

**Canadian Governments and Aboriginal Peoples Project  
The Province of Nova Scotia**

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# **RELATIONS BETWEEN THE PROVINCE OF NOVA SCOTIA AND ABORIGINAL PEOPLES IN NOVA SCOTIA**

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## **EXECUTIVE SUMMARY**

This report examines relations between the Province of Nova Scotia and the Mi'kmaq nation, particularly as they relate to the fundamental question of Mi'kmaq governance. It traces the evolution of relations between the province and the Mi'kmaq nation, and includes a description, analysis and assessment of the state of relations to 1 October 1993, with a postscript on developments in the following year. The recognition by the government elected in 1993 that "the Mi'kmaq exist as a nation" provided some ground to be optimistic that a major change in relations appeared to be in the offing and a new round of negotiations began on October 1, 1993. This report provides an analysis of the obstacles and issues that need to be overcome and addressed.

This report has six parts. Part one provide an historical overview of the fate of the Mi'kmaq nation following intensive European settlement in what is now Nova Scotia, with particular reference to relations between the Mi'kmaq people and the provincial government in the period since 1960. Part two provides a brief account of the present context of the Mi'kmaq people within the province. Part three examines the current state of relations with reference to the organizations and structures that constitute the institutional framework for these relations. Part four provides an analysis of the factors that affect and have shaped these relations. Part five offers an assessment, taking into account, in so far as possible, the past and present views of both parties to this relationship. Part six concludes with recommendations designed to promote a more effective set of relations.

This report was prepared on the basis of a review of relevant historical literatures, selected government and Mi'kmaq documents, and interviews with individuals from both government and the Mi'kmaq people. The interviews for this report were conducted by the

principal researcher and research assistant; the former conducted interviews with government officials and other non-Aboriginal persons; the latter conducted interviews with Mi'kmaq leaders and persons involved in Mi'kmaq organizations. These interviews were conducted on a confidential, not-for-attribution basis.

The Province of Nova Scotia, especially since the 1970s, has been involved in relations with the Mi'kmaq nation and people through both federal-provincial-Mi'kmaq and provincial-Mi'kmaq forums. In contrast to provinces where there exists a relatively substantial Aboriginal population, however, the provincial government did not develop explicit policies to provide specific programs or services for Aboriginal people. Moreover, aside from funding a limited number of discrete projects, the province, with only a few minor exceptions, did not seek to tailor provincial programs or services to meet the particular circumstances and needs of the Mi'kmaq people. Rather, its "Aboriginal policy" was to respond to the concerns of the Mi'kmaq people over the substance and application of provincial law and policy as they affected Aboriginal people on a case by case, issues by issue basis. This fragmented approach to governance and public administration was not confined to provincial relations with the Mi'kmaq people. In many respects, it has been a defining characteristic of Nova Scotia government. It has had, however, adverse effects on relations between the government and the Mi'kmaq people, and has been confounded by the fact that for some time the Mi'kmaq people themselves have been represented by a number of organizations.

The virtual absence of an established provincial complex of institutional arrangements to govern Aboriginal affairs as well as specific Aboriginal policies and programs, as outlined in this report, means that there was little to reconfigure as the provincial government elected in 1993 sought to enter a new phase of relations and to recognize Mi'kmaq governance. There is a new need for more effective relationships at the political level, for the Province to develop its capacity to relate in a strategic manner, and for forums of Mi'kmaq governance which are sufficiently innovative to accommodate the size of the Mi'kmaq nation as well as the advantages flowing from efficient intergovernmental relations.

**Canadian Governments and Aboriginal Peoples Project  
The Province of Nova Scotia**

by Peter Aucoin and Violet Paul

We recognize that the Mi'kmaq exist as a nation.

Dr. John Savage  
Premier of Nova Scotia  
7 July 1993

The 7 July 1993 statement by the premier of Nova Scotia to the annual general meeting of the Union of Nova Scotia Indians recognizing the Mi'kmaq people as a nation within the context of Canada (Nova Scotia, 1993a) goes beyond an acknowledgement that the Mi'kmaq people are the "first chapter" in the history of this province (Nova Scotia, 1991a). It also acknowledges that relations between the province of Nova Scotia and the Mi'kmaq nation must be established on a new basis. This entails not only an affirmation of Mi'kmaq treaty and Aboriginal rights, but also the development of "a comprehensive new agreement between Nova Scotia's first peoples and the non-native community" (Nova Scotia, 1993a, p. 4) to be negotiated between the provincial government and the "native community" on the basis of a "relationship" that is "nation to nation".

This re-emergence of the Mi'kmaq nation within the context of Canada and Nova Scotia constitutes a remarkable story. This is not simply a case of the Mi'kmaq nation achieving recognition because other Aboriginal peoples in Canada have asserted their claims on the Canadian political system. Although this broader context has obviously facilitated this in important respects, there is much more to this development that is particular to the Mi'kmaq people and their leadership.

At least four factors have been critical here. First, the Mi'kmaq people and their leaders never relinquished their claim as a self-governing nation with treaty and Aboriginal rights and land claims, notwithstanding the fact that, with precious few exceptions, this was largely ignored outside the Mi'kmaq nation for almost two centuries. (Paul, 1993) The legacy of this commitment was an ability to perpetuate a sense of identity and collective confidence among the

Mi'kmaq people that, although clearly shaken at times, endured. By the 1980s, Mi'kmaq leaders had made their claims known: they had declined to be represented by the Assembly of First Nations in constitutional negotiations; had presented their case to the United Nations Human Rights Commission; and had revived their celebration of Treaty Day, notwithstanding the refusal of the province to participate with them. This preservation of the Mi'kmaq nation was evident in the context of the second factor — the catalytic event of the provincial Royal Commission on the Donald Marshall, Jr., Prosecution. (Nova Scotia, 1989) The consequence of this inquiry, as Alex Christmas, president of the Union of Nova Scotia Indians, put it, "changed the landscape in Nova Scotia forever". (Union of Nova Scotia Indians, 1992a, p. 12)

The third factor, not unrelated to the effects of the Marshall inquiry, was the presence of Mi'kmaq leaders in the national constitutional discussions and negotiations of the early 1990s. For the first time, Mi'kmaq leaders assumed a major role within provincial political affairs as the government prepared its constitutional position (Nova Scotia, 1991a and 1991b) and then as the province participated in the subsequent national processes. Finally, and as a consequence largely of the first three factors, non-Mi'kmaq leaders, and the non-Aboriginal population generally, began to understand the aspirations of the Mi'kmaq people for recognition as an Aboriginal nation and restoration of their self-governance.

This report examines relations between the province of Nova Scotia and the Mi'kmaq nation, particularly as they relate to the fundamental question of Mi'kmaq governance. It should be noted at the outset, if it is not already clear, that Aboriginal governance within Nova Scotia means Mi'kmaq governance. Although the Mi'kmaq nation in the past and still today extends beyond the borders of what is now Nova Scotia, the province is home to no other Aboriginal nation. Not all individuals who belong to the Mi'kmaq nation are 'status Indians' under current federal legislation, and therefore the question of Mi'kmaq governance must also entail a resolution of the membership of this nation by the Mi'kmaq people.

This question of Mi'kmaq governance also encompasses the structures and processes that must be established, or reformed, to bring about the effective conduct of relations between the province and the Mi'kmaq nation. This, in turn, requires that the province develop, or enhance, its own organizations and mechanisms to develop and manage provincial policies concerning Mi'kmaq governance and its relations with the Mi'kmaq nation over those matters in which the two orders of government have shared interests.

This report examines the evolution of relations between the province and the Mi'kmaq nation and includes a description, analysis and assessment of the state of relations. The research for this report was conducted in the period before 1 October 1993. Given the advent of a new provincial government, and the subsequent statement of the premier, Dr. John Savage, quoted earlier, a major change in relations appears to be in the offing. A new round of negotiations began on 1 October 1993, a day commemorating the 1752 treaty between the British Crown and the Mi'kmaq nation. Unless a complete revolution across several fronts occurs simultaneously, however, the account presented here is unlikely to become entirely irrelevant. This paper does note a number of the developments since then in a postscript, but further research and analysis will be required to assess their significance and impact.

Finally, it should be noted that this account focuses on relations between the Mi'kmaq nation and the province of Nova Scotia. It does not deal explicitly with the role of the government of Canada. It is of course the case that the role of the federal government is more critical in most respects, precisely because of the federal government's responsibilities for "Indians, and Lands reserved for the Indians". For the Mi'kmaq people and nation, the most important government is the federal government. This subject, however, is beyond the scope of this report.

At the same time, it must be noted that it is only the federal government that can be said to have had substantive policies to provide programs and services to the Mi'kmaq nation. The provincial government, especially since the 1970s, has been involved in relations with the Mi'kmaq nation and people, through both federal-provincial-Mi'kmaq and provincial-Mi'kmaq forums. But, in contrast to other provinces, especially where there is a relatively substantial Aboriginal population, the provincial government in Nova Scotia has not developed explicit policies to provide specific programs or services to Aboriginal people. Until 1 October 1993, when an agreement between the federal and provincial governments and the Union of Nova Scotia Indians was reached concerning a tribal police force for five communities, the province had entered into only one major federal-provincial-Mi'kmaq agreement, in the area of family and child services. Moreover, aside from funding for a limited number of discrete projects, with only a few minor exceptions, the province has not sought to tailor provincial programs or services to meet the particular circumstances and needs of the Mi'kmaq people. Rather, its 'Aboriginal policy' has been essentially to respond to the concerns of the Mi'kmaq people over the substance

and application of provincial law and policy as they affect Aboriginal people on a case-by-case, issue-by-issue basis. As a consequence, this report cannot provide a detailed analysis of the programs and expenditure priorities of the provincial government in relation to the Mi'kmaq people, as can be presented for other provinces. In the case of Nova Scotia, there have been no programs; expenditures, such as there have been, have been provided on an ad hoc basis.

The virtual absence of either an established provincial complex of institutional arrangements to govern Aboriginal affairs or specific Aboriginal policies and programs means that there is little to reconfigure as the province enters a new phase of relations with the Mi'kmaq nation to recognize Mi'kmaq governance. In one sense, then, this relatively clean slate provides an opportunity for the province and the Mi'kmaq nation, along with the federal government, to implement a new constitutional order. In this paper, this new order is taken to mean that Mi'kmaq governance derives both from an inherent right to self-government on the part of the Mi'kmaq nation, and from its treaty rights, and that Mi'kmaq governance constitutes a third order of government within the Canadian federal system that is a separate and independent jurisdiction. This does not rule out areas of constitutionally shared jurisdiction, assuming constitutional agreements are reached between the orders of government involved. Nor does it imply that arrangements could not be established between two or three orders of government for purposes of co-managing particular governmental undertakings where responsibilities overlap. Finally, this does not rule out institutional designs in which the governance structures of either the federal or the provincial order of government included representation of the Mi'kmaq nation and its people. Whatever the specifics, nonetheless, the defining element of Mi'kmaq governance within the Canadian federal system must be that it is established on a basis that recognizes an inherent right of self-governance.

This paper begins with an historical overview of the fate of the Mi'kmaq nation following intensive European settlement in what is now Nova Scotia, with particular reference to relations between the Mi'kmaq people and the provincial government in the period since 1960. Second, a brief account of the present context of the Mi'kmaq people within the province is presented. Third, the current state of relations is examined with reference to the organizations and structures that constitute the institutional framework for these relations. Fourth, an analysis of the factors that affect and have shaped these relations is provided. Fifth, an assessment is offered, taking into consideration, in so far as possible, the past and present views of both parties to this



relationship. Finally, the report concludes with recommendations designed to promote more effective relations.

This paper was prepared on the basis of a review of relevant historical literature, selected government and Mi'kmaq documents, and interviews with individuals from government and the Mi'kmaq people. The interviews were conducted by the principal researcher and the research assistant: the former conducted interviews with government officials and other non-Aboriginal persons; the latter conducted interviews with Mi'kmaq leaders and persons involved in Mi'kmaq organizations. The interviews were conducted on a confidential, not-for-attribution basis; those interviewed are therefore not identified.

While this paper inevitably must encompass a wide range of matters — including the history, society, and economy of the Mi'kmaq people and their constitutional and legal claims, as well as provincial government decisions, actions and legal positions — it makes no claim to be an authoritative study of these matters. Rather, the account, analysis and assessment focus on matters concerning political relationships, the institutional mechanisms through which these relations have been conducted, and the organization of the two parties to these relations, with particular reference to the provincial government. In the conduct of these relations, as well as in the internal management of the affairs of each side to the relationship, there will be found, inevitably, not merely different views and opinions but, equally important, different interpretations of events. There is no single 'correct' storyline. The best that can be produced is an account that each side can agree reports its position fairly.

## **History**

From the perspective of this paper, perhaps the most critical dimension of the history of relations between the Mi'kmaq nation and the province of Nova Scotia is that there are, in fact, two different accounts. Precisely because the central historical 'facts' pertain to treaties between the Mi'kmaq nation and the British Crown, especially the Treaty of 1752, (Native Communications Society of Nova Scotia, 1987, pp. 20-21) the historical record is hardly 'historical': it continues to be an issue in the relations between the Mi'kmaq nation and the province of Nova Scotia (as well as the government of Canada). The status of the Mi'kmaq people as a self-governing nation — with Aboriginal and treaty rights extending to many matters of relations between the Mi'kmaq nation and provincial law and its administration — is very much tied to interpretations of what

transpired in the eighteenth century. These interpretations are not merely legal, although legal issues are clearly critical; they are also political in that they entail broader questions of fundamental relationships between the Mi'kmaq nation and the established political order of Nova Scotia and Canada.

What can be established without much dispute is that the struggles between the French and English over what is now Nova Scotia had consequences for the Mi'kmaq people and their governance that are still with us today. The Mi'kmaq people were caught in the middle of this struggle between European powers. While the Mi'kmaq people remained a force to be reckoned with throughout the eighteenth century, the military might of the British forces led not only to the eventual defeat of the French, here and elsewhere in North America, but also to subsequent British settlement in the province. Relations between the British Crown and the Mi'kmaq led to a series of treaties — the very treaties that today are the basis of the treaty claims of the Mi'kmaq nation.

Although they were obviously affected by the struggles of the French and British, the Mi'kmaq people regarded themselves as an independent party to them, notwithstanding their periodic participation in these struggles. Indeed, their treaties with the British Crown were understood by them to define a relationship with the Crown that recognized their status as a self-governing nation — and not contingent either on any relationship they may have had with the French or on the fact that the British forces had defeated the French. What this may have meant to the British authorities at the time or subsequently is, of course, a different matter.

The arrival of European military forces and then settlers had important effects on the Mi'kmaq people well beyond what had been their experience in earlier relations with European fisheries expeditions. While the Mi'kmaq people were successful, in certain respects, in responding to what is referred to as the period of the 'fur trade', their way of life was altered substantially by the arrival of settlers, particularly after the British secured military control over what is now Nova Scotia. In the latter part of the eighteenth century and then into the following century, the Mi'kmaq people had to endure a British colonial regime that initially was hostile to them; subsequently ignored, or at least failed to secure, their Aboriginal and treaty rights; and then sought, explicitly or implicitly through various laws, policies and practices, to assimilate them into the settler society or to relegate them to the margins of the developing colonial society.

In some large part, the position of the Mi'kmaq nation in colonial Nova Scotia, that is,

until 1867, derived from the fact that their population and geographic dispersal contributed to an isolation within a provincial society that was itself sparsely populated and widely dispersed. Indeed, following the establishment of British colonial rule, Mi'kmaq numbers decreased severely. Their dislocation, and the subsequent consequences of economic hardship coupled with their vulnerability to disease, resulted in their population declining to fewer than 1,500 within a century of British colonial rule. (Wien, 1986, p. 14) In one dimension, the Mi'kmaq nation suffered a form of double discrimination for many years; as a people who had become Roman Catholics, they lived in a British colonial society that initially was openly hostile and then quietly opposed to members of this faith in several dimensions of politics, society and economy.

Needless to say, Confederation, in 1867, provided no opportunity for reconsideration by the Mi'kmaq nation of its position within the context of British North America. Nova Scotia became a province of the new Dominion of Canada without any reference to the claims of the Mi'kmaq nation. Responsibility for "Indians, and Lands reserved for Indians" was vested in the Parliament of Canada, thus ending provincial responsibility for what had been the colonial government's role in relation to the Mi'kmaq people as a nation with Aboriginal rights and treaties with the British Crown.

Although the Nova Scotia society and economy enjoyed a period of growth and prosperity in the nineteenth century, particularly in the period just before Confederation, their subsequent decline led to a provincial political system characterized by parochialism and conservatism. (Beck, 1978) Within this context, the Mi'kmaq nation was ignored by the political system, and discrimination against the Mi'kmaq people was tolerated by the established political order. Within the non-Aboriginal society, other peoples, particularly the Black community, also faced isolation and discrimination. Indeed, the parochialism and conservatism of the province encompassed a structure of religious and ethnic conflict in which the Mi'kmaq people were regarded as but one among a number of 'minorities'.

One consequence of this state of affairs is a paucity of historical accounts dealing with the Mi'kmaq people and nation in their relations with the province following Confederation. In part, of course, this can be attributed to the fact that the constitutional division of powers at Confederation removed "Indians, and Lands reserved for Indians" from the jurisdiction of the province. Relations between the Mi'kmaq people and the Canadian political order, to the extent that they can be considered 'relations', had become relations between the Mi'kmaq people and

the government of Canada.

It is also the case that the exclusion of the Mi'kmaq people from the political society of Nova Scotia meant that they were not present in the partisan politics of the political system and, therefore, not represented in the legislative or governmental arenas of political power. As a consequence, they were excluded from the spoils of partisan politics, namely the judicial branch of government as well as the civil service apparatus of the provincial state. This exclusion from provincial political life did not mean, however, that the Mi'kmaq were viewed as being outside provincial laws, even though legally this was and is a disputed point. On the contrary, provincial jurisdiction in a number of areas of crucial importance to the Mi'kmaq people, especially in relation to hunting and fishing, brought them into conflict with provincial authorities, invariably to the detriment of the Mi'kmaq people. (Nova Scotia, 1993b)

Following Confederation and the transfer of jurisdiction over "Indians, and Lands reserved for Indians", coupled with the increasing adaptation of the Mi'kmaq people to the economic circumstances of the latter part of the nineteenth century and the early part of the twentieth century, the Mi'kmaq people experienced an up-turn in their socio-economic fortunes, at least relative to their serious condition in the early part of the nineteenth century. (Wien, 1986) Their population increased, and progress was evident in their collective well-being. The Depression of the 1930s seriously curtailed this gradual and limited progress, however. Indeed, the Depression was more serious for their economic circumstances than for the rest of the Nova Scotia population, (Wien, 1986) given the fragility of their marginal participation in the provincial economy and, perhaps more important, the perception that they were 'wards' of the federal government and thus without recourse to provincial programs.

The consequences of the Depression were disastrous for the Mi'kmaq people of Nova Scotia. (Patterson, 1985) First, with increasing reliance on federal welfare came increasing intervention by federal authorities in the governance of their community affairs, including the establishment of residential schools that had the same devastating effects as elsewhere in Canada. Second, and largely because of the first development, the federal government, in the early years of the Second World War, embarked on an ill-conceived 'centralization' scheme that sought to consolidate the Mi'kmaq people, at that time living on some forty reserves, on two principal 'reserves': Eskasoni and Shubenacadie. Although the federal government abandoned this ill-fated scheme within a decade, this was not until great dislocation, disruption and

deterioration of Mi'kmaq communities had taken place.

In the following decade, the federal government moved to establish official 'bands' for the Mi'kmaq people, who previously had not been organized officially into separate bands, in order to implement 1951 amendments to the *Indian Act* that were to give an increased measure of administrative authority to band councils on reserves. By 1958, eleven bands had been created, although some smaller reserves were placed on a 'general list'. (Patterson, 1985, p. 127). A decade later, in 1969, in response to the White Paper of the federal Liberal government, the Union of Nova Scotia Indians (UNSI) was created. The Mi'kmaq nation, along with Canada's other First Nations, entered a period of rapid politicization. The federal government's centralization scheme, whose effects remained throughout this period, had at least produced one lasting positive effect — it had served to mobilize the Mi'kmaq nation.

Following the demise of the proposals in the 1969 White Paper on Indian policy, tripartite arrangements involving Indian organizations and the federal and provincial governments were established in all provinces. This meant that, for the first time, the Mi'kmaq nation, organized through UNSI, was to have formal relations with the provincial government. The Tripartite Committee for Nova Scotia brought together representatives of UNSI, the federal department of Indian affairs, and the government of Nova Scotia, represented by the department of public welfare. The newly appointed co-ordinator for Indian affairs, located within this provincial department, reported that "the purpose of this Committee is to facilitate communication between the Indian people and the Federal and Provincial Governments in order that greater participation and involvement in Provincial-Federal policies and programs might be developed". (Nova Scotia, 1971, pp. 142-143). The working arm of the Tripartite Committee was to be a "Liaison Committee...consist[ing] of three full-time employees representing each of the parties involved." The full-time liaison employees of both UNSI and the government of Nova Scotia were to be funded by the federal department of Indian affairs.

In the decade that followed, this tripartite committee constituted the principal forum for relations between Mi'kmaq leaders and the provincial government, although a practice was initiated whereby these leaders met occasionally with ministers of the province and/or their officials. A Native court worker program, funded by the federal and provincial governments, was established in the mid-1970s, but curtailed shortly thereafter by UNSI when it failed to reach agreement with the province on the subject of Aboriginal rights. A Provincial Advisory Council

on Native Peoples and the Criminal Justice System was disbanded at the same time for the same reason.

The Tripartite Committee and its Liaison Committee remained in place for just over a decade. The single most important development arising out of federal-provincial-Mi'kmaq relations took place in the 1980s, when the three parties agreed to establish a Micmac Family and Children's Services Agency.

In 1982, the provincial government recognized the Native Council of Nova Scotia (NCNS, founded originally in 1975 as the Non-Status Indian and Metis Association of Nova Scotia) by convening a bilateral meeting so that the province and the organization representing Mi'kmaq not represented by UNSI would have a forum to discuss matters of concern to the NCNS. The following year, the NCNS recommended that the province establish an office of Aboriginal affairs. One year later, the provincial government instead created a cabinet committee on Aboriginal affairs, chaired by the minister of community services (then the minister responsible for Aboriginal affairs) and including the ministers of education, health, labour and manpower, and lands and forests, and the attorney general. In succeeding years, the committee provided a forum for periodic meetings with the chiefs of the (now) thirteen bands in the province and with the political organizations of the Mi'kmaq people, by 1987 numbering four: the Union of Nova Scotia Indians (now reduced to representing seven bands); the Confederacy of Mainland Micmacs (formed in 1986 and representing six bands); the Native Council of Nova Scotia; and the Nova Scotia Native Women's Association, founded in 1972.

With the failure of the province to take action on a number of fronts, UNSI stepped up its efforts to have its claims recognized both nationally and internationally, including pressing its claims to the United Nations Human Rights Commission.

Two events in the mid-1980s served to change significantly relations between the Mi'kmaq people and the province. First, in November 1985, the Supreme Court of Canada recognized the validity of the Treaty of 1752 in *Simon v. The Queen*, a landmark decision in so far as the Mi'kmaq nation is concerned, and a decision that validated the strategy of those Mi'kmaq leaders who sought to achieve through the courts what provincial government authorities had refused to recognize. Second, in 1986, the provincial government established a Royal Commission on the Donald Marshall, Jr. Prosecution.

Although the Supreme Court decision was a critical one for the Mi'kmaq nation, its

political significance pales in comparison to effects of the royal commission. As noted at the outset, and again in the words of Alex Christmas, it "changed the landscape in Nova Scotia forever". The commission had been established by the provincial government four years after Donald Marshall, Jr., son of the Grand Chief of the Mi'kmaq Nation, was exonerated by the Nova Scotia Court of Appeals for a wrongful conviction for which he had spent eleven years in jail. The commission's extensive hearings (93 days and 16,390 pages of transcript), research and the accompanying publicity concerning major deficiencies in the administration of justice and policing highlighted the inequities dealt Mi'kmaq people over many decades and exposed their plight to the public to a degree unprecedented in the province's history. (Mannette, 1992) Its seven-volume report, released in 1990, had, in the words of the attorney general of the day, "a catastrophic effect". (quoted in Kaiser, 1990, p. 364)

In terms of Mi'kmaq-Nova Scotia relations, one immediate effect of the Marshall Inquiry, as it came to be called, was the creation of a new Tripartite Forum, encompassing the Canadian and Nova Scotia governments and three Mi'kmaq political organizations: UNSI, the Confederacy, and the Native Council. Its focus has been matters relating to policing, the administration of justice, and human rights.

A second consequence was the establishment of a bilateral process involving the three political party leaders in the legislative assembly and the three Mi'kmaq organizations just mentioned along with the Native Women's Association. The constitutional process quickly overtook this development, but at the same time, this meant that, for the first time, Mi'kmaq leaders were seriously engaged with the province on matters of significance to both the Mi'kmaq nation and the province. Following the defeat of the constitutional accord, the government again committed itself to establishing a permanent bilateral process. The government, just before calling a general election, also agreed to establish an office of Aboriginal affairs, reporting to the minister responsible for Aboriginal affairs, and to resurrect the cabinet committee on Aboriginal affairs.

At that election, the Progressive Conservative government, in power since 1978, was defeated by the Liberal Party. Upon taking office, the new premier, Dr. John Savage, also assumed the position of minister of Aboriginal affairs. On 7 July 1993, in his first major policy statement, delivered to the annual general assembly of the Union of Nova Scotia Indians, he proposed "immediate and high priority bilateral talks between the Province and the Mi'kmaq

people in Nova Scotia" to begin on October 1 — Mi'kmaq Treaty Day. (Nova Scotia, 1993a, p. 2)

### **The Present Context**

The Mi'kmaq nation is not confined to Nova Scotia, but within Nova Scotia Mi'kmaq people constitute almost the entire Aboriginal population. By 1991, the Aboriginal population of Nova Scotia, at 8,815, constituted one per cent of the total provincial population and 1.4 per cent of Canada's total Aboriginal population.

Of the total Nova Scotia Aboriginal population, fully 97.5 per cent identified as North American Indian. Métis accounted for 2.6 per cent and Inuit 0.6 per cent. Of those who identified as North American Indian, 64.2 per cent resided on reserves, compared to a Canadian average of 26.5 per cent, while 33.3 per cent were off-reserve, compared to a Canadian average of 47.1 per cent. The high percentage of the population living on-reserve is accounted for in some large part by the fact that the reserves are not isolated communities by Nova Scotia standards; for instance, the largest, Eskasoni, is near Sydney, the second largest, Shubenacadie, is near Truro, and two mid-size reserves, Membertou and Millbrook, are within the municipal boundaries of Sydney and Truro respectively.

An Aboriginal language was spoken by 42.1 per cent of children (ages 5-14) on-reserve (compared to a Canadian average of 44.3 per cent), but no one in this age group living off-reserve reported speaking an Aboriginal language. For those age 15 and over, 67 per cent of those living on-reserve reported speaking an Aboriginal language (compared to a Canadian average of 65.4 per cent), while 12.9 per cent of those living off-reserve reported speaking an Aboriginal language (compared to a Canadian average of 23.1 per cent). Rates of participation in traditional Aboriginal activities were slightly below the Canadian average for children living on reserves (54.2 per cent compared to 57.5 per cent) and off-reserve (36.8 per cent compared to 39.5 per cent). A similar pattern was apparent for adults living on-reserve (56.1 per cent compared to 65.2 per cent) and off-reserve (41.4 per cent compared to 44.8 per cent).

The thirteen Mi'kmaq bands in Nova Scotia are distributed across the province: five on Cape Breton Island and eight on the mainland of the province. The two largest bands, Eskasoni on Cape Breton Island and Shubenacadie on the mainland, represent approximately one-third of the total band population. The land area of the reserves and their settlements covers just under 12,000 hectares.



In his analysis of the socio-demographic characteristics of the Aboriginal population in Nova Scotia, Clairmont reports:

The large off-reserve population on the mainland outside metro Halifax appears to be quite similar to the mainland reserve population in terms of socio-demographic profile; socio-economic conditions may also be similar. The metro Halifax area appears to have emerged as a major centre for native activity. Its aboriginal grouping as a whole appears to be similar in socio-economic and socio-demographic characteristics to the general metro Halifax population. Overall the Nova Scotia native population...appears to be better-off on many criteria than their counterparts...[in other provinces]; this latter situation appears especially to hold in the instance of post-secondary education. Still there is evidence, among natives outside the metro Halifax area, of limited socio-economic opportunity. While native levels of probation and incarceration in provincial custody institutions are substantially less than in other provinces they are about twice as high as expected (i.e., accounting for roughly 4% of the provincial totals) and reflect disproportionately higher native rates in the areas outside metropolitan Halifax. (Clairmont, 1992, p. 4)

The 1991 Statistics Canada census of Aboriginal people indicated an unemployment rate among Aboriginal people in Nova Scotia of about 27 per cent, more than twice the rate for the province as a whole. Mi'kmaq leaders rejected those data, claiming that unemployment was at least three times that figure on reserves. (*Halifax Mail-Star*, 21 September 1993) Although some progress has been made on the educational front, there are still no Mi'kmaq doctors in the province, and although several Mi'kmaq have graduated from the Dalhousie University Law School, no practising lawyers. There are, on the other hand, increasing numbers of Mi'kmaq teachers and professional social workers.

### **The Institutional Context**

Aside from periodic meetings of representatives of the Mi'kmaq people and individual ministers and administrative officials of the Nova Scotia government, formal relations between the Mi'kmaq nation and the province of Nova Scotia take place through two principal forums: the Canada-Nova Scotia-Mi'kmaq Tripartite Forum, encompassing federal and provincial governments and three Mi'kmaq political organizations, and the bilateral process instituted in 1992 and now rejuvenated. Both are products of recent developments, although in the case of the former there had been a tripartite mechanism established in the aftermath of the 1969 White Paper.

The Tripartite Forum, unlike its predecessor, focuses on justice, policing and human

rights matters — that is, the concerns arising from the Marshall Inquiry. Because of this focus, the Tripartite Forum differs from similar mechanisms in other provinces in its inclusion of issues related to all Aboriginal peoples in the province. The Mi'kmaq people are thus represented by the Union of Nova Scotia Indians, the Confederacy of Mainland Micmacs and the Native Council of Nova Scotia. This focus has also meant federal and provincial government participation includes the federal departments of the solicitor general and justice as well as per cent affairs, and the provincial department of the attorney general and solicitor general (now a single organization) as well as a representative of the minister responsible for Aboriginal affairs. The Forum has three operational committees, structured to deal with the Forum's three areas of concern — justice, policing and human rights. In September 1992, a review of this structure was initiated.

In the justice area, a major study was undertaken by Dr. Donald Clairmont, entitled *Native Justice in Nova Scotia* (1992). Three projects have been initiated to date: a band diversion program at the Shubenacadie reserve; a community legal issue facilitators demonstration project, administered by the Native Council of Nova Scotia; and a justice worker project through the Micmac Native Friendship Centre. In the area of policing, a consultant's report was prepared on a proposed tribal police force, and an agreement on establishing the Unama'ki Tribal Police Service was signed on 1 October 1993 by the governments of Canada and Nova Scotia and the Union of Nova Scotia Indians. This police service, with financial commitments from both the federal and the provincial government under the First Nations Policing Policy, will eventually provide services to five Cape Breton Mi'kmaq communities. In addition, a Native civilian liaison officer project has been implemented within the Halifax Police Department. In the area of human rights, educational materials and workshops have been developed.

The bilateral process, involving representatives of the Mi'kmaq people and the province of Nova Scotia, began in 1992 following a meeting between Mi'kmaq leaders and the leaders of the three political parties represented in the Nova Scotia House of Assembly, including the premier. Its immediate purpose was to consider the question of Aboriginal self-government in the context of proposed constitutional changes. (The presence of the leader of the official opposition, the Liberal party leader, and the leader of the New Democratic Party was not unique to this issue. Rather, this all-party approach had been adopted at the instigation of the premier, Donald Cameron, as a mechanism to promote a non-partisan stance for the province in constitutional discussions and negotiations.) There was little time to do more than initiate this process,

however, before the constitutional process itself took over. Under the present scheme, of course, the mandate of the bilateral process will encompass a wider range of issues, to be determined when this begins presently.

Within this context, the principal Mi'kmaq participants include the men and women who are the chiefs of the thirteen Nova Scotia bands. The thirteen bands in Nova Scotia were, of course, the creation of the federal government under the *Indian Act* in the 1950s. Although there has been no formal mechanism involving the chiefs and the provincial government, there have been meetings involving these two parties, and the province has approached the chiefs on occasion to seek out representatives from the Mi'kmaq nation, such as when a working committee on the constitution was formed in 1991. The Canada-Nova Scotia-Indian Child and Family Services Agreement, concerning the Micmac Family and Children's Services Agency, established the chiefs as the board of directors of this agency. More recently, a Mi'kmaq Educational Authority was formed following an agreement between the federal government and the chiefs under which the authority will control education finance and administration, including negotiations with local school boards.

The four Mi'kmaq political organizations that have participated in either federal-provincial-Mi'kmaq or provincial-Mi'kmaq forums include the Union of Nova Scotia Indians, the Confederacy of Mainland Micmacs, the Native Council of Nova Scotia, and the Nova Scotia Native Women's Association (the last not represented in the Tripartite Forum).

The Union of Nova Scotia Indians was formed in 1969. Its board of directors was composed of the chiefs of all the bands then established (twelve at the time). An executive was elected by the membership at a general assembly, including two vice-presidential posts, one for mainland Nova Scotia and one for Cape Breton. The Union assumed the administration of a number of federal government programs, funded by several federal departments, with core funding coming from the secretary of state for Union staff. The Union quickly became the largest single employer of Mi'kmaq people in the province. With the creation of the Confederacy of Mainland Micmacs, the Union now represents seven bands, the five on Cape Breton Island and two on the mainland. These seven bands constitute approximately 70 per cent of the total band population in Nova Scotia.

The Nova Scotia Native Women's Association was founded in 1972 to represent status and non-status Indian women. It is an affiliate of the Native Women's Association of Canada. Its

executive is elected at an annual assembly; its board of directors is elected at the local level.

The Native Council of Nova Scotia was established in 1975, as the Non-Status and Metis Association of Nova Scotia, to represent Indian women who had been enfranchised by marriage to non-Indian men; Indian men who had not been included in the 1951 register of the federal department of Indian affairs; Indian men who had become enfranchised; children of non-status Indian parents; and Métis persons not eligible for registration under the *Indian Act*. Its membership structure was organized on a territorial basis, with ten zones, and its board of directors included a representative from each zone. Membership is now open to Aboriginal persons, including those who are registered under the provisions of the *Indian Act* but, with some exceptions, are not residents of a reserve. The organization now has twelve zones across the province. Its board is composed of one director from each zone, regardless of zone membership, while its president is elected by universal suffrage. It is a member organization of the Native Council of Canada (now the Congress of Aboriginal Peoples).

In 1986, the Confederacy of Mainland Mi'kmaq was established. It originally represented five of the eight mainland Nova Scotia bands; in 1992, another mainland band joined the Confederacy. These six bands represent approximately 30 per cent of the total band population in the province. Like UNSI, its board of directors comprises the chiefs whose bands are represented by the Confederacy. It does not have an elected executive; rather, the board appoints an executive director as the chief administrative officer of the Confederacy.

The split of the thirteen Mi'kmaq bands into two political organizations reflected political, ideological and strategic differences between Mi'kmaq leaders. The Confederacy has been closer to the federal department; the Union has been more aggressive in pursuing Mi'kmaq interests in the courts and in international institutions. In addition, there were socio-economic differences between the Mi'kmaq communities in Cape Breton and mainland Nova Scotia, including their respective rates of Mi'kmaq language retention and their respective proportions of on- and off-reserve members. In terms of both language retention and the percentage of persons living on-reserve, the Cape Breton bands are on the high side compared to bands on the mainland. As well, this division corresponds to long-standing political differences between non-Mi'kmaq communities on the Nova Scotia mainland and on Cape Breton Island; the division of the Mi'kmaq people in this particular respect is not unique to them.

It is also the case that the Union has had better relations with the Native Council of Nova

Scotia than has the Confederacy. In 1986, the two organizations established a "political issues alliance...[to] work together to promote the rights of the Micmac people to improve their situation within Nova Scotia." (Native Council of Nova Scotia, 1993, p. 31) The Confederacy, on the other hand, has objected to the claims of the Native Council in regard to its membership and the question of who should be considered a member of the Mi'kmaq nation (see, for example, *Micmac-Maliseet Nations News*, May 1993, p. 8). The Confederacy has not been happy with the Native Council's participation in the Tripartite Forum and has similar concerns about the province's recognition of the Native Women's Association, particularly in regard to the province's inclusion of the women's association in Nova Scotia-Mi'kmaq relations, and, of course, has had closer relations with the federal department of Indian and northern affairs.

These divisions among the Mi'kmaq people obviously complicate the conduct of their relations with the provincial government. They can diminish the effectiveness of the Mi'kmaq nation in its dealings with the province precisely because any people, or collective interest, that is not united in its dealings with a government is subject to having its leverage with that government reduced accordingly. This is particularly the case for the Mi'kmaq nation, given that its small population is geographically dispersed and its political and administrative leadership and financial resources necessarily limited, and that it must conduct relations simultaneously with two orders of government across a wide range of complicated governance and public policy matters.

On the other hand, while the province might prefer a single point of contact, it cannot insist that the Mi'kmaq nation organize itself according to the wishes of the province. In point of fact, of course, British and then Canadian governmental authorities obviously disrupted the evolution of governance structures within the Mi'kmaq nation itself, including the imposition of the Canadian federal system of 'provinces' on what had been a different configuration of geographical boundaries for the Mi'kmaq nation before non-Mi'kmaq settlement, which extended (and continues to extend) beyond Nova Scotia. Finally, it is also the case that the federal government has used its powers to impose a system of governance on the bands it has created and to determine access to services depending on residence. For instance, the Royal Commission, heard in Halifax, during its second round of hearings, the concerns of a group of students about the lack of services for band members not resident on reserves, as well as the practices of band governments. (RCAP, 1993, p. 36)

For its part, the organization of the province of Nova Scotia in relation to Mi'kmaq affairs consists at present of a minister of Aboriginal affairs, currently the premier, his deputy minister (who is also deputy minister of intergovernmental affairs), and a director of Aboriginal affairs. For reasons outlined below, the organizational resources of the provincial government in this area have been limited, to say the least.

The first organizational presence in the provincial government began with the first Tripartite Committee in the early 1970s. As a consequence of the province's participation on this committee, the position of co-ordinator of Indian affairs, as the position was then called, was created. It was located within the headquarters of the department of public welfare, albeit reporting to the administrative assistant to the deputy minister. At one point in the late 1970s, the position, but not the functional responsibility, disappeared altogether. In 1979-80, it reappeared and was assigned to the planning branch of the department of community affairs. In formal classification terms, it was never a senior position, and from the outset there was never more than a single individual staff member of the provincial civil service dedicated to this function. Indeed, for most of the past decade, the official assigned this function was also responsible for other activities, including being co-ordinator for the senior citizens secretariat in the department of community services.

The ministerial portfolio of Aboriginal affairs, first assigned in the mid-1980s, has always been held by a minister with other major ministerial responsibilities, primarily community services. The cabinet committee on Aboriginal affairs, also created in the mid-1980s, was essentially a special sub-committee of a sub-committee in the cabinet system, namely the social development committee of the policy board. In the structure of cabinet at the time, the policy board was one of two principal cabinet committees, the other being the management board. (White, 1992; Aucoin, 1984).

The organizational structure and administrative capacity of the provincial government with respect to Mi'kmaq affairs, and therefore its relationship with the Mi'kmaq nation, must be understood in part within the general context of the provincial government system. Two aspects of this system are relevant in this regard.

First, the traditional approach to public management in Nova Scotia has been characterized by strong line (or operating) departments on the one hand and weak central (or co-ordinating) agencies on the other. Although the Nova Scotia system has avoided the worst

excesses of central agency domination of the policy and administrative processes found in many other governments in Canada over the past two decades, it has clearly erred in the opposite direction. The "high degree of departmental autonomy" that has been "especially pronounced" in the Nova Scotia government (White, 1992, p. 2) was challenged by the Smith Progressive Conservative government in 1969 when it established a central secretariat to serve a new cabinet committee on planning and programs. In addition to the fact that Premier Smith could not get his ministers to take the new approach seriously, there was significant bureaucratic resistance to the central agency to serve the committee. As White reports,

The significance of the experiment with the 'Poetschke Secretariat' [Poetschke being its head and a former federal public servant] lay less in the fact that it became a minor political issue in the 1970 election and was quickly abandoned by the Liberals [who formed the new government], as in the remarkable legacy it left of suspicion and distaste for powerful central agencies....Significantly, in interviews conducted in the 1990s for this book, this episode was still cited as affecting bureaucratic attitudes... (1992, p. 2)

Second, while it has had its share of changes in cabinet and central agency structures, departmental reorganizations, and alterations in policy and administrative decision-making systems over the past 25 years, the provincial government never managed to develop the capacity for effective strategic direction and management. Informal comparisons with other comparable provinces, New Brunswick or Manitoba for instance, have not usually been favourable. In part, this has been the result of the high degree of departmental autonomy. In addition, it has been attributed to a long-standing politicization of provincial public administration, in practice if not in official policy. As a consequence, the system has had few administrators able to overcome the lethargy of a civil service overburdened by partisan political considerations. Further, it is the result of "the combined absence of large central agencies and the low rate of crossovers between departments [which] meant that precious few individuals, even at the most senior ranks of the public service, had either the opportunity or the incentive to develop a comprehensive view of the entire management of government". (Aucoin, 1984, p. 11) At the same time, and paradoxically, ministers and their line departments, with few exceptions, have been given precious little in the way of strategic policy direction by the cabinet, notwithstanding a succession of premiers who have dominated their cabinets. (Beck, 1957; Smith, 1988)

In short, a highly centralized political decision-making system was coupled with highly decentralized administrative decision making in line departments, exacerbated by the continuing

differentiation of ministerial portfolios (until Cameron, in 1991, reduced the size of cabinet from 22 to 17). The political dimensions of public policy were clearly attended to in a fashion, although accompanied increasingly by growth in expenditures. What was not adequate was the development and management of strategic public policy to steer the provincial state.

One result of this state of affairs was that the capacity of the provincial government to develop and manage policy in areas that require horizontal co-ordination across government left much to be desired. The intergovernmental affairs function was one such example, notwithstanding its crucial importance to this province. Another example was economic development. A third was Aboriginal affairs. Given the Nova Scotia governance culture and thus its practice of public administration, it should come as no surprise that for the past two decades the co-ordinator of Indian, later Aboriginal, affairs had to function without full-time professional staff support; that this 'co-ordinator' essentially had neither the mandate nor the leverage to co-ordinate governmental undertakings in this field of public policy and administration; and that the position was buried deep within a line department, rather than at the centre of the executive-administrative system.

Although the limitations of this approach may have been acknowledged at times, the consistent rationale was that, given the small size of the Nova Scotia governmental apparatus, co-ordination could be achieved efficiently and effectively by way of interdepartmental communications as well as by drawing upon the professional expertise and technical resources of other departments and agencies as the need arose, thus economizing on staff resources. While the case can obviously be made that this approach had the intended effects in so far as economy within government is concerned, there is little evidence to support the argument that this led to efficiency or effectiveness in the government's performance in developing or managing strategic policy, including of course the co-ordination of departments and agencies with a role in Aboriginal affairs. To a very considerable extent, the rationale was either simply a justification for maintaining departmental autonomy in their respective spheres or — and perhaps worse — a failure of senior departmental managers to recognize and appreciate the need for a corporate approach to matters that require the attention of more than a single department.

It is of course the case, for this area in particular, that provincial responsibilities with respect to the Mi'kmaq people, as 'Indians', were limited by the province's assumption that this was essentially, even exclusively, an area of federal jurisdiction. But, as the annual reports of



successive co-ordinators of Indian/Aboriginal affairs since the 1970s make clear, the functions of a wide range of provincial government departments affect the Mi'kmaq people, however minimally or sporadically, directly or indirectly. (Nova Scotia, 1971-1989) The absence of an organizational capacity to develop and co-ordinate policy meant that, by default, the approach was necessarily reactive and ad hoc. A disjointed and incremental strategy is not necessarily unresponsive or ineffective in certain areas of public policy; it may even lead to experimentation and institutional learning. Moreover, policy coherence and effective co-ordination are not always generated simply by enhancing the organizational resources committed to a particular area of policy. Having said this, however, when the complexities of provincial government-Mi'kmaq relations are taken into account — encompassing as they do a wide range of provincial governmental functions, a federal-provincial intergovernmental dimension, and a government-Aboriginal people relationship — this approach is not likely to be effective.

### **The Political-Public Policy Agenda**

Provincial government relations with the Mi'kmaq people span a wide range of subjects, even though the provincial program activities and therefore expenditures directed to the Mi'kmaq people are minimal. Given that the province has recently expressed its willingness to address matters of concern to the Mi'kmaq people, the current 'agenda' encompasses, among other things, treaty and Aboriginal rights, self-governance, land claims, hunting and fishing rights, taxation, unemployment, education, social and health services, culture and heritage, the administration of justice, policing, legalized gambling, human rights, and Mi'kmaq representation in the provincial legislature.

As a consequence of the Marshall Inquiry, attention has been given, through the Canada-Nova Scotia-Mi'kmaq Tripartite Forum, to justice, policing and human rights issues. While some progress has been evident on these critical issues, it would be inaccurate to state that relations between the provincial government and Mi'kmaq leaders have advanced to the point where a completely satisfactory accommodation has been achieved. In particular, Mi'kmaq leaders expressed continuing concerns that the province had not implemented the recommendations of the Marshall Royal Commission report. An apology from the provincial attorney general, without cabinet approval, was considered insufficient. In addition, it was widely known that, even after the Marshall Inquiry report, provincial ministers continued to

express, at least privately, negative views about the Mi'kmaq people. Nonetheless, the agreement covering the proposed Unama'ki Tribal Police Service constitutes a major accomplishment. The provincial government's expenditure share of this initiative constitutes its most significant commitment to a continuing program in relation to Mi'kmaq governance.

The rights of Mi'kmaq people concerning hunting and fishing constitute a long-standing issue in Mi'kmaq-Nova Scotia relations. These rights were included in the 1752 Treaty; section 4 provided that "the said Tribe of Indians shall not be hindered from, but have free liberty of hunting and fishing as usual...". The application of provincial laws to Mi'kmaq people from 1867 on, including the prosecution of those deemed to have violated these laws, meant that the rights of the Mi'kmaq people were ignored in the law, in its enforcement and in its adjudication. Mi'kmaq leaders in the Union of Nova Scotia Indians thus pursued a two-prong strategy: pressing for both treaty rights, through the courts, and Aboriginal rights, through the political process and international forums.

In 1985, the Supreme Court of Canada, in *Simon v. The Queen* (2 S.C.R. 387), declared that the 1752 Treaty was a valid treaty and that, "at a minimum the Treaty was still available to protect hunting rights on reserve lands". In addition, "the ruling made clear that existing rights of aboriginal people could not be extinguished by Provincial legislation". (Nova Scotia, 1993b, p. 41) In 1990, the appeals division of the Supreme Court of Nova Scotia, in *R. v. Denny, Paul and Sylliboy* (1990, 94 N.S.R. (2d) 253), "quashed convictions of three native persons...and held that the appellants had an existing aboriginal right to fish for food in the waters involved". (Nova Scotia, 1993b, p. 42)

Attempts by Mi'kmaq leaders, following the *Simon* decision, to gain recognition of their treaty rights resulted in a period of intense frustration for the Mi'kmaq people, particularly as they remained subject to prosecutions by provincial authorities for certain aspects of provincial laws in this area, resulting in a modern low point in Mi'kmaq-Nova Scotia relations. In 1988, limited and 'interim' hunting agreements between the government and Mi'kmaq leaders were reached and were in force for three years. When satisfactory arrangements could not be negotiated, Mi'kmaq leaders decided to supervise their own guidelines.

Although the provincial government, in 1990, recognized Mi'kmaq hunting rights, the issue remains on the agenda. In 1993, the wildlife advisory council of the department of natural resources recommended, among other things in relation to "Native People and Wildlife", that

The government of Nova Scotia...officially and publicly, recognize native constitutional and treaty rights to hunt and fish....[and that the] Department of Natural Resources...approach all native leaders with the view toward establishing three representative co-management boards; one each for the [Native] Council, the Confederacy and the Union; each of which would have both native and non-native representation on a single Provincial Co-Management Board that will determine ultimate policy. (Nova Scotia, 1993b, pp. 57-58)

In his statement to the Royal Commission on Aboriginal Peoples on 6 May 1992, Alex Christmas, president of the Union of Nova Scotia Indians, stated, "Based on the provisions of the 1752 Treaty, there is no opportunity for outside interference in our use and management of the resource, so the notion of 'co-management' is unacceptable to us." (Union of Nova Scotia Indians, 1992a, p. 10) In their presentation to the Special Joint Committee on a Renewed Canada on 16 January 1992, Daniel Christmas, executive director of the Union, and Bruce Wildsmith, legal counsel to the Union, stated, "There may also be a need [following constitutional recognition of Mi'kmaq governance within the Canadian Constitution] to consider areas of possible shared jurisdiction, such as off-reserve natural resource management". (Union of Nova Scotia Indians, 1992b, p. 5)

Taxation and trade have also constituted contentious issues on the political agenda, as the two sides have long disagreed about the application of provincial taxation on and off reserves, particularly with respect to gasoline and diesel fuel delivered to reserves, as well as provincial attempts to regulate the trade of tobacco products on reserves. The latter issue erupted onto the public stage when, less than three weeks after Premier Savage's policy statement of 7 July 1993, provincial tax officials raided 30 stores on reserves. Premier Savage apologized publicly to the Mi'kmaq chiefs for the raid, claiming that it would "not have occurred if we [the premier and cabinet] had known about it". (*Halifax Mail Star*, 3 August 1993, p. A3) The issue, he said, should be approached by way of "negotiation rather than by sending in the redcoats". His position was reiterated on 29 September, when the minister responsible, finance minister Bernie Boudreau said, "There are...larger issues here and they are issues of treaty rights". (*Halifax Mail-Star*, 30 September 1993)

The question of Mi'kmaq land claims is one that has focused primarily on Mi'kmaq relations with the federal government. To date, the federal government position has been that any rights to land on the part of the Mi'kmaq nation have been superseded by law, notwithstanding the fact that none of the treaties to which the Mi'kmaq nation was a party extinguished any such

rights and nor has any specific legislation explicitly done so. The provincial position, as reiterated in Premier Savage's July 1993 statement, is that federal involvement is required to settle this, among many other questions. A concerted effort has now been mounted by Mi'kmaq organizations to conduct new research on this issue. Premier Savage's July 1993 affirmation of "our recognition of native treaty and aboriginal rights", given that this affirmation goes beyond any previous statement by the province, together with the 1 October 1993 Proclamation signed jointly by Premier Savage and Grand Chief Ben Sylliboy, should introduce a new factor into the equation (Appendix 1).

On the question of self-government, Mi'kmaq leaders are in agreement. Their position was stated succinctly to the Royal Commission by Alex Christmas:

We see our right of self-government as an inherent right which does not come from other governments. It does not originate in our Treaties. The right of self-government and self-determination comes from the Mi'kmaq people — it is through their authority that we govern. The Treaties reflect the Crown's recognition that we were, and would remain, self-governing, but they did not create our Nationhood... In this light, the Treaties should be effective vehicles for the implementation of our constitutionally protected right to exercise jurisdiction and authority as governments. Self-government can start with a process of interpreting and fully implementing the 1752 Treaty, to build on it to an understanding of the political relationship between the Mi'kmaq people and the Crown. (Union of Nova Scotia Indians, 1992a, p. 13)

The position taken by the provincial government, supported by the leader of the opposition as well as the leader of the New Democratic Party, during the constitutional discussions of 1992, was one that supported "the inherent right to [Aboriginal] self-government". (Nova Scotia, 1992a, p. 4) Their joint statement to the Special Joint Committee on a Renewed Canada went on to state that

We are willing to sit down with the Mi'kmaq to negotiate with them just how self-government would work in Nova Scotia. This would involve definition of the structures and powers of aboriginal government and how these would relate to the Provincial and Federal Governments. When these negotiations are concluded to the satisfaction of all parties, we are prepared to seek the entrenchment of the resulting self-government agreements in the Constitution. (Nova Scotia, 1992, p. 4)

The same set of leaders subsequently supported the constitutional proposal — the Charlottetown Accord — that would have recognized that the "governments [of Aboriginal peoples] constitute one of three orders of government in Canada".

Premier Savage's July 1993 statement to the effect that there are "three jurisdictions — the provincial, the federal and the Aboriginal" (Nova Scotia, 1993a, p. 5) reaffirmed the province's recognition of what was included in the failed Charlottetown Accord. In so doing, it would appear that this could form the basis of an agreement on the four 'goals' of self-government in the Canadian Constitution set forth in 1986 by the Union of Nova Scotia Indians (representing at the time all the Mi'kmaq chiefs in Nova Scotia) and the Mi'kmaq Grand Council, namely,

1. **recognition** of the legal personality of those aboriginal nations and governments already acknowledged by treaty;
2. **limitation** of the powers of the Federal and Provincial governments over aboriginal communities;
3. **immediate vesting** of specific powers of self-government in aboriginal people, subject only to **subsequent** agreements with the Crown; and
4. **including** aboriginal governments in national equalization formulas, without prejudicing other financial entitlements. (quoted in Nova Scotia, 1991b, p. 17, emphasis in original)

This does not exhaust the issues currently on the Mi'kmaq-Nova Scotia agenda. Among other items, Mi'kmaq leaders have criticized the responsiveness of the provincial government and its departments in securing adequate health and social services where these apply to Mi'kmaq people, in developing educational curricula and support services where Mi'kmaq children are taught in public schools (which includes the majority of Mi'kmaq children in primary schools and all high-school students), in providing general public education and awareness about the Mi'kmaq nation and the rights of its people, and in initiating programs to foster employment opportunities. In addition, there is the question of representation of the Mi'kmaq nation in the provincial House of Assembly. (Nova Scotia, 1992b) This issue was raised in the context of a redrawing of provincial electoral districts, and the House of Assembly is on record as favouring a 'Mi'kmaq seat', but Mi'kmaq leaders and communities could not agree on a proposal to implement a scheme of representation in the provincial legislature.

### **Assessing the Relationship**

From a Mi'kmaq perspective, the overriding concerns with respect to relations between the Mi'kmaq people and the province of Nova Scotia are essentially twofold: first, provincial recognition of the Mi'kmaq people as an Aboriginal nation with treaty and Aboriginal rights to self-determination; and, second, a relationship built on trust, honesty and responsiveness as the basis for implementing self-determination.

The first concern has been addressed by the present government, at least in an initial way, in Premier Savage's July 1993 statement and his call for a "new, lasting and honourable relationship". (Nova Scotia, 1993a, p. 1) This builds upon steps taken by the previous Progressive Conservative government, with the support of the Liberal Party, then the official opposition, and the provincial New Democratic Party, during the events leading to the most recent constitutional round. These initiatives included a 1991 Working Committee on the Constitution, which counted among its eleven members a representative of the Mi'kmaq people and made, for the first time in the province's political history (aside from the Marshall Inquiry), a deliberate effort publicly to address issues related to the Mi'kmaq people in Nova Scotia as an Aboriginal nation with treaty and Aboriginal rights. Six advisory committees served the working committee. Five of these were formed with constitutional experts from the academic and private sectors. The sixth, the advisory committee on Aboriginal issues, was formed primarily on the basis of members nominated by Mi'kmaq political organizations.

In its report, which began its consideration of the subject of Aboriginal peoples, the working committee stated clearly that "Nova Scotians want aboriginal rights and rights to aboriginal self-government respected, and the promises made to aboriginal peoples in treaties respected". (Nova Scotia, 1991a, p. 7) The joint presentation by the premier, the leader of the official opposition and the leader of the New Democratic Party to the Special Joint Committee on a Renewed Canada, on 16 January 1992, replied:

Our response is equally clear: Nova Scotia agrees with the principle of aboriginal self-government. We agree furthermore that there is an inherent right to self-government, provided that this is within the Constitution of Canada, does not convey an assertion of international sovereignty, and its relation to land claims is clearly defined. Nova Scotians...believe that self-government is an aboriginal right and that the nature of self-government must evolve from negotiations between the aboriginal peoples of Canada and the Federal and Provincial governments. (Nova Scotia, 1992a, p. 4)

What is most significant in the development of the position of the Nova Scotia government and the province's political leaders is the extent to which the conception of the relationship between the provincial government and the Mi'kmaq people and its leaders has been transformed. Premier Savage captured the essence of this change when he stated,

The Government of Nova Scotia understands the dynamics of the process we are proposing. We want all Nova Scotians to understand, as well. These are not discussions between a government and the citizens governed. These are

negotiations between nations. When a non-native government deals with the native community, the relationship is nation to nation. This is a concept that will be difficult for some to accept. But it is the reality. It is a difficult concept, because it does not conform to our understanding of international relations. But here in Canada, the two nations share common land: the first nations and the Canadian nation. To further complicate matters, three jurisdictions — the provincial, the federal and the Aboriginal — overlap. But make no mistake, the Nova Scotia Government will enter into these vital talks with no misconceptions. We recognize that the Mi'kmaq exist as a nation, and has the obligations that come with nationhood. (Nova Scotia, 1993a, pp. 4-5)

Non-Aboriginal Nova Scotians, including their political leaders, have had difficulty coming to terms with this understanding of the Mi'kmaq people and nation for other reasons as well. The virtual invisibility of the Mi'kmaq people on the provincial political scene, the small size of the Mi'kmaq nation in relation to the provincial population, and the dispersal of their communities across the province, as well as the heterogeneity of the provincial society itself, have all contributed to a provincial polity that, in general, has had neither a knowledge nor an understanding of the Mi'kmaq Nation and its treaty and Aboriginal rights. At best, the Mi'kmaq people have been perceived as one among many 'minorities'; at worst, they have been discriminated against as a 'race'. Their status simply has not been a factor in provincial politics and governance. Many well intentioned Nova Scotians have regarded them in the same light as descendants of the many ethnic heritages that constitute the cultural diversity of the province, including the English, Scottish, Irish, Acadian, German, Black heritages. In a province where one other 'people' was actually formed, namely the Acadians, but where they were not expected to make any special claims, notwithstanding their active role in provincial political affairs, it is not surprising that many have "difficulty", as Premier Savage put it, accepting recognition of the Mi'kmaq people, as a nation, beyond their being 'wards' of the federal government.

All of this began to change in official circles with the 1985 Supreme Court of Canada decision in *Simon v. The Queen* and the 1990 Supreme Court of Nova Scotia decision in *R. v. Denny, Paul and Sylliboy*. Although the Mi'kmaq people and their leaders have often not been content with the extent to which the government responded to these court rulings, the provincial government has had to admit that the Mi'kmaq people have both "treaty and aboriginal rights". This recognition, coupled with the political salience of the Marshall Inquiry findings and recommendations, has forced a new appreciation that the Mi'kmaq people are not "citizens governed" by the province in the manner that applies to non-Aboriginal people.

The fact that the province acknowledged the treaty and Aboriginal rights of the Mi'kmaq nation only reluctantly — and not until Premier Savage's July 1993 statement did it express this in the most explicit terms — has meant that public knowledge and understanding have lagged behind official policy, notwithstanding general public acceptance of the need to address past inequities. Two areas in particular provide illustrations of this.

In the case of Mi'kmaq hunting and fishing rights, the tentative position of the province in relation to negotiated agreements with the Mi'kmaq nation as a matter of Mi'kmaq governance resulted in the Nova Scotia Wildlife Federation declaring that the interim hunting agreements of 1989 amounted to the government "[giving] away the management and conservation of wildlife to a *private interest group* and [endorsing] *discrimination*". (quoted in Nova Scotia, 1993b, p. 51, emphasis added) The characterization of the Mi'kmaq nation as "a private interest group" captures clearly the traditional view that denies the very existence of the Mi'kmaq people as a nation. Under this interpretation provincial laws apply to the Mi'kmaq people with equal force.

In the second case, that of the trade in tobacco products, the current government's decision to cease investigations on reserves pending the conclusion of negotiations prompted the Progressive Conservative leader, Terry Donahoe, a former minister in the governments of John Buchanan and Donald Cameron, to state, "I don't take issue at all with the idea that there be meetings, discussions and ultimately resolution of some of these matters...but *the law...is the law*. If there is any illegal activity relative to the Tobacco Tax Act in this province — whether it's native, white, or any other *part of the community* — then I say it's patently and obviously wrong for the premier and the minister of finance to tie the hands of the men and women who work in the tax commission". (*Halifax Mail-Star*, 30 September 1993, emphasis added) This understanding of provincial "law" in relation to the Mi'kmaq nation, and of the Mi'kmaq people as but one "part of the [provincial] community", illustrates the distance that must be travelled in recognition of the Mi'kmaq nation, its governance and jurisdiction in relation to the province and its laws.

Not until the provincial government recognized the Mi'kmaq nation as having treaty and Aboriginal rights was it likely that a relationship might be formed on the basis of trust, honesty and responsiveness, as desired by the Mi'kmaq people. The reasons for this are both simple and complex.

The simple part of the explanation lies in the nature of the politics practised in Nova



Scotia. (Beck, 1985 and 1988) Although not unique to the province by any means, political praxis has entailed promises beyond what politicians knew could, or would, be met, and therefore political promises not kept, particularly if those promised something were unable to exercise the political influence to collect on promises given. Likewise, political leaders were generally not responsive when demands could not be articulated in ways that entailed political rewards or sanctions. In a province where a combination of elite accommodation and populist politics long characterized governance, a small and dispersed people, with little in the way of the prerequisites for political access or clout, was unlikely to have the capacity to make politicians behave in ways that acknowledged their rights or met their needs. Serious political and ideological divisions within the Mi'kmaq nation itself have exacerbated the situation.

The complex part of the explanation lies in the fact that the Nova Scotia governance structure has been one where the capacity for central direction and co-ordination was at the lowest possible level. The Mi'kmaq people are not the only Nova Scotians to have suffered from these deeply embedded characteristics of Nova Scotia governance. But their claims and interests have been especially undermined because these claims and interests encompass much more than a single focus of provincial public policy. Without a significant degree of central direction and co-ordination, it is highly unlikely that even a sympathetic government could establish a relationship built on the required degree of trust, honesty and responsiveness. The dynamics of the system work in the opposite direction.

It is not surprising, considering these dynamics, that Mi'kmaq leaders are at times concerned as much about the capacity of ministers to control their supposedly subordinate civil servants as about the extent to which ministers are sympathetic to their claims. The actions of provincial tax officials on 22 July 1993 constitute the most recent cause for such concern on the part of Mi'kmaq leaders.

In so far as we were able to ascertain, Mi'kmaq leaders are more optimistic about their prospects under the new Liberal government. For the most part, they hoped for more from a new government, and Premier Savage's policy statement has instilled a degree of confidence in this expectation. In addition, not only has the personnel in the cabinet changed with the election of the Liberal party, but an overhaul of the bureaucracy has begun. Even so, the record of the past inevitably tempers this guarded optimism. "Time will tell" was a repeated comment from Mi'kmaq leaders.

The Mi'kmaq view of the record of provincial governments is one that is best characterized as extremely negative. The province has been regarded as unresponsive to a wide range of Mi'kmaq concerns. Mi'kmaq persons living off reserves and Mi'kmaq women in particular have regarded the province as uninterested in their situations. More generally, the view has been that the province has been "dishonest", even "deceitful", in its dealings with the Mi'kmaq people. The Mi'kmaq view is that they have not only had to fight expensive court battles to have their rights recognized, but that even when they have succeeded in the courts the province has been reluctant to respond in a positive manner. The fact that the province has been aggressive in applying provincial law to the Mi'kmaq people but has been unresponsive in providing public services to them is seen by Mi'kmaq leaders as the perpetuation of racism and discrimination, notwithstanding the recommendations of the Marshall Inquiry. Indeed, Mi'kmaq leaders were of the opinion that the provincial government, in the aftermath of the Marshall Inquiry, was less than aggressive in responding to what had been recommended. In short, a turnaround in the province's general approach may well depend on the formulation of specific provincial public policies relating to provincial government-Mi'kmaq relations, that is, policies to govern these relations as opposed to the ad hoc resolution of conflicts as they occur.

One dimension of Mi'kmaq-Nova Scotia relations, including those conducted through the Tripartite Forum, of long-standing concern of Mi'kmaq leaders relates to the level at which these relations are conducted. Given that the leaders of the Mi'kmaq nation wish these relations to be conducted as intergovernmental relations, they are dissatisfied with the extent to which the federal and provincial governments have been represented by appointed public servants rather than elected ministers. Many leaders, especially the chiefs, consider this an insult to them — "a slap in the face"; they are the elected representatives of their people, but federal and provincial governments expect them to negotiate with "the hired help". This is inconsistent in a context of nation-to-nation relations. This point has been raised in the context of a review of the Tripartite Forum and has also surfaced in the bilateral forum now established at the provincial level. Mi'kmaq leaders are well aware of the limitations imposed on public servants by the federal and provincial governments in the conduct of relations and therefore on the actual conduct of relations whose purpose is to resolve issues that require political, as opposed to administrative, decisions.

This feature of relations between Mi'kmaq chiefs, as well as Mi'kmaq political

organizations, and federal and provincial governments accounts in some large part for the degree of fluidity in who actually participates in the various forums and meetings. In addition, the absence of formalization in these processes imposes a particular burden on the Mi'kmaq nation, given the limited personnel and resources at its disposal to conduct such relations. Further, if negotiation rather than litigation is the preferred mode of settling outstanding issues, economy of time and effort is required if the Mi'kmaq nation is to have an opportunity to participate effectively in such negotiations.

### **Conclusions and Recommendations**

Both Mi'kmaq leaders and provincial government authorities now agree that negotiation is the preferred route to resolving questions pertaining to Mi'kmaq-Nova Scotia relations, including the issue of Mi'kmaq governance. At the same time, there is a greater desire on the part of Mi'kmaq leaders to adopt a third-party mechanism to resolve issues on which the two parties cannot agree. Given that the provincial government has constitutional status and the Mi'kmaq nation does not yet enjoy the same security in its jurisdiction, at least in so far as their treaty rights are not yet entrenched in the Constitution, this is not surprising. The fact that the courts have been instrumental in the Mi'kmaq nation securing its treaty and Aboriginal rights, especially over the past decade, naturally gives Mi'kmaq leaders a greater measure of confidence in them than in the province.

The acceptance by the Savage government of the need "to forge a new, lasting and honourable relationship...built on respect, understanding and trust" (Nova Scotia, 1993a, p. 1) and to initiate a "process that will conclude with a comprehensive new agreement between Nova Scotia's First Peoples and the non-native community" (p. 4) should constitute the starting point for a new era in Mi'kmaq-Nova Scotia relations. A comprehensive agreement, as the premier put it, could "bring the Treaty of 1752 into the 1990s, and make it relevant to native needs into the next century". (p. 2) This approach is consistent with the traditional Mi'kmaq understanding of a "covenant chain of treaties", whereby treaties between nations are not considered "static" but rather "the framework for living and evolving relationships between...Nations". (Union of Nova Scotia Indians, 1992a, p. 1)

But what must be done to accomplish this goal? As the preceding analysis has attempted to make clear, at least three conditions must apply.

First, if the Mi'kmaq nation is to be recognized as a nation in the conduct of Nova Scotia-Mi'kmaq relations, as well as Canada-Nova Scotia-Mi'kmaq relations, the mechanisms within which negotiations take place must be structured first and foremost to ensure that these are negotiations between political leaders. Both the tripartite and the bilateral process, accordingly, must be structured to include ministers from the governments concerned. Not all negotiations need to be conducted by these political leaders, but their continuous involvement is essential. For their part, Mi'kmaq leaders must likewise ensure that for discussions at this level their representatives are able to speak on behalf of the Mi'kmaq nation. This does not preclude consultations between Mi'kmaq leaders and their people, or the development of positions on matters of decision consistent with Mi'kmaq governance traditions; it does mean, however, that, as was the case in the past, the Mi'kmaq nation must be able to reach nation-to-nation agreements.

In this regard, it may be necessary at some point to recognize that the Mi'kmaq nation is not confined to Mi'kmaq people living in Nova Scotia. The 1867 imposition of the Canadian state on the Mi'kmaq nation, without its participation or consent, has meant that it must relate to more than one provincial government. If the Mi'kmaq nation is to be recognized as constituting a third order of government in Canada, the question arises whether the territorial boundaries of the second order of government, namely provinces, must constrain the approach to the boundaries of the third order of government.

It is not inconceivable, for instance, that the third order of government, as it applies to the Mi'kmaq nation, might extend across existing provincial boundaries. Although our traditional concepts of the nation-state, including nation-states that are federal and thereby contain separate local states or provinces, have been predicated upon territorial demarcations that do not overlap, there is nothing inherent in the concept of a self-governing nation that precludes the idea of a self-governing nation with boundaries extending across boundaries used for other governmental or administrative purposes. For instance, the federal department of fisheries, unlike other federal departments and agencies, organizes its regional divisions in ways that extend across provincial boundaries because this makes sense in terms of fisheries administration. Another example of an attempt to deal with the exigencies of geography in relation to governmental matters is the proposal by the federal Royal Commission on Electoral Reform and Party Financing to establish a process for creating 'Aboriginal constituencies', for the election of members to the House of

Commons, that would extend across other constituencies within a province. (Canada, 1991, pp. 169-192).

At issue here is the question of how the Mi'kmaq nation wishes to address Mi'kmaq self-governance. An openness to the practical dimensions of the restoration of Mi'kmaq governance ought not to begin, on the part of the federal and provincial governments, with the assumption that the Mi'kmaq nation must confine itself to the territorial boundaries of a federation established by others. This is especially important given continuing discussions among the three Maritime provinces concerning interprovincial co-operation and co-ordination.

Second, for its part, the government of Nova Scotia requires an enhanced organizational and administrative capacity to manage the conduct of its relations with the Mi'kmaq nation. Although this could be accomplished in several ways, at a minimum the mandate of those involved in this function must be made explicit, and the number of staff responsible for this function must be increased.

The former requires a measure of effective formalization of authority and policy that has not been a characteristic of government in the province in relation to Aboriginal affairs — or, for that matter, most areas of provincial governance. While a measure of discretion is required for those who will be involved in negotiations with the Mi'kmaq nation, a strategic approach by the province must include a clear understanding of who is responsible for what and what constitutes the fundamental objectives of provincial policy in relation to Mi'kmaq governance. The fact that the premier has assumed the portfolio of minister responsible for Aboriginal affairs is a positive step in this direction.

The latter consideration requires that the deputy minister of the office of the premier — who also occupies the position of deputy minister of intergovernmental affairs, and who is therefore the immediate superior of the director of Aboriginal affairs, the lead civil servant responsible for the office of Aboriginal affairs — possess an explicit mandate to institute a mechanism to co-ordinate the policies and activities of other departments and agencies whose functions affect relations between the province and the Mi'kmaq nation and its people. This could take one of several forms, but whatever approach is adopted, it must foster and secure recognition on the part of the other departments and agencies that the province's policies concerning provincial-Mi'kmaq relations are government policies that encompass all departments and agencies. Whatever approach to interdepartmental co-ordination is adopted, however, the

office of Aboriginal affairs, particularly for the period of initial negotiations between the province and Mi'kmaq leaders, must have its staff complement increased, whether by permanent staff or secondment from other departments and agencies. The experiences of the province in this and other areas that require central direction and co-ordination, but where major shortcomings have been evident, ought not to be repeated. The vital interests of the province and the Mi'kmaq nation are too important to be subject to the traditional practices of provincial public administration.

Finally, the particular characteristics of the Mi'kmaq nation, even within Nova Scotia — encompassing as it does dispersed communities, a relatively small population, and members living both on and off reserves — combined with the financial exigencies facing both provincial and federal governments at present (and for the foreseeable future), require that considerable attention be given to innovative ways to realize Mi'kmaq governance in order to secure and enhance the well-being of the Mi'kmaq people.

Mi'kmaq governance entails self-determination by the Mi'kmaq people on matters over which their order of government exercises exclusive jurisdiction and shared jurisdiction. At the same time, it is incumbent upon the Canadian federation, and thus the other two orders of government — federal and provincial — not only to establish financial agreements that make every possible provision for a fair and just distribution of Canadian resources to the third order of government, but also to enter into administrative agreements that enable this order of government to provide for public services that cannot be delivered efficiently or economically solely by the third order of government. As is currently the case in several areas of public services, practical considerations will require contractual arrangements between two or more orders of government if the financial resources of the third order of government are to be used effectively.

Just as federal and provincial governments are beginning to experiment with joint federal-provincial services across Canada, the third order of government will likely have to rely on this approach for some of the services provided to Mi'kmaq people. As joint intergovernmental undertakings, however, these need not imply any measure of subordination. These practical considerations nonetheless highlight the need for the provincial government to create the necessary internal capacity to develop and foster co-operative and co-ordinated, rather than confrontational and fragmented, relations with the Mi'kmaq nation and its governance

structures. Mi'kmaq governance, in short, will be enhanced, among other things, by improved governance and public management by the province of Nova Scotia.

### **Postscript**

Subsequent to the preparation of this study several developments occurred that bear upon the issues raised in it. Progress has been made on establishing the Unama'ki Tribal Police Force; by the end of 1994, fifteen officers will have been trained and in place. In addition to the justice-related initiatives noted in this paper, the province has announced the creation of a Native Justice Institute, that, in addition to acting as a co-ordinating body for these several initiatives, will introduce a court workers program. The Tripartite Forum has been strengthened in several respects, including efforts to secure high-level involvement by political leaders on both the governmental and Mi'kmaq sides, as well as the appointment of Joe Ghiz, former premier of Prince Edward Island and now dean of the Dalhousie University Law School, as chair of the Forum. The Forum's mandate, moreover, is to be enlarged to encompass more than justice-related issues. In addition, an accord was reached between the federal government and the thirteen Mi'kmaq chiefs that will transfer control over education from the federal government to the Mi'kmaq nation, the first such agreement in Canada. Finally, within the Nova Scotia government, the premier has retained the Aboriginal affairs portfolio, and some progress has been made in developing the co-ordinating capacity of the provincial government with respect to these affairs.

At the same time, there continues to be friction in the area of the administration of justice, and confrontations between Mi'kmaq 'warriors' and the police have not ceased. Issues concerning Mi'kmaq youth, women and persons living off-reserve are still marginal to the political agenda in relations between the province and the Mi'kmaq. Moreover, public support for initiatives may be declining, especially as government efforts to cope with the province's deficit and debt take their toll. Finally, the uncertain future of Premier Savage (a story in itself) may also not bode well for the future success of provincial-Mi'kmaq relations.

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