

Ila'matulti'k

("We Reconcile")

MI'KMAQ – PRINCE EDWARD ISLAND – CANADA FRAMEWORK AGREEMENT



BETWEEN:

The MI'KMAQ OF PRINCE EDWARD ISLAND as represented by the two Mi'kmaq Governments (Chiefs and Band Councillors of the Lennox Island and Abegweit First Nations (Bands), respectively)

(the "Mi'kmaq")

-and-

HER MAJESTY THE QUEEN IN RIGHT OF PRINCE EDWARD ISLAND as represented by the Minister responsible for Aboriginal Affairs

("Prince Edward Island")

-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 recognize there are outstanding constitutional rights issues amongst them, including the inherent right to self-government, Aboriginal rights, including assertions of title, and treaty issues;

AND WHEREAS the Parties wish to negotiate the issues of definition, recognition and implementation of the constitutionally protected rights of the Mi'kmaq;

AND WHEREAS the Parties agree that they will take into account the unique circumstances of the Mi'kmaq when developing their mandates and that their positions may differ from Canada's Comprehensive Land Claims Policy;

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

AND WHEREAS the Mi'kmaq include all persons who are members of the two (2) Mi'kmaq First Nations (Bands) in Prince Edward Island, being the Lennox Island and Abegweit First Nations (Bands), 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 Prince Edward Island;

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

AND 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;

AND WHEREAS Canada and Prince Edward Island recognize that the Mi'kmaq have rights protected under section 35 of the *Constitution Act, 1982*;

AND 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;

AND WHEREAS court decisions such as *Haida*, *Delgamuukw* and *Marshall* have highlighted the importance of setting claims of Aboriginal and treaty rights through negotiations;

AND 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 of 1725-26, 1749, 1752, and 1760-61, and the continuing treaty relationship of the Parties; and,

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 interest of the people of Prince Edward Island;

NOW THEREFORE, the Parties agree as follows:

DEFINITIONS

1. In this Framework Agreement:

"Accord" means the final agreement among the Parties, which, subject to Article 4, shall be negotiated with a view to seeking constitutional protection pursuant to sections 25 and 35 of the *Constitution Act, 1982*, and which shall be based in form on the Agreement in Principle; and,

"Agreement in Principle" means a legally non-binding agreement preliminary to the Accord and which will address, in some degree of detail, the full range of issues to be covered by the Accord.

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, 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 or as a process leading to their extinguishment.
5. The negotiations pursuant to this Framework Agreement are in respect of the geographic area within the jurisdictions of Canada or Prince Edward Island and not within the jurisdiction of another province, and are without prejudice to any rights the Mi'kmaq 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 pursuing appropriate interim, or incremental, measures or agreements in advance of finalizing the Agreement in Principle is a priority and is intended to demonstrate tangible progress and advance negotiations of the Agreement in Principle and the Accord.
8. The Mi'kmaq position is that they do not intend to enter into the Accord if it does not implement, to their satisfaction, their view of Mi'kmaq rights and title.

OBJECTIVES OF NEGOTIATIONS

9. The objectives of negotiations are to create stable and respectful relationships and to reconcile the respective rights and interests of the Parties through an Accord that sets out the manner in which the Mi'kmaq will exercise constitutionally protected rights respecting land, resources and governance, to the extent the issues are dealt with in that Accord.
10. The objectives of the negotiations are 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 process parameters such as interim or incremental measures or agreements, approvals, the negotiation process, funding, termination and amendment.
11. Once the Framework Agreement is finalized, the Parties intend to begin negotiating the interim and incremental measures and agreements set out in Article 15, and in parallel, conduct Agreement-in-Principle negotiations towards finalizing an Accord.

SUBJECT MATTERS FOR NEGOTIATION

12. In order to achieve the objectives of negotiations under Articles 9, 10, and 11, the Parties intend to 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 and ceremonial sites, artefacts and archaeological resources;
 - h. Environmental assessment and protection;
 - i. Health, education, housing and social services;
 - j. Mi'kmaq heritage, language and culture;
 - k. Resolution of claims for past infringement of Mi'kmaq rights and title;
 - l. Capital transfers;
 - m. Other financial arrangements including transfers of capital assets and funding arrangements for implementation and governance;
 - n. Taxation;
 - o. Economic measures;
 - p. Consultation;
 - q. Approval and ratification;
 - r. Implementation;
 - s. Dispute resolution;
 - t. Amendment;
 - u. Fisheries;
 - v. Law enforcement and policing; and,
 - w. Resource revenue-sharing and other yet to be determined revenue sources.
13. The Parties understand that each of the subject matters listed in Article 12 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 objectives of negotiations under Articles 9, 10, and 11.
14. This Framework Agreement does not constitute a commitment by any Party to reach an agreement or to provide benefits in respect of any particular subject matter listed in Article 12, or in respect of any interim or incremental measures or agreements in Articles 15 or 16.

INTERIM, OR INCREMENTAL, MEASURES OR AGREEMENTS

15. The Parties shall seek to negotiate interim or incremental measures or agreements, giving priority to, but in no particular order:
 - a. economic development;
 - b. lands and resources, including management and possibly co-management, and processes regarding Crown land disposal;
 - c. identification and protection of Mi'kmaq sacred, ceremonial and archaeological sites as to be defined in the interim or incremental measure or agreement; and,
 - d. improving existing consultation processes.
16. The Parties may consider other interim or incremental measures, or agreements with respect to matters referred to in Article 12, upon mutual agreement.
17. These interim or incremental measures or agreements should advance rather than delay completion of the Accord.
18. Interim or incremental measures or agreements shall be sufficiently detailed and clear to allow for their successful implementation.
19. Negotiations for, and participation in, incremental measures or agreements identified in Articles 15 and 16 may occur bilaterally or trilaterally, as appropriate.

SCHEDULING AND TIMING

20. The Parties acknowledge that it is desirable that the negotiations proceed at a pace which allows the Mi'kmaq to inform fully the Mi'kmaq people in order to build a consensus.
21. While the Parties agree that the negotiations should proceed as expeditiously as reasonably possible having consideration to the disparity of available resources and capacity among the Parties, the Parties also agree that the negotiations may proceed in stages including interim or incremental measures or agreements.
22. Following the signing of this Framework Agreement, the Parties will determine the schedule and timing to negotiate any subsequent agreements, including interim measures and the prioritization thereof. Through an annual work plan, the Parties will determine the schedule of subject matters for negotiation, being those set out in Article 12.

STATUS AND INTERPRETATION OF THE AGREEMENT

23. Except for articles 23-28, 31, and 42-47, this Framework Agreement and the work undertaken pursuant to this Framework Agreement do not create any legal obligations which are binding on the Parties unless otherwise agreed to in writing by the Parties.
24. This Agreement is not a treaty within the meaning of section 25 and 35 of the *Constitution Act*, 1982.
25. Unless otherwise provided in subsequent agreements, this Framework Agreement and the work undertaken pursuant to this Framework Agreement shall:
 - a. be on a "without prejudice" basis with respect to the legal rights and positions of the Parties, including with respect to the Aboriginal and treaty rights of the Mi'kmaq; and the assertion of Aboriginal title by the Mi'kmaq;
 - b. be deemed not to deny, create, define, alter or affect the legal rights or positions of the Parties, including the Aboriginal and treaty rights of the Mi'kmaq;
 - c. not be construed to be, or deemed to be, consultation for the purpose of justification by Canada or Prince Edward Island for the infringement of any Aboriginal or treaty rights of the Mi'kmaq; and,
 - d. not preclude any other discussion or initiative between:
 - i) the Mi'kmaq, or individual Mi'kmaq First Nation and Prince Edward Island on matters of mutual concern, or
 - ii) the Mi'kmaq, or individual Mi'kmaq First Nation and Canada on matters of mutual concern.
26. Except for the purpose of enforcing 23-28, 31, and 42-47, of this Framework Agreement or unless otherwise agreed to in writing, the Parties agree not to tender or seek admission of the content of negotiations, in a court of law or in any other legal proceeding.
27. Notwithstanding any other provision of this Framework Agreement, any Party may refer to publicly and may lead evidence regarding the Parties, effective date, existence and purpose of this Framework Agreement and the frequency and participants in meetings held pursuant to this Framework Agreement before a court of law or in any other legal proceeding.
28. The Parties will cooperate to oppose the use or attempted use of this Framework Agreement or any discussions pursuant to this Framework Agreement, by anyone not a Party, in a court of law or other legal proceeding.

OPENNESS AND PUBLIC AWARENESS

29. Subject to Article 31, the Parties agree that it may be desirable that the public, including individuals, groups or organizations having a particular interest in the outcome of the negotiations, should have access to sufficient information respecting the objectives set out in Articles 9, 10, and 11 and be given the opportunity to express their views regarding the general status, aims, objectives, and progress of the negotiations. For that purpose, the Parties may engage in joint or separate public communication initiatives.
30. The Parties will jointly develop a communication strategy in anticipation of signing this Framework Agreement.
31. Unless the Parties otherwise agree in writing, or unless required by law, a Party shall not disclose to the public the following information:
 - a. the content of negotiations pursuant to this Framework Agreement; and,
 - b. documents generated during the negotiations pursuant to this Framework Agreement.
32. Once the Parties have signed the Agreement in Principle or the Accord, each shall be made public.
33. Interim or incremental measures or agreements shall be made public upon agreement of the parties.

THE NEGOTIATIONS PROCESS

34. The negotiations will take place amongst the Parties in good faith, in an open and transparent manner with frank discussion of interests and joint analysis of problems.
35. The Parties may establish and direct 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 Parties or their designates.
36. Unless otherwise agreed to by the Parties, the negotiating sessions will not be formally chaired, and no tripartite minutes, audiotapes or video recordings shall be kept.

FUNDING

37. Funding may be provided to the Mi'kmaq, through the Mi'kmaq Confederacy of PEI, in order to assist the Mi'kmaq participation in the process set out herein. For greater certainty, Canada and Prince Edward Island shall each have full discretion to determine any level of funding they respectively provide to the

Mi'kmaq. Where such funding is provided, it shall be allocated in consideration of the annual work plan.

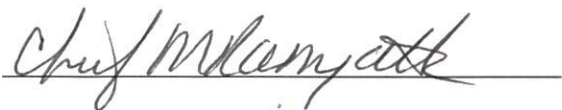
38. It is recognized by the Parties that the Mi'kmaq will require funding from Canada and Prince Edward Island in order to adequately participate in the process set out herein.
39. The position of the Mi'kmaq is that they will not accept loan funding to finance the costs of their participation in negotiations pursuant to this Framework Agreement or in relation to the negotiation of the Agreement in Principle, the Accord or any interim, or incremental, measures or agreements.

APPROVAL, EFFECTIVE DATE, TERMINATION, WITHDRAWAL AND AMENDMENT

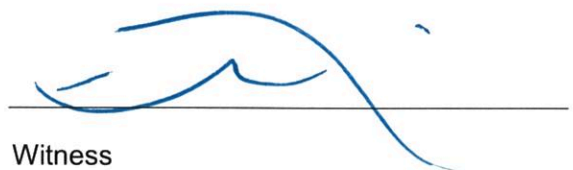
40. The Parties will signify their approval of this Agreement by signing it. The signatories are authorized to represent their respective Party.
41. The approval process for the Agreement in Principle and Accord will be determined pursuant to the respective negotiations thereof and shall be set out within those respective agreements.
42. This Framework Agreement shall come into force and effect on the date of its signing 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.
43. Either Abegweit First Nation or Lennox Island First Nation (Bands) may by Band Council Resolution withdraw from this Framework Agreement and all negotiations pursuant to it.
44. Notwithstanding Article 43, the agreements, understandings, undertakings, and commitments set out in Articles 23-28, 31, and 44 shall continue to apply to the withdrawing First Nation band, unless the Parties otherwise agree in writing.
45. If one of Abegweit First Nation or Lennox Island First Nation (Bands) decides to withdraw from the Framework Agreement pursuant to Article 43, this agreement and negotiations pursuant to it, shall not automatically terminate. Canada, Prince Edward Island and the Mi'kmaq shall individually consider whether or not to continue negotiations or to terminate the Framework Agreement pursuant to Article 42.
46. This Framework Agreement may be amended with the written consent of the Parties.
47. Notwithstanding termination of this Framework Agreement, this section and 23-28, 31, 44, and 47 will continue to have effect.

Signed this 24 day of August 2018,

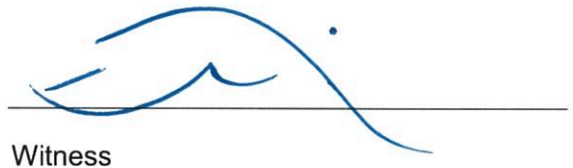
THE MI'KMAQ OF PRINCE EDWARD ISLAND



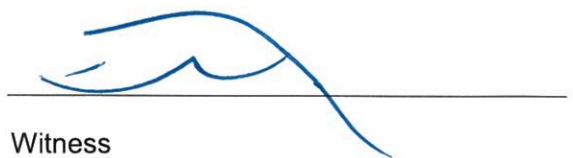
Chief Matilda Ramjattan
Lennox Island First Nation


Witness

Councillor Janet Banks
Lennox Island First Nation


Witness

Councillor Richard Guimond
Lennox Island First Nation



Witness



Councillor Mary Moore-Phillips
Lennox Island First Nation



Witness



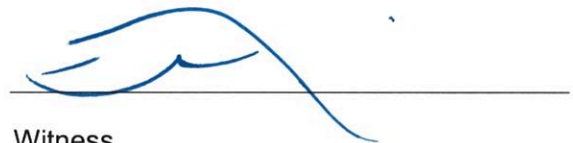
Chief Brian Francis
Abegweit First Nation



Witness



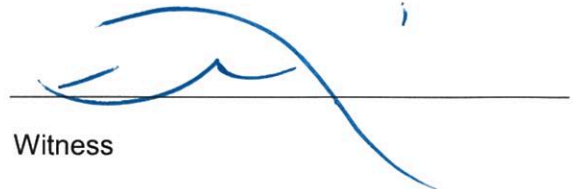
Councillor Daren Knockwood
Abegweit First Nation



Witness



Councillor Jacob Jadis
Abegweit First Nation



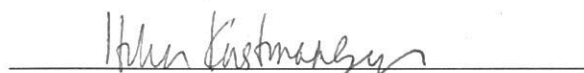
Witness

Signed this 15 day of January 2019,

THE GOVERNMENT OF PRINCE EDWARD ISLAND



Wade MacLauchlan
Premier of Prince Edward Island and
Minister Responsible for Aboriginal Affairs



Witness

Signed this 15th day of January 2019,

THE GOVERNMENT OF CANADA



Carolyn Bennett
Minister of Indian Affairs and Northern
Development



Witness