

“MADE-IN-NOVA SCOTIA PROCESS”

**MI'KMAQ – NOVA SCOTIA – CANADA
FRAMEWORK AGREEMENT**

BETWEEN:

The **MI'KMAQ OF NOVA SCOTIA** as represented by the Thirteen Mi'kmaq Saqmaq
("the Mi'kmaq of Nova Scotia")

– and –

HER MAJESTY THE QUEEN IN RIGHT OF NOVA SCOTIA as represented by the
Minister of Aboriginal Affairs
("Nova Scotia")

– and –

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Minister of
Indian Affairs and Northern Development
("Canada")

Collectively referred to as "the Parties"

WHEREAS the Parties entered into an Umbrella Agreement on June 7, 2002 in which they recognized there are outstanding constitutional rights issues amongst them, including the inherent right to self-government, Aboriginal rights, including assertions of title, and treaty issues;

WHEREAS the Parties agreed in the Umbrella Agreement to negotiate issues of definition, recognition and implementation of the constitutionally protected rights of the Mi'kmaq of Nova Scotia;

WHEREAS the Parties reaffirm their agreement under Article 7 of the Umbrella Agreement that they will take into account the unique circumstances of the Mi'kmaq of Nova Scotia when developing their mandates and that their positions may differ from Canada's Comprehensive Land Claims Policy;

WHEREAS the Mi'kmaq of Nova Scotia, being "Indians" within the meaning of section 35 of the *Constitution Act, 1982*, are Aboriginal people;

WHEREAS the Mi'kmaq of Nova Scotia include all persons who are members of the thirteen (13) Mi'kmaq First Nations (Bands) in Nova Scotia whether they reside on or off reserve and other persons of Mi'kmaq heritage who are beneficiaries of Mi'kmaq rights and title applicable in Nova Scotia;

WHEREAS section 35 of the *Constitution Act, 1982* protects the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada;

WHEREAS the Supreme Court of Canada in *R. v. Marshall (D.J.)* has recognized the existence of certain Mi'kmaq harvesting and trading rights pursuant to the Treaties of 1760-61;

WHEREAS the Nova Scotia Court of Appeal in *R. v. Denny, Paul and Sylliboy* has recognized the existence of certain Mi'kmaq Aboriginal rights;

WHEREAS Canada and Nova Scotia recognize that the Mi'kmaq of Nova Scotia have rights protected under section 35 of the Constitution Act, 1982;

WHEREAS the Parties may have differing views with respect to the legal status and effect of specific Mi'kmaq Treaties and the existence, scope, extent and beneficiaries of Mi'kmaq rights and title, and the Parties wish to work together to resolve these issues and settle outstanding claims through negotiation rather than litigation;

WHEREAS recent court decisions such as *Delgamuukw* and *Marshall* have highlighted the importance of settling claims of Aboriginal and treaty rights through negotiations;

WHEREAS the Parties wish to enter into these negotiations in a manner and spirit that respects and upholds the significance of the Mi'kmaq Treaties and the continuing treaty relationship of the Parties; and

WHEREAS the Parties wish to agree upon provisions that will set out their rights and responsibilities and will reconcile the constitutionally protected rights and interests of the Mi'kmaq people with the rights and interests of the people of Nova Scotia;

NOW THEREFORE, the Parties agree as follows:

DEFINITIONS

1. In this Framework Agreement,

"Lead Negotiator" means the person designated by each Party as the Chief or Lead Negotiator;

"Mi'kmaq Treaties" means the treaties between the ancestors of the Mi'kmaq of Nova Scotia and the British Crown, including those signed in 1725-26, 1749, 1752, and 1760-61;

"Parties" means the Mi'kmaq of Nova Scotia, Nova Scotia and Canada, and "Party" means any of the three (3) Parties as the context requires; and

"Umbrella Agreement" means the Mi'kmaq – Nova Scotia – Canada Umbrella Agreement made the 7th day of June, 2002.

GENERAL

2. The recitals shall form part of this Framework Agreement.
3. In this Framework Agreement, references to Mi'kmaq Aboriginal rights, including Aboriginal title, and treaty rights are in respect of the Mi'kmaq of Nova Scotia, and may be referred to as "Mi'kmaq rights and title".
4. The negotiations pursuant to this Framework Agreement are not intended as a re-negotiation of the Mi'kmaq Treaties, nor as a process leading to their extinguishment.
5. The negotiations pursuant to this Framework Agreement are in respect to the geographic area within the jurisdiction of Canada or Nova Scotia and not within the jurisdiction of another province, and are without prejudice to any rights the Mi'kmaq of Nova Scotia may have outside of that geographic area.
6. The Parties intend to conduct their negotiations as expeditiously as possible and on a without prejudice basis, as more particularly set out in this Framework Agreement.
7. The Parties agree that appropriate interim, or incremental, measures or agreements may be necessary to demonstrate tangible progress and to advance negotiations.
8. The Parties acknowledge that the Mi'kmaq do not intend to agree to a Mi'kmaq of Nova Scotia Accord that does not implement to their satisfaction their view of Mi'kmaq rights and title.

PURPOSE OF THIS FRAMEWORK AGREEMENT

9. This Framework Agreement is intended to promote efficient, effective, orderly and timely negotiations towards a resolution of issues respecting Mi'kmaq rights and title. To that end, this Framework Agreement establishes:
 - a. objectives for the negotiations;
 - b. subject matters that are to be included in negotiations;

- c. process parameters such as interim, or incremental, measures or agreements, approvals, the negotiation process, funding, termination and amendment; and
- d. other conditions that will foster a helpful environment for negotiations.

OBJECTIVES OF NEGOTIATIONS

- 10. The objectives of negotiations are to create stable and respectful relationships and to reconcile the respective rights and interests of the Parties through a Mi'kmaq of Nova Scotia Accord that sets out the manner in which the Mi'kmaq of Nova Scotia will exercise constitutionally protected rights respecting land, resources and governance, to the extent the issues are dealt with in that Accord.

SUBJECT MATTERS FOR NEGOTIATION

- 11. In order to achieve the objectives of negotiations under Article 10, the Parties shall address the following subject matters:
 - a. Mi'kmaq governance, including government institutions, membership, law making authority and delivery of programs and services;
 - b. Eligibility and enrollment of beneficiaries;
 - c. Inter-governmental relations;
 - d. Land and water;
 - e. Natural resources, both renewable and non-renewable;
 - f. Parks and protected areas, including marine protected areas;
 - g. Sacred sites and archaeological resources;
 - h. Environmental assessment and protection;
 - i. Health, education, housing and social services;
 - j. Mi'kmaq language and culture;
 - k. Resolution of claims for past infringement of Mi'kmaq rights and title;
 - l. Capital transfer (money);
 - m. Other financial arrangements including transfers of capital assets and funding arrangements for implementation and governance;
 - n. Taxation;
 - o. Economic measures;
 - p. Consultation;
 - q. Transboundary claims of the Mi'kmaq and other Aboriginal groups;
 - r. Approval and ratification;
 - s. Implementation;
 - t. Dispute resolution;
 - u. Amendment; and

- v. The constitutional status of the various provisions in the Mi'kmaq of Nova Scotia Accord.
- 12. The Parties understand that each of the subject matters listed in Article 11 contain a broad range of topics. Each of the Parties may raise those topics for negotiation, as well as other subject matters required to meet the objective of negotiations under Article 10.
- 13. This Framework Agreement does not constitute a commitment by any Party to reach agreement or to provide benefits in respect of any particular subject matter listed in Article 11, or in respect of any interim, or incremental, measures or agreements in Articles 14-17.

INTERIM, OR INCREMENTAL, MEASURES OR AGREEMENTS

- 14. The Parties shall give priority to negotiating interim, or incremental, measures or agreements with respect to:
 - a. Mi'kmaq access to and management responsibilities regarding land and natural resources;
 - b. Crown land alienation and natural resource development; and
 - c. Identification and protection of Mi'kmaq sacred and archaeological sites.
- 15. The Parties may consider interim, or incremental, measures or agreements with respect to governance and other matters referred to in Article 11.
- 16. These interim, or incremental, measures or agreements should advance rather than delay completion of the Mi'kmaq of Nova Scotia Accord.
- 17. Interim, or incremental, measures or agreements shall be sufficiently detailed and clear to allow for their successful implementation.

APPROVAL PROCESS

Initialing Process

- 18. To signify that negotiations with respect to a subject matter, including interim, or incremental, measures or agreements, are substantially complete, the Lead Negotiators shall initial the provisions.

19. The Mi'kmaq Lead Negotiator will not initial provisions until instructed to do so by the Assembly of Nova Scotia Mi'kmaq Chiefs.
20. The initialed provisions may be reconsidered and amended and, if amendments are agreed upon, the process in Articles 18-19 will apply to the amended provisions.

Approval of the Mi'kmaq of Nova Scotia Memorandum of Understanding

21. Once all the provisions have been initialed, the Lead Negotiators may review and organize the package into a Mi'kmaq of Nova Scotia Memorandum of Understanding for legal and technical review and possible amendments.
22. When the process in Article 21 is complete, the Lead Negotiators will initial the Mi'kmaq of Nova Scotia Memorandum of Understanding. They shall submit it to their respective Parties and recommend its acceptance by them.
23. The Mi'kmaq of Nova Scotia Memorandum of Understanding will be complete once it has been accepted and signed by the Parties.

Approval of the Mi'kmaq of Nova Scotia Accord

24. The Mi'kmaq of Nova Scotia Accord will be complete once it has been ratified by the Parties in the manner set out in the Mi'kmaq of Nova Scotia Accord.

SCHEDULING AND TIMING

25. The Parties acknowledge that it is desirable that the negotiations proceed at a pace which allows the Mi'kmaq of Nova Scotia to inform fully the Mi'kmaq people, and particularly the Elders, in order to build a consensus. To this end, while the Parties agree that the negotiations should proceed as expeditiously as possible, they also agree that the negotiations may proceed in stages toward agreement including interim, or incremental, measures or agreements.
26. The Parties will use their best efforts to reach a Mi'kmaq of Nova Scotia Memorandum of Understanding with respect to the subjects listed in Article 11 within six (6) years from the date of execution of this Framework Agreement.
27. Upon approval of the Mi'kmaq of Nova Scotia Memorandum of Understanding, the Parties will negotiate towards a Mi'kmaq of Nova Scotia Accord based upon the Mi'kmaq of Nova Scotia Memorandum of Understanding. This may include additional interim, or incremental, measures or agreements.

28. The Parties will use their best efforts to reach a Mi'kmaq of Nova Scotia Accord within three (3) years from the signing of the Mi'kmaq of Nova Scotia Memorandum of Understanding.
29. A schedule will be prepared for the negotiation of the subject matters in Article 11.
30. The Lead Negotiators will jointly review, prior to the fourth anniversary of the signing of the Framework Agreement, the progress of negotiations against the objectives set out in the Framework Agreement. The Lead Negotiators will, based on the joint review, make recommendations to their principals regarding the continuation of negotiations.

STATUS AND INTERPRETATION OF THE AGREEMENT

31. Except for Articles 31-34, 37-39, 50 and 59-62, this Framework Agreement is not legally binding and is intended as an expression of goodwill and as a political commitment to enter into discussions. This Framework Agreement and all negotiations pursuant to it are not intended to recognize, deny, create, define, alter or affect Mi'kmaq Aboriginal rights, including Aboriginal title, treaty rights or other legal rights, or to be construed as an interpretative aid in the determination of any such legal right, except as may otherwise be set out in the Mi'kmaq of Nova Scotia Accord or any interim, or incremental, measures or agreements.
32. This Framework Agreement and any negotiations pursuant to it are not required, are not intended and shall not be construed so as to discharge, in whole or in part, any fiduciary obligation owed by Canada and Nova Scotia to the Mi'kmaq of Nova Scotia, except as may otherwise be set out in the Mi'kmaq of Nova Scotia Accord or any interim, or incremental, measures or agreements.
33. Whether or not disclosed to Mi'kmaq communities, stakeholders or the public:
 - a. this Framework Agreement;
 - b. all negotiations pursuant to it;
 - c. all records, information or communications that disclose the content of negotiations, proposals or positions of the Parties; and
 - d. the fact that any records were used in the negotiations;

shall be:

- i) without prejudice to Mi'kmaq Aboriginal rights, including Aboriginal title, and treaty rights and the legal rights of, and positions taken by, any of the Parties in any legal proceeding, and shall not be construed as admissions of fact or liability;
 - ii) deemed not to recognize, deny, create, define, alter or affect Mi'kmaq Aboriginal rights, including Aboriginal title, and treaty rights and the legal rights or positions of any of the Parties; and
 - iii) construed not to be, and deemed not to be, consultation for the purpose of justification by Canada or Nova Scotia for the infringement of any Mi'kmaq Aboriginal right, including Aboriginal title, or treaty right.
34. Except for the purpose of enforcing Articles 31-34, 37-39, 50 and 59-62 of this Framework Agreement, the Parties undertake not to seek admission of, or voluntarily tender, evidence respecting any of the matters listed in Article 33 in a court of law or in any administrative, adjudicative or regulatory tribunal or board, and such matters shall be deemed to be privileged.
35. The use or attempted use by a Party, including any agency, representative or branch of a Party, in any court or other adjudicative forum, whether administrative, civil, prosecutorial or regulatory, of any of the matters listed in Article 33 will be deemed to justify termination of negotiations at the option of any other Party.
36. The Parties will cooperate to oppose the use or attempted use by anyone not a Party, in any court or other adjudicative forum, whether administrative, civil, prosecutorial or regulatory, of any of the matters listed in Article 33. The refusal of any Party to cooperate shall be deemed to justify termination of negotiations at the option of any other Party.
37. The benefit of Articles 31-39, 50 and 59-62 shall accrue to, and the undertakings of the Parties shall apply in respect of, all thirteen (13) Mi'kmaq First Nations (Bands) in Nova Scotia, their governing Chiefs and Councils and their members, the Assembly of Nova Scotia Mi'kmaq Chiefs, The Confederacy of Mainland Mi'kmaq, the Union of Nova Scotia Indians, Nova Scotia and Canada.

38. The Parties may agree that an interim, or incremental, measure or agreement is intended to address certain Mi'kmaq Aboriginal rights, including Aboriginal title, or treaty rights on a temporary basis, in which case Articles 31-34, 37 and 50 of this Framework Agreement shall apply except to the extent set out by the Parties in the interim, or incremental, measure or agreement.
39. In accordance with Articles 7 and 10 of the Umbrella Agreement, the Framework Agreement, during its operation, stands as an independent arrangement, governs the negotiation process to which it pertains and, for greater certainty, sets out all of the provisions which will apply with respect to issues of without prejudice, confidentiality and public information.

OPENNESS AND PUBLIC AWARENESS

40. To realize the purpose and objectives described in Articles 9 and 10, there is a need to balance the following considerations:
 - a. protecting the without prejudice nature of the negotiations;
 - b. maintaining confidentiality;
 - c. informing and involving the public;
 - d. informing and involving stakeholders; and
 - e. the need of the Mi'kmaq of Nova Scotia to build consensus regarding matters that affect the constitutional rights of the Mi'kmaq.
41. Unless the Lead Negotiators otherwise agree in writing or unless required by law, a Party shall not disclose the following information with respect to the negotiations pursuant to this Framework Agreement:
 - a. the content of meetings or discussions among or between any of the Parties;
 - b. any other Party's views, positions, proposals and draft provisions; or
 - c. information marked as confidential and received in confidence by the Parties.
42. The Parties acknowledge that the public should be well informed regarding the general status, objectives and progress of the negotiations.
43. The Parties will seek agreement on a program of public information and will attend meetings with and provide general information to such individuals, groups or organizations as they may jointly agree will assist in the process of building public awareness.

44. Whether or not agreement pursuant to Article 43 has been sought or obtained, each Party may inform the public of its interests, objectives and views of the general status and progress of the negotiations.
45. Subject to Article 41, the Parties may carry out, separately or in combination, such additional private, confidential communications with stakeholders as they see fit to obtain a broad range of input and build knowledge and understanding and develop workable solutions. In such private communications, a Party may provide more detailed information on the matters being negotiated, including its own views, own positions, own draft provisions and own proposals on specific topics, subject to the recipient agreeing to hold the information in confidence.
46. Notwithstanding Article 41, a Party may disclose to stakeholders draft provisions that the Lead Negotiators have confirmed in writing are appropriate for their review, or are tentatively agreed upon pending stakeholder discussions. This disclosure is subject to the recipient agreeing to hold the draft provisions in confidence. The Party shall give notice to the other Parties of their intention to disclose draft provisions to stakeholders.
47. The Parties acknowledge the enhanced need of the Mi'kmaq of Nova Scotia to communicate with their communities, members and other persons of Mi'kmaq heritage in order to build consensus regarding those matters that affect the constitutional rights of the Mi'kmaq. Notwithstanding Article 41, the Mi'kmaq Lead and Associate Negotiators may disclose and discuss with those communities and individuals draft provisions that the Lead Negotiators have confirmed in writing are appropriate for discussions with Mi'kmaq communities or are tentatively agreed to by the Lead Negotiators, and positions and proposals that have been confirmed in writing as formal by the proposing Party. The Mi'kmaq of Nova Scotia shall give notice to the other Parties of their intention to disclose draft provisions and formal positions to their communities, members and other persons of Mi'kmaq heritage. All such communications are intended to be confidential and internal to the Mi'kmaq of Nova Scotia.
48. Subject matter agreements, including interim, or incremental, measures or agreements, that are initialed by the Lead Negotiators shall be made public.
49. The Mi'kmaq of Nova Scotia Memorandum of Understanding and the Accord that are initialed by Lead Negotiators shall be made public before they are submitted for approval and ratification.

50. The disclosure of information, confidential or otherwise, with or without consent, to the public, the media, stakeholders, members of the 13 Nova Scotia Mi'kmaq communities and other persons of Mi'kmaq heritage, or anyone not a Party to this Framework Agreement, is not intended to be, and shall be deemed and construed not to be:
- a. a waiver of Articles 31-39 of this Framework Agreement; nor,
 - b. acquiescence by a Party to the disclosure of information unless that Party explicitly consents and any such consent shall not be deemed nor construed to be consent to any further disclosure of the information.

THE NEGOTIATIONS PROCESS

51. The negotiations will take place amongst the Parties in good faith, in a manner open and transparent to each other, with the frank discussion of interests and joint analysis of problems.
52. The Lead Negotiators may establish and direct ad hoc working groups to research, report and provide recommendations on specific issues or concerns as they deem fit. Any such working groups will report to the main negotiation table.
53. Unless otherwise agreed to by the Lead Negotiators, the negotiating sessions will take place in Nova Scotia.
54. Unless otherwise agreed to by the Lead Negotiators, the negotiating sessions will not be formally chaired.
55. Unless otherwise agreed to by the Lead Negotiators, no tripartite minutes, audiotapes or video recordings shall be kept.

FUNDING

56. Canada and Nova Scotia will jointly determine how to fund the costs associated with the negotiation of, benefits under and implementation of agreements reached pursuant to the Framework Agreement.
57. Certain contribution funding will be provided to the Mi'kmaq of Nova Scotia in order to assist their participation in the process. Such funding will be provided based on consideration of the annual work plan of the Mi'kmaq of Nova Scotia. Government shall determine the level of contribution funding to be provided to the Mi'kmaq of Nova Scotia.

58. The position of the Mi'kmaq of Nova Scotia is that they will not accept loan funding to finance the costs of their participation in negotiations pursuant to this Framework Agreement or any Mi'kmaq of Nova Scotia Memorandum of Understanding.

TERMINATION OR WITHDRAWAL

59. This Framework Agreement shall come into force and effect on the date of its signature and shall continue in force and effect unless terminated by one or more of the Parties upon six months written notice to the other Parties hereto.
60. Any of the thirteen (13) Mi'kmaq First Nations (Bands) may by Band Council Resolution withdraw from this Framework Agreement and all negotiations pursuant to it.
61. Notwithstanding Articles 50, 59 and 60, the agreements, understandings, undertakings and commitments set out in Articles 31-39 shall continue in effect unless the Parties otherwise agree in writing.
62. If one or more Mi'kmaq First Nations (Bands) decides to withdraw from the Framework Agreement pursuant to Article 60, this agreement shall not automatically terminate. Canada, Nova Scotia and the Mi'kmaq of Nova Scotia shall individually consider whether or not to continue negotiations or to terminate the Framework Agreement pursuant to Article 59.

AMENDMENT

63. This Framework Agreement may be amended with the written consent of the Parties.

Concluded at: Memberton, the 23rd day of February, 2007

FOR THE MI'KMAQ OF NOVA SCOTIA

Mosta B
Witness

June 28/06
Date

Chief Robinson
Chief of Acadia Band

~~J. B. Marshall~~
Witness

~~June 27 2006~~
Date

~~Chief [unclear]~~
Chief of Annapolis Valley Band

Viola Robinson
Witness

June 23 /06
Date

[unclear]
Chief of Bear River Band

Viola Robinson
Witness

Sept 21/06
Date

CH N A M A
Chief of Chapel Island First Nation
(Potlotek)

Tuma Young
Witness

Oct 4/06
Date
Proxy for

Herald Jean
Chief of Eskasoni Band

Viola Robinson
Witness

Oct 13 /06
Date

Chief [unclear]
Chief of Glooscap First Nation

Eric A. Gledits
Witness

June 16/06
Date

Chief Tenon J. Paul
Chief of Memberton Band

Prue H. Wildsmith
Witness

June 16/06
Date

Chief Lawrence Paul
Chief of Millbrook Band

Witness

SEPT 21/06
Date

Chief David Jr.
Chief of Paqtnkek First Nation

Eric A. Gledits
Witness

Sept. 21/06
Date

Chief An Francis Muse
Chief of Pictou Landing Band

Witness

Date

Chief of Shubenacadie Band
(Indian Brook)

Bruce H. Wildsmith
Witness

Sept. 21/06
Date

Chief Rusta Week
Chief of Wagmatcook Band

Bruce H. Wildsmith
Witness

Sept. 21/06
Date

Chief Alex Bell
Chief of Waycobah First Nation
(We'koqma'q)

Killester Andrew Day
Witness

Feb. 23/07
Date

Grand Chief Inuk Silety
Grand Chief of Mi'kmaq Grand Council
(Kji Saqmaq)

"AS A WITNESS ONLY"

"AS A WITNESS ONLY"

FOR THE PROVINCE OF NOVA SCOTIA

Judith S. Gray
Witness

Michael R. Leves
Minister of Aboriginal Affairs

FOR THE GOVERNMENT OF CANADA

[Signature]
Witness

[Signature]
Minister of Indian Affairs and Northern Development