

TREATY RENEWAL



Treaty Renewal (c.1985 to present)

The renewal of the Treaty relationship between the Mi'kmaq and the Federal and Provincial governments has been a defining period in Canada's history. Rather than an exact year, or even decade, Treaty Renewal is marked by the growing empowerment and self-determination of the Mi'kmaw Nation.

Community organizations, led by the Union of Nova Scotia Indians in the 1970s, began to articulate and push for Mi'kmaw sovereignty and equity for the Nation. Land claims, the Nova Scotia Native Women's Association, and the Micmac Association of Cultural Studies were all early efforts to move the Nation towards the larger goal of renewing the treaty relationship.

Legal Success and Changing Dynamics

A series of monumental developments in the 1980s secured a new era through which the Nation continued to seek a renewed treaty relationship with the Federal and Provincial governments. The 1982 Repatriation of the Constitution enshrined Treaty and Aboriginal Rights in modern law through Section 35, which recognized and affirmed treaty rights. Section 52 of the Constitution Act made the treaties part of the supreme law of Canada. And section 25 of the Canadian Charter of Rights and Freedom shielded treaty rights from private rights of Canadians. This was an important watershed moment, when the rights and responsibilities embedded in the eighteenth century would no longer remain a responsibility of the British Crown. Instead they became constitutional responsibilities of the Government of Canada and the provinces.

The 1985 James Matthew Simon case was the first modern Supreme Court decision to affirm the Peace and Friendship Treaties (the 1752 Treaty). It was followed by affirming decisions in *R v. Marshall* (1999) and *R v. Bernard* (2005), as well as others. These Supreme Court of Canada decisions, along with other related cases, changed the way people across Canada understood treaty rights and obligations. Here in Mi'kma'ki, the cases changed the way that Mi'kmaw and non-Mi'kmaw individuals and organizations interacted in the public sphere.

These decisions by the Supreme Court of Canada, along with a series of national commissions and provincial inquiries, have challenged Canadians to work towards equity with Indigenous peoples on matters of land, water, natural resources, ancestral places, health, education, justice, eco-

conomic development, culture, language, and governance. The Royal Commission on the Donald Marshall Jr. Prosecution, the Royal Commission on Aboriginal Peoples, and the Truth and Reconciliation Commission have set out frameworks, key issues, and recommendations that continue to affirm Mi'kmaw efforts to seek justice and equity from the harms of the Treaty Denial period.

Consultation and the Duty to Consult

Today, the Crown as represented by the Federal and Provincial governments work together with the Mi'kmaq to determine how best to implement treaty rights. It is not always an easy process, but the governments have remained committed to this tri-lateral process. Consultation is required when the actions of Federal or provincial governments (often referred to as "the Crown") impact treaty rights. Examples include anytime a permit or license is awarded, or when the government takes steps to regulate or to develop a particular sector or initiative. The consultation process brings all parties to the table through sanctioned representatives to discuss the priorities of those involved. If treaty rights are impacted, then acceptable solutions are sought that accommodate these priorities. All parties have both responsibilities and rights in this negotiation. Ultimately, governments seek long-term solutions that are acceptable to all.

ARE TREATY RIGHTS AND ABORIGINAL RIGHTS DIFFERENT?

Yes! Aboriginal rights and treaty rights are different kinds of rights. *Aboriginal rights* are rights that come from the fact that indigenous people were here for thousands of years before Europeans and other newcomers arrived. Aboriginal rights are general in nature and they are said to "flow" from this historical reality. *Treaty rights* are specific rights guaranteed at one time or another within the treaty relationship. For example, fishing is part of the Mi'kmaq and British Peace and Friendship treaties, but fishing is not necessarily guaranteed to all Indigenous people just because they are indigenous.

Generations of Effort

Treaty Renewal has grown through many efforts of many people in many organizations. Akin to reconciliation, it has required the work of people across communities and sectors to make it a reality. If Treaty Denial is defined by the loss and damage of land and water, children and education, health and well-being, and community and identity, then the Treaty Renewal period has seen growing strength and independence in these same areas.

There are a great many issues facing contemporary communities. The treaty rights process is just one pathway through which people are seeking greater equity for Mi'kmaw people as well as for other indigenous people in Canada. As Canadian society moves forward, learners will increasingly be asked to understand the realities of the modern treaty relationship in many personal and professional contexts. The more they understand the context of the relationship, the stronger it will be.

KEY DEVELOPMENTS IN RENEWAL & RECONCILIATION

1969 The Union by the Nova Scotia Native Women's Association and the Micmac Association of Cultural Studies in 1972.

1977 A position paper on the Aboriginal Rights of the Mi'kmaq is presented to the Government of Canada. In it the Nation makes its case for Aboriginal Rights of Mi'kma'ki.

1982 Treaty and Aboriginal Rights are recognized in Section 35 of the Constitution Act.

1985 *R v. James Matthew Simon* affirmed the validity of the 1752 Treaty. This is the first Supreme Court of Canada decision to affirm Mi'kmaw treaties with Canada.

1986 The Confederacy of Mainland Mi'kmaq forms to promote the interests of mainland Mi'kmaq in Nova Scotia.

1986 The Royal Commission on the Donald Marshall Jr. Prosecution is established. Its report in 1990 will highlight widespread discrimination in the Nova Scotia justice system.

1986 Kji-Saqmaw Donald Marshall Sr. named October 1st Treaty Day, resurrecting the 1752 Treaty promise between the Mi'kmaq and the British "to renew their friendship" annually.

1991 The Royal Commission on Aboriginal Peoples forms in response to the Oka crisis. Five years later in 1996, the RCAP would make recommendations across sectors for the improvement of the lives of indigenous people in Canada, most of which would be left unrealized.

1997 *R v. Delgamuukw* affirms the existence of Aboriginal Title in Canada for indigenous people.

1998 Mi'kmaw Education Act transfers education authority to Mi'kmaw First Nation communities. Mi'kmaw Kina'matnewey forms to educate youth.

1999 *R v. Marshall* affirms Mi'kmaw rights from the 1760-61 Treaty to hunt and to fish for a moderate livelihood.

1999 In response to the 1994 Task Force on Museums and First Peoples, a Memorandum of Association concerning Mi'kmaw heritage is signed by Federal and provincial governments.

2002 The Mi'kmaq, and Federal and Provincial governments sign an "umbrella agreement" for the implementation of treaty rights.

2003 Kwilmu'k Maw-klusuaqn/Mi'kmaw Rights Initiative forms to implement Aboriginal and Treaty rights across Nova Scotia. In time, Millbrook and Sipekne'katik First Nations will negotiate their own rights as individual bands.

2010 The Truth and Reconciliation Commission forms in response to a class action lawsuit by survivors against the Government of Canada. In 2015 it publishes 94 calls to action and finds the country's goal was cultural genocide against indigenous children and communities.

2016 Nova Scotia Treaty Education is launched to provide opportunities to learn about the Mi'kmaq and the Peace and Friendship Treaties.

2016 Canadian Human Rights Tribunal determines that Health Canada's services for First Nations children was discriminatory. They use "Jordan's Principle" to create change.

2017 A "free pardon" is granted to Kji-Saqmaw Gabriel Sylliboy exonerating him from the 1929 Nova Scotia Supreme Court conviction for hunting muskrat out of season. It is the second free pardon in the history of the Province.