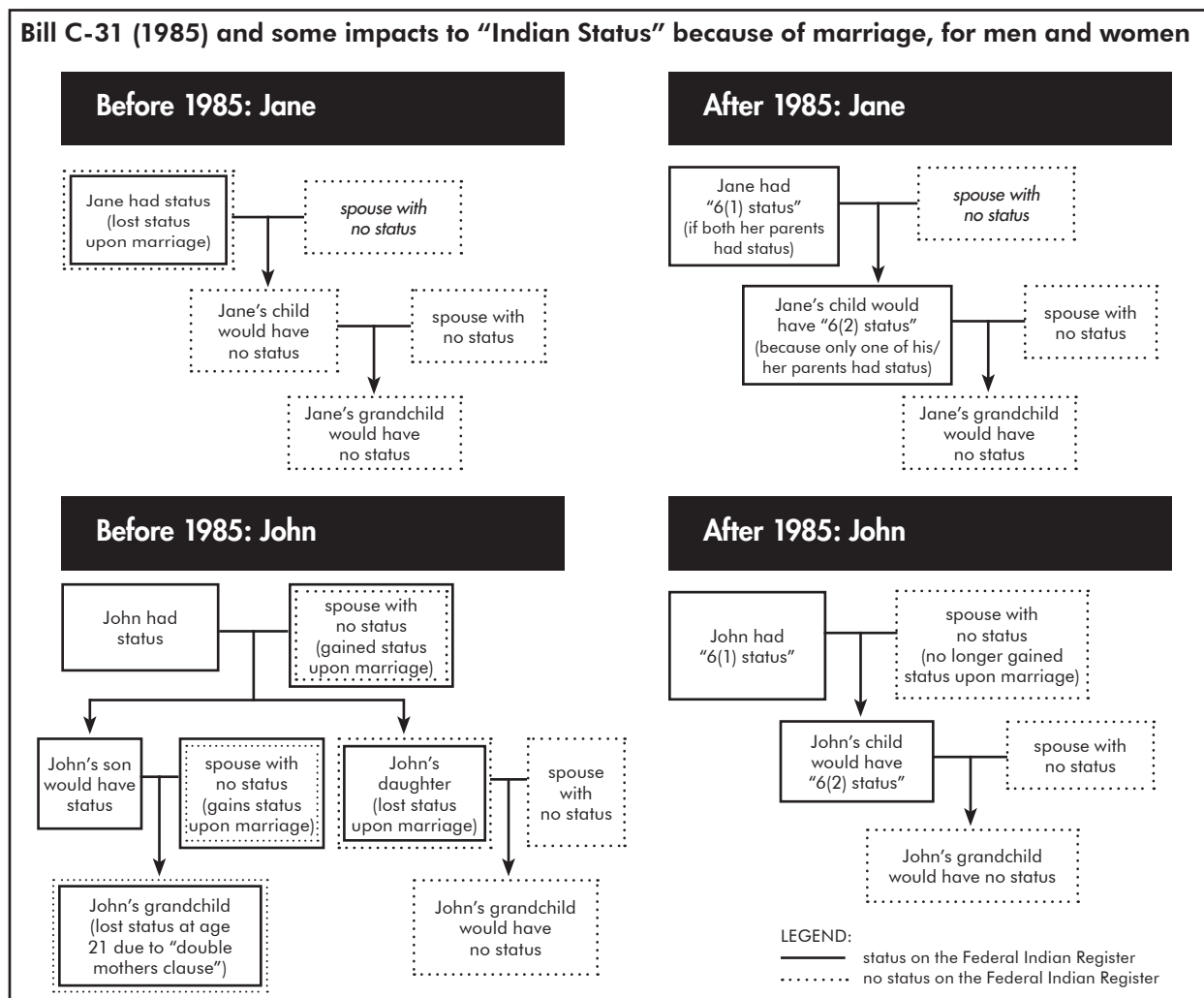
Members whose parents are both Mi'kmaq status Indians were given the classification of 6(1) and those who only have one parent with Indian status were classified as 6(2).

The following chart compares Indian Act status inheritance before and after Bill C-31. We can see from this chart the potential of decreasing status population.

Mi'kmaq Administrative and Program Delivery Organizations

Not satisfied with services from the Department of Indian and Northern Affairs, and concerned over the White Paper Policy, the Mi'kmaq started to be more involved in looking after their own affairs at the local community level across Nova Scotia. Social programs were soon managed and administered by the local community. Gradually other programming was shifted from government to community in areas like housing, infrastructure and membership. At the same

Bill C-31 (1985) and some impacts to "Indian Status" because of marriage, for men and women



time, organizations led by Mi'kmaq were set up to provide services to their members. Many of these organizations continue to operate today.

The Royal Commission on Aboriginal Peoples

In the summer of 1990, the Oka crisis brought worldwide attention to Native rights in Canada. The town of Oka, in the province of Quebec, announced its intention to develop a golf course on lands that had been claimed for many years as traditional burial ground for the Mohawk of the Kanehsatake First Nation. This clash turned into a 78-day armed standoff between Native warriors, the Quebec provincial police, and eventually the Canadian army. What began as a disagreement over land, was expanded to bring attention to the living conditions of Aboriginal Canadians and their relationship with the government.

Immediately following the Oka crisis, the Canadian government initiated the Royal Commission on Aboriginal Peoples (RCAP).

The mandate of the Commission was to study the evolution of the relationship of the Aboriginal peoples, the government of Canada, and Canadian society as a whole. Four of the seven individuals appointed to the Commission were Aboriginal.

The RCAP visited Native communities across the country, heard briefs from over 2000 people and commissioned over 350 research studies. A five-volume report was released on November 21, 1996. The main conclusion of the report was the need for a complete restructuring of the relationship between Aboriginal and non-Aboriginal peoples in Canada.

The RCAP Report provides an Aboriginal perspective on Canadian history and the role Aboriginal peoples should play in modern society.

In response, federal and provincial governments began to support practical initiatives to address Aboriginal social and economic issues raised by the report.

It was not until 1997 that the Canadian Government purchased the land in dispute on behalf of the Native community. In 1999, Kanehsatake signed a land management agreement with the federal government giving the community management authority over the land. Today the land has been used to extend the community's burial ground.

Recent Court Decisions

Several issues have been brought before the courts that have significantly changed the lives of First Nations and contributed to the relationship with government that is unfolding today.

1985—The Supreme Court of Canada held that the Treaty of 1752 was an existing treaty in *R.v.Simon*.

1990—The Supreme Court of Canada, in the *Sparrow* decision, set out the way in which Aboriginal and treaty rights are protected by section 35(1) of the Constitution, and indicated that the government and First Nations should negotiate the details of implementation.

1990—The Nova Scotia Court of Appeal held that the Mi'kmaq of Nova Scotia had Aboriginal rights to fish for food, protected by section 35(1) of the Constitution in the case of *Denny, Paul and Sylliboy*.

1997—The Supreme Court of Canada provided guidance on the question of Aboriginal title in the *Delgamuukw* case, stating how rights to land, and not just rights to fish or hunt on the land, were to be determined. The Supreme Court of Canada also directed that governments and First Nations should try to negotiate how these rights should be recognized and implemented.

1999—The Supreme Court of Canada released the *Donald Marshall* decision recognizing the treaties of 1760 and 1761 and the right to hunt, fish and gather for a moderate livelihood.

1999—The Supreme Court of Canada released the *Marshall II* decision, explaining in more detail the rights identified in the first *Marshall* decision, and the power of the government to justify infringing the rights.

These decisions gave support and momentum to the negotiation of Aboriginal and treaty rights.

Political Infrastructure

In the 1990s as a result of the wrongful conviction of Donald Marshall Junior for the murder of Sandy Seale, the Government of Nova Scotia launched an investigation and inquiry. A Royal Commission appointed by the Government of Nova Scotia examined the events and presented its findings and recommendations for change in support of fair and equitable treatment for Aboriginal people interacting with the Justice System.

With federal, provincial and local support, many of these recommendations have come to life:

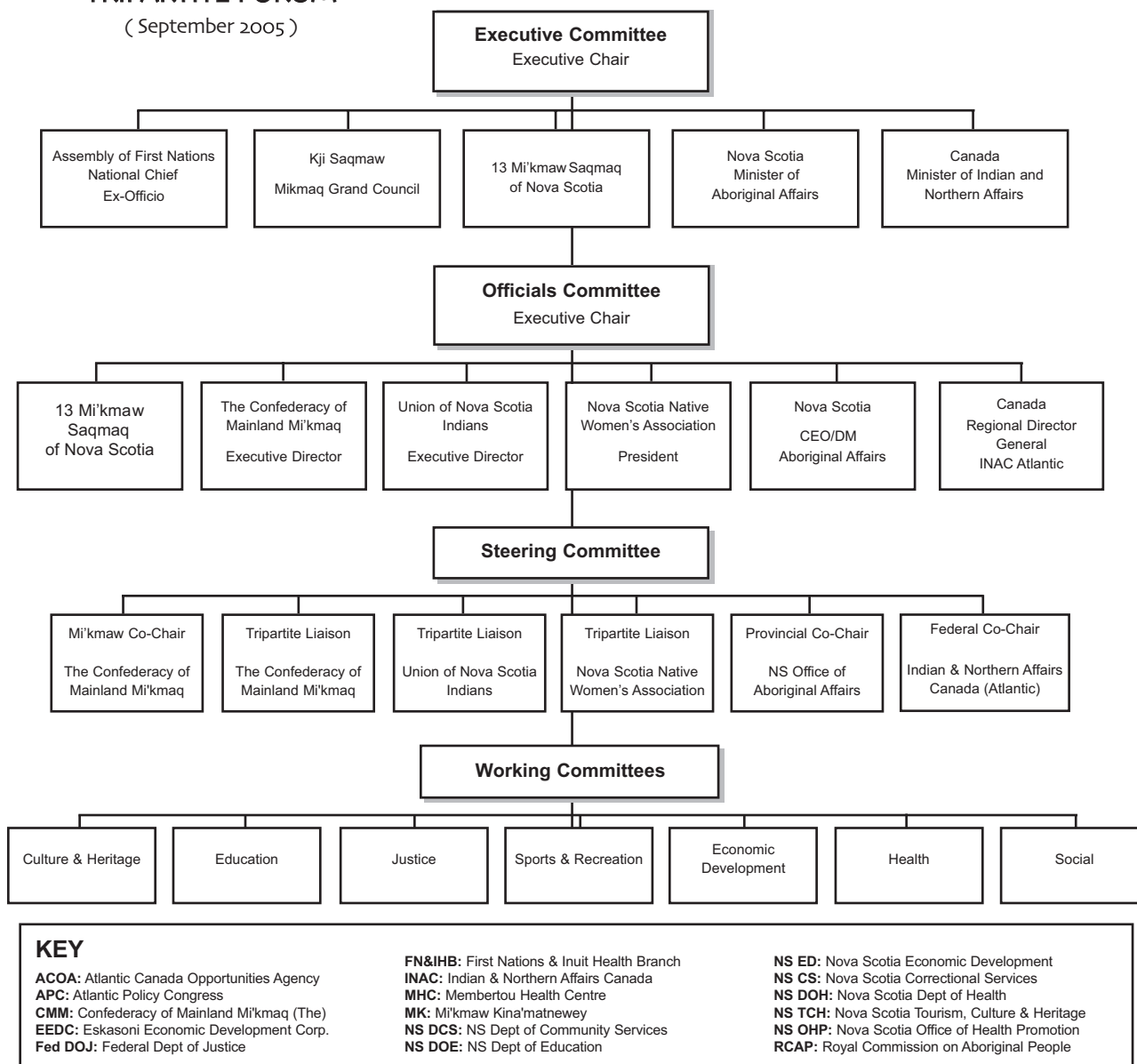
- More Mi'kmaw students are entering and graduating from law school.
- There are RCMP detachments in many First Nations.

- The Mi'kmaq Legal Support Network (MLSN) was established to help Aboriginal people dealing with the legal system in Nova Scotia.
- The Mi'kmaq Court Worker Program was established.
- Mi'kmaw-speaking clients are now offered translation services.
- The MCLP (Mi'kmaw Customary Law Program) was launched to assist Aboriginal young offenders.

Mi'kmaq • Nova Scotia • Canada TRIPARTITE FORUM

(September 2005)

www.tripartiteforum.com



Another of the recommendations of the Donald Marshall Inquiry was to establish a discussion table where the Mi'kmaq, the federal government and the provincial government could meet on a regular basis to resolve issues of mutual concern. It was this recommendation that gave birth to the Mi'kmaq-Nova Scotia-Canada Tripartite Forum.

The Tripartite Forum provides a mechanism where problems can be solved through mutual discussion and agreement.

The Forum has three levels:

1. The Working Committees—These committees bring issues to the discussion table. Each of the three parties of the Forum assigns representatives to the committees to initiate the discussion process. If the issue is not resolved at this level, it moves to the Officials Committee.

2. The Officials Committee—This committee is made up of the regional directors of the government departments involved and the

Assembly of Nova Scotia Mi'kmaq Chiefs. It is at this table that decisions are made regarding the work plan and budgets of the Forum.

3. The Executive of the Tripartite—The Executive of the Tripartite meets on an annual basis to review the progress of the Forum. At this level, Mi'kmaq leaders meet with government ministers to resolve issues that could not be resolved at the other levels of the Forum. The Executive can also make changes to the tripartite process as needed. In 2000, the Executive revised the tripartite process to accommodate room for the negotiation of Mi'kmaq treaty rights.

Moving Ahead in the 21st Century

The Umbrella Agreement

On June 7, 2002, the Mi'kmaq-Nova Scotia-Canada Umbrella Agreement was signed. This was an important day in Mi'kmaq history. This agreement:

- (1) Reaffirmed the commitment of all parties to the Tripartite Process
- (2) Committed the parties to enter into good-faith negotiations to address Aboriginal Title and the implementation of Treaty rights.
- (3) Committed all parties to developing terms of reference for a consultation process to support the negotiation process.



Signing of the Mi'kmaq-Nova Scotia-Canada Umbrella Agreement, Halifax, NS, June 7, 2002

The Mi'kmaw "Made-in-Nova Scotia" Process

The "Made in Nova Scotia Process" refers to the negotiations process referred to under the Umbrella Agreement of 2002. For the Mi'kmaq, the purpose of this process is to negotiate the definition, recognition and implementation of Mi'kmaw, Aboriginal and treaty rights. As the name implies, the process is unique and designed to address Aboriginal rights of the Mi'kmaw treaties. It is designed to put these rights into operation. It is not about re-negotiating the treaties. In essence, the process will bring about an understanding of what is included in these rights and what the Mi'kmaq may do under these rights. Under this process, Mi'kmaw legal rights will not be surrendered or given up.

The Made in Nova Scotia process also includes a Consultation Table to determine when and how Canada and Nova Scotia should consult with the Mi'kmaq over issues that might affect their rights. Other issues

with Nova Scotia and Canada that do not immediately concern Aboriginal land or treaty rights will be dealt with through the Tripartite Forum. However, the Tripartite Forum and the "Made in Nova Scotia Process" may work together on related issues in the future.

By 2003, all three parties had named their Lead Negotiators and began discussion on the Framework Agreement—the blueprint that sets out the process to be followed in negotiating Mi'kmaw rights.

Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO)- "Searching for Consensus"

In 2004, a non-profit society was incorporated to administer and manage the Mi'kmaw participation in the negotiation process. The "Made in Nova Scotia Process" began to be referred to as the KMKNO. The KMKNO conducts research and facilitates community discussion on matters to be negotiated.



(left to right)
Chief Lawrence Paul
(Millbrook), The Hon.
Michael Baker Q.C.,
(Nova Scotia Office
of Aboriginal Affairs),
The Hon. Robert Nault
(Indian and Northern
Affairs Canada) and
Chief Terrance Paul
(Membertou) during the
signing of the Mi'kmaq-
Nova Scotia-Canada
Umbrella Agreement,
Halifax, NS, June 7, 2002

The Mi'kmaq have also begun to formalize the Assembly of Nova Scotia Mi'kmaw Chiefs, which meets monthly to discuss matters of concern to all Nova Scotia Mi'kmaq. Decisions of the Assembly must be supported by Band Council Resolutions from each community before being legally binding. The Assembly provides the venue for Mi'kmaw leaders to meet and discuss issues of mutual concern as a "nation."

Negotiating Mi'kmaw rights will take many years of extensive research, consultation and negotiation among the three parties. As well, the negotiation of Mi'kmaw title will proceed slowly. In both instances the beneficiaries question must be addressed. The answer to this question will decide who will be eligible to receive the benefits of these negotiation processes. This is a challenging question that will see the Mi'kmaw Nation redefine its membership on its own terms.

With programs administered through Mi'kmaw organizations and Band Councils, a structure is in place to foster a negotiation process, the Supreme Court decision to uphold the treaties, and a more educated population, the Mi'kmaq are well on their way toward once again governing themselves as a Nation.



References

Indian and Northern Affairs Canada

Information on First Nation lands,
Royal Commission Reports, Bill C-31,
Indian Status, etc.

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Mi'kmaq-Nova Scotia-Canada

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Activities/Discussion Questions

1. Prepare a short essay explaining the role played by government and the Courts to motivate the Mi'kmaq toward nation building.
2. Do you think the Mi'kmaq will ever become a self-governing and independent nation again? Why or why not?
3. You are a status Mi'kmaw adult living on-Reserve. You are told that the Mi'kmaq will soon become a Nation. How will this affect your life and that of future generations? Do you have any concerns about this development? What questions would you ask your Band Council about this change?