



Mi'gma'we'l T'plu'taqnn

MI'GMAWE'L T'PLU'TAQNN INC.
RESPONSE REPORT
SYSTEMIC RACISM IN NEW BRUNSWICK

Executive Summary

Systemic racism is a reality of daily life for First Nations in New Brunswick, as it has been for centuries. Racism is embedded in New Brunswick's laws and institutions and has been central in attempts to dispossess the Mi'gmaq of our lands, to remove our children from our communities, and to separate us from our language and culture. While these attempts have not been wholly successful, they have contributed to issues of mental and physical health, poverty, addiction, and generational trauma. They have led to the over-policing of our communities, the overrepresentation of our people in the justice system, and their overrepresentation.

While the Government of New Brunswick has acknowledged the problem of systemic racism in the Province, they have refused to take appropriate action, or even to properly investigate the causes of anti-Indigenous racism.

The First Nation Chiefs in New Brunswick are united in their call for an independent Indigenous-led public inquiry into systemic racism that exists in the justice system in New Brunswick. The reasons for such an inquiry are further laid out in this report.

Unfortunately, the Government of New Brunswick, and Premier Higgs in particular, have refused to heed this call. They have once again decided on what they feel is best for Indigenous Peoples, without taking the actual perspectives of Indigenous peoples into account. This paternalistic approach is emblematic of the very problem we are trying to solve and perpetuates systemic racism rather than addressing it.

Instead of an independent, Indigenous-led inquiry with the power to meaningfully address the systemic problems that exist in this Province, what the people of New Brunswick got was a Crown-led Office of the Commissioner on Systemic Racism ("OCSR") which lacked the ability to properly investigate anti-Indigenous racism, and lacked independence from the GNB, as evidenced by the Commissioner withdrawing her interim report, and watering down her findings and recommendations.

This report by Mi'gmawe'l Tplu'taqnn Incorporated ("MTI") is provided in response to the Commissioner's Final Report, and to propose a different path forward.

Systemic Racism against Indigenous Peoples in New Brunswick

The systemic racism that First Nations in New Brunswick are subjected to is both unique and widespread, and is different from the experience of Indigenous peoples elsewhere, and of that experienced by other racialized groups in New Brunswick.

As part of the Peace and Friendship Treaties entered into between the Wabanaki Nations and the British, the Crown agreed not to unlawfully occupy or possess our lands without our agreement. Despite those constitutionally protected Treaties, the GNB sold large tracts of unceded Mi'gmaq land and continues to unlawfully claim and occupy large tracts of so-called "Crown land" – and continues to refuse to acknowledge Mi'gmaq title to our lands.

- The wholesale theft of unceded land from the First Nations in New Brunswick is the largest act of systemic racism in the Province, and is the root of many barriers First Nations in the Province face today.

The continued illegal occupation of unceded Mi'gmaq lands results in the Crown and private industry profiting off of resource development with little to no revenue sharing with the First Nations. This suppression of Mi'gmaq rights and disregard for their wellbeing has resulted in mental health challenges, addiction, and high rates of poverty, which means that First Nations people are more likely to come into contact with the justice system; while at the same time, are underserved when it comes important social safety nets such as income assistance and related programs and services.

Issues with the justice system in New Brunswick came to a head in 2020 following the horrific police shooting deaths of two Indigenous people, which occurred shortly after the hit-and-run death of an Indigenous person and the Crown's decision not seek justice for that individual's family. These incidents led all First Nation Chiefs in New Brunswick to call for an independent Indigenous-led public inquiry into the systemic racism that exists in the justice system in New Brunswick.

The GNB rejected that call of the First Nation leadership.

Need for a Public Inquiry into Systemic Racism against Indigenous Peoples in NB

The Supreme Court of Canada has affirmed that provincial public commissions of inquiry play an important role in the operation of government. Public inquiries are created to uncover the truth in response to matters of significant concern; often prompted by the tragic deaths of person(s) at the hands of police or because of longstanding failures of a justice system.

Each province and territory in Canada has their own legislation authorizing the establishment of public inquiries. Provinces that have made progress in addressing these issues have had their own provincial inquiries into racism in their justice systems. The Marshall Inquiry in Nova Scotia, for example, "laid bare the overt and systemic racism that exists throughout Nova Scotia's justice system and has since been a major catalyst for positive change."

- There is nothing preventing the GNB from establishing a public inquiry into systemic racism against Indigenous peoples in New Brunswick.

For that reason, it's important to set out what such a public inquiry could look like and what it could achieve. An independent Indigenous-led public inquiry into systemic racism against Indigenous Peoples in New Brunswick could serve many functions, including:

- Raising awareness and increasing public understanding of the problem of racism in New Brunswick generally, and in the justice system specifically;
- Filling many of the gaps in the data / information regarding racism in New Brunswick;
- Examining the root causes of, and potential solutions to, the problems, leading to widespread change in the justice system and in New Brunswick generally;
- Assisting our Mi'gmaq communities, and the families of those who have lost loved ones, to find answers, to heal, and find closure;
- Providing the independence and impartiality that a government committee, commission or task force cannot; and
- Reviewing and assessing the progress made in New Brunswick in addressing the recommendations, calls to action, and calls for justice made by prior commissions, inquiries, and expert panels.

A public inquiry could achieve all of this because it would have the legal authority to compel witnesses and to collect the data that is missing regarding the extent of the problems in New Brunswick. For example, the powers of the commissioner(s) of such a public inquiry would be quite broad, allowing the commissioner(s) of the public inquiry hearing from witness such as police officers, provincial Crown Ministers and others whose evidence may be material to the subject of the inquiry: systemic racism against Indigenous Peoples in New Brunswick.

Such a public inquiry would serve as the needed in-depth study of the specific problems within New Brunswick's justice system in relation to Mi'gmaq and Wolastoqiyik peoples; it would raise awareness of the issues, gather the necessary information on the extent of the problems, and identify actionable changes and spur the change that is needed.

New Brunswick Commissioner on Systemic Racism

Instead of establishing a public inquiry that could affect real change, in 2021, the GNB appointed the Commissioner, who was set up to fail from the outset, for a number of reasons, including:

- The GNB mandated and appointed the Commissioner without any input from Indigenous or racialized groups;
- The Commissioner was given a team of only three individuals, \$500,000.00 and only one year to study and report on the extent and scope of systemic racism against Indigenous peoples and all racialized minorities in New Brunswick, including in the areas of education, health, social development and justice;
- The Commissioner had no power to compel evidence or testimony from anyone, much less government, police sources or their officials;
- None of the three individuals on the Commissioner's team were Indigenous.

Perhaps the most alarming aspect of the Commissioner's Report and the OCSR process is that it appears the GNB dictated what recommendations the Commissioner could make.

In the Spring of 2022, the Commissioner voiced support for a public inquiry into the systemic racism in the justice system, and prepared a midterm update in which the Commissioner stated:

"[...] my first recommendation to the government is to launch, without delay, a Public Inquiry into systemic racism against Indigenous peoples in New Brunswick's criminal justice and policing sectors. I further recommend that this Public Inquiry be an Indigenous-led, co-managed process and be provided with all the necessary resources and institutional support required for its work."

That midterm update was supposed to be released publicly. However, it was only after the Commissioner met with the Premier and a Minister, as well as with lawyers working for GNB, that Commissioner decided not to release the midterm update. This reinforces the conclusion that this process was directed by Government, and not by Indigenous peoples.

The abrupt turn in position by the Commissioner prompted the Mi'gmaq leadership in the Province to withdraw from the Commissioner's process in June 2022, alleging political interference (joining Wolastoqey Chiefs, who declined to participate from the beginning).

By lumping all forms of racism together, and having the investigation conducted by a single, government-appointed, non-independent commissioner, the GNB not only failed to adequately address systemic racism, it actually perpetuated the paternalistic approach that is at the core of systemic racism against Indigenous peoples in New Brunswick.

Commissioner's Recommendations

While there are some positive recommendations and findings in the Commissioner's Report, for the most part, the Commissioner's recommendations fall far short of what is needed.

The recommendations do not reflect the concerns put forward by First Nations about the strained relationship with the GNB, and the Commissioners Report and its recommendations fail to address the root causes of systemic racism against Indigenous peoples in New Brunswick.

- The Commissioner's Report actually reinforces why an independent public inquiry is needed. It certainly appears that the GNB limited the scope of the Commissioner's mandate, and had a hand in vetting the Commissioner's Report and its recommendations.

The Commissioner's Report and its recommendations fails to fulfill the commitments that the Commissioner made to the Mi'gmaq Chiefs in the Spring of 2022, when the Commissioner promised to provide Indigenous-specific recommendations, including calling on the GNB to launch an independent public inquiry into systemic racism in the justice system.

Ultimately, the Commissioner's Report contains 29 Indigenous-specific recommendations, none of which seek to address concrete and effective action that can be taken to address the root causes of many barriers and injustices First Nations peoples in the province face.

Continued need for an Indigenous-Led Public Inquiry into Systemic Racism

While MTI will push for the implementation of many of the Commissioner's recommendations, MTI will also continue to push for change in the areas that the Commissioner's Report and its recommendations do not address, including the need for an independent inquiry into systemic racism in the justice system, the need for structural change at the Department of Aboriginal Affairs, and the need to address the root of racism against Indigenous peoples in this Province: the illegal occupation of our lands.

A full list of the MTI recommendations that were provided to the Commissioner are included in Appendix "A" to this report.

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Introduction

This report by Mi'gmawe'l Tplu'taqnn Incorporated ("MTI") is provided in response to the Systemic Racism Commissioner's Final Report¹ released by the New Brunswick Office of the Commissioner on Systemic Racism ("OCSR"). This report sets out MTI's concerns with the Commissioner's Report and its recommendations, as well as serious concerns surrounding the events leading up to the Commissioner's Report, and proposes a different path towards addressing systemic racism in the Province.

Ultimately, this MTI report explains how the Commissioner's Report:

"...represents another broken promise to First Nations, and an unfortunate conclusion to a process that could have done so much more to address systemic racism in the Province. While MTI welcomes some of the recommendations made by the Commissioner, others fall far short of what is needed."²

Before delving into those concerns directed at the OCSR process and the Commissioner's Report, this report briefly addresses public inquiries generally, and then shifts to a discussion on what an independent Indigenous-led public inquiry could have looked like and what it could have achieved.

Long before the Commissioner was appointed and the OCSR was established, First Nations in New Brunswick had asked for an independent Indigenous-led inquiry into systemic racism facing Indigenous peoples in the justice system in New Brunswick. The history and experience of racism against Indigenous peoples in New Brunswick is unique, and requires a specific, tailored response. That being said, this report is not intended to downplay or be dismissive of the systemic racism that others face in New Brunswick. Action must be taken to address all systemic racism in this Province. As MTI has previously made clear to the OCSR and the Government of New Brunswick ("GNB"), all racism in Mi'gmaq territory is harmful and must be eradicated.

We cannot speak for other communities and racialized groups, so for the purposes of this report, the focus is on the systemic racism against Indigenous Peoples in New Brunswick; which the Commissioner's Report and the GNB have failed to meaningfully address. By lumping all forms of racism together, and having the investigation conducted by a single, government-appointed, non-independent commissioner, the GNB not only failed to adequately address systemic racism, it actually perpetuated the paternalistic approach that is at the core of systemic racism against Indigenous peoples in New Brunswick. The Crown has once again decided on what it feels is best for Indigenous Peoples, without taking the actual perspectives of Indigenous peoples into account.

Background

While systemic racism is a problem that is not specific to New Brunswick, the experience of First Nations with racism in New Brunswick is different from the experience of Indigenous peoples elsewhere, and is different than that experienced by other racialized groups in New Brunswick.

¹ Government of New Brunswick – "Systemic Racism Commissioner's Final Report", online at: <https://www2.gnb.ca/content/dam/gnb/Corporate/Promo/systemicracism-racismesystemique/SystemicRacismCommissionerFinalReport.pdf> ["Commissioner's Report"]

² As explained in an MTI press release immediately following the release of the Commissioners' Report, see online at: <https://migmaxel.org/statement-from-mti-chiefs-on-systemic-racism-commissioners-report/>

Whether it is the attacks on Mi'gmaq fishers at Burnt Church, signs in doctor's offices saying that First Nations are not entitled to the same medical treatment as our non-Indigenous neighbours, being denied access to jobs because of lack of recognition of our Indigenous languages, or the continuing illegal occupation of our unceded lands, the systemic racism against Indigenous Peoples in New Brunswick is both unique and widespread.

Beginning in the 18th century the Mi'gmaq and the British, on a Nation-to-Nation basis, entered into a series of Peace and Friendship Treaties, which are commonly referred to as the Covenant Chain of Treaties.³ The starting point for any discussion on addressing systemic racism in the Province of New Brunswick should be the Peace and Friendship Treaties. Our ancestors negotiated Treaties that protected our rights and did not surrender our sovereignty or Title. The Peace and Friendship Treaties were not land cession treaties; the Crown agreed that they would not unlawfully occupy or possess Mi'gmaq lands without the agreement of the Mi'gmaq.⁴

The *Royal Proclamation of 1763* ("*Royal Proclamation*"), issued by the British Crown, continued the land related agreements set out in the Peace and Friendship Treaties; that Indigenous lands could not be ceded without consent of the relevant Indigenous peoples.⁵ The government in New Brunswick did not honour their treaty obligations, and disregarded the requirements set out in the *Royal Proclamation*, and allowed unlawful sales and squatting on our lands.⁶

Colonial violence against Indigenous Peoples in New Brunswick has not stopped. Indigenous people in this Province continue to face racism and discrimination in various aspects of the justice system and other social systems. Indigenous peoples are underrepresented as policy and lawmakers, as lawyers and judges, and are generally excluded from meaningful decision-making roles in the Province.

The legacy of colonial violence, and the resulting mental health challenges, addiction, and high rates of poverty means that Indigenous peoples are more likely to come into contact with the justice system; while at the same time, are underserved when it comes important social safety nets such as income assistance and related programs and services.

MTI provided a Discussion Paper on the Administration of Justice to the GNB in late 2019, which outlines some of the systemic issues at a high level. That paper draws on the following key supporting documents that make recommendations for improving the justice system, and experiences generally, for Indigenous peoples in Canada:

³ A helpful overview of the Treaties by Prof. William Wicken, PhD, can be found online at: <https://www.rcaanc-cirnac.gc.ca/eng/1100100028599/1539609517566#wb-info>; See also Francis, R. (2003) "The Mi'kmaq nation and the Embodiment of Political Ideologies: Ni'kmaq, Protocol and Treaty Negotiations in the Eighteenth Century," M.A. Thesis, Saint Mary's University.

⁴ Hamilton, R. (2018). *Indigenous Legal Traditions and Histories of International and Transnational Law in the Pre-Confederation Maritime Provinces*, Canada in International Law at 150 and Beyond, Paper No. 4. Centre for International Governance Innovation, Waterloo: ON [*"Indigenous Legal Traditions and Histories"*], pg. 8.

⁵ John Burrows, *Constitutional Law from a First Nation Perspective: Self Government and the Royal Proclamation*, 1994, pg. 11. Canadian courts have recognized the significance of the *Royal Proclamation* as key to considering the issue of Indigenous lands and title. In considering the territorial application of the *Royal Proclamation*, the Supreme Court of Canada has held that it does apply to the former colony of Nova Scotia, being present day Nova Scotia and New Brunswick – see *R v Marshall*, 2005 SCC 43, at para 87.

⁶ See Brian Cuthbertson, *Stubborn Resistance: New Brunswick Maliseet and Mi'kmaq in defence of their lands*, (2015), Halifax, NS: Nimbus Publishing Limited.

- The Report of the Royal Commission on Aboriginal Peoples (“RCAP”);⁷
- The United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”);⁸
- The Truth and Reconciliation Commission’s (“TRC”) Calls to Actions;⁹ and
- The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (“MMIWG Report”).¹⁰

While RCAP, the TRC, the MMIWG Report and others have addressed many of the larger systemic issues at a national level, and have made important findings and calls to action that need to be implemented, none of those reports / inquiries have dealt with the specific realities of systemic racism and the justice system in New Brunswick. While past inquiries have touched on certain aspects of the problem, and there are many recommendations flowing from those past reports that all governments should implement, none have looked at the specific history and circumstances in New Brunswick. There is actually very little within reports from past inquiries that is specific to New Brunswick, their recommendations are generally national in scope.¹¹ Further, unlike many other Provinces, there has never been a public inquiry into the specific circumstances of systemic racism and discrimination against Indigenous Peoples in the justice system in New Brunswick.

Issues with the justice system in the Province of New Brunswick came to a head in June 2020 after the horrific shootings of Chantel Moore and Rodney Levi, which occurred shortly after the finding of “not guilty” with respect to the driver involved in the hit-and-run death of Brady Francis and the Crown’s decision not to appeal.

These incidents led all First Nation Chiefs in New Brunswick to call for an independent Indigenous-led public inquiry into the systemic racism that exists in the justice system in New Brunswick. Since then there has been a long-standing call by all First Nation Chiefs in the Province for a public inquiry; the Chiefs have repeatedly explained to the GNB that previous commissions and reports do not specifically address racism in New Brunswick, and that the need for a public inquiry is separate and apart from the need for action on recommendations from past commissions and inquiries.¹²

In August 2020 an open letter signed by hundreds of people, including lawyers, professors and other concerned citizens, was provided to the GNB, calling on the Province to hold a public inquiry into how the justice system treats Indigenous Peoples.¹³ Following that, the Chiefs continued to push for a public inquiry. However, instead of listening to the repeated calls by all First Nations in

⁷ Canada. Report of the Royal Commission on Aboriginal Peoples (1996), online at: <https://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/final-report.aspx>

⁸ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295.

⁹ TRC Calls to Action 43 and 44, found online at: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf

¹⁰ Reclaiming Power and Place: The Final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, online at: <https://www.mmiwg-ffada.ca/final-report/>

¹¹ Naomi Metallic, *New Brunswick Needs a Public Inquiry into Systemic Racism in the Justice System: Nova Scotia Shows Why*, *Journal of New Brunswick Studies*, Vol. 12 (Fall 2020) [“NB Needs a Public Inquiry”], pg. 4.

¹² December 11, 2020 joint press release of the Wolastoqey Nation in New Brunswick and MTI.

¹³ See CBC news article, July 21, 2020, online at: <https://www.cbc.ca/news/canada/new-brunswick/nb-letter-push-inquiry-systemic-racism-policing-justice-1.5657046> [“Open Letter”]; the Open Letter was initially provided to the Province on July 20, 2020, and then again on August 4, 2020 after over 200 more people signed onto the Open Letter.

the Province for a public inquiry, in March 2021, the GNB issued a press release stating that the GNB would be appointing a single commissioner “tasked with engaging all stakeholders to develop an understanding of the nature and impact of systemic racism in the province.”¹⁴

That announcement came as a surprise to all First Nation Chiefs in the Province. In April 2021, months before the Commissioner was appointed, MTI wrote to the GNB expressing concerns with the proposed approach as announced. In that letter, the Mi’gmaq Chiefs detailed concerns with the GNB’s decision to forego a public inquiry and instead appoint a single commissioner with a broader scope of study, in a limited timeframe, and in a manner lacking the independence of an inquiry.¹⁵ In addition to relaying their surprise, the Mi’gmaq Chiefs posed a series of questions aimed at ensuring there could be confidence in the OCSR’s process, including: “Who will the Commissioner report to? How will their independence be ensured?” and “Has there been any discussion on whether this tight timeline may hinder qualified persons from applying or producing a subpar report?”¹⁶

By the time the Commissioner was appointed, the GNB was made aware that the Coroner’s Inquests in both Rodney Levi and Chantal Moore’s shootings were deemed homicides, which underscores some of the problems in the justice system and highlights why an independent public inquiry is necessary. To date, there has been little to no action from the GNB on the recommendations that came out of the Coroner’s Inquest into the police killing of Rodney Levi. In our (Mi’gmaq) experience, the deaths of Rodney Levi and Chantal Moore are not isolated incidents: racism in the justice system in New Brunswick is widespread, and affects every aspect of the system from policing, to prosecutions, to prisons. As a lawyer and professor of law explains:

“Mi’gmaq and Wolastoqiyik peoples are demanding more than just an investigation into the police conduct in the Moore and Levi deaths; what is sought is a full examination of how New Brunswick’s justice system is failing First Nations peoples in the province. This is because police operate and are shaped by the wider justice system they work in and First Nations in the province recognize that you cannot fix one without fixing the other.”¹⁷

When the Mi’gmaq Chiefs met with Premier Higgs in June and July 2020 they asked for an Indigenous-led inquiry that would have the power to effect real change. The Premier, in response, argued that a public inquiry would take too long, is unnecessary and, instead, that it is sufficient to study the hundreds of recommendations coming out of previous reports such as RCAP, the TRC and the MMIWG Report. However, when asked how many of those past recommendations that the GNB has followed through with, the Premier explained that he did not have an exact number, “but was told that less than 15 per cent of the 800 recommendations have been implemented.”¹⁸ The Premier’s very argument against the need for a public inquiry is an admission

¹⁴ Government of New Brunswick – News Release: Commissioner to be appointed to address systemic racism in New Brunswick, online at: https://www2.gnb.ca/content/gnb/en/news/news_release.2021.03.0228.html

¹⁵ April 29, 2021 letter from MTI to Ministers of Aboriginal Affairs and Post-Secondary Education Training and Labour.

¹⁶ *Ibid.*

¹⁷ See NB Needs a Public Inquiry, pg. 1.

¹⁸ See CBC article, First Nations Chiefs and N.B. premier meet to discuss systemic racism, June 17, 2020, online at: <https://www.cbc.ca/news/canada/new-brunswick/first-nations-chiefs-meet-new-brunswick-premier-systemic-racism-justice-1.5616548>

of inaction on the part of the GNB, which “is a reflection of the systemic problems in the province’s justice system.”¹⁹

The Commissioner was appointed in September 2021.²⁰ While skeptical, the Mi’gmaq Chiefs initially opted to participate in the OCSR process, in hopes that it would actually be a process independent and free from government interference. Throughout the time the Mi’gmaq Chiefs participated in the OCSR process it was made clear by the Chiefs that, despite the appointment of the Commissioner, a public inquiry is needed as the OCSR and the resulting Commissioner’s Report is not a substitute for an independent public inquiry. The position of the Mi’gmaq in New Brunswick has not changed.

Public Inquiry into Systemic Racism against Indigenous Peoples

To meaningfully address the systemic problems in New Brunswick’s justice system, which have been highlighted by the failed prosecution into the killing of Brady Francis and the police shooting deaths of Rodney Levi and Chantal Moore, there needs to be an Indigenous-led public inquiry into the systemic racism and how the justice system is failing Indigenous peoples in the Province.

This section first provides a brief overview of some provincial public inquiries that can be looked to as examples for governments that are actually committed to addressing systemic racism and effecting real change. Following that, this section then discusses what an independent Indigenous-led inquiry could have looked like, including its process and powers, as well as how it could have meaningfully addressed systemic racism against Indigenous peoples in this Province.

Provincial Public Inquiries

The Supreme Court of Canada has affirmed that provincial (and federal) commissions of inquiry play an important role in the operation of government.²¹ Public inquiries are created to establish the facts and uncover the truth in response to matters of significant concern, often in the face of skepticism of the need for an inquiry. Unfortunately, the reality is that public inquiries are often prompted by tragic deaths at the hands of police or longstanding failures of a justice system.²²

Each of the provinces and territories in Canada have their own legislation authorizing the establishment of public inquiries,²³ and provinces that have made progress in addressing these issues have had their own provincial inquiries into racism in the justice system. We need look no further than Nova Scotia’s public inquiry into the wrongful conviction of Donald Marshall Jr. (the “Marshall Inquiry”)²⁴ The Marshall Inquiry found that the failures of the justice system in Nova

¹⁹ See NB Needs a Public Inquiry, pg. 4. Further, the commissioners of the MMIWG National Inquiry acknowledged the need for regional / Indigenous-specific investigations in order to properly address the longstanding issues that Indigenous peoples face – see MMIWG Report, Vol 1a, p. 622 and MMIWG Report Vol 1b, p. 75.

²⁰ See GNB new release, *Commissioner on systemic racism in New Brunswick appointed*, September 2021 online at: https://www2.gnb.ca/content/gnb/en/departments/post-secondary_education_training_and_labour/news/news_release.2021.09.0661.html

²¹ See *Star v Houlden*, [1990] 1 S.C.R 1366; also see *Phillips v Nova Scotia (Commissioner, Public Inquiries Act)*, [1995] 2 S.C.R. 97 [“*Phillips v Nova Scotia*”].

²² See *Phillips v Nova Scotia*, at para 60.

²³ In New Brunswick it is the *Inquiries Act*, RSNB 2011, c. 173 [“NB Inquiries Act”].

²⁴ See Royal Commission on the Donald Marshall, Jr., Prosecution – Digest of Findings and Recommendations (December 1989), online at:

Scotia were due, in part at least, to the fact that Donald Marshall Jr. is Indigenous.²⁵ The Marshall Inquiry “laid bare the overt and systemic racism that exists throughout Nova Scotia’s justice system and has since been a major catalyst for positive change”²⁶, including:

- the Indigenous Black and Mi’kmaq law program, which has trained a large number of Mi’kmaq lawyers working within the justice system in Nova Scotia;
- the Mi’gmaq Legal Support Network, which provides a wide range of supports and services to Mi’kmaq people interacting with the criminal justice system, including court support workers, Gladue reports, and victim support services;
- Indigenous Courts and sentencing circles; and
- changes to training of judges, police officers, Crown attorneys, and other actors in the justice system.²⁷

Most of the above tools are missing or underutilized in New Brunswick.²⁸

Other provinces have held their own public inquiries in the wake of high-profile incidents of racism against Indigenous peoples. The Government of Quebec, in response to multiple reports of Indigenous women being abused by police in Val d’Or, established a public Commission of Inquiry into Relations between Aboriginal Peoples and Certain Public Services (the “Viens Commission”).²⁹ Similar to the New Brunswick context, at first there was resistance on the part of the provincial government in Quebec in response to public and Indigenous calls for an inquiry.³⁰ However, the Viens Commission was established pursuant to Quebec’s public inquiry legislation,³¹ and resulted in a 520-page report containing 142 calls to action, covering a broad spectrum, including calls for improvements in social services, justice (policing, corrections), mental-health, youth protection services, as well as education. The Viens Commission involved 38 weeks of hearings throughout Quebec, which gathered testimony about the decades of abuse, mistreatment and neglect of Indigenous people in that province.³²

https://novascotia.ca/just/marshall_inquiry/docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf

²⁵ *Ibid.*

²⁶ NB Needs a Public Inquiry, pg. 1.

²⁷ See NB Needs a Public Inquiry; also see L. Jane McMillan, “Living Legal Traditions: Mi’kmaq Justice in Nova Scotia,” (2016) 67 *U.N.B. L.J.*, 187.

²⁸ For a brief comparison between Nova Scotia and New Brunswick regarding various measures to address the justice needs of First Nations see pg. 2-3 of *NB Needs a Public Inquiry*.

²⁹ See Commission d’enquête sur les relations entre les Autochtones et certain services publics online at:

<https://www.cerp.gouv.qc.ca/index.php?id=3&L=1>

³⁰ Initially, the Premier of Quebec argued that the Val d’Or events should be addressed by the national MMIWG Inquiry. However, the executive director of the MMIWG inquiry sent a response letter to Quebec advising that the Val d’Or events would not be reviewed by the federal MMIWG. That response from the MMIWG Inquiry resulted in a change of position by the provincial government and the creation of the Viens Commission. See “Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Quebec: listening, reconciliation and progress – Final Report”, at pg. 18, online at:

https://www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Rapport/Final_report.pdf [“Viens Commission Report”].

³¹ *Act respecting public inquiry commissions*, CQLR, c. C-37 [“Quebec Inquiry Act”].

³² Section 5 of the Quebec Inquiry Act provides the appointed commissioners with the authority to hold meetings “at the place where the necessary information is to be obtained”; the Viens Commission mandate included “To hold hearings in Val-d’Or and in the indigenous communities affected, as well as in other parts of Québec, if deemed necessary in the performance of its mandate”, see Viens Commission Mandate online at:

<https://www.cerp.gouv.qc.ca/index.php?id=11&L=1>

The Aboriginal Justice Inquiry of Manitoba, which was a provincial public inquiry established to probe into the murders of two Indigenous people, was tasked with examining the relationship between the Indigenous People in that Province and the Provincial Government of Manitoba.³³ One of the commissioners of that provincial public inquiry was The Honourable Murray Sinclair, an Indigenous person and former lawyer, judge and Senator. The scope of that Aboriginal Justice Inquiry captured all components of the justice system in order to consider the systemic discrimination against Indigenous peoples. To achieve that, the Aboriginal Justice Inquiry commission was given the authority to investigate into a lengthy list of justice related areas.³⁴ The report resulting from that inquiry called for, among other things, the recognition of land and Treaty rights, as well as Indigenous self-determination.³⁵

Further west, the Braidwood Commission of Inquiry (the “Braidwood Inquiry”) was a Provincial inquiry established pursuant to British Columbia’s *Public Inquiry Act*,³⁶ in response to lethal use of tasers by RCMP officers resulting in the death of Robert Dziekanski.³⁷ RCMP officers testified and were ultimately charged with perjury for lying under oath.³⁸ Leading up to those perjury charges, the RCMP officers unsuccessfully challenged the Braidwood Inquiry Commissioner’s authority to investigate into allegations of misconduct against the officers involved in the tasing death of Mr. Dziekanski. The RCMP in that Province distanced itself from the lawsuit filed by the four RCMP officers; an official spokesperson told CBC News that the RCMP in that Province would “co-operate fully with the inquiry” and recognized “the jurisdiction of the inquiry as having authority.”³⁹

Indigenous-led Inquiry into Systemic Racism against Indigenous Peoples

The GNB received the Commissioner’s Report over a year ago and still has not formally responded to it. An independent Indigenous-led inquiry would long since have completed its work, and started acting on its recommendations. An independent Indigenous-led public inquiry into systemic racism against Indigenous Peoples in New Brunswick could have served many functions, including:

- It could have raised awareness and increased public understanding of the problem of racism in New Brunswick generally, and in the justice system specifically;
- It could have filled many of the gaps in the data / information regarding racism in New Brunswick;

³³ See *Report of the Aboriginal Justice Inquiry of Manitoba*, Chapter 1: The Inquiry and the Issues, online at:

<http://www.ajic.mb.ca/volumel/chapter1.html#2>

³⁴ *Ibid.*

³⁵ See *Report of the Aboriginal Justice Inquiry of Manitoba*, Chapter 5: Aboriginal and Treaty Rights, online at:

<http://www.ajic.mb.ca/volumel/chapter5.html>

³⁶ *Public Inquiry Act*, S.B.C. 2007, c. 9 [“BC Inquiry Act”].

³⁷ See “Why? The Robert Dziekanski Tragedy,” Braidwood Commission on the death of Robert Dziekanski, May 2010, online at: <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/inquiries/braidwoodphase2report.pdf> [the “Braidwood Inquiry Report”].

³⁸ See *Robert Dziekanski Taser death: Kwesi Millington sentenced to 30 months for perjury*, CBC news - June 22, 2015 online at: <https://www.cbc.ca/news/canada/british-columbia/robert-dziekanski-taser-death-kwesi-millington-sentenced-to-30-months-for-perjury-1.3122941>

³⁹ See *Inquiry makes criminal allegations vs Mounties in Dziekanski death: lawyer*, CBC news - June 12, 2009 online at: <https://www.cbc.ca/news/canada/british-columbia/inquiry-makes-criminal-allegations-vs-mounties-in-dziekanski-death-lawyer-1.792352>

- It could have examined the root causes of, and potential solutions to, the problems, and lead to widespread change in the justice system and in New Brunswick generally;
- It could have helped our Mi'gmaq communities, and the families of those who have lost loved ones, to find answers, to heal, and find closure;
- It would have provided the independence and impartiality that a government committee, commission or task force cannot; and
- It could have served to review the progress in New Brunswick in addressing the recommendations, calls to action, and calls for justice made by prior commissions, inquiries, and expert panels.

In March 2022, the OCSR sent MTI a “Summary of Indigenous-led recommendations,”⁴⁰ which stated that the Commissioner would be recommending that the GNB “launch a Public Inquiry into systemic racism against Indigenous peoples in New Brunswick” and that it “should be an Indigenous-led and co-managed process.” The Lieutenant-Governor in Council could have established a public commission of inquiry, and appointed one or more commissioners to investigate into various matters including “the administration of justice”.⁴¹ The Lieutenant-Governor in Council (Cabinet) could have established a commission of public inquiry to:

- Inquire into and report on all forms of systemic racism against Indigenous people within all aspects of the justice system in New Brunswick (policing, access to and adequacy of legal counsel, prosecution, courts, correctional services) including underlying social, economic, cultural, institutional and historical causes contributing to the ongoing discrimination against Indigenous people in the justice system in New Brunswick;
- Review the GNB’s progress in acting on the recommendations, calls to action, and calls for justice from previous commissions, inquiries, and reports; and
- Make recommendations on concrete and effective action that can be taken to remove systemic causes of discrimination against Indigenous people in the justice system in New Brunswick, and the steps that need to be taken to implement the recommendations.

The New Brunswick Lieutenant-Governor in Council could have appointed Indigenous people as commissioners to the independent public inquiry. Alternatively, the Lieutenant-Governor in Council could have ordered a co-managed process for the public inquiry with one or more Indigenous organizations to work alongside the commissioner(s).⁴²

In particular, an independent Indigenous-led public inquiry would have had the legal authority to compel witnesses and to collect the data that is missing regarding the extent of the problems in New Brunswick. The powers of the commissioner(s) of such a public inquiry would have been quite broad, which could have resulted in the public inquiry hearing from witness such as police officers, provincial Crown Ministers and others whose evidence may be material to the subject of

⁴⁰ Office of the Commissioner on Systemic Racism, *Summary of Indigenous-led recommendations*, March 2022 [“March 2022 Summary”].

⁴¹ NB Inquiry Act, s. 2.

⁴² Some provinces have public inquiry legislation that specifically contemplates a co-managed process. See s. 3 of the BC Inquiry Act for example, which states that the Lieutenant Governor in Council may enter into an agreement with the government of another jurisdiction and/or an Indigenous organization to establish a joint commission. While the NB Inquiry Act does not include such an express provision, the wording in sections 2 and 14 of the NB Inquiry Act are quite broad, and there is nothing in the Act that would, on its face, prohibit such a process.

the inquiry: systemic racism against Indigenous Peoples in New Brunswick.⁴³ On that point, the Supreme Court of Canada has confirmed that ministers of the Crown are generally compellable witnesses in public inquiry proceedings.⁴⁴

Concerning police officers, the British Columbia Court of Appeal determined that the commissioner of the Braidwood Inquiry had the statutory authority to investigate into allegations of misconduct against the RCMP officers involved in the tasing death of Mr. Dziekanski, including the authority to make findings of misconduct against the RCMP officers.⁴⁵ While that decision is from British Columbia, the Courts findings are applicable to the New Brunswick context as the language contained in the relevant provision in the NB Inquiry Act regulations is a near mirror image of the BC Inquiry Act clause at issue in that case.⁴⁶

Public inquiries are not governed by strict rules of evidence. In New Brunswick, commissioners of a public inquiry are empowered to hear and accept any relevant evidence, whether or not it is admissible under the Court of King's Bench trial rules.⁴⁷ This would have allowed the Indigenous-led inquiry to examine in detail the root causes of systemic racism against Indigenous peoples in New Brunswick, and to determine potential solutions to this problem. Any person summoned by the Indigenous-led inquiry would have been required to attend and answer all questions asked by the commissioner(s), and to produce all relevant documents in that person's control or possession.⁴⁸ If a person refused to comply with a summons, either by refusing to answer a question of the commissioner(s) or refusing to produce a document, they could be subject to a penalty of up to 30 days in jail.⁴⁹

Commissioners of public inquiries have a general power to control their proceedings and are not to be constrained by narrow interpretations of their enabling statutes. The rationale behind that is the nature and purpose of public inquiries, which includes insulating the public inquiry investigations from government and the Courts.⁵⁰ An Indigenous-led inquiry would have provided the independence and impartiality that a government committee, commission or task force cannot; as the conduct of and the procedure to be followed at the inquiry would have been under the direction and control of the inquiry commissioner(s).⁵¹ The commissioner(s) of the Indigenous-led inquiry could have developed and implemented its own procedures, which could have included the following (non-exhaustive list):

- Guidance on working with Indigenous communities in New Brunswick to adopt procedures that are culturally appropriate and sensitive, while being expedient for the proper conduct of the inquiry;
- That, similar to that of the MMIWG National Inquiry, to further assist with the gathering of data / information and to facilitate participation by those who would otherwise be unable

⁴³ Section 4 of the NB Inquiry Act provides appointed commissioners the authority to summons "any person whose evidence may be material to the subject of the inquiry" and the commissioner(s) may "order any person to produce the books, papers and documents" that appear necessary for investigation of the inquiry subject matter.

⁴⁴ See *Canadian Javelin Ltd, Re*, [1982] 2 S.C.R. 686

⁴⁵ *Rundel v British Columbia (Commissioner of Inquiry)*, 2009 BCCA 604.

⁴⁶ See ss. 4(2) of the N.B. Reg. 83-167 – Procedure Order – NB Inquiry Act and s. 11 of the BC Inquiry Act.

⁴⁷ NB Inquiry Act, s. 8.

⁴⁸ NB Inquiry Act, s. 4.

⁴⁹ NB Inquiry Act, s. 6. The Supreme Court of Canada has held that there is no constitutional limitation on a provincial commission of inquiry exercising powers to punish for contempt in the event of a refusal by a witness to testify, see *Di Lorio v Montreal Jail*, [1978] 1 S.C.R. 152.

⁵⁰ See *Phillips v Nova Scotia (Commissioner, Public Inquiries Act)*, [1995] 2 S.C.R. 97.

⁵¹ See s.2 of the N.B. Reg. 83-167 – Procedure Order – NB Inquiry Act.

to in person, the commission would have held meetings and/or hearings throughout the Province,⁵² especially in Indigenous communities in New Brunswick;

- To assist the commissioner(s) in conducting the inquiry, including with the examination of witnesses and holding hearings, the commissioner(s) could have appointed Indigenous legal counsel;⁵³
- While working with Indigenous communities in New Brunswick, to the greatest extent possible, the commission would conduct meetings and/or hearings by means of informal processes such as the gathering of statements by qualified trauma-informed persons to record the experiences of those participating in the inquiry. During the MMIWG National Inquiry, witnesses explained how they felt shame and humiliation of having to relive their histories when telling their stories to non-Indigenous Gladue report writers.⁵⁴ Having Indigenous legal counsel would have allowed Indigenous witnesses tell their stories in a more comfortable setting, which would have helped to fill in many of the gaps in the data / information regarding racism against Indigenous peoples in New Brunswick, and could have helped our Mi'gmaq communities, including the families of those who have lost loved ones, to heal and find closure;
- Make available to inquiry participants trauma-informed and culturally appropriate counselling services that the commission considers appropriate;
- Provide any person having a substantial and direct interest in the subject matter of the inquiry with an opportunity to participate in the Inquiry;
- Consider and give weight to, as the commissioner(s) deem appropriate, the findings of facts and recommendations set out in relevant studies, reports and other examinations, whether provincial, national or international, including but not limited to: the TRC Report, the RCAP Report; the Final Report of the MMIWG Inquiry, the Marshall Inquiry Report, the Report of the Aboriginal Justice Inquiry of Manitoba, the Cawsey Commission (1991), the Stonechild Inquiry (2004), the Saskatchewan Commission in First Nations and Metis Peoples Justice Reform (2004), the Ipperwash Inquiry (2007) and the Review of First Nations Representation on Ontario Juries (2013);
- That all GNB departments, boards, and agencies shall, subject to any privilege or other legal restriction, assist the commission to the fullest extent possible, including by producing documents in a timely manner, so that the commission may carry out its duties;
- Timeline for the commission to develop and submit an interim report, inclusive of the commission's preliminary findings, conclusions and recommendations, including a review of work already done and measures aimed at addressing systemic racism against Indigenous people in New Brunswick that can be implemented immediately; and
- Timeline for the commission to develop and submit a final report, setting out the commission's findings and recommendations.⁵⁵

Public inquiries “can and do fulfil an important function in Canadian society,” and “the investigative, educational and informative aspects of inquiries clearly benefit society as a whole.”⁵⁶ Such a public inquiry would have served as the needed in-depth study of the specific problems within New Brunswick's justice system in relation to Mi'gmaq and Wolastoqiyik peoples; it could have raised

⁵² See NB Inquiry Act, s. 3.

⁵³ See s.3 of the N.B. Reg. 83-167 – Procedure Order – NB Inquiry Act.

⁵⁴ MMIWG Report, Vol 1a, p. 641.

⁵⁵ Section 10 of the NB Inquiry Act states that commissioners shall report the evidence gathered and their findings on the evidence to the Attorney General of New Brunswick.

⁵⁶ See *Phillips v Nova Scotia*, at paras 62 and 65.

awareness of the issues, gathered the necessary information on the extent of the problems, and identified actionable changes and spurred the change that is needed.

Key Concerns with the OCSR and the Commissioner's Final Report

Instead of an independent Indigenous-led inquiry, the OCSR and the Commissioner's Report was a Crown-led commission in which the Commissioner lacked independence from the GNB. This failed to respect First Nations sovereignty and the Treaty partnership between the Crown and First Nations. As such, instead of meaningfully addressing the problems, it merely replicated the paternalistic colonial power structures that are at the root of systemic racism against Indigenous peoples in New Brunswick.

MTI and other First Nation organizations were also excluded from the release of the Commissioner's Report, and only received the report after it had been shared publicly. That exclusion reinforces the view that the entire OCSR process was one that did not meaningfully involve Indigenous peoples.

Commissioner's Mandate

The Commissioner and her team were set up to fail from the outset. The Commissioner was given a team of only three individuals, \$500,000 and only one year to study and report on the extent and scope of systemic racism against Indigenous peoples and all racialized minorities in New Brunswick, including in the areas of education, health, social development and justice.⁵⁷ The GNB mandated and appointed the Commissioner without any input from Indigenous or racialized groups. Instead of responding directly and positively to calls for a public inquiry, the GNB, in its decision to unilaterally provide the Commissioner with her mandate, undermined the legitimacy of the concerns for the safety of First Nations people living in New Brunswick and on unceded First Nation land.⁵⁸

MTI has long warned that racism is deeply embedded in GNB departments like education, health, social development and justice. However, unlike the powers an independent public inquiry could have had,⁵⁹ the Commissioner had no power to compel evidence or testimony from anyone, much less government, police sources or their officials. Given that lack of power on the part of the Commissioner, we question the transparency of certain government and police officials that participated in the Commissioner's process.

Further, none of the three individuals on the Commissioner's team were Indigenous. Regardless of the intentions and qualification of those on the Commissioner's team, that was a critical oversight, one that MTI hopes was not intentional. Regardless, at the very least it demonstrates a lack of understanding concerning the need for Indigenous representation when attempting to study and report on systemic issues facing Indigenous peoples. Ultimately, right from the appointment of the Commissioner, to the creation of the Commissioner's mandate, and throughout the whole OCSR process, it appears that the GNB was content to disregard the voice of its Treaty partners. The former senior advisor to the Commissioner succinctly explained that:

⁵⁷ For the Commissioner's mandate, See Government of New Brunswick – "Commissioner on systemic racism", online at: <https://www2.gnb.ca/content/gnb/csr-crs/en.html> ["About the Commission"].

⁵⁸ See "The mandate of N.B.'s systemic racism commissioner perpetuates the problem", July 5, 2022 online at: <https://policyoptions.irpp.org/magazines/july-2022/systemic-racism-commission-nb/> ["Mandate Perpetuates the Problem"].

⁵⁹ See section 4 of the NB Inquiry Act.

“We must acknowledge the violence inflicted upon First Nations people in New Brunswick through the creation of our mandate. Equating the manifestations of systemic racism unique to Indigenous Peoples with those of Black people and non-white settlers like the two of us minimizes the specific oppression of Indigenous Peoples. That is racist. We clearly cannot be an appropriate alternative to a public inquiry.”⁶⁰

MTI expressed concern throughout the process about the Commissioner’s lack of independence.

Commissioner Lacked Independence

Within the first fifty days of the Commissioner’s mandate one of the first tasks was to develop terms of reference for meeting the Commissioner’s objectives.⁶¹ Under public inquiry legislation, terms of reference are established by order in council. The terms of reference then frame the scope of the inquiry’s legal authority.⁶² However, that was not the case here as the OCSR was not a public inquiry established under the New Brunswick public inquiry legislation. As such, months before the Commissioner was even appointed, in a letter to the relevant GNB Ministers, MTI posed a list of questions including: “Is there an opportunity for us to have a representative on the [commissioner] hiring committee?” and “Are the Mi’gmaq Chiefs able to appoint a representative(s) to help develop a Terms of Reference for the Commissioner of Systemic Racism?”⁶³ However, the questions and concerns raised by MTI were dismissed by the GNB.

The Mi’gmaq Chiefs clearly conveyed to the GNB that there needed to be Indigenous involvement. Yet, the end result was that no Indigenous or racialized groups were involved in the Commissioner hiring process, the development of the Commissioner’s Terms of Reference, or reporting structure for the Commissioner.⁶⁴ The same Indigenous peoples that the Commissioner was mandated to study and report on were excluded from the very process aimed at establishing the OCSR and developing the Commissioner’s scope of work.

Unlike reports from public inquiries, the Commissioner’s Report does not provide any details on the Commissioner’s / OCSR’s terms of reference or the Commissioner’s contract. It appears as though the GNB instructed that the Commissioner could not address specific matters, even if directly relevant to the Commissioner’s mandate. Whether it was the terms of reference for the Commissioner or through another avenue, it seems as though there was some form of direction from the GNB that prohibited the Commissioner from addressing issues that were / are in litigation, effectively precluding the Commissioner from addressing some of the most serious and controversial issues in the First Nation-Provincial Crown relationship, including forestry and the theft and illegal occupation of Indigenous land by the Crown.

Mid-term Update / Report: Government Interference?

The Mi’gmaq Chiefs first met with the Commissioner in December 2021 and shared some of their concerns, stories, and rationale on the need for a public inquiry into the systemic racism in the justice system. Then, in the Spring of 2022, during another meeting with the Mi’gmaq Chiefs, the

⁶⁰ See Mandate Perpetuates the Problem.

⁶¹ See “Timeline” in the Commissioner’s Report, pg. 6.

⁶² Westlaw Canada, CED Public Inquiries § 10.

⁶³ MTI letter to Ministers Arlene Dunn and Trevor Holder, dated April 29, 2021.

⁶⁴ See “New Brunswick Chiefs release report, continue call for inquiry into systemic racism”, Global News, June 20, 2022 online at: <https://globalnews.ca/news/8934052/nb-racism-report-calls-inquiry/>

Commissioner voiced support for an inquiry and advised the Chiefs that the Commissioner was going to release an interim report that included such a recommendation.

In March 2022 the OCSR wrote to MTI, and in line with what the Commissioner previously committed to the Mi'gmaq leadership, stated that the Commissioner intended to make two sets of recommendations specific to Indigenous Peoples, with the first set to be outlined in a midterm report to be made public, and that one of the recommendations would be that the GNB “Launch a Public Inquiry into systemic racism against Indigenous peoples in New Brunswick” and that it “should be an Indigenous-led and co-managed process.”⁶⁵

Shortly thereafter, the Commissioner prepared a reported titled “Midterm Update” and dated April 2022, which was largely based on information and recommendations the Mi'gmaq had provided. In that Midterm Update, after describing the work done by the OCSR up to the halfway mark of its mandate, the Commissioner stated:

“[...] my first recommendation to the government is to **launch, without delay, a Public Inquiry into systemic racism against Indigenous peoples in New Brunswick’s criminal justice and policing sectors.** I further recommend that this Public Inquiry be an **Indigenous-led, co-managed process and be provided with all the necessary resources and institutional support required** for its work.”⁶⁶

MTI then sent a follow-up letter to the Commissioner, explaining that the Chiefs were pleased to see that the Commissioner listened to their concerns and agreed on the need for a public inquiry.⁶⁷

The Midterm Update was supposed to be released publicly.⁶⁸ However, it seems that after sharing the Midterm Update and meeting with the Premier and Minister Arlene Dunn, as well as with lawyers working for GNB, the Commissioner decided not to release the Midterm Update report and released a midterm statement instead. It seems that the Midterm Update and its recommendations set off alarm bells within the GNB; a CBC News article explains how Minister Dunn was “astonished” to see the Midterm Report and that Minister Dunn was alarmed that the Commissioner did not seek prior input from government departments.⁶⁹ This reinforces the conclusion that this process was directed by Government, and not by Indigenous peoples.

It was after the Commissioner met with the Premier and Minister that it was revealed the Commissioner would no longer be recommending a public inquiry.⁷⁰ This raises serious concerns about the Commissioner’s independence. Not only should commissioners of public inquiries not have to provide tentative conclusions to government for vetting,⁷¹ but MTI is concerned that the

⁶⁵ March 2022 Summary.

⁶⁶ Midterm Update: Office of the Commissioner on Systemic Racism, April 2022 [“Midterm Update”] at pg. 7. Emphasis in original.

⁶⁷ May 5, 2022 letter from MTI to Commissioner Varma re: Meeting with MTI Chiefs on mid-term report.

⁶⁸ See CBC News article, *Systemic racism report calls for N.B. task force, not the inquiry sought by First Nations*, December 16, 2022 online at: <https://www.cbc.ca/news/canada/new-brunswick/systemic-racism-commissioner-final-report-1.6688382>

⁶⁹ See CBC News article, *Call for immediate public inquiry shelved after systemic racism commissioner met with Higgs*, June 20, 2022 online at: <https://www.cbc.ca/news/canada/new-brunswick/systemic-racism-commissioner-midterm-report-1.6495262> [“Call for Inquiry Shelved”]

⁷⁰ *Ibid.*

⁷¹ See *First Investors Corp., Re*, 1998 CarswellAlta 316 (ABCA); leave to appeal refused by SCC, (1989), 100 N.R. 159, where the Court of Appeal explained that a commissioner should not have to provide tentative conclusions, as doing so could lead to a series of minor trials.

GNB appeared to interfere with the Commissioner's work, and dictated what recommendations the Commissioner could make. Not only does this highlight the Commissioner's lack of independence, but also it is yet another example of a broken promise to First Nations.

The abrupt turn in position by the Commissioner prompted the Mi'gmaq leadership in the Province to withdraw from the Commissioner's process in June 2022, alleging political interference.⁷²

Following the Coroner inquest into the death of Chantal Moore, which was deemed a homicide, the Commissioner was asked if she had seen enough to publicly recommend an Indigenous-led public inquiry; the Commissioner declined. As a result, the Commissioner's senior advisor resigned from the OCSR.⁷³

Failure to acknowledge the unique nature of anti-Indigenous racism

By lumping all systemic racism under a single commission, the GNB failed to acknowledge the unique nature of anti-Indigenous racism. The result is that the Commissioner's Report fails to adequately consider the roots of anti-Indigenous racism in historic and ongoing colonialism in the Province of New Brunswick. A statement issued by the Wolastoqey Chiefs following the Commissioner's appointment aptly describes the fundamental flaw with the GNB's decision:

“Make no mistake: this commission is not a replacement for the inquiry we asked for [...]. The Higgs-mandated general review of systemic racism against all racialized people in New Brunswick pre-determines that the needs and exercises of all minority communities are the same. This is an example of systemic racism.”⁷⁴

The approach of the GNB to view all those subjected to systemic racism as being the same is problematic; this type of formal equality approach fails to acknowledge and accept that the experiences and lived reality of First Nations people are unique and different from that of other racialized groups. The Canadian Human Rights Tribunal has held that substantive equality requires accommodating “the distinct needs and circumstances of First Nations children and families living on reserve, including their cultural, historical and geographical needs and circumstances.”⁷⁵

The systemic racism faced by First Nations is unique, as is the Treaty relationship between the Provincial Crown and the First Nations in the Province. The unique history of New Brunswick, with its interaction between Indigenous Peoples, Acadians, and English-speaking peoples, has created its own dynamics and patterns of racism. These have been evident in incidents like the 'Burnt Church Crisis', a racist and violent backlash by non-Indigenous fishers to the recognition of our Treaty rights. Most of those responsible for the violence have never been brought to justice. This continues to have repercussions in our communities today.

⁷² See “New Brunswick racism commissioner calls for public inquiry into Indigenous treatment in the justice system”, Globe and Mail, June 20, 2022 online at: <https://www.theglobeandmail.com/canada/article-new-brunswick-racism-commissioner-calls-for-public-inquiry-into/>

⁷³ See Mandate Perpetuates the Problem.

⁷⁴ Wolastoqey Chiefs Decline to Participate in Higgs Government's Commission on Systemic Racism, online at: <https://wnnb.wolastoqey.ca/2021/11/24/lorem-ipsum-3/>. Emphasis added.

⁷⁵ See *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 at para. 465.

The MMIWG Report, in various sections, discusses the unique history and needs of Indigenous Peoples in Canada. That Report explains that in addition to requiring an understanding of a specific Indigenous groups history, values, beliefs, and needs in order to address and heal from systemic racism, “understanding the distinctions among Nations and communities in key areas is important in understanding that there is no one solution to implementing measures to promote safety and justice.”⁷⁶ Whereas, in New Brunswick, a consequence of lumping all systemic racism under a single commission means that the Commissioner was set up to fail from the outset. This is reflected in the Commissioner’s Report, which touches only briefly on some of the historic and ongoing colonial violence against Indigenous peoples in New Brunswick.

Commissioner’s Recommendations

While MTI welcomes some of the recommendations made by the Commissioner, others fall far short of what is needed. Before commenting on the Commissioner’s recommendations, the first part of this section will address the Commissioner’s Report generally.

An aspect of the OCSR’s process that is concerning, and which is explained in the Commissioner’s Report, is that the OCSR did not provide any definition of ‘systemic racism’ to participants and “never questioned a participant’s definition of racism, overt or systemic.”⁷⁷ Had there have been parameters set for participants as to what systemic racism is, including examples, that may have prompted more sharing, which could have resulted in stronger Indigenous-specific recommendations (provided the Commissioner was free to make such recommendations without interference).

Another methodology related concern we have is the OCSR decision not to hold public consultations, due to the concern that ill-intended individuals might attend and cause greater trauma for participants.⁷⁸ There are ways to address / prevent things like that from happening. Taking a trauma based approach,⁷⁹ in conjunction with appropriate screening / security measures, the OCSR could have held public consultations, which would have afforded more people the opportunity to share their stories in order for the Commissioner to have a more fulsome understanding of the deeply ingrained racism in GNB departments and structures. Although MTI understands that the miniscule budget of the OCSR likely contributed to not being able to do so.

Unfortunately, the rushed, closed door nature of the process means that far too little was accomplished in terms of public education about systemic racism, and that as a result, there is now very little public dialogue about what needs to be done to address it. A public inquiry would have fostered more education, attention to the issues, and ultimately more public support for the actions that are needed to address racism.

When comparing the Midterm Update to the final Commissioner’s Report, and knowing the events that occurred in between, it is certainly hard to reach any conclusion other than the Commissioner’s Report and its recommendations were constrained by GNB interference. For example, the Midterm Update, which was not made public by the OCSR, heavily criticized the GNB and determined that: “The overarching conclusion is that the relationship between

⁷⁶ MMIWG Report, Vol. 1a, pg. 131.

⁷⁷ See Commissioner’s Report, pg. 5.

⁷⁸ See Commissioner’s Report, pg. 4.

⁷⁹ A trauma-informed approach that supports healing and seeks to ensure that witnesses and other participants are not re-traumatized. For example, see the MMIWG Inquiry, *Doing Things Differently: 10 ways our approach is reflective of Indigenous values*, online at: <https://www.mmiwg-ffada.ca/doing-things-differently/>

Indigenous peoples and New Brunswick's justice system is broken."⁸⁰ Whereas the Commissioner's Report contains a very watered down version of the Midterm Report, stating that "[w]e are at a fork in the road regarding Indigenous relationships. Key actions will determine whether we will move forward together"; and at various parts the Commissioner's Report praises the "exceptional work" that has been done to date by GNB departments, educational institutions and industries.⁸¹

Much of the Commissioner's Report focuses on the need for New Brunswick to be a welcoming community for newcomers, with many of the recommendations in the limited Commissioner's Report being directed at systemic racism generally and racialized immigrants and newcomers.

While MTI agrees with the need to address those aspects of systemic racism in this province, and that racialized immigrants and newcomers deserve a welcoming community free from racism, the fact is that merely four pages of recommendations specific to addressing systemic racism against Indigenous peoples falls woefully short of being able to address the hundreds of years of colonial violence and continuing acts of injustice that Indigenous peoples in New Brunswick continue to face.

MTI shared a series of existing MTI discussion papers and reports with the Commissioner, including a detailed list of relevant findings and recommendations as contained in those documents.⁸² A full list of the MTI recommendations that were provided to the Commissioner are included in Appendix "A" to this report. As noted above, the Commissioner's Midterm Update was largely based on information and recommendations the Mi'gmaq had provided. However, the Commissioner's Report fails to fulfill the commitments that the Commissioner made to the Mi'gmaq Chiefs when she met with them in the Spring of 2022 and promised to provide Indigenous-specific recommendations, including calling on the GNB to launch an independent public inquiry into systemic racism in the justice system, as well as putting a hold on the GNB's controversial "Common Path" initiative.

Recommendation 1 in the Commissioner's Report falls short of what is need in New Brunswick and is hard to align with other aspects of the Commissioner's Report. For example, the Commissioner states that "[m]y concern is with the leadership [...]". The overall environment of [GNB] leadership did not present systemic racism as a priority."⁸³

Like this statement in the Commissioner's Report, MTI's concern is with the complete disregard the GNB leadership espouses with respect to Indigenous peoples well-being and the need to meaningfully address systemic racism. Despite being requested to complete a survey for the OCSR, more than 99% of those in GNB leadership positions did not complete the survey. Pairing that with the Minister of Public Safety publicly stating that he does not believe that systemic racism exists in this Province⁸⁴ further demonstrates the need for an independent public inquiry into systemic racism in New Brunswick, in order to independently investigate and report on the issues in a manner that the Commissioner was unable and/or prevented from doing. Simply

⁸⁰ See Midterm Update, pg. 7.

⁸¹ See Commissioner's Report, pg. 7.

⁸² This includes: the MTI Administration of Justice discussion paper referenced earlier; an MTI discussion paper on reclaiming Mi'gmaq lands; an MTI submission to the Government of Canada titled *Taan Tel Nestemeg: Towards a Mi'gmaq Rights Implementation Framework*; an MTI paper on Language, Heritage and Culture; and an MTI report to Heritage Canada titled *Moving towards Reconciliation in New Brunswick*.

⁸³ See Commissioner's Report, pg. 13.

⁸⁴ *Ibid*, pg. 25.

recommending that GNB leaders and elected officials be educated on the meaning of systemic racism fails to consider those earlier points – that many in the GNB leadership either do not believe that there is systemic racism or they not care – which further speaks to a public inquiry being necessary in order to address such pervasive disregard concerning First Nations sovereignty and well-being.

Concerning Recommendations 5 and 6, MTI agrees with the need for an anti-racism policy and for the continuation of the OCSR or a similar body. However, such a policy would need to include a specific anti-Indigenous racism section and the OCSR or other entity would need to have Indigenous representation. That being said, as a starting point there would need to be an independent public inquiry, in order for the work and objectives as set out in those recommendations to be meaningful and effective.

Recommendation 47 calls for the implementation of a task force focused on dismantling systemic racism in New Brunswick policing. Again, while such a task force may prove beneficial to improving interactions Indigenous peoples have with police, a task force is not a substitute for the needed independent public inquiry into systemic racism against Indigenous peoples in the justice system. Proceeding with a task force, without having a public inquiry, will result in the task force not having the information / data or guidance needed in order to accomplish the very work of the task force.

Recommendations 48 and 52 speak to updating GNB’s policing standards and ensuring First Nation representation on the NB Police Commission. MTI agrees with these recommendations, but they do not go far enough. As set out in Calls to Justice 5.7 and 9.2 from the MMIWG Report, what needs to be established is a well-funded Indigenous civilian police oversight body within New Brunswick, and all those within the justice system need to work together to ensure adequate and appropriate Indigenous representation within all policing oversight bodies.⁸⁵

Since before the Commissioner was appointed, the Mi’gmaq Chiefs have, on numerous occasions, proposed specific and immediately actionable reforms that are within provincial jurisdiction, including policing related reforms, including:

- The need to change the approach to law enforcement in our Mi’gmaq communities;
- The need to change police training and standards; and
- The need for increased Indigenous involvement in police oversight.

Despite repeatedly reminding the GNB of these types of actionable reforms, the GNB has not taken steps to move forward with the majority of the proposed action items that fall within provincial jurisdiction. Given that, MTI has little faith in the GNB to act on these Commissioner’s recommendations.

Recommendation 57 calls on the GNB to rescind the directive restricting First Nation land acknowledgements. MTI agrees that the GNB must rescind this colonialist directive, but the Commissioner’s recommendations do not go far enough. Simply acknowledging that all of New Brunswick is unceded First Nation territory, without further action, will be nothing but a symbolic gesture.

⁸⁵ The full list of the MMIWG Report Calls for Justice can be found on the MMIWG National Inquiry website at: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf

The Peace and Friendship Treaties were not land cession treaties; the Crown agreed not to unlawfully occupy or possess Mi'gmaq lands without agreement of the Mi'gmaq. Through various unlawful acts, including not adhering to the *Royal Proclamation* or the Treaties, the GNB sold large tracts of unceded Mi'gmaq land – the vast majority of which has never been returned to the Mi'gmaq. The wholesale theft of unceded land from the First Nations in New Brunswick is the largest act of systemic racism in the Province, and is the root of many barriers First Nations in the Province face today. The Mi'gmaq have sacred rights to their unceded lands, which predate all settler rights. The land is deeply connect to Mi'gmaq identity and way of life, and the inability of Indigenous peoples to exercise their traditional and cultural activities on their own territory has a distinct impact on their cultural identity, health and well-being.⁸⁶

A fundamental Indigenous-specific recommendation missing from the Commissioner's Report is that:

- There must be an onus on the Crown to demonstrate that they have legitimately acquired their "Crown" land from the Mi'gmaq. Where the Crown is unable to do so, the land must remain unceded Mi'gmaq territory.⁸⁷

Indigenous peoples need to actually feel like they are part of decision-making processes affecting their rights.⁸⁸ There is a Mi'gmaq Rights Impact Assessment (MRIA) Framework in place,⁸⁹ the purpose of which is for the Mi'gmaq to have a self-determining, Mi'gmaq-led process for assessing the potential impacts of proposed activities on Mi'gmaq Aboriginal and Treaty Rights and Title, and for determining if Mi'gmaq consent for a project will be granted.⁹⁰ MTI has repeatedly expressed an interest in working with GNB to align our respective impact assessment processes, and work collaboratively to approve projects. Two related recommendations missing from the Commissioner's Report are:

- The GNB must accept that the Mi'gmaq are an order of government in their own right, with proven Aboriginal and Treaty rights, and the ability to approve projects in their territory; and
- The GNB must accept and respect the MRIA Framework and work with MTI in a manner that allows the MRIA to inform the Crown duty to consult process, both in terms of the assessment of potential impact on rights, as well as potential accommodation measures.

MTI agrees with Recommendation 65; but it should apply to other programs, such as law, engineering, sciences, etc. MTI also agrees with Recommendation 68; however, the work mentioned in relation to creating supportive and inclusive structures to attract and retain

⁸⁶ As explained by Connie Greyeyes and Jacqueline Hansen. See Criminal Justice Hearing Transcript, Mixed Part II & III, Vol. VI, September 18, 2018.

⁸⁷ See MTI Discussion Paper: Reclaiming our Lands.

⁸⁸ As per Ellen Gabriel, an expert witness at the MMIWG Inquiry. See Criminal Justice Hearing Transcript, Mixed Part II & III, Vol. IX, September 21, 2018.

⁸⁹ See <https://migmawel.org/migmaq-rights-impact-assessment-framework/>. For the purposes of the MRIA Framework and its application, MTI represents eight Mi'gmaq communities in New Brunswick: Amlamgog (Fort Folly) First Nation, Natoagaeg (Eel Ground) First Nation, Oinpegitjoig (Pabineau) First Nation, Esgenoôpetitj (Burnt Church) First Nation, Tjipôgtôtjg (Buctouche) First Nation, L'nui Menikuk (Indian Island) First Nation, Ugpi'ganjig (Eel River Bar) First Nation and Metepenagiag Mi'kmaq Nation

⁹⁰ This requirement of consent is rooted in the Peace and Friendship Treaties, UNDRIP, and the Supreme Court of Canada's decision in *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44.

Indigenous employees should be Indigenous-led. The same applies for Recommendation 77, the mandatory Indigenous-based education and exercises must be Indigenous-led and the relevant First Nation organizations must be provided adequate capacity funding to deliver that educational material.

For the most part, MTI agrees with Recommendation 79. With respect to the TRC aspect, a Mi'gmaq led approach is needed in New Brunswick to ensure the TRC Calls to Action are implemented in the Province. In addition, the GNB needs to transparently and frequently provide updates on the progress made to implement the MMIWG Inquiry's Calls to Justice, the implementation of which should be Mi'gmaq-led.

Recommendation 81 is a step in the right direction. Provincial UNDRIP implementation legislation,⁹¹ co-developed with the Indigenous peoples in New Brunswick, is also required in order to give any committee the power to hold GNB accountable; as overseeing the GNB's progress on the adoption of UNDRIP is, in isolation, insufficient.

Ultimately, the Commissioner's Report contains 29 Indigenous-specific recommendations, none of which seek to address concrete and effective action that can be taken to address the root causes of many barriers and injustices First Nations peoples in the province face.

While MTI will push for the implementation of many of the Commissioner's recommendations, MTI will also continue to push for change in the areas that the Commissioner's Report and its recommendations do not address, including the need for an independent inquiry into systemic racism in the justice system, the need for structural change at the Department of Aboriginal Affairs, and the need to address the root of racism against Indigenous peoples in this Province: the illegal occupation of our lands (while the Crown and private industry profit off of resource development with little to no revenue sharing with the First Nations).

Continued need for an Indigenous-Led Public Inquiry into Systemic Racism

While there are some positive recommendations and findings in the Commissioner's Report, it does not reflect the concerns put forward by First Nations about the strained relationship with the GNB, and it fails to address the root causes of systemic racism against Indigenous peoples in New Brunswick. The Commissioner's Report actually reinforces why an independent public inquiry is needed. It certainly appears that the GNB limited the scope of the Commissioner's mandate, and had a hand in vetting the Commissioner's Report and its recommendations.

We are concerned that the GNB appears to have interfered with the Commissioner's work, and dictated what recommendations the Commissioner could make. The Premier and his government, along with the Commissioner on Systemic Racism, have shown us with their actions that this process was not independent. We believe the actions throughout the OCSR process show us that the Commissioner's work will continue to be vetted to serve the needs of the Premier and his Ministers rather than the Indigenous people and other racialized groups in this province.

An independent Indigenous-led public inquiry into systemic racism against Indigenous Peoples in New Brunswick is the only way to address the root causes of the issues within the justice system. In the meantime, there needs to be concerted effort to act on the already existing recommendations from RCAP, the TRC Calls to Action, the MMIWG Report Calls to Justice, and the 2019 Expert Panel on Indigenous Communities, *Toward Peace, Harmony, and Well-Being: Policing in Indigenous Communities*.

⁹¹ Similar to that of British Columbia, see *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44.

Appendix “A”

List of MTI Recommendations

The following is a non-exhaustive list of the findings and recommendations included in various MTI discussion papers and reports,⁹² which MTI provided to Commissioner Manju Varma:

Establish a Public Inquiry

1. That the GNB immediately launch an independent Indigenous-led public Inquiry into systemic racism against Indigenous peoples in New Brunswick.

Honour the Peace and Friendship Treaties

2. The Peace and Friendship Treaties must be honoured and respected by our Treaty partners, the Provincial (and federal) Crown.
 - a. This requires the Crown to have an understanding of the historical background to the Treaties, the text of the Treaties themselves, and the oral promises that were exchanged leading up to and at the time of signing.
3. Any discussion regarding our relationship with the Crown must be rooted in the Treaties.
4. The Crown must be transparent with its mandates and approach to negotiations with the Mi'gmaq, in a collaborative approach that seeks to honour and implement the Treaties.

Reform the Justice System

5. The starting point for any discussion or review of the justice system as it applies to or involves the Mi'gmaq in New Brunswick is the Treaties (this is because there are three subject matters relating to the administration of justice that are prominent in the Treaties: 1) land use and colonial settlement; 2) civil and criminal jurisdiction, and; sovereignty and friendship).
6. Justice matters that are internal to the Mi'gmaq must be dealt with according to Mi'gmaq law.
 - a. At minimum, dispute resolution in the following areas should always fall within the exclusive jurisdiction of the Mi'gmaq: the management of our lands; recognition and regulation of activities on our lands (including hunting, fishing, forestry, and overall environmental protection).
 - b. The long-term solution requires the reclamation and recreation of a Mi'gmaq justice system, which *could* involve the Province and Canada as partners. The groundwork and legal basis for doing so is already in place – in the Treaties.

⁹² MTI Administration of Justice discussion paper; an MTI discussion paper on reclaiming Mi'gmaq lands; an MTI submission to the Government of Canada titled *Taan Tel Nestemeg: Towards a Mi'gmaq Rights Implementation Framework*; an MTI paper on Language, Heritage and Culture; and an MTI report to Heritage Canada titled *Moving towards Reconciliation in New Brunswick*.

- c. A stand-alone administration of justice agreement between the Mi'gmaq, Canada and the Province is required, which must allow for an incremental approach to rebuilding a Mi'gmaq justice system.
 - d. The end goal for rebuilding a complete Mi'gmaq justice system must include Mi'gmaq: law enforcement; Courts; family law circles; preventative measures; prosecution of laws and; dispute resolution mechanisms, including diversion and restorative justice.
7. The existing justice system must operate in a manner that is consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). This is required even if the Indigenous peoples in the province revitalize and implement their own justice system.
8. Short-term solutions for improving the existing justice system must include:
- a. Implementing a Mi'gmaq specific restorative justice program in the Province.
 - b. Law enforcement within Mi'gmaq communities must be reformed. This includes developing Mi'gmaq enforcement / peacekeeper programs.
 - c. Appointing Indigenous justices of the peace with the authority to hear Mi'gmaq by-law / law prosecutions.
 - d. Shifting away from using pre-sentence reports as an alternative to Gladue reports, and implementing a Gladue writer certification program and Indigenous court worker program.

Implement existing Calls for Justice, Calls to Action and other Recommendations

9. When the GNB is implementing the MMIWG Calls for Justice, the TRC Calls to Action, or any of the other action items from past inquiries or reports, it must be led by Indigenous governments, organizations and communities.
- a. Implementing any call to action / recommendation must not take a pan-Indigenous approach, as there are differences between each Indigenous group/Nation.
 - b. A Mi'gmaq led approach is needed in New Brunswick to ensure the TRC Calls to Action are implemented in Mi'gmaq territory in the Province.

Return Lands to the Mi'gmaq

10. There must be an onus on the Crown to demonstrate that they have legitimately acquired their "Crown" land from the Mi'gmaq. Where the Crown is unable to do so, the land must remain unceded Mi'gmaq territory.
11. Simply adding to the existing reserve land base of the First Nations in the Province is insufficient to address the injustice. The Province must acknowledge and accept that what is needed is recognition of Aboriginal title to the lands and waters.
12. The Provincial Crown must accept and acknowledge the absurdity and inherent flaw in the concept of "surplus" Crown lands.

- a. When the Crown is attempting to dispose of any 'surplus' Crown land in Mi'gmaq territory, the Mi'gmaq must be consulted as soon as a disposition is contemplated.
- b. If the Mi'gmaq want the respective land returned, the Crown must facilitate that. If the Mi'gmaq do not wish to have the respective 'surplus' lands being disposed of returned to the Mi'gmaq, the Crown must seek the consent of the Mi'gmaq for any other disposition of the land.
- c. For any Crown 'surplus' lands in Mi'gmaq territory, in which the Mi'gmaq want returned, the Crown must never demand or require proof of Mi'gmaq interest. The Treaties are enough proof.

13. Canada and the Province of New Brunswick must:

- a. Take immediate steps to recognize Mi'gmaq ownership of their lands and take steps to return "Crown lands" to Mi'gmaq ownerships.
- b. Take immediate steps to recognize the Mi'gmaq as stewards of their lands and waters, and restore the Mi'gmaq role as the leading authority on environmental matters within Mi'gmaq territory.
- c. Recognize that matters relating to environmental protection must be viewed as integral to Mi'gmaq culture; that the Mi'gmaq are the lead authority on matters relating to environment and wildlife; and that Mi'gmaq laws should prevail in those areas.
- d. Acknowledge and accept that any issues of overlapping / shared territory as between the different First Nations in the Province is a matter to be dealt with by the Nations.

14. There must be a process in place for returning lands to the Mi'gmaq in the Province that were improperly taken by the Crown: a Mi'gmaq Tribunal must be developed (similar to the Waitangi Tribunal in New Zealand for example), to address issues related to land and other Treaty issues, including Treaty interpretation and Rights implementation. In the interim:

- a. Existing Crown policies on the disposition of surplus Crown lands must be aimed at restoring Mi'gmaq lands to the Mi'gmaq and recognizing our title, rather than merely facilitating the sale / disposition of Crown lands.
- b. Ownership and control of reserve lands should be transferred to First Nations.

Review and Reform Crown Laws and Policies

- 15. All Crown policy and legislative reform must comply with our Treaties and UNDRIP, and make space for us to revitalize, enforce and adjudicate our own laws.
- 16. The Crown approach must be a collaborative one with us; in a manner that allows us to incrementally move away from colonial policy and legislation, towards a revitalized system where the Mi'gmaq are governed by their own laws and policies.
- 17. A review of federal and provincial legislation and policy must occur to ensure Indigenous people and their history, values and knowledge is integrated into historical commemoration within the respective Indigenous group's territory.

18. Jurisdiction of the Mi'gmaq to govern ourselves and our territory must be recognized.

Protect and Include Mi'gmaq Culture, Language and Indigenous Knowledge

19. To ensure we are protecting our own people and our culture for future generations:

- a. There must be First Nation representation on school boards where First Nation children attend provincial schools.
- b. There must be more funding provided to First Nations for on-reserve housing, and First Nations must have the decision-making power to determine where and when the funding is spent.
- c. For the delivery of programs and services, the Mi'gmaq leadership must be primarily accountable to Mi'gmaq community members, and not the Crown. This requires sufficient funding to the Mi'gmaq for the Mi'gmaq to develop and deliver the programs and services that the Mi'gmaq identify as wanting to rebuild control over, such as social assistance as but one example.

20. The inclusion of Mi'gmaq Indigenous Knowledge, language, laws and guidance from Elders and community knowledge holders must be paramount in any discussion concerning Crown heritage and cultural matters and materials.

21. Mi'gmaq Indigenous Knowledge must lead discussions on heritage and culture.

22. Mi'gmaq language as a tool of cultural revitalization must be addressed in any agreement with the Crown on heritage and culture.

23. Any displays of Mi'gmaq cultural heritage must be acceptable to the Mi'gmaq, and any financial benefits must be shared with the Mi'gmaq.

24. Immediate initiatives must be taken to protect certain Mi'gmaq cultural sites.

25. With respect to the history of Indigenous peoples and their rights, professional development and training for public servants, politicians, police, lawyers, judges, corrections staff and others in the justice system needs to be an ongoing initiative. Such initiatives must be developed and delivered by the Mi'gmaq.

26. The story of the Mi'gmaq, including their past, present and future, must be reflected in all heritage materials. This includes museums, parks, and textbooks.