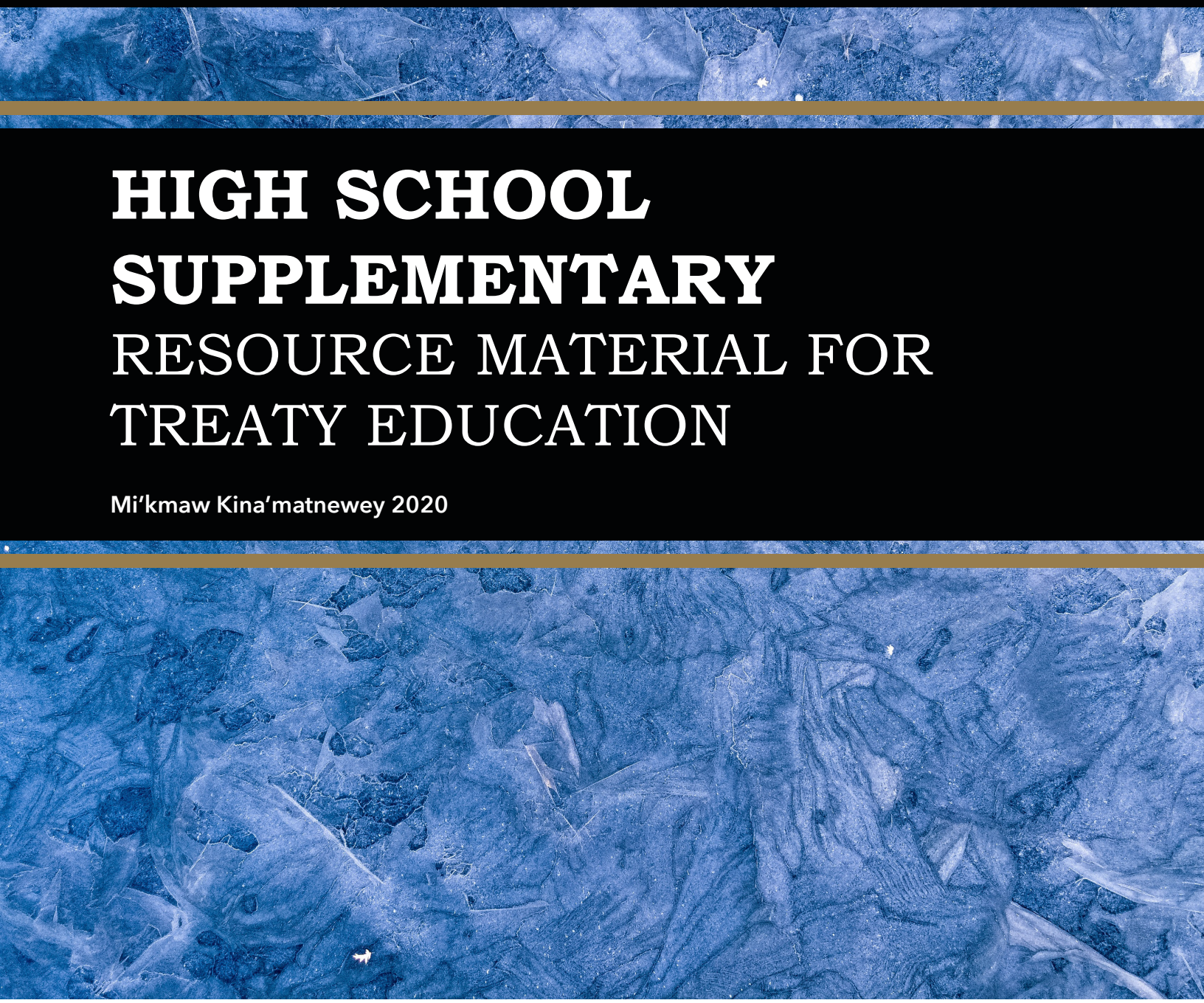

HIGH SCHOOL SUPPLEMENTARY

RESOURCE MATERIAL FOR TREATY EDUCATION

Mi'kmaw Kina'matnewey 2020

Mi'kmaw Kina'matnewey

CONTENTS

TREATY EDUCATION COURSE BOOK: DRAFT 1

This resource course book will lay out the blueprint and implementation of Treaty Education into the Nova Scotia Curricula for grade 12 students and teachers. It is clear that both students and teachers need a better understanding of the significant contribution of the Mi'kmaq to the province of Nova Scotia. Further, it will enhance student learning of Treaty Education and Mi'kmaq knowledge. In particular, both teachers and students would benefit from reliable and appropriate content information within the classroom and in particular teachers will enhance their classroom practice. There are several Mi'kmaq specific outcomes and indicators in the new curriculum and these would be most effectively addressed with input from knowledgeable Mi'kmaw educators, elders, and community members.

SUMMARY

The project team engaged the expertise and experience of Mi'kmaw community members, to help design the curricula and lesson plans for engaging student learning experiences. The cooperation and contribution of Mi'kmaw community members made the lessons helpful for both indigenous and non-indigenous teachers and students. Potential partners included community members, educators, education coordinators, knowledge holders, and elders.

PROJECT SCOPE

Outcomes and indicators to be addressed will include:

- Students will understand that Treaty relationships are based on the understanding of Mi'kmaq identity which includes languages, ceremonies, worldviews, and relationship to the land.
- Students will recognize and understand the spirit and intent of Treaties that there is interconnectedness to the spiritual realm and the spirit and intent serve as a guiding principle for our actions.
- Students will acknowledge that the social, cultural, economic, and political conditions of the past played and continue to play a significant role in both the reality of the present and the future generations.
- Students will appreciate that Treaties are sacred covenants between sovereign nations and are the foundational basis for meaningful relationships with the Mi'kmaq within the Province of Nova Scotia.

Course Outline

Section 1

Introduction to the course and Doctrines of Colonialism

- **Doctrine of Discovery**

In 1095, Pope Urban II issued the Papal Bull Terra Nullius (meaning empty land). It gave the kings and princes of Europe the right to "discover" or claim land in non-Christian areas.

The Doctrine of Discovery is a legal term or principle that goes back to the time of the first exploration of North America by the European's. This was the legal means by which the Europeans claimed sovereignty and property rights in areas they allegedly discovered. By the time Christopher Columbus set sail in 1492 this doctrine was a well-established idea in the Christian world.

The claims of discovery were made without consultation with the people's residing in these territories whom the land actually belonged. The Doctrine of Discovery is a significant part of history and the relations between the Europeans and Indigenous peoples, and underlies their legal relationship to this day recognized under International law. Upon discovery of a territory, the doctrine held that Indigenous peoples could not claim ownership of their land, but only rights of occupation and use.

Under the Doctrine of Discovery the governing authority has the power to extinguish Indigenous peoples' property rights in their traditional lands and territories, including their rights of self-determination within those lands. The Doctrine of Discovery legitimizes the domination and colonization of Indigenous Nations and continues to impact the rights of Indigenous peoples.

Additional Resources:

https://upstanderproject.org/firstlight/doctrine

https://www.nps.gov/subjects/islandofthebluedolphins/upload/Lesson-Plan-Doctrine-of-Discovery.pdf

- **Indian Act**

The Indian Act passed in 1876 and is a Canadian federal law that governs in matters relating to Indigenous people in Canada. The Indian Act places Indigenous People in a different category from all other Canadians. The Indian Act defines Indian Status, bands and reserves. The Indian Act allows the federal government to regulate and administer in the affairs and day-to-day lives of registered Indians and reserve communities. The Indian Act has also allows the government to determine the land base of Indigenous peoples in the form of

reserves, and sets up a complicated process of who qualifies as Indian through Indian status. The Indian Act is administered by Indigenous Services Canada, formerly Indian and Northern Affairs Canada (INAC). The Indian Act is a part of a long history of assimilation policies that intended to terminate the cultural, social, economic, and political distinctiveness of Indigenous peoples by absorbing them into mainstream Canadian life and values. The Indian Act displaced traditional Indigenous governance structures and imposed a governance system without consultation and introduced the Indian agents to the Reserves. Indian Agents were representatives of the Canadian Federal Government in the 1830's. The Indian agents enforced government polices and administered provisions of the Indian Act. They also managed the day to day affairs of residents residing on reserves.

For much of the 19th and 20th centuries, Indigenous People were considered wards of the state and put in the care of the government. Under the terms of the Indian Act the superintendent general of Indian Affairs had sole decision making rights and responsibility of Indigenous people. The Department of Indian Affairs employed Indian Agents to administer the Indian Act and to manage local affairs.

The pass system was introduced in the 1800's which was a process whereby Indigenous people had to present a travel document authorized by an Indian agent in order to leave and return to their reserves.

Indian Agents managed government resources and finances, distributed rations, paid annuities, inspected schools, negotiated land surrenders, managed band finances and infrastructure projects on reserves. Indian Agents conducted band council elections and presided over band council meetings and made all decisions regarding resident's access to housing, welfare, enfranchisement, membership, etc. Many of the other roles and responsibilities of the Indian agents were related to the goal of assimilating Indigenous people into Canadian society.

The Indian Agents, for the most part, abused their authority often removing children from their homes and taking them to residential schools or to non-native foster homes. The Indian agents also had the power to determine who could be registered as a "Status Indian" and abused that authority to the extent that people were enfranchised, removed or omitted from the registry.

In 1884 Indigenous traditional ceremonies were banned and Indian Agents enforced this ban and individuals practicing any forms of traditional ceremonies were charged and arrested. The Indian agents managed estates of deceased band members, recording information such as births, death and marriages. The federal government eliminated the Indian agents in 1969 to make way for a new administrative structure that will be later known as the White Paper Policy.

Additional Resouces:

http://education.historicacanada.ca/files/409/Activity_7_Worksheet_-_Indian_Act_Amendments.pdf

- **Historical Discrimination of the Indian Act**

Until as recently as 1982, the legal status of Indigenous women was affected by who they married. Indigenous women with Status lost their Indian Status when they married a non-Status man. All the children in these marriages would not be entitled to Indian Status.

Women also lost their status if their husbands died or abandoned them, in which case the woman would:

- lose the right to live on reserve land and have access to band resources,
- not necessarily become a member of her previous band again,
- be involuntarily enfranchised, losing her legal Indian status rights; her children could also be involuntarily enfranchised as a result.

Under the Indian Act, Indigenous women were also banned from voting and running in Chief and Council elections. The oppression of Indigenous women under the Indian Act resulted in long-term poverty, marginalization and violence, which they are still trying to overcome today.

Bill C-31, An Act to Amend the Indian Act, was passed on June 17, 1985 and given Royal Assent on June 28, 1985. Section 12 of the Indian Act was introduced in 1951 and established a centralized register of all registered Indians. 'Status' or 'registered' Indians had the right under the Indian Act to live on-reserve, to vote for chief and council, to share in band monies, and to own and inherit property on-reserve.

Under the Indian Act, Aboriginal women lost their status when they married a non-Indian, but allowed a status man to give status to his non-Indian wife status under the Indian Act. Further a woman who married a non-Indian was not entitled to be registered and lost her status. Between 1958 and 1968, an estimated 4,605 Indian women lost their Indian status as a result of these provisions of the Indian Act. Indian Women were discriminated against because of both race and gender.

The Canadian Constitution was amended; in 1982, the Canadian Charter of Rights and Freedoms became part of Canadian constitutional law. Section 15 of the Charter prohibits discrimination on the basis of race, national or ethnic origin, colour, religion, age, sex, or mental or physical disability.

Just as it was to take effect, changes were made to the Indian Act to repeal Section 12 which would have been unconstitutional under Section 15 of the Charter as it violated the right to equality. These changes were contained in Bill C-31, which restored some of the rights taken away from Indian women.

The Bill amended the Indian Act by restoring the status and membership rights of women who had lost their status under the old laws. The amendments did not change the role of the federal government in maintaining the Indian Register. A complicated framework determines who may and may not apply for registration under the new provisions.

Bill C-31 greatly increased the number of status Indians in First Nations communities and communities were already struggling with issues related to poverty such as over crowded housing, dependence on social programs, and high unemployment rates. Although Bill C-31 reinstated Indigenous women who had married non-Indigenous men and lost their status as a result, many issues still remain. The main problem is that the federal government still determines and decides who will be considered an Indian under the Indian Act. Under Bill C-31 children cannot pass on status to their future children unless they marry someone who has status.

Under Bill C-31 the Indian Act has two categories of Band members instead of one:

- people under section 6(1) (who are recognized as having full status)
- people coming under section 6(2) (who have only one-half the recognized Indian status as those under 6[1])

Changes made to the Indian Act recognized the right of Indigenous people to control their own membership. Each band is to create a band membership rules approved by a majority of band electors. These rules must be approved by Indian Affairs. Bill C-31 also abolished the concept of enfranchisement, the process whereby an Aboriginal person gave up Indian status and band membership usually to get the rights of majority. Persons who were enfranchised under the Indian Act for any reason (including those who gave up status and band membership for the right to vote or to join the armed forces) are now eligible to have their status restored. Their children are also eligible to be registered as persons with status within the meaning of the Act. Bill C-31 still contains, a provision for someone who voluntarily gives up rights as a status Indian, but the process is no longer called enfranchisement.

In addition, the grandchildren of a woman who married were not eligible for reinstatement, but the grandchildren of men who married out were eligible. This was amended with Bill C-3. On December 15, 2010 Bill C-3: Gender Equity in Indian Registration Act received Royal Assent. The Governor in Council has announced that effective January 31, 2011, the Gender Equity in Indian Registration Act will come into force. The bringing into force of Bill C-3 will ensure that eligible grand-children of women who lost status as a result of marrying non-Indian men will become entitled to registration (Indian status).

In 2017 another Bill was passed through parliament to Amend the Indian Act to fix the sex-based discriminatory registration provisions within the Indian Act. The issues were as follows:

- Children who lost status when their mother married a non-status man;
- The cousins' issue (differential treatment among first cousins whose status depends on the sex of the grandparent;
- Unknown or unstated parentage;
- The sibling's issue which includes females born out of wedlock between 1951 -1985 who were denied status.

This does not fix the issue and there are remaining issues that go unaddressed by this amendment. The federal government continues to determine who does and does not qualify for "Indian Status".

- **Centralization**

In the 1910s the Canadian Federal Government developed a Centralization Policy for the Mi'kmaq of Nova Scotia. By 1919, 55 members of the Halifax County Band had moved to the Millbrook Reserve. The population was listed as 124 by 1931. The political structure of the Mi'kmaq was established at this time and leadership was strong on the Millbrook Reserve under Chief Joseph Julian. The Mi'kmaq were included in the decision making process and their ideas, including procurement of additional resources, were incorporated into the program. Relocation can be viewed as only a minor disruption to the social and economic structure of those involved. During the Great Depression, and as Canada was preparing for World War Two, the government felt the need to ease the economic burden of providing for the Mi'kmaq. Referring to the economic success of the Millbrook centralization, it was decided in 1941 that the Mi'kmaq would be centralized to the two larger reserves, Indian Brook and Eskasoni. By 1946, 816 people were living on Indian Brook where only 41 people had resided in 1931. The political structure was unorganized and representation was weak and inexperienced. The move was forced on an uninformed people under threat of enfranchisement and loss of government financial support. Without the acquisition of additional resources, the overcrowded conditions had serious consequences on the social and economic stability within the Indian Brook Reserve.

The Centralization Policy was created by the federal government in an attempt to do many things, one of which included cutting administration costs by creating two central reserves, one in Eskasoni and the other in Shubenacadie. Many Mi'kmaw families refused to move and many of those who did so returned to what was left of their original homes, realizing the promises of new homes and jobs made by the government would be unfulfilled. It was only then that the government saw its plan had failed and the attempt to isolate our people was abandoned. Today there are 18 Mi'kmaw communities in Nova Scotia.

Additional Resources:

http://www.danielnpaul.com/Canada'sShame-Centralization.html

- **Residential Schools**

The John A. Macdonald government implemented the Indian Residential School system, and as recommended by the Davin Report, contracted with churches to manage the schools at minimal cost to the government. With churches managing the schools, bureaucratic complexities along with religious divisions created administrative blocks and gaps, which impacted where children could attend school, (sometimes forcing children to attend school out-of-province), the building and funding of too many schools with churches vying for funding and position in communities, and the prevention of protective policies regarding curriculum, limits on student labor, discipline, nutrition, admissions requirements, care of the ill and deceased, and staff credentials.

The Canadian Government developed residential schools for Indigenous children in 1883 with two goals in mind:

- To protect Aboriginal peoples from European society, but it was intended to assimilate them into European society at the same time.
- The government wanted to exclude Aboriginal people from having a say in their own affairs and it failed to recognize their culture and traditions.

The Treaties obligated the federal government to provide an education for Indigenous children and to maintain schools on reserves, but these proved to be expensive. So by building residential schools, and by bringing the churches in to run them, costs were cut dramatically. By 1923 there were 72 such schools, and by 1931 there were 80. Legislation made school attendance compulsory for Aboriginal children between the ages of 7 and 15.

The children were removed from their communities, having little or no contact with their families, for it was feared that students would go back to their ways if they returned to their families and the reserve. Most residential schools did not allow children to speak their language, and if students broke the rules they were severely punished.

Until 1930, the curriculum was largely religious instruction and moral education promoting the values of European society. In residential schools, students would be lucky to reach the academic equivalent of grade five by the time he or she was 18. These schools were grossly under-funded; and despite the concerns raised by school officials, remained so until they were disbanded.

The government had a deliberate policy to disrupt the social structures and economies of First Nations by forcibly removing children from their traditional cultures, spirituality and educational means. Indigenous governments were displaced and nations disintegrated as a result. Languages were extinguished, and traditional healing, spirituality and ceremonies were driven underground.

From 1894 to 1996, when the last residential school closed, the government tried to assimilate Indigenous people, by giving Indigenous children a Christian education, teaching them English or French, taking them from their family and replacing their values with European values. Part of the plan was to train them to be farmers or housekeepers. These schools were funded by the Federal Government and the Indian Act made this mandatory and if parents did not comply it could result in a jail sentence.

During their schooling, students often experienced a variety of abuses from the people who administered the school. The Royal Commission on Indigenous peoples recommended a public inquiry to hold public hearings to document and investigate the origins and effects of residential school's policies and practices, and recommend actions, such as apologies, compensation and funding for treatment for affected survivors and their families.

Four churches were involved in the operation of the residential schools for Indigenous children; the Roman Catholic Church, Anglican Church, United Church and Presbyterian

Church. An estimated 100000 to 150000 Aboriginal children attended residential schools, representing about 20% of the Indigenous status population. All of the churches wanted to bring the concept of the Christian education to Indigenous children.

The consequences were tragic for Indigenous people. During the times that the schools operated, the churches supported the federal governments assimilation goals in running the schools. Government paid for capital expenses and staff salaries through operating grants. The residential schools could be considered to be an instrument of genocide. Every Aboriginal group in Canada has suffered a loss of language, culture, religion and economic existence. The essence of genocide is a purposeful intent to destroy a group out of existence. In many ways this intention was achieved. Scores of children died from disease while in the care of residential schools, others were emotionally and spiritually destroyed by the harsh discipline and living conditions.

Confinement, humiliation, lack of privacy, physical, sexual, psychological abuses resulted in dislocation, loss of pride and self-respect, and loss of identity within family, community and nation. We speak of multi-generational effects. There are epidemic rates of suicide, alcoholism, solvent abuse and family violence in some communities that are attributed to the lingering effects of residential schools.

The schools alienated Indigenous people from their culture by separating children from their families, forbidding them to speak their languages or to honor their traditions. This has taken a toll on succeeding generations. For example, one generation of children were punished from speaking their languages, when they became parents, they did not teach their children their native tongue, to protect them; the third generation was denied an opportunity to learn their languages, culture and traditions and are now attempting to recover that knowledge.

It is widely believed that those who attended residential schools lost their ability to parent and their identity as Indigenous people. The psychological trauma would have been passed on to subsequent generations of children. The long-term effect of the schooling has been termed the residential school syndrome.

Residential Schools had detrimental effects on the overall health and well-being of First Nations. They were the product of a particular era, an era where Indigenous people were not highly valued by the non-native community. The goal was for Indigenous people to give up their traditions and replace them with values to assist them to blend in with the Canadian society. These values included formal schooling, Christianity, and work experience.

The education for Indigenous children was transmitted orally by Elders and community members as teachers. Education was no longer life long, or the responsibility of the entire community. In fact, the community was portrayed as backward, ignorant and useless to the children. The punishment in residential schools was very severe, there was a great deal of physical abuse. These methods included isolation such as being put in cells, whippings and public humiliation. The underlying purpose of the residential schools was to assimilate Indigenous people into mainstream society by discouraging their languages, spirituality and cultural practices. This corroded the structures of Aboriginal community practices and the

self esteem of First Nation families.

In Nova Scotia the Shubenacadie Indian Residential School, like all residential schools at the time, was run by a religious order, in this case the Sisters of Charity, and (under)funded by Indian Affairs. The school was in operation between 1923 and 1967. Almost all the children at the school were Mi'kmaq from Atlantic Canada.

Additional Resources:

https://fernwoodpublishing.ca/book/out-of-the-depths-fourth-edition

https://www.nwac.ca/wp-content/uploads/2015/05/Residential-Schools-Fact-Sheet.pdf

http://www.danielnpaul.com/IndianResidentialSchools.html

https://nsadvocate.org/2017/06/21/understanding-our-story-two-books-on-the-shubenacadie-residential-school

- **White Paper Policy and the Hawthorn Report**

In 1969, Prime Minister Pierre Trudeau and Minister of Indian Affairs, Jean Chrétien, introduced a policy paper that proposed ending the special legal relationship between Indigenous peoples and the Canadian government to get rid of the Indian Act. This paper was met with forceful opposition from Indigenous leaders across the country and sparked a new era of Indigenous identity and political organizing in Canada.

By the 1960s, the federal government could not deny that Aboriginal peoples were facing serious socio-economic barriers, such as greater poverty and higher infant mortality rates than non-Indigenous Canadians and lower life expectancy and levels of education. The civil rights movement was sweeping in the United States brought public attention to the intense racism and discrimination experienced by African Americans and other minorities. The movement also led many Canadians to question inequality and discrimination in their own country, particularly the treatment of First Nations.

The federal government's intent was to achieve equality among all Canadians by eliminating *Indian* as a distinct legal status and by regarding Indigenous peoples simply as citizens with the same rights, opportunities and responsibilities as other Canadians. The government proposed to abolish the Indian Act. The white paper stated that removing the unique legal status established by the Indian Act would "enable the Indian people to be free—free to develop Indian cultures in an environment of legal, social and economic equality with other Canadians."

The White Paper proposed the following:
- Eliminate Indian Status
- Dissolve the Department of Indian Affairs within five years
- Abolish the Indian Act
- Convert reserve land to private property that can be sold by the band or its members

- Transfer responsibility for Indian affairs from the federal government to the province and integrate these services into those provided to other Canadian citizens
- Provide funding for economic development
- Appoint a commissioner to address outstanding land claims and gradually terminate existing treaties

In 1963, the federal government commissioned University of British Columbia anthropologist Harry B. Hawthorn to investigate the social conditions of Aboriginal peoples across Canada. In his report, *A Survey of the Contemporary Indians of Canada: Economic, Political, Educational Needs and Policies*, referred to as the Hawthorn Report. The report concluded that Aboriginal peoples were Canada's most disadvantaged and marginalized population. They were "citizens minus." Hawthorn attributed this situation to years of failed government policy, particularly the residential school system, which left students unprepared for participation in the contemporary economy. Hawthorn recommended that Aboriginal peoples be considered "citizens plus" and be provided with the opportunities and resources to choose their own lifestyles, whether within reserve communities or elsewhere. He also advocated ending all forced assimilation programs, especially the residential schools.

Based on Hawthorn's recommendations, Chrétien decided to amend the Indian Act. The federal government began a national program of consultation with First Nations communities across Canada. The government distributed the informational booklet *Choosing a Path* to reserve communities, organized community meetings, and in May 1969 brought regional Indigenous representatives to Ottawa for a nationwide meeting. During these consultations, First Nations representatives consistently expressed concern about Aboriginal and treaty rights, title to the land, self-determination, and access to education and health care. In June 1969, Ottawa, in answer to the consultations, produced their white paper proposing to dismantle Indian Affairs. The federal government wanted Indians to participate in the growth of individual provinces and local services. Because they were tax exempt the Indians did not develop services for themselves. Everything was done through the Indian Agents.

The federal government wanted to pass on the responsibility of Indian Affairs to the provinces, but most provinces of course were faced with their own problems. According the to government the system of special legislation, "The Indian Act", a special land system and separate administration for Indian people was the basis for Indian policy. The Policy states, "Discrimination breeds discrimination by example, and the separateness of Indian people has affected the attitudes of other Canadians towards them."

"The White Paper policy rested upon the rights of Indian people to full and equal participation in the cultural, social, economic and political life of Canada. To argue against this right is to argue for discrimination, isolation and separation." The government knew that they would have to amend s. 91(24) of the B.N.A. Act to end the legal distinction between Indians and other Canadians. But in the short term they could get rid of the Indian Act and introduce transitional legislation to ensure orderly management of Indian lands.

The government knew it would be a long process and would require a constitutional

amendment they would start developing some special legislation for Indian lands. The government of Canada said that Indians now had a third choice and that was to have a full role in Canadian society and in the economy while retaining their Indian identity and to preserve only the good things of the past. The White Paper would transfer responsibility for Indian affairs to the provinces and Indians would be treated as full and equal citizens with all the responsibilities and all the privileges. The federal government proposed to transfer all federal responsibilities for Indians from the Department of Indian Affairs to other departments and to the provincial governments'.

In 1970, in response to the White Paper Policy the Chiefs of the Indian Association of Alberta produced a counter document titled Citizens Plus: The Red Paper. Historical treaties are important to Indigenous people as vocalized in the content of the Red Paper, and treaty Indians, continue to see the treaties as significant to their contemporary relationship with the state.

The Red Paper was an act of resistance by the Indian Association of Alberta that was predicated on two key points: first, the Red Paper emphasized the treaty connection and relationship between Indigenous people and the federal government; second, the Red Paper articulated a model of "self-governance" that reinforced an Indigenous perspective. Moreover, the Red Paper was generated by mutual cooperation between Indigenous leaders and members of Indigenous communities in Alberta. The key concepts of treaties and "self-sufficiency" were evident in both documents. This Red Paper determines the essence of those differences by arguing that the differences in views, in the political significance, as well as the emergence of Indigenous community opposition with regard to the legal status of Indians, treaties, and lands is worth understanding for contemporary citizens. The Red Paper demonstrates the significance of historical treaties as sacred agreements, that never lost relevance for Indigenous people in Canada.

Additional Resources:

https://www.atlas101.ca/pm/concepts/white-paper-statement-of-the-government-of-canada-on-indian-policy-1969/

https://www.cbc.ca/player/play/1473005172

Section 2

The Constitutional Framework in Canada

- **British North America Act, 1867**

In 1867, legislative jurisdiction over "Indians and Lands reserved for the Indians" was assigned to the Parliament of Canada through the Constitution Act, 1867, a major part of Canada's Constitution. Originally enacted as the British North America Act (BNA), which acknowledged that First Nations had special status. Separate powers covered "status and civil rights on the one hand and Indian lands on the other."

Section 91(24) British North America Act, 1867, provide the federal Parliament and government with exclusive authority over Indians and lands reserved for Indians. This section authorizes Parliament to pass laws directly in relation to Indigenous people. Therefore, provincial governments are not entitled to pass legislation directly in relation to Indians or lands reserved for Indians. However, provinces are able to pass legislation with a valid provincial purpose, governing Aboriginal peoples so long as the legislation does not interfere with the purpose of the Federal jurisdiction. Therefore, the provincial law must not interfere with the Aboriginal right or the core meaning of section 91(24).

In Canada, there are few constitutional provisions fraught with the enormous social, economic and political difficulties and yet unresolved uncertainties as those dealing with Aboriginal peoples and their rights. The ongoing controversies in New Brunswick and Nova Scotia regarding Mi'kmaq treaty rights to harvest seafood for a "moderate livelihood", described as "food, clothing and housing supplemented by a few amenities", are a case in point.

Therefore, section 91(24) applies to Indigenous people whether residing on or off reserve and the federal government also known as the Crown has the responsibility "to provide for the welfare and protection of Indigenous peoples" in Canada. This responsibility represents endorses the nation-to-nation relationship that existed before confederation.

- **Constitution Act, 1982**

Following the repatriation of the Constitution by Pierre Elliot Trudeau in 1982, Indigenous people were assured under section 35 of the Constitution Act that their rights and status were constitutionally protected.

Section 35(1) of the *Constitution Act, 1982* constitutionally entrenches Aboriginal rights. Prior to 1982 Aboriginal rights existed at common law and therefore could be altered and/or extinguished by the federal government through "ordinary" legislation. Under section 35(1) the following protections apply:

- All Indian, Inuit and Metis people protected.
- Rights protected are those that still existed in 1982.
- If they still existed in 1982, they cannot be abolished now, though there can be some modification.

Section 35 of the *Constitution Act, 1982* provides:

"35(1) The existing aboriginal and treaty rights of the aboriginal people in Canada are hereby recognized and affirmed.

(2) In this Act, "Aboriginal Peoples of Canada "includes the Indian, Inuit, and Métis Peoples of Canada.

(3) For greater certainty, in subsection (1), "treaty rights" includes rights that now exist by way

of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons."

Additional Resources:

https://indigenousfoundations.arts.ubc.ca/constitution_act_1982_section_35/

- **Meech Lake Accord**

After Quebec refused to ratify the *Constitution Act* of 1982, the June 1987 Meech Lake Accord, agreed between the federal government and all ten provinces, was designed to address Quebec's concerns by constitutionally recognizing it as a "distinct society." The accord would also provide new powers to the provinces.

The Meech Lake Accord was a series of amendments to the Canadian Constitution proposed by Prime Minister Brian Mulroney and negotiated between him and the 10 provincial premiers. The main goal of the amendments were to gain Quebec's consent of the Constitution; Quebec had rejected the Constitution Act of 1982, changes to the Constitution led by Prime Minister Pierre Trudeau, and was estranged from the Canadian "constitutional process." The Meech Lake Accord would recognize Quebec as a "distinct society" within Canada.

The Accord was initially supported by many Canadians, but over the course of a few years opposition grew and grew—particularly from federalists (the Accord would weaken federal powers) and Aboriginal groups.
To be ratified, the Accord needed support from the Canadian legislature and the legislatures of each province within three years.

A Cree member of the Manitoba Legislative Assembly – Elijah Harper – blocked the vote because it failed to provide for Aboriginal consultation. The Meech Accord expired in June 1990 and its failure contributed heavily to the close vote in the Quebec referendum of 1995. Harper initiated delays in the Manitoba legislature on June 22, 1990—the last day the Accord could be ratified—and ran out the clock to have the Meech Lake Accord approved in all provinces.

- **Charlottetown Accord**

The history of the Charlottetown Accord is rooted in one of the central characteristics of Canadian politics: Quebec's place in Canada. This constitutional agreement included elements such as patriating the Canadian Constitution, implementing a new formula for amending the constitution, and adding a Canadian Charter of Rights and Freedoms.

Quebec was the only Canadian province not to approve the Constitution Act, 1982, arguing that it did not reflect any of its demands for constitutional reform. This did not leave Quebec outside of the constitution in legal terms; all the new constitutional provisions applied to that

province even though it refused to sign the agreement. Nevertheless, it did leave Quebec outside the constitutional fold in a symbolic sense. The Government of Quebec, unlike the other provincial governments, had not formally consented to the basic political framework governing the country.

The Charlottetown Accord provided that the "aboriginal peoples of Canada have the inherent right of self-government within Canada." The inclusion of this clause was a major breakthrough for First Nations peoples in that a year before the accord was reached, its possible inclusion seemed unlikely. The use of "inherent" is crucial for First Nations peoples in that it signifies the important nature of self-government and its central role in their ability to define and to control their destiny.

The Charlottetown Accord also states that the inherent right of self-government and amending section 31.1 of the Constitution Act to include the following:

"The Aboriginal peoples of Canada have the inherent right of self-government within Canada."

This would constitutionalize the inherent right of self-government and by itself, it represents an historic step forward.

The Charlottetown Accord defined, to some degree, the scope of the inherent right and made significant progress in terms of recognizing Aboriginal rights and the inherent right to self-government and proposed a third order of government. However, the accord did not secure for Aboriginal governments a right to the resources on the lands under their control and to which many First Nations claim ownership. As well, it did not explicitly create a third order of government nor new Aboriginal Crowns in the constitutional sense.

- **Penner Report**

In 1982, a House of Commons Special Committee on Indian Self-government was appointed to make recommendations to Parliament on Indian Self-government. The committee commissioned Keith Penner to lead the process. The Penner Report made recommendations for improving Accountability and implementing self-government procedures.

The report on Indian Self-Government proposed that the federal government use its s.91(24) of the British North America Act, 1867 to get rid of the application of provincial laws to reserves, and then negotiate with Indians different self – government mechanisms and funding arrangements. The Penner Report highlighted the following to ensure economic self-sufficiency:

- Granting more land
- Settling land claims
- Bigger share of revenues from resources connected with their lands

The Penner Committee engaged First Nations across the country and in the end received

support for a series of significant recommendations.

- that the federal government recognize First Nations as a distinct legal order of government within the Canadian federation and pursue processes leading to self-government;
- that the federal government introduce legislation to lead to the 'maximum degree of self-government immediately;
- constitutional entrenchment of self-government and the introduction of recognition legislation,

In 1984, the Department of Indian Affairs delivered its response to the Penner Report by first acknowledging that "Indian communities" were historically self-governing and that further clarification of constitutional entrenchment would require greater consultation with the provinces. Nevertheless, it agreed to introduce legislation to establish a framework for those Indian First Nations that wish to govern themselves and their land in a way that is not possible under the Indian Act. On June 27, 1984, Bill C-52 entitled, An Act relating to Self-Government for Indian Nations was introduced in Parliament. It fell far short of the Penner recommendations and did not go beyond first reading.

Additional Resources:

http://caid.ca/PennerRep1983.pdf

- **Royal Commission on Aboriginal People**

The Royal Commission on Aboriginal Peoples was created in order to help restore justice to the relationship between Indigenous and non-Indigenous people in Canada and to propose practical solutions to some of the problems. Established in 1991, the commission examined the relationships between the government and Indigenous Canadians and between Indigenous and non-Indigenous Canadians and advised the government on their findings. After four years of consultation, testimony and research studies, including 178 days of public hearings, 96 community visits the final Report of the Royal Commission on Aboriginal peoples was released in 1996.

The Royal Commission was established following the Oka Crisis, a 78-day standoff between Mohawk protesters and Canadian authorities over a proposed development on a Mohawk burial ground which exposed serious problems with the handling of Aboriginal affairs. The purpose of this inquiry was to explore the evolving relationship between the Aboriginal peoples of Canada, the Canadian government and Canadian society.

The Commissioners were instructed to draw from local and international experiences to make recommendations about how to address the problems with that relationship and also the issues facing Aboriginal peoples through constitutional change and welfare policies. The Indian residential school system, whereby Aboriginal children were removed from their families with the aim of providing them with a basic western education, formed part of that investigation.

Under the leadership of six commissioners, four of whom were Aboriginal, the Royal Commission undertook a broad research agenda. It held public hearings and received briefs and submissions from individuals and groups, it commissioned research studies, published reports and held round tables on Aboriginal issues.

The report produced a five-volume final report and 440 recommendations intended to reframe the relationship between non-Aboriginal and Aboriginal Canadians and improve the lives of Aboriginal people. Some of those findings related to the residential school system that operated from the 1870s through the 1990s, which took Aboriginal children away from their families. It found that the school system, far from benefiting the children involved, had devastating effects on their lives. Essentially a tool of assimilation, the school system isolated children from their support networks and subjected them to horrific physical and psychological abuse. Sexual abuse was described as "pervasive". The report highlighted the need for a public inquiry into the residential school system's purpose and its impact on Aboriginal communities.

Additional Resources:

https://iog.ca/docs/1997_April_rcapsum.pdf
http://caid.ca/DRepRoyCommAborigPple.html

Section 3

Aboriginal Rights

Aboriginal rights are collective rights which flow from Aboriginal people continued use and occupation of certain areas. These rights are inherent, which Aboriginal peoples have practiced and enjoyed since before European contact, therefore, these rights are not vested in any government or organization and not given to Aboriginal people by any government. Some of the rights that Aboriginal peoples have practiced and recognized for themselves have not been recognized by the federal government/crown. In 1982, the federal government protected Aboriginal rights in Section 35 of the Constitution Act. These rights still need more clarification and recognition since the federal government does not clearly define them and leave it up to the courts to define the nature and status of Aboriginal rights in Canada.

- Section 35
    - Section 35 of Constitution Act 1982
        - All Indian, Inuit and Metis people protected
        - Rights protected are those that still existed in 1982
        - If they still existed in 1982, they cannot be abolished now, though there can be some modification.
        - Therefore, key questions are what existed in 1982.
        - 35(1) The existing Aboriginal and Treaty Rights of the Aboriginal peoples of Canada are hereby recognized and affirmed.
        - (2) In this act, "aboriginal peoples of Canada" includes the Indian,

Inuit, and Metis people of Canada.

- Royal Proclamation of 1763
    - In the Royal Proclamation of 1763, as the British Empire established control over North America, guidelines for the government's relationship with Aboriginal people were set. These are still relevant today. The Royal Proclamation describes the basis for Treaties with Aboriginal peoples. The Royal Proclamation of 1763 was issued by King George III (Britain) after defeat in the Seven Years War. It required negotiation of treaties with Aboriginal inhabitants before claiming land for settlement. Sometimes, it was called an "Indian Bill of Rights." The Royal Proclamation of 1763 recognized that:
        - Aboriginal people lived on traditional lands. Interest in those lands belonged to groups and nations, not individuals
        - Only the Crown could purchase or accept Aboriginal land
        - Only the Crown generally required an agreement to obtain lands from Aboriginal people
        - Aboriginal people were under the Crown's Protection.
    - The Royal Proclamation of 1763 is very significant. As it defines Canada's special relationship with Aboriginal people and sets out the basic in law for Aboriginal land ownership and other rights.

R v. Sparrow

The 1990 R. v. Sparrow decision, created the "Sparrow test" which defined the scope of an Aboriginal right and defined to what degree the Canadian government can reasonably infringe upon, or limit, it. This case was instrumental and very controversial, in that it confirmed Aboriginal rights are not absolute.

- Ronald Edward Sparrow, a member of the Musqueam Band, was caught fishing with a drift net 45 fathoms (82 m) in length, 20 fathoms (37 m) longer than permitted by the band's fishing license under Fisheries. Sparrow admitted to all the facts in the charge but justified it on the ground that he was exercising his Aboriginal right to fish under Section 35(1) of the Constitution Act, 1982. At trial, the judge found that section 35 only protected existing treaty rights and that there was no inherent right to fish. An appeal to the Country Court was dismissed and a further appeal to the Court of Appeal was dismissed on the grounds that there was insufficient evidence to maintain the defense. The issue to the Supreme Court was whether the net length restriction violated Section 35(1).
- R .v. Sparrow, [1990] 1.S.C.R. 1075 was an important decision of the Supreme Court of Canada concerning the application of Aboriginal rights under section 35(1) of the Constitution Act, 1982. The Court held that Aboriginal rights, such as fishing, that were in existence in 1982 are protected under the Constitution of Canada and cannot be infringed without justification on account of the government's fiduciary duty to the Aboriginal peoples of Canada.
- The Supreme Court held that Sparrow was exercising an "inherent" Aboriginal

right, that existed before the provincial legislation and that was guaranteed and protected by Section 35 of the Constitution Act, 1982. To arrive at this, they interpreted each of the words of Section 35(1).

- The word "existing" in Section 35(1), the Court said, must be "interpreted flexibly so as to permit their evolution over time". As such, "existing" was interpreted as referring to rights that were not "extinguished" prior to the introduction of the 1982 Constitution Act. They rejected the Alternative "frozen" interpretation referring to rights that were being exercised in 1982.
- Based on historical records of the Musqueam fishing practices over the centuries and into colonial time, the Court found that the band had a clear right to fish for food. Extinguishment of rights can only occur through an act that showed "clear and plain intention" on the government to deny those rights. Here, the Court found that the Crown was not able to prove that the right to fish for food were extinguished prior to 1982. The licensing scheme was merely a means of regulating the fisheries and not to remove the underlying right, nor did any historical government policy towards fishing rights amount to a clear intention to extinguish.

"Recognized and Affirmed"

- The words "recognized and affirmed," the Court held, incorporate the government's fiduciary duty to the Aboriginal people which requires them to exercise restraint when applying their powers in interference with aboriginal rights. This further suggests that aboriginal rights are not absolute and can be encroached upon given sufficient reason.
- After the *Sparrow* case, federal or provincial legislation can only limit aboriginal rights if it has given them appropriate priority, because aboriginal rights have a different nature than other non-aboriginal rights. The *"Sparrow Test"* has been used since this important decision by many experts as a way of measuring how much Canadian legislation can limit aboriginal rights. The Supreme Court decided that the regulations violated his aboriginal right to fish in that area.
- Key points in Sparrow Case
    - Recognition of Aboriginal legal systems
    - Rights could not be extinguished implicitly; there has to be a clear intent to extinguish
    - Rights exist in contemporary form
    - Government has trust relation to Aboriginal people
    - But, Aboriginal rights can be limited if good reason to do so

United Nations Declaration on the Rights of Indigenous People

- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly on Thursday, 13 September 2007 by a majority of 144 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine). Years have passed since the UN Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly. Since then, the four countries voting against have reversed their position and now support the Declaration. Today the Declaration is the most comprehensive international instrument on the rights of

Indigenous peoples. It establishes a universal framework of minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of Indigenous peoples.

What is the UNDRIP

- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is an international instrument adopted by the United Nations on September 13, 2007, to enshrine (according to Article 43) the rights that "constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world." The UNDRIP protects collective rights that may not be addressed in other human rights charters that emphasize individual rights, and it also safeguards the individual rights of Indigenous people. The Declaration is the product of almost 25 years of deliberation by U.N. member states and Indigenous groups. The first of the UNDRIP's 46 articles declares that "Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights(4) and international human rights law." The Declaration goes on to guarantee the rights of Indigenous peoples to enjoy and practice their cultures and customs, their religions, and their languages, and to develop and strengthen their economies and their social and political institutions. Indigenous peoples have the right to be free from discrimination, and the right to a nationality. Significantly, in Article 3 the UNDRIP recognizes Indigenous peoples' right to self-determination, which includes the right "to freely determine their political status and freely pursue their economic, social and cultural development." Article 4 affirms Indigenous peoples' right "to autonomy or self-government in matters relating to their internal and local affairs," and Article 5 protects their right "to maintain and strengthen their distinct political, legal, economic, social and cultural institutions." Article 26 states that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired," and it directs states to give legal recognition to these territories. The Declaration does not override the rights of Indigenous peoples contained in their treaties and agreements with individual states, and it commands these states to observe and enforce the agreements.

Specific and Comprehensive Land claims

There are several kinds of land claims in Canada. These land claims deal with Indigenous communities right to land and to the use and occupancy of the land.

In a land claim, an Indigenous Nation asks the federal government to address historic wrongs. The community provides historical and legal documents to prove that the community:

- is legally entitled to reserve land and/or to financial compensation, or
- never surrendered to the Crown its original rights in lands and natural resources

Specific Land claims

These claims are about:

- the size and location of reserves or
- the improper use of reserve lands by others, particularly government
- reserve land was used in the past (e.g., to build a road) without permission
- financial compensation should be paid for using reserve land; e.g. Boat Harbour in Pictou Landing.

Comprehensive Land Claims

Comprehensive land claims deal with the unfinished business of treaty-making in Canada. These claims arise in areas of Canada where land rights have not been dealt with by treaty or through other legal means. These claims are better known as modern day treaties and are negotiated between First Nations, Canada and at times the province and/or territories.

These treaties are implemented through legislation and are the most comprehensive way of addressing Aboriginal rights and title. These claims involve use and management of land and resources. Some treaties may also include provisions relating to Aboriginal self-government.

Section 4

Wabanaki Confederacy

At the time the European settler's arrival in the1600s,the Mi'kmaq Nation belonged to the Wabanaki Confederacy. The Wabanaki Confederacy was the highest level of governance, similar to our Supreme Court of Canada in our judicial system.
The Wabanaki Confederacy included:

- the Mi'kmaq,
- the Wolastoqiyik,
- the Passamaquoddy,
- the Penobscot,
- and the Abenaki tribes.

The Wabanaki Confederacy were members of the Algonquin family and occupied lands east of the St. Lawrence River, the Adirondacks and the Appalachians.

All these tribes respected the territory occupied by the Mi'kmaq. The area included all of what is today:

- Nova Scotia,
- Prince Edward Island,
- The eastern part of New Brunswick,
- Newfoundland,
- and southern Gaspé.

The Mi'kmaq were part of the Wabanaki Confederacy and the Mi'kmaq Grand Council were the political voice for the Mi'kmaq within the Confederacy. The Mi'kmaq are the Indigenous people of Mi'kma'ki. The land of the Mi'kmaq is made up of seven districts:

- Unama'kik aq Ktaqmkuk ("foggy lands" and "land across the water") – Cape Breton Island and Newfoundland
- Epekwitk aq Piktuk ("lying in the water" and "the explosive place") – Pictou County and Prince Edward Island
- Eskikewa'kik ("skin-dresser's territory") – the area stretching from Guysborough to Halifax County
- Sipekni'katik ("wild potato area") – the counties of Halifax, Lunenburg, Kings, Hants and Colchester
- Kespukwik ("last flow") – the counties of Queens, Shelburne, Yarmouth, Digby and Annapolis
- Siknikt ("drainage area") – including Cumberland County in Nova Scotia, and the New Brunswick counties of Westmorland, Albert, Kent, Saint John, Kings and Queens
- Kespek ("last land") – the area north of the Richibucto, including its rivers and parts of Gaspe

Mi'kmaq Grand Council

The Grand Council (Santé Mawiómi or Mi'kmawey Mawio'mi) was the normal senior level of government for the Mi'kmaq, based in present-day Canada, until passage of the Indian Act in 1876, requiring elected governments. After the Indian Act, the Grand Council adopted a more spiritual function. The Grand Council was made up of representatives from the seven district councils in Mi'kma'ki and Keptinaq ("captains"), who were the district chiefs. There were also elders, the Putu's, the women's council, and the Grand Chief.

- The *Putu's* recorded the Mi'kmaw Grand Council meetings by stories and the creation of wampum belts, a kind of visual history, and dealt with the treaties with other native tribes and non-native groups.
- The hereditary chiefs of the traditional Grand Council continue to have a role, but the legal authority to govern has been largely transferred by the Indian Act to the elected chiefs and councils.

Traditional governance structures

- Indigenous Governance is very different from the political traditions which emerged in Europe. European systems of government were designed to maintain the privilege and powers of those superior people who claimed dominion over the world and the right to rule other people. Indigenous people developed a complex system of government prior to colonization. When European settlers came here in the 1600s, the Mi'kmaw Nation belonged to the Wabanaki Confederacy. This Confederacy included the Mi'kmaq, the Maliseet, the Passamaquoddy, the Penobscot, and the Abenaki tribes. The tribes were all members of the Algonquin family which occupied lands east of the St. Lawrence River, the Adirondacks and the Appalachians. All these tribes respected the territory occupied by the Mi'kmaq, who divided it into seven hunting and fishing districts. This region, known as

Mi'kma'ki, included all of what is today Nova Scotia, Prince Edward Island, the eastern part of New Brunswick, Newfoundland and southern Gaspe.

- The Mi'kmaw lived in extended family units, nuclear families among the Mi'kmaq were grouped into living units of extended families. The territory of local Chiefs seems to have been in an area occupied by the inhabitants of a single summer village. Within the village, the Chief headed the council of elders, which consisted of the heads or representatives of the families in the settlement.
- Father Pierre Biard, an early Jesuit priest among the Mi'kmaq, indicated that decisions of the council of elders and the Chief depended upon a unanimous vote of the members, and that only such decisions were regarded as giving the Chiefs authority to act upon a certain matter (Hoffman 1955: 516). Oral history tells us that the Mi'kmaq Nation was divided into seven districts. When the districts were formed is not precisely known. Some researchers argue that this division of territory came about after contact. Each district Saqmaw belonged to the national political organization called *Mi'kmawey Mawio'mi*, or *the Mi'kmaq Grand Council*. The Grand Council was the Mi'kmaq political organization. Heading the Grand Council was a Grand Chief and an executive consisting of a *Grand Captain and Putu's*. A *Grand Captain or War Chief*, who was a great warrior, was second in command to the Grand Chief, and the Putu's, a messenger, and an important story-teller, were among the Grand Council's leadership structure. District Chiefs were chosen from among the local Chiefs. Local Chiefs were chosen from the head man of the most powerful local family. Early writers did not provide any evidence that there was ever a female Chief in the Grand Council.
- Mi'kmaq tradition indicates that the Grand Council developed in response to a need for organized interaction with other Aboriginal nations in matters of war and trade and to organize the nation internally in social, ecological, economic, and ceremonial matters. To become a Chief was the product of kinship affiliations and superior personal ability and was customarily passed down through families having tradition of chieftainship and members capable of assuming the role. The Grand Chief of the Mi'kmaq, is the head of the entire nation. The Grand Chief achieved his position by demonstrating the following qualities: leadership, ability, superior intelligence, generosity, courage and aggressiveness in war, and a superior hunting ability (Miller 1983: 47).
- Authority was secured by means of example, customs, kinship, and family alliance, rather than by being obedient. Belonging to a large and powerful family was a way in which one may become Chief and in particular, a Grand Chief. Local Chiefs, District Chiefs and Grand Chiefs were great speakers and could convince their followers to undertake actions such as going to war or forming alliances with other nations, and dividing hunting and fishing territories. Family alliances were significant in determining Chieftainship. Chieftainship was usually hereditary. The eldest son of a Chief began training at an early age in order to meet the requirements expected of him if he was to receive the position of Chief. If the eldest son of a Chief did not demonstrate the expected qualities of leadership or there were no male children directly descended from the Chief, the Chief would go to his sister and ask her son. Thus, extended family networks were important.
- Historically, the Mi'kmaq practiced polygamy, which allowed Chiefs to expand their networks of followers and alliances with other family groups. The greater the

family size, the greater the contributions to the Chief, which improved his ability to redistribute goods to a larger number of people. Fulfilling such economic roles would enable the Chief to gain respect needed in matter of war and other chiefly duties.

The Inherent Right of Self-Government is a Section 35 Right

- The Government of Canada recognizes the inherent right of self-government as an existing Aboriginal right under section 35 of the Constitution Act, 1982. It recognizes, as well, that the inherent right may find expression in treaties, and in the context of the Crown's relationship with treaty First Nations. Recognition of the inherent right is based on the view that the Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources.
- The Government acknowledges that the inherent right of self-government may be enforceable through the courts and that there are different views about the nature, scope and content of the inherent right. However, litigation over the inherent right would be lengthy, costly and would tend to foster conflict. In any case, the courts are likely to provide general guidance to the parties involved, leaving it to them to work out detailed arrangements.
- For these reasons, the Government is convinced that litigation should be a last resort. Negotiations among governments and Aboriginal peoples are clearly preferable as the most practical and effective way to implement the inherent right of self-government within the Canadian Constitutional Framework.
- Aboriginal governments and institutions exercising the inherent right of self-government will operate within the framework of the Canadian Constitution. Aboriginal jurisdictions and authorities should, therefore, work in harmony with jurisdictions that are exercised by other governments. It is in the interest of both Aboriginal and non-Aboriginal governments to develop co-operative arrangements that will ensure the harmonious relationship of laws which is indispensable to the proper functioning of the federation.
- In light of the wide array of Aboriginal jurisdictions or authorities that may be the subject of negotiations, provincial governments are necessary parties to negotiations and agreements where subject matters being negotiated normally fall within provincial jurisdiction or may have impacts beyond the Aboriginal group or Aboriginal lands in question. Territorial governments should be party to any negotiations and related agreements on implementing self-government north of the sixtieth parallel.
- The inherent right of self-government does not include a right of sovereignty in the international law sense, and will not result in sovereign independent Aboriginal nation states. On the contrary, implementation of self-government should enhance the participation of Aboriginal peoples in the Canadian federation, and ensure that Aboriginal peoples and their governments do not exist in isolation, separate and apart from the rest of Canadian society.

Canada's Self Government Policy

- Canada's Inherent Right Policy was first launched in 1995 to guide self-government negotiations with Indigenous communities. Negotiated agreements put decision-making power into the hands of Indigenous governments who make their own choices about how to deliver programs and services to their communities.
- Indigenous peoples practiced their own forms of government for thousands of years before the arrival of European and other settlers in what is today Canada. These forms of government reflected the economic, social and geographic diversity of Indigenous peoples, as well as their cultural practices and spiritual beliefs.
- Early partnerships between colonial governments with Indigenous nations were forged through treaties, trade and military alliances. Over many centuries, these relationships were eroded by successive laws, policies and decisions that were based on a colonial and paternalistic approach. This includes the Indian Act, which was passed in 1876 and continues to determine how most First Nations in Canada are governed to this day. The Indian Act imposed a colonial governance system on First Nation communities where authority rested with the federal Minister.
- Canada has now embarked on a journey of reconciliation between Indigenous and non-Indigenous peoples. It is a necessary journey intended to address a long history of colonialism and the scars it has left. The goal is to renew the nation-to-nation, government-to-government, and Inuit-Crown relationships with Indigenous peoples.
- The Government of Canada is working in partnership with Indigenous peoples to undo federally imposed systems of governance and administration in favor of Indigenous control and delivery. Canada is working with Indigenous peoples to support them in their work to rebuild and reconstitute their nations, advance self-determination and, for First Nations, facilitate the transition away from the Indian Act and toward self-government.
- Self-government negotiations are one way to work together in partnership toward this goal and advance Indigenous self-determination, which is a fundamental Indigenous right and principle of international law, as set out in the United Nations Declaration on the Rights of Indigenous Peoples.

What is Indigenous self-government?

- Canada recognizes that Indigenous peoples have an inherent right of self-government guaranteed in section 35 of the Constitution Act, 1982. Canada's Inherent Right Policy was first launched in 1995 to guide self-government negotiations with Indigenous communities.
- Negotiated agreements put decision-making power into the hands of Indigenous governments who make their own choices about how to deliver programs and services to their communities. This can include making decisions about how to better protect their culture and language, educate their students, manage their own lands and develop new business partnerships that create jobs and other benefits for their citizens.
- Because communities have different goals, negotiations will not result in a single

model of self-government. Arrangements take many forms based on the different historical, cultural, political and economic circumstances of the Indigenous governments, regions and communities involved. For example: Inuit land claim agreements have been signed in all four Inuit regions. These Inuit communities are pursuing their vision of self-determination under these agreements and in some cases through ongoing self-government negotiations. The Métis are also actively pursuing their own vision of self-determination through ongoing engagement with their citizens and through dialogue at Recognition of Rights and Self-Determination discussion tables with Canada.

- Self-government is part of the foundation for a renewed relationship and is a pathway to development and economic growth that generates benefits for Indigenous peoples.

Indian Band Elections

The majority of First Nations governments are composed of a chief and councillors who responsible for making decisions on behalf of the First Nation and its members. The number of councillors per First Nation is on a per capita basis and elections under the Indian Act are for two-year terms. However, the First Nations Elections Act allows for Band Councils to extend the terms for 4 years.

The selection of a chief and councillors can be held in one of these ways:

- Under the Indian Act
- Using the Indian Band Regulations
- Band Custom Election Codes
- Or the First Nations Election Act.

Additional Resources:

https://www.sac-isc.gc.ca/eng/1323195944486/1565366893158

Section 5

Aboriginal People and the Justice System

- Royal Commission on Donald Marshall Jr.

The Marshall case is one of Canada's most famous examples of wrongful conviction and racism against native peoples. In 1971, Donald Marshall Jr. and his friend Sandy Seale were walking in Wentworth Park in Sydney, N.S. They struck up a conversation with two strangers, Roy Ebsary and Jimmy MacNeil. Ebsary pulled a knife and fatally stabbed Seale in the stomach; but Ebsary was not charged for the crime. Marshall who was 17 at the time, was convicted of the murder and sentenced to life in prison. **The trial took just three days.**

Ten days after the conviction, Jimmy MacNeil came forward to say he was with Ebsary and

had seen him commit the murder. In 1974, Ebsary's daughter Donna told Sydney police that she had seen her father washing blood from a knife on the night of the murder. In both cases the information was not passed along to either the Crown or the defence team.

The Marshall Report issued by the Royal Commission on the Donald Marshall Jr. Prosecution in December 1989 castigated the Nova Scotia justice system, and society in general, for the injustices carried out against an innocent and defenseless Mi'kmaq boy.

On January 26, 1990, the Royal Commission of Inquiry on the Donald Marshall Jr. Prosecution released its much-anticipated report on Mr. Marshall's wrongful conviction for murder (Commissioners' Report – Findings and Recommendations 1989).

For the Mi'kmaq community, the most significant finding of the Inquiry's three years of work (public hearings, roundtables and independent research studies) was the conclusion reached by the Commissioners that Donald Marshall Jr. was "convicted and sent to prison, in part at least, because he was a Native person."

The Commissioners described the evidence supporting this "inescapable conclusion" as "persuasive" and said, "That racism played a role in Marshall's imprisonment is one of the most difficult and disturbing findings this Royal Commission has made."

In January 1982 the RCMP reopened the investigation into Sandy Seale's murder. As Staff Sergeant Harry Wheaton and Corporal James Carroll reviewed the evidence and spoke to the original witnesses they realized that Marshall could be telling the truth about his innocence. On July 29, 1982, Marshall was granted parole after 11 years and one month in custody and on May 10 1983 Marshall's conviction was overturned but he was still held responsible for his imprisonment for not admitting to being in Wentworth park to rob people.
Two days later, Roy Ebsary was charged with 2nd degree murder. After three trials he was convicted of manslaughter and sentenced to three years in prison which was reduced to one year on appeal.

On September 26, 1984 the province of Nova Scotia announced a settlement of $270 000 for the years Donald Marshall spent in prison.

On October 28, 1986, the Royal Commission on the Donald Marshall Jr. Prosecution was established in order to make recommendations on:

- the investigation of Sandy Seale's death,
- the charging and prosecution of Donald Marshall Jr., and
- Marshall's conviction and sentencing

A Royal Commission is appointed by the government to conduct an investigation. It can call witnesses and review all evidence, it then makes recommendations which the government may or may not act upon.

Beginning in September 1987, the Royal Commission heard from 62 witnesses in Sydney and 52 in Halifax.

The Royal Commission found that:

- The criminal justice system failed Marshall
- If persons involved in the justice system had carried out their duties professionally his conviction should not have happened
- Marshall was not responsible for his own imprisonment
- The fact that Marshall was Mi'kmaq played a factor in his wrongful conviction and imprisonment
- Marshall had told the truth about what happened in Wentworth park
- The police response and investigation were "inadequate, incompetent, and unprofessional"
- The Crown prosecutor and the defence counsel failed Marshall

Recommendations:

- The Nova Scotia Attorney General should adopt a policy on race relations that is committed to employment equity and elimination of inequality based on race
- Police officers should undergo sensitivity training
- A Native Criminal Court should be established
- Mi'kmaq interpreters should be provided by the courts
- A Native court worker program should be established
- The RCMP and other police forces should take immediate steps to recruit and hire Native people.

Additional Resources:

https://novascotia.ca/just/marshall_inquiry/_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf

https://www.nfb.ca/film/justice_denied

https://www.cbc.ca/archives/entry/1990-donald-marshall-exonerated-of-wrongful-conviction

- **Manitoba Justice Inquiry**

The Aboriginal Justice Inquiry was established in 1988 in response to two specific incidents: the 1987 trial of two men for the 1971 murder of Helen Betty Osborne, and the 1988 shooting death of J.J. Harper following an encounter with a Winnipeg police officer. These two events raised serious questions as to whether the justice system was failing Aboriginal people.

The Commission was to consider the extent to which aboriginal and non-aboriginal persons are treated differently by the justice system and whether there are specific adverse effects, including possible systemic discrimination against aboriginal people, in the justice system. The commission considered the manner in which the justice system operates and whether there are alternative methods of dealing with aboriginal persons involved with the law. (AJI, Volume I, page 3)

The AJI held over 123 days of hearings, received over 1200 presentations and exhibits, travelled more than 18,000 kilometres, and generated 21,000 pages of transcripts. Its final report, released in 1991, filled two volumes and contained 296 recommendations.

These recommendations can be roughly divided into those that address questions of Aboriginal rights, and those directed at reforms to existing institutions of the contemporary justice system. The Inquiry's major initiative in the area of Aboriginal rights was the recommendation to establish an Aboriginal justice system based on rights of self-government.

In their report, the Commissioners stated that without the creation of an Aboriginal justice system, "problems of inequality and injustice will continue to plague our justice system." (AJI, Volume I, page 339) The proposed reforms to the existing system were numerous, but their overall thrust was to reduce incarceration, increase Aboriginal involvement in the operation of the justice system, and reduce cultural barriers. The AJI Commissioners stated they were recommending these changes to the existing system because:

- many Aboriginal people would live in communities that would not be under the jurisdiction of the proposed justice systems; and
- they believed that many of these reforms would serve as transitional steps to the creation of Aboriginal justice systems.

Additional Resources:
http://www.ajic.mb.ca/volumeII/chapter1.html

http://www.ajic.mb.ca/reports/final_toc.html

http://www.ajic.mb.ca/volumelll/chapter2.html

- **Ipperwash Inquiry**

On September 4, 1995, Chippewas from the Stoney Point Reserve began an occupation of Ipperwash Provincial Park, located in Grand Bend, ON. Two days later, an Aboriginal occupier, Anthony O'Brien George, also know as Dudley George, was killed during a confrontation between the Aboriginal occupiers and the Ontario Provincial Police. The Ipperwash Inquiry was established in 2003 by the government of Ontario to inquire and report on the events surrounding the death of Dudley George, and make recommendations on how to avoid violence under similar circumstances in the future.

The Ipperwash Inquiry was established by the Ontario government in 2003 to inquire and report on the death of Dudley George. Its mandate also included making recommendations on how to avoid violence in similar situations in the future.

Hearings began in July 2004 and ended in August 2006 and Justice Sidney Linden was appointed Commissioner of the public inquiry. The Commissioner divided the inquiry into two parts. The purpose of Part 1 was to inquire into and report on the events surrounding the death of Dudley George. Part 1 heard testimony from 139 witnesses. The purpose of Part 2 was to gather and analyze the information needed to make recommendations for

preventing future incidents of violence. As of March 31, 2007, the cost of the public inquiry was $13.3 million. The report from the Ipperwash Inquiry was made available to the public on May 31, 2007. It consists of four volumes and 100 recommendations.

Key themes of the recommendations:

- policing of Aboriginal protests and occupations
- relationships among federal, provincial and First Nations governments
- the land claims process
- sharing the benefits of resource development
- consultation concerning Aboriginal and treaty rights
- public awareness and education about Aboriginal peoples

The report also called on the government to create:

- a new stand-alone Ministry of Aboriginal Affairs
- an Ontario Aboriginal Reconciliation Fund
- a Treaty Commission of Ontario

Most of the report's recommendations were carried out or in the process of being addressed

Additional Resources:

https://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/faq/index.html

http://www.anishinabek.ca/wp-content/uploads/2016/06/Treaties-Matter-Understanding-Ipperwash.pdf

- **Aboriginal Alternatives to Justice**

  Restorative Justice is an approach to justice that focuses on addressing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by crime – victim(s), offender and community – to identify and address their needs in the aftermath of a crime. "RJ is primarily about establishing and maintaining a proper and peaceful relationship."
  (Justice Murray Sinclair, 2012 National RJ Symposium)

Restorative justice provides an alternative which focuses less on punishment and custodial sentences, and more on healing the relationships between the individuals and families and the community. People who are diverted are typically first-time offenders, youth or are being accused of less serious charges. People facing charges get referred to the program from either police service; RCMP, Crown attorneys, or sometimes community members.

It further allows victims to tell their story, hold the offender accountable and identify what

can be done to repair the harm if possible and allows offenders to tell their story, accept responsibility for their actions and acknowledge the harm caused. It also allows the victim and offender to reach some type of reconciliation if possible.

- **Sentencing and Gladue**

Gladue refers to a right that Aboriginal People have under section 718.2 (e) of the Criminal Code. Gladue is also a sentencing principle which recognizes that Aboriginal Peoples face racism and systemic discrimination in and out of the criminal law system, and attempts to deal with the crisis of overrepresentation of Aboriginal Peoples in custody, to the extent possible, through changing how judge's sentence. Gladue instructs judges, when sentencing or setting bail, to consider: "all available sanctions other than imprisonment that are reasonable in the circumstances, with particular attention to the circumstances of Aboriginal offenders."

Gladue and other changes to the criminal code, give judges discretion to use sanctions outside of the mainstream prisons for Aboriginal women and men when appropriate. In most cases, diversion to community supervised justice programs, such as those under the Aboriginal Justice Strategy, or conditional sentences are made use of for less serious offences, and in some cases for those facing first time charges only.

The Gladue report is a pre-sentencing or bail hearing report, usually prepared by Gladue caseworkers at the request of the judge, defense counsel or Crown Attorney. These reports contain recommendations to the court about what an appropriate sentence might be, and include information about the Aboriginal persons' background such as: history regarding residential schools, child welfare removal, physical or sexual abuse, underlying developmental or health issues, such as FASD, anxiety, or substance use.

Gladue applies to all self-identified Aboriginal People: status and not, regardless of whether they live in or outside of an Aboriginal community. Aboriginal People can waive their Gladue rights. In March 2012, the Supreme Court of Canada ruled that Gladue Principle also applies to breaches of long-term supervision orders. The ruling stated that "failing to take [Aboriginal] circumstances into account would violate the fundamental human rights of the individual.

Additional Resources:

http://www.cba.org/CBA/cle/PDF/JUST13_Paper_Shields_GladuePrimer.pdf

- **Mi'kmaq Legal Support Network**

The Mi'kmaq Legal Support Network (MLSN) began operations in July 2002 under the umbrella of The Confederacy of Mainland Mi'kmaq. Its purpose was/is to develop and maintain a sustainable justice support system for all Mi'kmaq / Aboriginal people involved in the Nova Scotia Criminal Justice System. The objectives of MLSN are as follows:

- To provide legal support services to all Mi'kmaq / Aboriginal people living in or

visiting Nova Scotia.
- To communicate with Mi'kmaq/Aboriginal organizations, communities, individuals, identified key stakeholders, and Provincial and Federal Governments for the improvement of the administration of justice for Mi'kmaq/Aboriginal people.
- To research and develop justice programming which will initiate change for the betterment of all parties. To promote and create justice programs which will meet the changing and growing needs of Mi'kmaq / Aboriginal people living in or visiting Nova Scotia.
- To develop a network among Mi'kmaq/First Nations, justice forums and mainstream justice programs. To decrease the percentage of repeat offences and the number of First Nations people going through the criminal justice system.

The vision of the MLSN is to provide Mi'kmaq/First Nation people with autonomy and control over their justice support system in a time frame determined by the Mi'kmaq/First Nation people and their leadership. The short-term direction was to develop a sustainable justice support system that would address the inequities experienced by Mi'kmaq/First Nation peoples within the mainstream justice system and build strong partnerships will all levels of government. The vision of MLSN provides for a short and long term goals towards creating a "sustainable justice support system" that not only addresses current inequities within the mainstream justice system, but also one that reflects the goals and aspirations of the Mi'kmaq First Nation people in Nova Scotia, as a result of one of the recommendations of the Marshall Inquiry.

The following programs are administered and managed by MLSN:

- Mi'kmaq Court Worker Program
- Mi'kmaq Customary Law Program
- Mi'kmaq Victim Support Services
- Gladue Reports
- Mi'kmaq Bail Supervision
- Mi'kmaq Healing Court – Wagmatcook

Additional Resources:

https://cplc2018.files.wordpress.com/2018/09/mlsn.pdf

Section 6

Understanding Mi'kmaq Treaties in the Maritimes

- The treaty making period and the Covenant Chain of Treaties

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.

Prior to Confederation in 1867, a number of treaties were signed between the Mi'kmaq and the Colonial government. In the 1700's, 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.

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. There are very few records of these ceremonies and spoken agreements in existence today. Although there are no written records of the treaty discussions the most significant aspect of this relationship are the ceremonies surrounding the treaty discussion. There were many discussions and deliberations that were significant in the signing of the treaty. The oral history of the Mi'kmaq and the ceremonies surrounding the signing of the Treaties made up parts of the treaty and the Mi'kmaq understanding of that relationship.

Mi'kmaq Case Law

R. v. Sylliboy, 1928

Mi'kmaq Grand Chief Gabriel Sylliboy is believed to be the first to use the 1752 Peace and Friendship Treaty to fight for Canada's recognition of treaty rights. In his court case, R. v. Sylliboy (1928), he argued that the 1752 treaty protected his rights to hunt and fish, but he lost the case and was subsequently convicted.

In 1927, Gabriel Sylliboy, the first elected Grand Chief of the Mi'kmaq Grand Council (in 1918), was arrested for hunting and possessing pelts out of season while off his Whycocomagh reserve. While Sylliboy argued that he had Indigenous right to hunt and fish on the land, he was convicted of these charges in Magistrate's Court under Nova Scotia's Lands and Forests Act.

In R. V. Sylliboy, Chief Sylliboy appealed the ruling in a County Court in July 1928, using treaty rights as a defence. He argued that the 1752 Peace and Friendship Treaty signed between the Crown and Mi'kmaq chief Jean Baptiste Cope recognized the right of his people to freely hunt and fish on traditional territories. As the treaty states, "It is agreed that the said Tribe of Indians shall not be hindered from, but have free liberty of Hunting & Fishing as usual." Sylliboy and five members of the Mi'kmaq nation – Joe Christmas, Andrew Alec, Andrew Bernard, Francis Gould and Ben Christmas – testified at the trial, supporting the hunting rights and practices of their people.

Judge George Patterson explored aspects of Mi'kmaq treaty rights as they related to the case but ruled that the conviction stood. According to Patterson, the Mi'kmaq "were never regarded as an independent power" and therefore, could not have entered into a treaty with the Crown. Moreover, Patterson concluded that Governor Hopson, who signed the 1752 treaty with the Mi'kmaq, did not have the authority to make such an agreement.

- **R. v. Isaac (1975)**

In 1975, Stephen Isaac of Chapel Island First Nation was found guilty of hunting "off" reserve lands. Later, in his appeal, the conviction was quashed at the Supreme Court level. The reversal was contained in a decision brought down by the Nova Scotia Supreme Court and delivered by Chief Justice MacKeigan. In the judgment which found in favor

of an appeal. Stephen Isaac had been charged under section 150(1) of the Nova Scotia Lands and Forest Act and was found guilty in Magistrates Court. The decision by Nova Scotia Supreme Court Appeal Division allowed in favor of Isaac's appeal and quashed his conviction. This decision was also based on the Royal Proclamation of 1763. In effect in 1975, the Royal Proclamation was validated by the Nova Scotia Supreme Court, meaning that hunting and fishing rights still existed for Mi'kmaq in Cape Breton

- **R. v. Simon (1985)**

In 1981, James Simon of the Mi'kmaq nation was convicted, under Nova Scotia's Land and Forests Act, for possession of a rifle and shotgun cartridges. The Court of Appeal upheld the judge's ruling that the Treaty of 1752 did not exempt Simon from provisions of the provincial Lands and Forests Act.

The Simon Case went to the Supreme Court of Canada in 1985. Simon argued that the right to hunt, as set out in the Treaty of 1752, combined with section 88 of the Indian Act, offered his people immunity from prosecution under the provincial act. Section 88 states that although provincial laws of general application apply to Indigenous peoples in Canada, these are subject to the terms of any treaty.

In its unanimous judgment on the case, the court ruled that, based on the 1752 treaty, Simon had the right to hunt for food anywhere in Mi'kmaq country. This right was not absolute; it had to include "reasonably incidental activities" such as travelling with necessary equipment to the hunting grounds and safe ownership of a hunting rifle and ammunition. Despite these limitations, the court's ruling vindicated Simon and the Treaty of 1752 remains in effect.

- **R. v. Marshall (1999)**

The single most important treaty fishing rights case is R. v. Marshall (1999), a case involving the interpretation of an eighteenth-century treaty between the British and the Mi'kmaq on the Atlantic coast. The treaty text stipulated that the Mi'kmaq would only trade at British trading posts. It did not mention fishing, but the SCC, after reviewing an extensive historical record and expert historical testimony, ruled that, in the context of a series of peace and friendship treaties, the Mi'kmaq had treaty rights to trade fish for "necessaries." Justice Binnie, writing for the majority, concluded "the treaty rights are limited to securing 'necessaries' (which I construe in the modern context, as equivalent to a moderate livelihood), and do not extend to an open-ended accumulation of wealth." Elsewhere he characterized the treaty as securing "the right of the Mi'kmaq people to continue to provide for their own sustenance by taking the products of their hunting, fishing and other gathering activities, and trading for what in 1760 was termed 'necessaries'."

Two months after releasing its decision in Marshall, the SCC issued a second set of reasons when it denied an application from the commercial fishing fleet for a rehearing of the case. In Marshall II the court emphasized the federal government's power to regulate the Mi'kmaq treaty right.
In reiterating the federal government's capacity to regulate the fishery and infringe treaty rights, the SCC imported to the treaty rights context the objectives that might justify

infringing an Aboriginal right to a commercial fishery. As a result, the treaty right, which the SCC found was limited to trade for sustenance or to support a moderate livelihood, was also subject to the capacity of the government to infringe that right for a broad range of social policy objectives.

The Marshall decision, and the fact that Mi'kmaq fishers immediately began to fish for lobster during a closed season in exercise of their treaty right, provoked an outcry among non-Aboriginal fishers. They called on Fisheries Canada to stop the fishing and when the department refused to intervene they destroyed Mi'kmaq fish traps and other property.

Fisheries Canada eventually did intervene, prompting a much-publicized confrontation between one Mi'kmaq community and federal authorities. However, by March 2001, Fisheries Canada concluded interim agreements with most First Nations affected by the Marshall decision. Under a program known as the Marshall Response Initiative, these agreements were later replaced with longer-term agreements in which, between 2000 and 2007, Fisheries Canada spent almost $600 million to provide eligible First Nations with communal commercial licenses (acquired from commercial fishers under a voluntary retirement program), fishing vessels, and training.

- **Denny, Paul, Sylliboy (1990)**

Three Mi'kmaw were charged with various fishing offences. Denny was charged with fishing salmon with a net without a license and illegal possession of salmon after he netted salmon off the mouth of a stream entering Bras d'Or Lake just outside his reserve. Paul was charged with fishing cod without a license in the same place. Sylliboy was charged with fishing salmon with a snare on a river outside a reserve. They were convicted and appealed.

The Nova Scotia Supreme Court, Appeal Division, allowed the appeals and acquitted the accused. The court held that in Nova Scotia, Mi'kmaq have a right to fish for food off reserve in priority to all other uses provided there is a surplus after conservation needs, which were paramount.

- **Sappier Grey (2006)**

The three respondents (two Maliseet and One Mi'kmaq) were charged with unlawful possession and cutting of Crown timber. They all admitted to the facts but all argued in defence that they possessed an aboriginal right to harvest timber for personal use, with Sappier and Grey also arguing they had a treaty right. The aboriginal right was found to exist in the lower courts, which the Crown appealed.

The claimed specific aboriginal right was the right to harvest timber for personal use. However, there was very little evidence to support that and they could not prove the importance of the harvest of the trees, aboriginal rights exist in practices, customs or traditions and not the resource itself.

The judge stated that culture really meant the pre-contact way of life, including means of survival. In this case, the fact that harvesting wood was done for survival purposed is

sufficient to make it an integral part of the culture. It was clear that the regulation infringed the aboriginal right and the Crown made no argument for extinguishment or justification, therefore the appeal was dismissed.

Mi'kmaw Child Welfare

Nova Scotia shares a common national history with other provinces with respect to the development of First Nations child welfare. Residential schools served as the primary mechanism of First Nations child welfare in Canada between 1879 and 1946 (Milloy, 1999). During this period, the Canadian government's policy was to attempt to assimilate Aboriginal peoples into Canadian society by separating Aboriginal children from their families and placing them in residential schools. In 1920, amendment to the Indian Act made attendance at designated state sponsored (day, residential, institutional) schools mandatory for all children "between the ages of seven and fifteen years".

In 1951, the introduction of Section 88 to the Indian Act made "all laws of general application from time to time in force in any province applicable to and in respect of Indians in the province" (Section 88 made it possible to enforce provincial child welfare legislation on-reserve.). For the first time provincial child welfare authorities began to apprehend Aboriginal children living on-reserve.

Additional Resources:

https://cwrp.ca/information-sheet/first-nations-child-welfare-nova-scotia-2011

Mi'kmaq Family and Children's Services

MFCS Agency is a registered charitable organization operating with full delegation by the Mi'kmaw Chiefs and the Provincial Department of Community Services since 1990.

The Agency delivers child welfare services to approximately 13,000 Mi'kmaw community members living on the 13 Nova Scotia Bands which have 23 inhabited Reserves. These are located throughout the province and represent a mixture of urban, rural and isolated communities. Within their realities of our human and fiscal resources, we also provide support and consultation to off-reserve Mi'kmaw and other First Nation individuals and families and to those agencies working with them.

The Agency is governed through a Board of Directors comprised of the 13 Chiefs of the Nova Scotia Bands and a representative of the Nova Scotia Native Women's Association. The agency serves all on reserve families and children and is governed by the provincial child welfare legislation.

Additional Resources:

http://mfcsns.ca/

- **Missing and murdered Indigenous Women**

The National Inquiry heard from international law and Indigenous law expert witnesses, and learned that Canada is in breach of both domestic and international obligations with respect to its failures and harmful actions toward Indigenous women and children. Canada has been told to clean up its act by United Nations tribunals and special rapporteurs repeatedly, with little response. The National Inquiry is purported to be Canada's answer and will provide evidence and recommendations to provide meaningful action on this epidemic of the number of missing and murdered Indigenous women in this country. This Inquiry completed its report in April 2019.

Additional Resources:

https://www.mmiwg-ffada.ca/
http://www.redressproject.org/

- **Idle No More**

Idle No More has quickly become one of the largest Indigenous mass movements in Canadian history – sparking hundreds of teach-ins, rallies, and protests across Turtle Island and beyond. What began as a series of teach-ins throughout Saskatchewan to protest impending parliamentary bills that will erode Indigenous sovereignty and environmental protections, has now changed the social and political landscape of Canada.

Additional Resources:

http://www.idlenomore.ca/story

- **Jordan's Principle**

Jordan's Principle is a child-first principle named in memory of Jordan River Anderson, a First Nations child from Norway House Cree Nation in Manitoba. Born with complex medical needs, Jordan spent more than two years unnecessarily in hospital while the Province of Manitoba and the federal government argued over who should pay for his at home care. Jordan died in the hospital at the age of five years old, never having spent a day in his family home. Jordan's Principle aims to make sure First Nations children can access all public services in a way that is reflective of their distinct cultural needs, takes full account of the historical disadvantage linked to colonization, and without experiencing any service denials, delays or disruptions because they are First Nations.

Additional Resources:

https://fncaringsociety.com/jordans-principle

Section 7

Mi'kmaq Change Makers and Upstanders

- Grand Chief John Denny
  John Denny Jr. was the last hereditary grand chief of the Mi'kmaq Nation, from 1881 to 1918. The grand chief is a traditional, unpaid post as senior statesman and spiritual leader of all Mi'kmaq communities. It was traditionally passed on from father to eldest son.
- Grand Chief Gabriel Sylliboy
  Gabriel Sylliboy (8 August 1874 – March 4, 1964) was the first Mi'kmaq elected as Grand Chief (1919) and the first to fight for the recognition by the state of Canada of the treaties between the government and the First Nations people; however, the courts found him guilty. Grand Chief Sylliboy was recently exonerated by the province of Nova Scotia
- Grand Chief Donald Marshall
  Donald Joseph Marshall Sr. (May 28, 1925 - August 25, 1991) was a Grand Chief of the Mi'kmaq who lived at Membertou First Nation near Sydney, Nova Scotia. He served as Grand Chief for 27 years from 1964 until his death in 1991.
- Grand Chief Ben Sylliboy
  Benjamin Sylliboy (March 2, 1941 – November 30, 2017) was a Grand Chief of the Mi'kmaq who lived at the We'koqma'q first nation in Cape Breton, Nova Scotia, Canada. He served as Grand Chief for 25 years from 1992 until his death in 2017.
- Grand Chief Norman Sylliboy
  Norman Sylliboy has been a hereditary keptin, or captain, of the Grand Council for years. In 2019, Normal Sylliboy was selected as Grand Chief; 101 years after his grandfather, Gabriel Sylliboy, was elected.
- Alexander Denny, Grand Captain
  In 1966, Alex Denny was appointed the lifelong role of Kji-keptin of the Sante'Mawiomi or Grand Captain of the Grand Council, an extremely honourable achievement. He was chosen for this role by the elders at the time. Shortly after, in 1969, he joined forces with Joe B. Marshall, Noel Doucette, Greg Johnson and Stan Johnson and together they formed the Union of Nova Scotia Indians (UNSI), where he served two separate terms as president, 1974-1976 and 1992-1995.
- Murdena Marshall and Albert Marshall
  - In October 2009, Albert and his wife Murdena were awarded Honorary Doctorates of Letters by Cape Breton University for their work which seeks the preservation, understanding, and promotion of cultural beliefs and practices among all Mi'kmaw communities. Albert and the late Murdena Marshall are highly respected and Elders of the Mi'kmaw Nation; Albert lives in Eskasoni First Nation Murdena was the First Mi'kmaq to obtain a Master's in Education from Harvard University in the 1980's and was instrumental in the development of the Mi'kmaq Studies Program at Cape Breton University. Both Albert and Murdena brought forward Etuaptmumk / Two-Eyed Seeing

as a Guiding Principle for Integrative Science and encourages its awareness across Canada and beyond. Albert is currently the Elder for the Unama'ki Institute of Natural Resources.

- Chief Noel Doucette

  Chief Noel Doucette (1938 – 1996), a dedicated man and founding president of the Union of Nova Scotia Indians. In 1954 Noel joined the RCAF, serving until 1964 at various posts across Canada. During that time, on October 28, 1958, he married Jean Doris Johnson of Chapel Island. Over the years they became the proud parents of 12 children. Upon his release from the service, they returned to their home community in Chapel Island, of which community he was chief for several terms. Chief Doucette was also instrumental in the formation of the Mi'kmaw Kina'matnewey and the enactment of the Mi'kmaq Education Act.

- Mary Ellen Pierro (1962)

  Mary Ellen Pierro, the first woman to be elected as Chief, in Wagmatcook First Nation. Mary Ellen passed away on June 30th of 1970.

- Dr. Bernie Francis

  Bernie Francis grew up on the Maupeltu (Membertou) First Nation community in Cape Breton, NS. From 1970-1974, he worked as the Director of the Court Worker Program for the federal court system. After leaving the court system, Bernie began his training in linguistics with linguist Doug Smith from the University of Toronto. Bernie completed that training in 1980, having developed a new orthography of the Mi'kmaw language with Professor Smith. The Smith/Francis orthography is now officially recognized by the Mi'kmaw chiefs in Nova Scotia, as well as by the Canada-Nova Scotia-Mi'kmaq Tripartite Forum.

- Joe B. Marshall

  Joe B Marshall obtained a Bachelor of Laws Degree in 1993, an Order of Nova Scotia in 2011 and an Order of Canada in 2014. He is a Senior Mi'kmaq Advisor to the Mi'kmaq Rights Initiative since 2004. Joe guides the Mi'kmaq and the Assembly of Nova Scotia Mi'kmaq Chiefs as they proceed through the negotiation of aboriginal and treaty rights with the Province of Nova Scotia and the federal government. Joe was the past the Executive Director of the Union of Nova Scotia Indians (UNSI) since 1996 and is one of its founding members. Mr. Marshall is currently one of the lead negotiators for the Mi'kmaq Rights Initiative in Nova Scotia.

- Viola Robinson

  Viola Robinson is a Mi'kmaq woman who was born and raised in Nova Scotia. She attended the Indian Day School at Shubenacadie Reserve (Indian Brook). While she is best known as the founding and long time president of the Native Council of Nova Scotia as well as the Native Council of Canada, her other achievements are numerous. She was awarded an Honorary Doctor of Law Degree from Dalhousie University in 1990. She served as a Commissioner with the Royal Commission on Aboriginal Peoples. She completed a law degree at Dalhousie Law School in May 1998. She is a current board member of the Aboriginal Healing Foundation. She is the Mi'kmaq co/chair of the Justice Tri-partite Committee of Nova Scotia. She has been a Senior Mi'kmaq

Advisor on the Negotiations Team with the Mi'kmaq Rights Initiative in Nova Scotia and most recently been appointed by the Chiefs of Nova Scotia as the Chief Lead Negotiator for this Negotiation team

- Daniel Paul

  Daniel N. Paul, (born 1938) is a Mi'kmaq Elder, author, columnist, and human rights activist. Paul is perhaps best known as the author of the book *We Were Not the Savages*. Paul asserts that this book is the first such history ever written by a First Nation citizen. Among his many awards, Paul has been conferred with the Order of Canada (2005) and the Order of Nova Scotia (2002). Mr. Paul received an honorary Law Degree from Dalhousie University in 2013 and is the Recipient of the Grand Chief Donald Marshall Memorial Elder Award in 2007.
- Helen Martin
  - Helen Martin was the daughter of Chief Ben Christmas and Jane Christmas (Denny) of the Membertou Mi'kmaq community. She was a founding member and elected the first president of the association in 1972, a position which she held for many years. Helen was an individual that was held in high esteem by her community and continues to be so today. Helen died in 1993.
- Lillian Marshall
  - Lillian Marshall was a highly respected and much loved Elder of the Mi'kmaw Nation; she lived in Potlotek (Chapel Island) in Unama'ki, Nova Scotia. She devoted her worklife to Aboriginal education and worked within a small, dynamic team in her home community to develop innovative learning and educational materials. Lillian had written several books, developed language CDs, and created children's stories and games. In June 2010, she was presented with a Lifetime Achievement Award for preservation of Mi'kmaw Language and Culture at the Potlotek Community Awards Banquet. Ms. Lilly as she was lovingly referred to as passed away in 2018.
- Noel Marshall

  Noel Marshall was born in 1905 in Potlotek and was the son of Thomas Marshall and Mary (Alex) Marshall. Noel was a well-respected Mi'kmaq elder, a community leader and a Captain with the Mi'kmaq Grand Council for many years. Noel was married to Annie (Battiste) Marshall and they lived most of their life in Potlotek, where they raised their children. Noel's father, Thomas, was also a Captain of the Grand Council and a former Chief of the community of Potlotek. It was from his father that Noel gained much of his knowledge of the Grand Council as he was extremely knowledgeable of the role of the Grand Council and the annual St. Anne's Mission. Noel was also well versed in Mi'kmaq prayers and hymns. Noel Marshall died in 1984.
- Dr. Peter Christmas

  Peter Christmas was one of the first Mi'kmaw people to obtain a Bachelor of Education degree. At that time, he was a principal at a Nova Scotia high school. Upon receiving his degree, in the 1960's Christmas had to enfranchise, meaning terminating his Native status, and was no longer considered Mi'kmaw under Canadian Law.
- Dr. Elsie Basque
  - Elsie Basque, was born to Margaret Labrador and Joe Charles at Hectanooga,

Digby County, on May 12, 1916. She was the first Mi'kmaq to earn a teacher's certificate from the Provincial Normal College in Truro. She also became an advocate for issues affecting the elderly in the American Indian community. Mrs. Charles Basque wrote a report on those challenges in 1974 and it was sent as a position paper to the U.S. Senate. While she appreciates the honour of being named to the Order of Canada, she said her greatest satisfaction came from her students. She recounted a 1993 reunion of students she had taught in Indian Brook between 1939 and 1947.

- Bernard Christmas

  Bernard Christmas graduated from Osgoode Hall Law School in 1991 and joined the Bar in 1993 in Ontario. Bernard was the first Mi'kmaq to become a lawyer in Canada.

- Donald Marshall Jr.
  - Donald Marshall Jr., Mi'kmaq leader, Indigenous activist, wrongly convicted of murder (born 13 September 1953 in Sydney, NS; died 6 August 2009 in Sydney, NS). ... He was the first high-profile victim of a wrongful murder conviction to have it overturned, paving the way for others. Mr. Marshall is also a hero in the battle against racism toward aboriginals in this country. He spent six years fighting discrimination in the courts to challenge the federal government's denial of the historic treaty rights granted to his people by the British Crown in 1760, a case that went all the way to the Supreme Court of Canada.

- Sister Dorothy Moore

  Sister Dorothy Moore, from Membertou First Nation, entered the Congregation of Sisters of St. Martha of Antigonish shortly after graduating high school, and became the first Mi'kmaw Religious Sister in Nova Scotia. Sister Dorothy, as she is affectionately known, has dedicated much of her life to education. She received her teaching certificate from the Nova Scotia Teachers College, bachelor's degrees (both Arts and Education) from St. Francis Xavier University, and an M.Ed. from Mount Saint Vincent University. Her contributions to the province have been recognized by both the Order of Nova Scotia (2003) and Order of Canada (2005). Sister Dorothy received honorary doctorate degrees from Mount Saint Vincent University, Cape Breton University (previously the University College of Cape Breton), and Saint Mary's University and has made a significant impact on Native Studies in Nova Scotia.

- Rita Joe

  Rita Joe a Mi'kmaq Poet born on March 15, 1932 in Whycocomagh, NS; died 20 March 2007. Often referred to as the poet laureate of the Mi'kmaq people, Rita Joe wrote powerful poetry that spoke about Indigenous identity and the legacy of residential schools in Canada. Her works continue to influence Indigenous and non-Indigenous writers and artists alike. Rita Joe was the author of several books of poetry and one of her books titled: "I Lost my Talk"; is most famous for her experience at the Shubenacadie Indian Residential School.

- Isabelle Knockwood
  - Isabelle Knockwood, born in Wolfville, Nova Scotia, attended the Indian Residential School in Shubenacadie from 1936 to 1947. She is the mother of

six children and has fourteen grandchildren. At a special Sunrise Ceremony at Indian Brook, Isabelle was given her Spirit name, Maqmikewe'skw, which means Mother Earth. Isabelle is most known for her book titled; "Out of the Depths" an account of her experience at the Shubenacadie Indian Residential School.

- Nora Bernard
    - Nora Bernard (September 22, 1935 – December 26, 2007) was a Canadian Mi'kmaq activist who sought compensation for survivors of the Canadian Indian residential school system. She was directly responsible for what became the largest class-action lawsuit in Canadian history, representing an estimated 79,000 survivors; the Canadian government settled the lawsuit in 2005 for upwards of 5 billion dollars.
- Senator Dan Christmas

    Mr. Christmas has served in various leadership positions in the Mi'kmaw Nation of Nova Scotia. After serving five years as the Band Manager for the Community of Membertou, Mr. Christmas worked for the Union of Nova Scotia Indians for 15 years - the last 10 as its Director. He was actively involved in the recognition and implementation of Mi'kmaw aboriginal and treaty rights in Nova Scotia. From 1997 to 2016, Mr. Christmas held the position as Senior Advisor with Membertou and had assisted the Chief and Council and its Management Team with the day-to-day operations of the Community of Membertou. Dan also served as elected councillor for Membertou for 18 years. Mr. Christmas has been active in a number of international, national, provincial and local agencies in a wide range of fields including aboriginal & treaty rights, justice, policing, education, health care, human rights, adult training, business development and the environment. In 2005, Mr. Christmas was awarded an honorary Doctor of Laws degree from Dalhousie University and an honorary diploma from the Nova Scotia Community College in 2016. In 2008, he was the recipient of the National Excellence in Aboriginal Leadership Award from the Aboriginal Financial Officers Association of Canada. In December 2016, Mr. Christmas was sworn in as an Independent Senator for Nova Scotia. Senator Christmas is the first Mi'kmaw senator to be appointed to the Senate of Canada.
- Dr. Robert Johnson Jr.

    In 1998 Robert was the first Mi'kmaq person to receive a degree in Medicine from Dalhousie. . After graduating from Dalhousie, Dr. Johnson embarked on residency training in family medicine at the University of British Columbia (Prince George. He returned to Nova Scotia for a time, practicing emergency medicine at the Dartmouth General Hospital, then returned to the West Coast to pursue studies in emergency medicine and anesthesiology at UBC..
- Eleanor Johnson

    Eleanor Johnson, professor, advocate and the first person to write a master's thesis completely in the Mi'kmaw language. The thesis titled "Mi'kmaq" was written in 1992 as a requirement of the Master of Atlantic Canada Studies at Saint Mary's University. Eleanor inspires Mi'kmaw students to excel in institutions while maintaining the Mi'kmaw language.

- Judge Cathy Benton
  Catherine Benton is the first Mi'kmaw woman judge in Nova Scotia. Benton, a lawyer with Nova Scotia Legal Aid, was appointed to the provincial and family court on January 23. She is the second Mi'kmaq and the third Indigenous person to be appointed to the bench in Nova Scotia.
- Everett Sanipass
  Everett Sanipass (born February 13, 1968) is a Canadian retired ice hockey forward. Sanipass was born in Elsipogtog First Nation, New Brunswick. Sanipass is the first Native Canadian to be inducted into the New Brunswick Sports Hall of Fame. Sanipass began his National Hockey League career with the Chicago Blackhawks in 1987 after being drafted 14th overall in the 1986 NHL Entry Draft. His indigenous heritage as a Mi'kmaq caused him to face racism early in his hockey career since he was prohibited from playing on off-reserve teams.
- Mary Ann Metallic
  Mary Ann Metallic has done exemplary work to revitalize the Mi'gmaq language in her home community of Listuguj, Quebec. Her passion for Mi'kmaq has led to the development of a successful teaching program, and her work with linguists has resulted in significant contributions to language documentation and linguistic theory.
- Glen Gould
  - Glen Gould (born June 6, 1972) is an Aboriginal Canadian actor, director and producer of Mi'kmaq and Italian descent. Originally from Membertou First Nation but resides in North Bay Ontario.
- Ursula Johnson
  Ursula Johnson (born 1980) is a multidisciplinary Mi'kmaq artist based in Halifax Nova Scotia. Her work combines the Mi'kmaq tradition of basket weaving with sculpture, installation, and performance art. In all its manifestations her work educates viewers about issues of identity, colonial history, tradition, and cultural practice. In 2017, she won the Sobey's Art Award.
- Allan Sylliboy
  An established Mi'kmaq artist, Alan Sylliboy's work is influenced by the indigenous Mi'kmaq rock drawing and quill weaving traditions. Working in acrylic and mixed media, Alan creates vibrantly coloured images exploring the themes of family, searching, spirituality, struggle, and strength. The use of layering symbols and mark making creates depth and texture in Alan's work.
- Arlene 'Dozay' Christmas
  October 31, 1954 - November 21, 2019. Dozay was truly a one-of-a-kind person. She loved the created world and all that belonged to it. Illustrator Dozay grew up on the Tobique First Nation in New Brunswick. She attended the Nova Scotia College of Art and Design and has displayed her artwork at galleries and exhibits across the Maritimes, Ontario and the United States.
- Loretta Gould
  Mi'kmaq Artist Loretta Gould From the East Coast. Her art is Spiritual, and it said it's a dream to see bright, beautiful colors. She is self-taught and has been creating and exhibiting her work ever since. Loretta's dream is to share her art

around the world. It is a way to get her spiritual feelings on canvas. She was born in Cape Breton and raised in We'koqma'q First Nation. Loretta is currently working on a book for all the stories that go with each painting.

- Mise'l Joe

  Mise'l Joe was born in Miawpukek into a strong Mi'kmaq family, both his grandfather and uncle held the office of hereditary Saqamaw. Misel has been educated in all the Mi'kmaq ways and traditions. Morris Lewis, the first appointed Chief in Newfoundland by the Grand Chief in Mi'kmaq territory, was Misel's great, great uncle. Mise'l is the author of a book titled "Muinji'j Becomes a Man".

- Stephen Augustine

  Originally from Elsipogtog (Big Cove), N.B., Augustine is a hereditary chief of the Signigtog region and a member of the Sante' Mawi'omi (Grand Council). He has served as curator of ethnology for the eastern Maritimes at the Canadian Museum of Civilization in Ottawa since 1996. He received his Bachelor of Arts in Anthropology and Political Science from St. Thomas University and a Master of Arts in Canadian studies from Carleton University. Augustine is currently the Associate Vice President of Indigenous Affairs and Unama'ki College at Cape Breton University.

- Lindsay Marshall

  Lindsay Marshall served as a Councillor, Chief and Band Manager of Potlotek First Nation. Lindsay was also the Dean of Unama'ki College. Marshall, a frequent contributor of poetry for important celebrations, Lindsay has composed for, and read before, Queen Elizabeth II. His first book of poetry was titled "Clay Pots and Bones".

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