



Kwilmu'kw  
Maw-klusuaqn  
Negotiation Office

**Chronology of Events:**  
***Recent History***

# Kwilmu'kw Maw-klusuaqn

## Chronology of Events – Recent History

1969

The Government of Canada releases *The White Paper*, which urges the complete assimilation of all Aboriginal people and the restructuring and dismantling of all treaties in Canada. The *Paper* enrages Aboriginal people across the country and radicalizes many. The vehement opposition to the policy assures it is never implemented

1973

The *Calder* decision is released by the Supreme Court of Canada and affirms that the First Nations and other Aboriginal people have legitimate claims, including claims to what is now known as Aboriginal title. The Court has harsh words for the Crown in its previous handling of the claims of First Nations regarding Aboriginal title and specific matters dealing with the reserves and assets of Bands.

In response to the *Calder* decision, the Government of Canada releases two new claims policies: one dealing with Comprehensive Claims (Aboriginal Title) and one dealing with Specific Claims (the claims of Bands regarding the government's handling of the Crown's management of their reserves and other assets.)

The Union of Nova Scotia Indians submits its claim to the Province of Nova Scotia asserting the Nation's hunting and fishing rights in the province. The claim is rejected.

1976

*March:* The Union of Nova Scotia Indians submits a revised claim asserting the hunting and fishing rights of the Mi'kmaq Nation in Nova Scotia to the Premier of Nova Scotia. The claim is rejected.

*December:* The Mi'kmaq Santé Mawioimi (Grand Council) and the Union of Nova Scotia Indians submit a comprehensive land claim to Canada respecting aboriginal title in Nova Scotia. The claim is rejected on the basis that it was “superseded by law”.



Kwilmu'kw Maw-klusuaqn Negotiation Office  
**Mi'kmaq Rights Initiative**

Our Rights. Our Future.

1982

The Canadian constitution is repatriated and comes in to full force and effect April 1, 1982. The *Constitution Act, 1982*, section 35(1) recognizes and affirms the existing (as of 1 April 1982) Aboriginal and Treaty rights of Indians, Inuit, and Métis.

1985

The Union of Nova Scotia Indians and the Native Council of Nova Scotia support James Simon, of Indian Brook, in a hunting case in which Simon asserted a treaty right defense. The Supreme Court of Canada, in *R. v. Simon*, affirms that the 1752 Treaty between the Crown and Jean Baptiste Cope continues in full force and effect. Therefore, Mr. Simon has a Treaty right to a food, social and ceremonial harvest.

1989

The Report of the Royal Commission on the Donald Marshall Jr. Prosecution is released. The Commissioner recommends establishing a tripartite forum bringing together Mi'kmaq leaders and the federal and provincial governments. A tripartite main table is recommended to deal with rights based issues such as Land, Self government, Aboriginal & Treaty Rights, Aboriginal Title

1990

The Supreme Court of Canada's *Sparrow* decision affirms the Aboriginal right to a food, social and ceremonial harvesting regime. The decision makes it clear that governments must consult with First Nations, Inuit, and Métis if legislation or other government measures will infringe upon or limit an Aboriginal Right. The Court urges the government to negotiate, rather than litigate Aboriginal claims.

The Nova Scotia Court of Appeal, in the case of *Denny, Paul and Sylliboy*, holds the Mi'kmaq of Nova Scotia have an Aboriginal right to fish for food, protected by s.35(1).



1991

*July:* The Union of Nova Scotia unanimously passes a resolution mandating community consultations to fully inform all Mi'kmaq in Nova Scotia about the Aboriginal title, rights and treaty rights of the Nation and establishing the "Technical Team" to advise the Nation on the drafting and presenting a Land Claim to the Government of Canada.

1997

*June:* The National Energy Board begins a review of the Sable Offshore Energy Project and the Maritimes and Northeast Pipeline (MNEP). Discussions between the companies and the Nova Scotia Chiefs on behalf of the Mi'kmaq Nation begin. The government is pressured to deal with Mi'kmaq Aboriginal title to Nova Scotia.

*July:* The Nova Scotia Mi'kmaq Chiefs, the Minister of Indian Affairs, and the Nova Scotia Aboriginal Affairs Minister sign the Tripartite Forum Memorandum of Understanding. The Forum's mandate is to discuss, investigate and negotiate measures assisting resolution of matters of concern between the Parties. Tripartite committees are established to discuss issues around Justice, Social, Education, Health, Cultural & Heritage, Sports & Recreation, and Economic Development

*December:* The Supreme Court of Canada's *Delgamuukw* decision affirms that Aboriginal title exists in Canada, and provides guidance on extinguishment of title and how a First Nation may prove its Aboriginal title. The Supreme Court again urges that governments and First Nations negotiate rather than litigate Aboriginal title, rights and treaty rights. If the Court's comments on extinguishment are applied to Nova Scotia, the extinguishment requirements have not been met.



## 1998

*September:* In a meeting as part of the on-going negotiations with Sable and Maritimes and Northeast, the Nova Scotia Chiefs, the Nova Scotia Aboriginal Affairs Minister, and the INAC Assistant Deputy Minister, on behalf of the Mi'kmaq Nation in Nova Scotia, Nova Scotia, and Canada, agree to pursue a “Made-in-Nova Scotia Process” to deal with outstanding treaty, title and aboriginal rights questions in Nova Scotia. It was agreed that the process would be outside of the Federal Comprehensive Claims Policy.

*October:* The Minister of Indian Affairs announces on Treaty Day that Canada is committed to the “Made-in-Nova Scotia Process.” Exploratory discussions begin between Canada, Nova Scotia and the Assembly of Nova Scotia Mi'kmaq Chiefs.

*December:* The Nova Scotia Chiefs forward a draft Framework Agreement to Canada and Nova Scotia outlining a possible negotiation process. The Assembly suggests that a pre-Framework Agreement be ratified to set out the process and to protect the Mi'kmaq from any confusion about what constitutes “consultation”. This pre-Framework Agreement or “Umbrella Agreement” is proposed to include the Tripartite Forum and a proposed Consultation Process. Exploratory talks proceed.

## 1999

*September:* The Supreme Court of Canada's *Marshall (No.1)* decision affirms that the Treaties of 1760 and 1761 remain valid and provide that Mi'kmaq and Maliseet have a right to commercially harvest – the right to hunt, fish and gather for a moderate livelihood. As an existing treaty right, the commercial harvesting right affirmed in *Marshall* is protected under s.35(1). The Court again repeats its urgings for governments and First Nations to negotiate acceptable solutions to and a detailed implementation of the constitutional rights.

*November:* The Supreme Court of Canada releases the *Marshall (No. 2)* decision which explains in a more detailed way the nature of the rights held to exist in *Marshall (No.1)*.





### 2000

*January:* In the aftermath of *Marshall*, exploratory talks continue regarding a long-term rights-based process. Separate negotiations and federal negotiators are established by the Indian Affairs and by the Fisheries and Oceans. Each Department formulates its own “*Marshall Response*”. Neither Indian Affairs or Fisheries admits to a responsibility to deal with the Nation’s moderate livelihood treaty fishery rights. There is much confusion on the part of the federal government on how to address the rights of the Mi’kmaq and Maliseet Nations.

### 2001

*January:* The Nova Scotia Chiefs, the Nova Scotia Aboriginal Affairs Minister, and the Indian Affairs Minister meet in Truro and agree to negotiate an Umbrella Agreement to begin the long-term rights-based process.

### 2002

*June:* Following extensive discussions, the thirteen Bands in Nova Scotia each pass BCRs authorizing their respective Chiefs to sign the Umbrella Agreement, and the document is signed by the Chiefs of Nova Scotia, Canada and Nova Scotia in a ceremony at Province House.

The Umbrella Agreement is a political commitment to enter into a mutually agreeable to negotiation process, and to develop Terms of Reference for a proper Consultation Process. It is completely “without prejudice,” meaning it cannot later be held against the Mi’kmaq Nation in Nova Scotia. It is intended to protect the Mi’kmaq Nation in Nova Scotia while talks with the governments of Nova Scotia and Canada continue. Canada, Nova Scotia and the Mi’kmaq Nation in Nova Scotia commit to negotiate the recognition, definition and implementation of Mi’kmaq Aboriginal title, rights, and treaty rights in good faith.

In the Umbrella Agreement, “The Parties agree that the negotiation process and approaches adopted will be governed by the Framework Agreement. For greater certainty, the Parties agree that they will take into account the unique circumstances of the Nova Scotia Mi’kmaq when developing their mandates and that their positions may differ from Canada's Comprehensive Land Claims Policy.”

### 2003

*November:* All three parties appoint negotiators with the authority to negotiate a Framework Agreement which will set out how the parties will negotiate a new and lasting framework protecting and affirming the Aboriginal title, rights, and treaty rights of the Mi'kmaq Nation in Nova Scotia. It is a blueprint setting out the process to be used in the upcoming discussions.

The negotiators for the Mi'kmaq, Canada, and Nova Scotia meet to scope out the negotiation process and start discussions on the development of a Framework Agreement.

### 2004

The “Made-in-Nova Scotia Process” becomes the Kwilmu'kw Maw-klusuaqn (Searching for Consensus). Staff are hired for the Kwilmu'kw Maw-klusuan Negotiating Office (KMKNO) to support the Negotiating Team. The main emphases are research to ensure that Mi'kmaq are prepared for negotiations, and communications and community discussions to ensure that all Mi'kmaq in Nova Scotia are aware of what is happening and are given an opportunity to contribute to the negotiations and raise issues of importance to the Mi'kmaq of Nova Scotia.

*April:* At a media briefing held regarding discussions about developing a Framework Agreement for the negotiations process, then Senior Negotiator for the Mi'kmaq Nation in Nova Scotia states “Canada and Nova Scotia have agreed with us that our negotiations so far and all of our future negotiations up to the point if and when we have a final agreement or another interim agreement intended to have legal affect will not alter or affect or prejudice Mi'kmaq Aboriginal and Treaty rights. The Provincial Negotiator says “I think from Nova Scotia’s point of view there’s no intent whatsoever of touching or renegotiating the existing sacred treaties.” The Federal Negotiator affirms “There is no model or a generic approach to follow on how to proceed in these negotiations. So the Mi'kmaq of Nova Scotia, the province and the federal government have agreed to a made in Nova Scotia process to address the Aboriginal, outstanding Aboriginal and Treaty rights.”

## 2004

The *Haida Nation* and *Taku River* decisions are released by the Supreme Court of Canada. The decisions mandate that where the Crown – federal or provincial – is aware that a First Nation have asserted Aboriginal or treaty rights or Aboriginal title but those rights and title are “unresolved”, the Crown must consult with, and where appropriate, accommodate the rights of the First Nation where a government policy or decision may affect the rights or title of the First Nation asserting those rights and title.

## 2005

In the *Mikisew Cree* decision, the Supreme Court of Canada stated that even where Aboriginal title or rights have been “resolved” in a Land Claim Agreement or modern treaty, there may still remain a duty to consult with, and where appropriate, accommodate the interests of a First Nation.

## 2006

*June:* The Terms of Reference for a Mi'kmaq-Nova Scotia-Canada Consultation Process are approved at the main Mi'kmaq Nation-Canada-Nova Scotia Negotiation Table

*October:* The 13 Nova Scotia Mi'kmaq Chiefs, who had been meeting on a regular basis to discuss issues of rights and title of the Mi'kmaq Nation in Nova Scotia, establish the Assembly of Nova Scotia Mi'kmaq Chiefs to, among other things, provide direction to the Nation's negotiators, to deliberate and pass resolutions respecting the Nation's rights and title, and to provide directions and instructions to the KMKNO.





## 2007

*February:* The Mi'kmaq-Canada-Nova Scotia Framework Agreement setting out the areas for negotiation, the approval process, and the schedule for negotiations is signed in Membertou. The Mi'kmaq Nation in Nova Scotia approach to the negotiations is based on 5 pillars:

1. To achieve recognition, acceptance, implementation and protection of Treaty, Title and other Rights of the Mi'kmaq of Nova Scotia;
2. To develop systems of Mi'kmaq management and resource management;
3. To revive, promote and protect a healthy Mi'kmaq identity;
4. To obtain the basis for a shared economy and social development; and
5. To negotiate toward these goals with community involvement and support.

The five pillars were developed by a group of leaders and Elders, including Grand Council members, at a conference held on the Eskasoni First Nation.

*June:* The Interim Consultation Terms of Reference, approved in June 2006, are implemented on a trial basis. The Consultation Terms of Reference provide a mechanism through which the federal and provincial governments will consult with the Mi'kmaq Nation in Nova Scotia when government decisions, policies, etc. may affect the rights and title of the Nation in Nova Scotia.

## 2008

The Nationhood Proclamation, in English and Mi'kmaq, signed by all 13 Nova Scotia Chiefs is proclaimed on Treaty Day by the Grand Chief. The Proclamation states the Chiefs assert the Nationhood of the Mi'kmaq over “our traditional lands and waters”.



### 2010

*August:* The Consultation Terms of Reference are signed. After a three year trial run, the federal and provincial governments agree that the Consultation Terms of Reference are an appropriate and effective means of fulfilling their constitutionally mandated duty to consult with the Mi'kmaq Nation in Nova Scotia.

### 2011

*December:* The Chiefs of the Bands of the Mi'kmaq Nation in Nova Scotia file suit in the Federal Court against the government of Canada relating to the Nation's FSC harvesting rights.

### 2011-2012

The Harper government introduces and passes two omnibus bills, C-38 and C-45. These two bills, both of which became law, among other things, making sweeping changes to Canada's environmental protection legislation and insert a definition of "aboriginal fisheries" into the *Fisheries Act*. These changes are protested by the Mi'kmaq Nation in Nova Scotia and the Co-chair of the ANSMC, Chief Terrance Paul, appears before a Senate Committee studying the bill to explain to the Senators why the "aboriginal fisheries" definition is unconstitutional as the government failed to consult the Nation about its rights, that the definition does not address the Mi'kmaq Nation's treaty harvesting rights, and other concerns.

### 2013

*February:* The Chiefs of the Bands of the Mi'kmaq Nation in Nova Scotia file suit in the Nova Scotia Supreme Court against the government of Canada seeking a declaration that Canada has failed to meet its obligations from the 1999 *Marshall* case to ensure the opportunity of Mi'kmaq to engage in a moderate livelihood fishery and that the definition of Aboriginal fisheries in Bill C-45 is unconstitutional as it does not recognize the Nation's treaty harvesting rights.

