

# Decolonization Learning Journey

A four-part Learning Journey with Mi'kmaw Elders and knowledge sharers.



Proudly partnered with:



## Community Sector Council of Nova Scotia

Decolonization Learning Journey – Resource document

Series 2, Webinar #1- Sept 28, 2020

### Hosting team:

- Elder Jane Meader, Elder, BACS & MEd
- Mary Beth Doucette, Assistant Professor and Purdy Crawford Chair in CBU's Shannon School of Business, Cape Breton University
- Nicole Cammaert, Associate Executive Director, CSCNS

### Guest speaker:

Trevor Bernard, Executive Director, Membertou First Nation

### Topic:

Myths & Truths About Indigenous Rights

### Highlights

#### What Are Treaties?

- Solemn agreements between two parties, typically Nations or governments, meant to govern the relationship between them.
- Contemporary examples are international treaties to which Canada is a signatory; treaties that address issues such as trade, taxation, extradition and military alliances such as NATO, the North Atlantic Treaty Organization.

#### Series of Pre-Confederation Treaties from 1725 to 1779

- Peace and Friendship Treaties<sup>1</sup> ensured either alliance or neutrality. To secure their place in the colony, the British entered into treaties of peace and friendship with the Mi'kmaq and expelled the Acadians in 1755.
- Mi'kmaw Chiefs and the representatives of the British Crown negotiated Treaties of Peace and Friendship between 1726 and 1789<sup>2</sup>. In 1713, the Treaty of Utrecht ceded all rights France had to areas of land and soon after, in 1725, Eastern Indigenous nation and the British Crown negotiated Treaties of Peace and Friendship<sup>3</sup>. With the encroaching settlement in the early 1700s, Indigenous nations representatives signed treaties with the British Crown to make sure that they would receive some government assistance in the future and to ensure that their people would survive and hunt and fish "as usual."

<sup>1</sup> View a copy of the Treaties of Peace and Friendship: <https://novascotia.ca/archives/mikmaq/archives.asp?ID=626>

<sup>2</sup> Listen to Stephen Augustine speak further about treaties: <https://www.youtube.com/watch?v=Gdv3yznfnjc>

<sup>3</sup> Additional information about Mi'kmaw treaties: <https://mikmaqrights.com/negotiations/treaties/>

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- The Treaties of Peace and Friendship did not reference land cession or release of Aboriginal title to the land. The British perceived the treaties signed in 1760 -1761 as thereby establishing control of the territory. The treaties signed in this period promise that the Mi'kmaq and Wolastoqiyik would retain hunting, fishing, and trading practices. Within these treaties, First Nation people did not give up the title and rights to their land, nor did they give up their status as sovereign nations.

## Royal Proclamation of 1763<sup>4 5</sup>

- "And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of Indians, with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds. ..."
- Designed to ensure orderly westward settlement.
- Relations with Indigenous people to be managed through the central colonial government and later the federal government and Indigenous lands now may only be surrendered or sold to them.
- Established treaty process that led to Pre-Confederation Treaties such as Robinson-Huron, Williams and Douglas Treaties as well as the Numbered Treaties.

## Treaty of Niagara<sup>6</sup>

- Royal Proclamation was considered ratified as a Treaty by Indigenous Nations at a large gathering of Nations at Niagara, Upper Canada in 1764.
- Records indicate representation from Nations as far east as "the Micmac of Nova Scotia."
- Ratification of the Royal Proclamation often referred to as the Treaty of Niagara.

## Confederation

- British North America Act<sup>7</sup> (now known as Constitution Act, 1867)<sup>8</sup>
- Section 91 sets out federal powers, while section 92 sets out provincial powers.
- S. 91.24 – "Indians, and Lands Reserved for Indians" falls within federal jurisdiction.
- Allowed for the first *Indian Act* in 1871.<sup>9 10 11</sup>

<sup>4</sup> Read more: [https://indigenousfoundations.arts.ubc.ca/royal\\_proclamation\\_1763/](https://indigenousfoundations.arts.ubc.ca/royal_proclamation_1763/)

<sup>5</sup> Watch Justice Muray Sinclair discuss the Royal Proclamation 1763:

<https://www.youtube.com/watch?v=dSQsyZDGoX0>

<sup>6</sup> Alan Corbiere explains the history of treaty-making between the British and First Nations:

<https://www.youtube.com/watch?v=qyQL1Jo3oPY>

<sup>7</sup> Read the Act: <https://www.thecanadianencyclopedia.ca/en/article/british-north-america-act-1867-document>

<sup>8</sup> Read more: <https://www.thecanadianencyclopedia.ca/en/article/constitution-act-1867>

<sup>9</sup> Read the *Indian Act* online: <https://laws-lois.justice.gc.ca/eng/acts/i-5/>

<sup>10</sup> Bob Joseph explains the *Indian Act*: <https://www.youtube.com/watch?v=OhBrq7Ez-rQ>

<sup>11</sup> Tanya Talaga on the *Indian Act*: <https://www.youtube.com/watch?v=vx00oxGzoi8>

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## 1969 White Paper on Indian Policy<sup>12 13</sup>

- Remove distinct legal status of “Indian”
- Dismantle Indian Affairs.
- Repeal the Indian Act.
- Convert reserve lands to private property.
- Transfer responsibilities for services to the provinces.
- Provide funding for economic development.
- Appoint Commissioner to address land claims and terminate existing treaties.

## The White Paper inspired action and activism. Some groups that formed in response to the White Paper:

- Assembly First Nation (<https://www.afn.ca/>)
- Union of NS Mi'kmaw (<https://www.unsm.org/>)
- Union of British Columbia Indian Chiefs (<https://www.ubcic.bc.ca/>)

## Constitution Act, 1982<sup>14</sup>

- Repatriation of Canada's Constitution.
- Most well-known for the Charter of Rights and Freedoms.
- For Indigenous people, the inclusion of s. 35(1) is most important. It states:
- “The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed.”
- Gave constitutional protection to Aboriginal and treaty rights.

## What happened in Burnt Church?

- Watch this feature-length documentary by Alanis Obomsawin regarding the events in Burnt Church: [https://www.nfb.ca/film/is\\_the\\_crown\\_at\\_war\\_with\\_us/](https://www.nfb.ca/film/is_the_crown_at_war_with_us/)

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<sup>12</sup> Read more: [https://indigenousfoundations.arts.ubc.ca/the\\_white\\_paper\\_1969/](https://indigenousfoundations.arts.ubc.ca/the_white_paper_1969/)

<sup>13</sup> Watch Stephen Augustine discuss the White Paper Policy: <https://www.youtube.com/watch?v=vSEhtZiYOBk>

<sup>14</sup> Read more: <https://www.thecanadianencyclopedia.ca/en/article/constitution-act-1982>

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## Duty to consult

- Haida Nation is not a treaty case but the SCC established a Crown duty to consult with Indigenous people where there is potential for adverse impacts on lands or resources subject to an Indigenous claim.
- The duty to consult is grounded in the principle of the honour of the Crown.
- This duty rests with the Crown and not development proponents.
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- This duty rests with the Crown and not development proponents.

## Many legal cases set precedent to affirm Indigenous Rights<sup>15</sup>:

- White and Bob (1965)
  - Case: <https://www.canlii.org/en/bc/bcca/doc/1964/1964canlii452/1964canlii452.html>
  - Read more: <https://www.canadianlawyermag.com/news/general/the-first-nations-connection/267212>
- Calder (1973)
  - Case: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5113/index.do>
  - Read more: [https://indigenousfoundations.arts.ubc.ca/calder\\_case/](https://indigenousfoundations.arts.ubc.ca/calder_case/)
- Simon (1985)
  - Case: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/93/index.do>
  - Read more: <https://www.cbc.ca/news/indigenous/obituary-james-simon-mi-kmaq-treaty-rights-1.4909667>
- Sparrow (1990)
  - Case: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/609/index.do>
  - Read more: [https://indigenousfoundations.arts.ubc.ca/sparrow\\_case/](https://indigenousfoundations.arts.ubc.ca/sparrow_case/)
- Badger (1996)
  - Case: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1366/index.do>
- Marshall (1999)
  - Case: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1739/index.do>
  - Read more: <https://www.dfo-mpo.gc.ca/publications/fisheries-peches/marshall-1999-eng.html>
  - APTN series on the Donald Marshall case: <https://www.aptnnews.ca/investigates/20-years-ago-the-supreme-court-ruled-on-mikmaq-fishing-rights-so-what-has-changed/>
- Marshall and Bernard Cases (2005)
  - Case: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2276/index.do>

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<sup>15</sup> For a full list of Indigenous cases brought to the Supreme Court, see: <https://www.lib.sfu.ca/help/research-assistance/subject/criminology/legal-information/indigenous-scc-cases>

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- Haida Nation (2004)
  - Case: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2189/index.do>
- Mikisew Cree Nation (2005)
  - Case: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2251/index.do>
  - Read more: <https://www.nortonrosefulbright.com/en-ca/knowledge/publications/24b304a6/case-summary-mikisew-cree-first-nation-v-canada-governor-general-in-council>



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