



**Inside this issue:**

<i>Made-In-NS Process</i>	1
<i>Five Pillars</i>	1
<i>Frequently Asked Questions</i>	2
<i>Successes</i>	3
<i>Next Steps</i>	4
<i>More Information</i>	4
<i>About KMKNO</i>	4

## Message from KMKNO



**Janice Maloney,  
Executive Director  
KMKNO**

Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO) wants to reassure community members that we have, and will continue to work, in the best interest of the Mi'kmaq of Nova Scotia. A majority of our staff members, including myself, are in fact members of the Mi'kmaq community first and foremost. KMKNO was created to provide the research and logistical support, and our team continues to work hard to ensure that the Assembly of NS Mi'kmaq Chiefs and the negotiations team have the necessary research needed to make informed decisions.

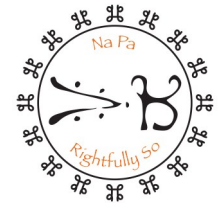
KMKNO does not have the legal capacity to terminate or extinguish existing treaties. Any agreements, accords or processes of implementation will have to be voted on and ratified by the Mi'kmaq of NS – in a referendum where all community members vote yes or no.

Although timelines for negotiations were established years ago, we believe that we should take our time with these discussions– we know our ancestors also took time to think about the seven generations before signing our historic treaties.

Our team is concentrating on improving the communication process so that you are

kept informed and up to date. Rest assured - although work is going on there is an a lot left to be done. Before any major decisions can be made in this process, we will require the consent of all Mi'kmaq of NS. We have a long way to go - but we need to take our time so that we are all satisfied that we are doing it right.

Our Rights. Our Future.



### **The Five Pillars of Mi'kmaq Values**

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 governance 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.

## *What is the Made-In-Nova Scotia Process?*

The Mi'kmaq-Nova Scotia-Canada Framework Agreement creates a road map of how parties will move forward to resolve outstanding issues regarding Aboriginal and Treaty rights. It is simply a political commitment to try to solve problems by talking together.

The Made-In-Nova Scotia Process has been established for the Mi'kmaq of Nova Scotia, Canada and the province of Nova Scotia to sit down together and negotiate outstanding issues of Aboriginal rights, including assertions of Aboriginal title and Treaty rights.

This process is unique in Canada. It is not like negotiations anywhere else – these negotiations will be what the Mi'kmaq want them to be. We are not negotiating under Canada's "Comprehensive Claims" or "Inherent Self-Government" policies, for example.

Our Agreement clearly states that "these negotiations [are done] in a manner and spirit that respects and upholds the significance of the Mi'kmaq Treaties and the continuing relationship of the Parties." Under the FA, the Mi'kmaq do not give up anything. We can still go to court if Mi'kmaq people are charged, or the Crown infringes Mi'kmaq rights or title, or negotiations break down.

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## Frequently Asked Questions

### *1. Why are we negotiating?*

Over the past 30 years, courts in Nova Scotia and Canada have recognized the existence and validity of Aboriginal and treaty rights and have tried to clarify the nature and extent of these rights. When addressing Aboriginal rights questions, Canadian courts have consistently encouraged governments and First Nations to approach questions of Aboriginal and treaty rights through negotiations rather than litigation. Such was the case in 1999 *Marshall* decision which confirmed the existence of Mi'kmaq rights as outlined in the Treaties of 1760-61. The Supreme Court did not define how these rights were to be implemented, but instead encouraged the Parties to negotiate a resolution in a fair and equitable manner. Negotiations permit the Parties to come up with solutions to some very complicated questions about how the interests and rights of the Mi'kmaq can be addressed.

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### *2. Why can't all communities in Mi'kma'ki work together?*

While each province has entered into different agreements with their own provincial governments included, the Mi'kmaq negotiations teams from NS, NB, PEI and Quebec do keep in contact and meet regularly to discuss what is being done for each of their respective areas.

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### *3. Why does the Framework Agreement say it's confidential?*

This clause was added to the Framework Agreement (FA) to ensure that negotiations are a "safe house", where whatever happens or is said is "off the record" and cannot be used against any Mi'kmaq person or community in a court of law. The negotiations will stay that way until or unless the Mi'kmaq (and Canada and Nova Scotia) agree something is "on the record" and is intended to affect the parties' legal position.

All parties to the FA, in s.47, understand the heightened need to provide information, positions and proposals to the Mi'kmaq community. Therefore, draft positions and proposals can be disclosed to the wider Mi'kmaq community but not the general non-Native community. These protections are for the Mi'kmaq to ensure that government does not use any of the negotiations to address their obligation to consult. In other words, Mi'kmaq community members have a greater access to negotiated positions and proposals than anyone else.

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### *4. Has KMKNO received loans for negotiations?*

The Mi'kmaq have made it clear that they will not accept loan funding to finance their participation in negotiations. If such loans are accepted, it would place great pressure on the Mi'kmaq to make a deal. Otherwise, if negotiations fall through, the Chiefs and their communities would have to come up with millions of dollars to repay the federal and provincial governments.

Without loan funding, the Assembly can decide to walk away from negotiations upon 6 months notice in writing. All KMKNO staff have been contracted on the basis that Canada and NS must continue to provide non-repayable grant funding for the negotiations. Thus no one- not the Assembly, organizations or individual communities - will have any legal obligation that extend beyond the contribution funding received from the Crowns.

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### *5. Are our Treaties protected?*

The historical treaties are sacred and will not be touched. In the final Accord(s) the Mi'kmaq will not be giving up or extinguishing any of their existing treaty rights. The Treaties are the foundation for the work that will go on in this negotiation process, and will stand for all time.

The Framework Agreement says that the Mi'kmaq will not agree to a final Accord that does not implement to their satisfaction the Mi'kmaq view of Mi'kmaq rights and title.

If we do not reach agreement with Canada and NS in the present negotiations, the meaning of the treaties will have to be left to be determined by the courts.

# Have we had any successes?

Yes, here are a few examples:

## Wildlife:

Wildlife was an early priority of the Main Table with moose as the primary focus of discussion. A Moose Working Group was established.

The Unama'ki Institute of Natural Resources (UINR) leads the initiative for the Mi'kmaq together with KMKNO. The first goal of the Moose Working Group was to raise Mi'kmaq and public awareness about issues related to moose. The Mi'kmaq hired a coordinator to start the dialogue in Mi'kmaq communities and Mi'kmaq Hunter Advisory Groups have been estab-

lished to further facilitate communication efforts. The Department of Natural Resources also established three full-time Aboriginal Conservation Officers. These efforts have fostered an environment of understanding and greatly improved the relationship between native and non-native hunters and enforcement alike.

### Tia'muwe'l Netuklimkewe'l. Unama'ki Moose Harvesting According to Netukulimk

In August 2009, after extensive Mi'kmaq community consultation, the Assembly approved the Tia'muwe'l

Netuklimkewe'l - Unama'ki Moose Harvesting According to Netukulimk Guidelines. At this time the Guidelines are voluntary, however, as Mi'kmaq community education and consultation continue it is the vision of the Assembly that these guidelines become mandatory.

By directly involving resource managers, the Moose Working Group has enhanced on-the-ground relationships and serves as a forum to explore measures that can provide a foundation for the future wildlife provisions of an accord. Col-

lectively, the working group is exploring new areas such as Mi'kmaq focused hunter education workshops, customary law approaches for regulatory offences related to moose harvesting and collaborating on moose management in the Cape Breton Highlands.



## Lands and Protected Areas

The Mi'kmaq have Aboriginal title to the lands and waters of Nova Scotia and adjacent areas of the offshore, and maintain that these rights were not given up through treaty, voluntary cession, or otherwise.

In Canada, there have been several legal decisions regarding Aboriginal title,

including Calder (1973), and Delgamuukw (1997).

In Nova Scotia, aspects of Aboriginal title were considered by the Supreme Court of Canada in the Joshua Bernard and Stephen Marshall et al. case (2005).

### Protected Areas

The Mi'kmaq have been providing working with the government on the selection, acquisition, designation, management, and use of land in Nova Scotia

The province of Nova Scotia has a goal to protect 12% of Nova Scotia's land base by 2015. For the Mi'kmaq, it is important that our rights are protected and that our tradi-

tional uses and perspectives are considered. A Mi'kmaq - Nova Scotia Protected Areas Selection and Management Technical Advisory Group has been formed which includes representatives, to provide advice, information, and recommendations to the Assembly of Nova Scotia Mi'kmaq Chiefs to the Province on this protected areas initiative.

In May 2012, KMK hosted a Protected Lands Workshop where Mi'kmaq community members discussed places that hold great importance to the Mi'kmaq and made recommendations for these to become part of the protected lands.

## Parks

In May 2012, the Assembly signed an interim arrangement with Parks Canada to grant the Mi'kmaq of Nova Scotia free entry to Kejimikujik National Park/National Historic Site, Cape Breton Highlands National Park and the Fortress of Louisbourg National Historic Site.

Vehicle Identifiers were provided to each community to distribute. These passes have allowed the Mi'kmaq in Nova Scotia to enter these parks, free of charge.



## Where are we now?

February 2012 marked the five year anniversary of the Framework Agreement. The Agreement sets out that the parties will use best efforts to reach a Memorandum of Understanding (MOU) within six years of signing the Framework Agreement, with an Accord to follow within three years of the approved MOU.

Complex negotiations such as these require patience and perspective. The initial timelines were ambitious and it is now clear that reaching an Accord will take longer.

The parties began with an in depth scoping of the topics and associated issues with a concentrated focus on governance, wildlife, forestry, fisheries and land. Topic-specific working groups were then established as needed.

One of the first priorities of the Main Table was to negotiate a process to address the Crown's duty to consult with the Mi'kmaq on proposed activities that have the potential to adversely impact Aboriginal rights including title and Treaty rights.

On August 31, 2010, after a three-year pilot period, the thirteen Mi'kmaq communities, through the Assembly of Nova Scotia Mi'kmaq Chiefs, signed an historic agreement with the Governments of Canada and Nova Scotia. The Mi'kmaq-Nova Scotia-Canada Consultation Terms of Reference lays out a process for the parties to follow when governments wish to consult with the Mi'kmaq.

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## What will happen next?

The Mi'kmaq, Nova Scotia and Canada continue to build consensus on the content of a future Accord and will continue to work toward a Memorandum of Understanding as a priority of the Main Table. Exploring interim/incremental arrangements will also continue to be a priority of the Main Table Negotiations, with particular emphasis in areas where work has begun such as wildlife, lands, and governance.

After centuries of no dialogue, this is the first time that the Mi'kmaq of Nova Scotia and governments have had meaningful conversation on such a wide array of social, economic, cultural and governance issues.

The Made-in-Nova Scotia Process has contributed substantially to creating stable and respectful relationships on rights matters among the parties. While differences remain, respect has grown, trust is on the rise and the parties are engaged in consistently meaningful and constructive dialogue on important issues.



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**Mi'kmaq Rights Initiative**

Our Rights. Our Future.

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Kwilmu'kw Maw-klusuaqn Negotiation Office works on behalf of the Assembly of NS Mi'kmaq Chiefs in the negotiations and consultations between the Mi'kmaq of Nova Scotia, the Province of Nova Scotia and the Government of Canada.

KMKNO was developed by the Mi'kmaq for the Mi'kmaq.

The purpose of these negotiations and consultations is to implement our Aboriginal and Treaty rights from the treaties signed by our ancestors in the 1700's.