

Presentation to the Mi'kmaq –
Nova Scotia – Canada Tripartite
Forum

“The Tripartite Forum and the Made-
In-Nova Scotia Process”

June 10, 2004

The Tripartite Forum

“How did it come into Existence?”

- Recommended by the “1989 Royal Commission into the Wrongful Imprisonment of Donald Marshall Jr.”
 - Rec. #22: :A Tripartite Forum...be established to mediate & resolve outstanding issues between the Micmac and gov’t., including native justice issues.”

The Tripartite Forum

“How did it come into Existence?”

- 13 Chiefs & N.C.N.S. signed Tripartite M.O.U. in 1993.
- Process broke down in 1995 over representation issues.

Tripartite M.O.U. & Addendum

- New Tripartite M.O.U. developed & signed in 1997.
 - 13 Chiefs represented all of their registered band members.
- “Without Prejudice” Addendum to M.O.U. signed in 1998
 - Ensured Tripartite Process meetings and discussions not used for “consultation”

Tripartite Report & Recommendations

- Parties reviewed Tripartite Process to identify it's successes and failures.
- Why?
 - Ongoing discussions between parties regarding Aboriginal Title & Mi'kmaq Rights.
 - Issues of rights & jurisdictional issues raised at the working committee level hindering progress on joint initiative discussions not rights based.

Tripartite Report & Recommendations

- Why? (cont'd)
 - Needed to ensure both Tripartite Process and Rights discussion tables had a clear and consistent mandate.
- Executive Committee accepted Report & Recommendations on June 7, 2002

Tripartite Report & Recommendations Highlights

- Committee structures changed
 - Natural Resources, Treaty & Self Government committees eliminated, as these issues were being discussed at Mi'kmaq Rights table
- Central Tripartite Secretariat created for working committee administrative support.

Tripartite Report & Recommendations Highlights

- Each working committee provided an annual budget for operation.
- Final working committee structure
 - Culture & Heritage
 - Economic Development
 - Education
 - Health
 - Justice
 - Social
 - Sports & Recreation

Tripartite Structure & Decision Making Process

- Working committees meet at least 2 times per year
- Tripartite Officials Committee meets at least 3 times per year
 - 13 Chiefs, Provincial & Federal Officials
 - Working committees report to Officials
- Executive Committee meets at least once per year
 - Makes decisions regarding significant Tripartite issues.

What is the “Made-In-Nova Scotia Process”?

- A negotiation table between Canada, Nova Scotia and the Mi’kmaq of Nova Scotia
- The purpose is to discuss:
 - Aboriginal Rights (including Title)
 - Treaty Rights

Why was this Process Developed?

- Attempt to implement our rights by negotiation rather than by litigation
- Courts are recommending negotiation
- Opportunity for our rights to be recognized & implemented by Canada and Nova Scotia

Background

- Negotiated Umbrella MOU (April to September, 2001)
- Conducted ratification process of MOU with Chiefs & Councils (October 2001 to February, 2002)
- Bands submitted BCRs of support
- Umbrella MOU signed on June 7, 2002

Background of the “Made-in-Nova Scotia Process”

- Sometimes called the “Malloy Process” or the long term “Marshall Process”
- First proposed in 1998 with the support of M&NP & SOEI
- Gained support as a result of the 1999 Marshall case
- Minister Nault, Minister Baker & 13 Chiefs agreed to process on January 10, 2001

What are some of the Issues?

- Court Cases:
 - Marshall Fishing Case
 - Logging Cases
 - Indian Brook Fishing Cases
 - Crown Lands Easement Case
 - Taxation Cases

What are some of the Issues?

- Negotiations:
 - Made in Nova Scotia Process
 - Fuel Tax Exemption System
 - Natural Gas Companies
 - » Maritimes & Northeast Pipelines
 - » Sable Offshore Energy Inc.
 - » Encana Deep Panuke Project

What are some of the Other Issues?

- Beneficiaries Project with CMM & TARR
- Historical Research for Court Cases
- Development of the Assembly of Nova Scotia Mi'kmaq Chiefs
- Organized two NS Chief and Councillors Conferences in 2001
- Organize Assembly of Chiefs Meetings

Who is involved in this Process?

- Canada: Indian & Northern Affairs Canada
- Nova Scotia: Office of Aboriginal Affairs
- Mi'kmaq: Assembly of Nova Scotia
Mi'kmaw Chiefs
Supported by the CMM &
the UNSI Technical Team

What is the Technical Team?

- A Technical Advisory Committee
- Formed by the Assembly in 1998 to advise on lands, rights & resource issues
- Funded by Negotiation Preparedness Initiative
- Meets on a monthly basis
- Operates pursuant to Terms of Reference and is under direction of the Assembly of Chiefs
- Members chosen based on expertise

Who is on the Technical Team?

- Dan Christmas - Chair
- Joe B. Marshall
- Don Julien
- Bruce Wildsmith
- Eric Zschiele
- Alex Denny
- Viola Robinson
- Rosalie Francis
- Bernd Christmas
- Doug Brown
- Trevor Bernard
- Jim Michael

Made in N.S. Process

Current Snapshot

- Offices located in Halifax
- Current Staff
 - Lead Negotiator: Bruce Wildsmith
 - Associate Negotiator: Eric Zscheile
 - Director of Research: Rosalie Francis
 - Administrative Manager: Debbie Paul
- Currently in discussions on a framework agreement, which would identify issues to be negotiated in the future

Made in N.S. Process

Future Steps

- Mi'kmaq community & leadership issues to be negotiated.
- Currently hiring a Sr. Advisor to develop community dialogue process and a beneficiaries strategy
- Developing further research on issues to be discussed at negotiations table
 - Lands, waters & resources
 - Governance issues, including Beneficiaries.

Tripartite Forum & Made in N.S. Process Linkages

- Negotiation process will require various types of support for discussions on specific issues.
- Working committees have the knowledgeable experts at the table and all parties represented.

Tripartite Forum & Made in N.S. Process Linkages

- Negotiation process may want to utilize the expertise at the Tripartite Working committees to develop further details on specific issues.
 - i.e. developing an implementation plan for interim measures to be put in place.
- Utilize expertise and capacity of the Tripartite Forum without hindrance of rights issues and roadblocks.