

# TREATY DENIAL

## Overview of Treaty Denial (c. 1785 to 1985)

Unfortunately, at the end of the eighteenth century, a period of treaty denial began in Mi'kma'ki. For nearly two hundred years, the British colonial government, and then Canada, would ignore their treaty responsibilities. Treaty Denial was part of a larger colonial regime that sought to use assimilation and other tactics to destroy Indigenous cultures and communities. Across Canadian-European society, and in Canadian-European policies, the primary assumption was that Indigenous peoples would “become” European over time.

This difficult and destructive period is marked by ongoing discriminatory policies across the public and private spheres in terms of land, employment, education and recreation. Government policies targeted the heart of communities—land, culture, leadership, women, and children—through formal and informal efforts. Laws and policies grew out of attitudes and assumptions that shared a common goal: to eradicate Indigenous cultures and ways of life, and replace them with European-Canadian worldviews and practices. The genocidal prejudice of Canadian-European leaders and others in the historical record is painfully obvious; the devastating consequences of this period are at the heart of reconciliation efforts today.

Mi'kmaq survived this dark period employing a range of strategies. People continued to hunt, fish, and gather across an increasingly fragmented landscape. They took advantage of urban centres for market and labour opportunities. Above all, people continued to depend on extended family networks for economic, social and cultural life. Oral histories also played an extraordinary role during the Treaty Denial period. With the treaties ignored or denied in courts and other formal venues, Mi'kmaq oral histories alone kept the promises of peace and friendship alive.

The 1985 James Matthew Simon case, in which the Supreme Court of Canada found the 1752 Treaty was binding and enforceable, is an important event. Many argue that this moment marked the beginning of Treaty Renewal. In reality, the slowing of Treaty Denial and the renewal of treaty relationships had been happening for several generations by that point. While this periodization is helpful, it is important to remember that aspects of Treaty Denial continue into the present, and work towards Treaty Renewal preceded the 1985 Simon case.

This introduction to Treaty Denial groups content into five areas:

- Assimilation and Fear
- Land and Water
- Children and Education
- Health and Well-Being
- Community, Identity and Discrimination

There is a great deal more to understand about this time period. Here, the content is designed to support educators and learners with the learning experiences that follow in this theme as well as in Renewal and Reconciliation.

## Assimilation and Fear

The Treaty Denial period is marked by extreme assimilationist policies and pressure. The pressure for Mi'kmaq people to fundamentally change who they are came in both formal and informal ways. The *Indian Act* and its many amendments were the primary legal instrument for assimilation in Canada. Policies that defined a woman's status through their husband's identity were meant to reduce the overall number of Indigenous people. Early governments (mistakenly) thought they could bargain the right to vote in exchange for people giving up their status. By the late 19th century, many Canadians believed that Indigenous people would simply disappear within a few generations; they couldn't envision a future that included Indigenous people as part of Canada. These assaults on Indigenous life and culture created generations of trauma.

## Land and Water

The loss of land across Mi'kma'ki began with British colonial governments encouraging emigration to Nova Scotia in the 1700s. These efforts were more damaging than any outright violence that happened between the British and the Mi'kmaq in the eighteenth century. The displacement of Mi'kmaq communities and the disruption of Mi'kmaq mobility was widespread. In addition, the agricultural practices of many settlers destroyed habitats that were central to the practice of netukulmk. For many settler communities, clearing land was the first step in creating a life in Mi'kma'ki. For the Mi'kmaq, this land clearing destroyed the animal and plant life that people had lived with for thousands of years. Many of the new settler communities disrupted access to the rivers and shorelines; this was a serious issue for Mi'kmaq communities whose livelihoods were tied to the waterways of Mi'kma'ki.

## THE INDIAN ACT

The *Indian Act* was passed in 1876 and is the primary way that the Government of Canada controls its relationship with First Nations across Canada. The Act dictates everything from how land is held to how status is determined to how estates are closed at the time of death. For decades, it prohibited First Nations' ceremonial and traditional spiritual practices. In the early twentieth century, it barred people from gathering or hiring lawyers for their own purposes. Because citizenship was not granted to Indigenous people in Canada until 1960, the *Indian Act* used citizenship to coerce assimilation.

The Act is a contradictory and ever-evolving piece of legislation. On the one hand, it has been the most damaging government tool for assimilation. On the other hand, it is the legislative structure that sanctions one's *legal* identity as an Indigenous person—so it is difficult to abolish. For many individuals, their identity derives from community and ancestry, but the legal definitions have affected people for generations in economic, political, and legal ways.

Here are some astonishing facts about the *Indian Act*:

- In the 1870s, Canada mistakenly thought that Indigenous people would give up their status in return for land or the right to vote.
- A woman's status was determined by her husband's identity. A woman who married a non-Indigenous man lost her status (until 1985; legacies remain).
- Indian Agents and other officials unilaterally made decisions about rights for individuals based on their assessment of people's "good moral character."
- People lost legal status as an Indigenous person if they became a Christian minister, lawyer, doctor or other professional (ended 1961).
- Amendments required children to attend "industrial" or residential schools.
- The Department of Indian Affairs replaced traditional governance structures, instituting band councils whether communities wanted them or not.
- Indigenous ceremonies such as the potlatch or dancing were prohibited (until 1951).
- It was illegal for Indigenous people to hire lawyers to sue the government for land without consent.
- Today, the estate of every Indigenous person in Canada has to be submitted to the Canadian government for review and approval.
- Want to read more? See <https://www.thecanadianencyclopedia.ca/en/article/indian-act>

By the 1780s, the British colonial government was issuing "licenses of occupation" that delineated lands that were expressly to be used by Indigenous peoples. These areas were the precursors to reserves that would emerge throughout the 19th and 20th centuries. European-Canadian landholding mechanisms did not consider Indigenous relationships to the land and its resources. Because land titles in a European sense did not exist in Mi'kmaw worldview and because the colonial governments ignored the treaty relationships, Mi'kmaw lost their access to vast amounts of land during the late 18th and 19th centuries. The changes in habitats were extreme and undermined the extensive knowledge that had sustained Mi'kmaw use and care of those habitats for generations.

Land encroachments intensified on the small parcels that had been identified as reserves or for other Indigenous use in the 19th century. By the turn of the 20th century there was growing pressure on Mi'kmaw communities across Nova Scotia to amalgamate into specific areas. This process of "centralizing" people affected areas across Nova Scotia and resulted in additional land loss. Lands near Halifax, River Philip and Kings Road in Sydney are all examples of places that experienced disruption. The removals dislocated people from their homes and usually reduced access to water—rivers, harbours and other shorelines.

## CENTRALIZATION

In the 1940s, these pressures coalesced into a formal policy. The policy demanded that Mi'kmaw people become centralized at two reserves: Sipekne'katik and Eskasoni. Those who refused to move would lose their status and become enfranchised. The policy was a failure, but also created enormous disruptions for Mi'kmaw communities that have continuing legacies. You can read more about Centralization, and find teacher resources at...

- **Overview:** [http://www.mikmaweydebert.ca/home/wp-content/uploads/2015/06/Mikmawel\\_Tan\\_Telik\\_inamuemk\\_Final\\_Online.pdf](http://www.mikmaweydebert.ca/home/wp-content/uploads/2015/06/Mikmawel_Tan_Telik_inamuemk_Final_Online.pdf) (pages 121-127)
- **Historical Documents on Centralization:** <http://www.mikmaweydebert.ca/home/centralization-elders-transcripts-and-historical-documents/>
- **An Elder's Story:** <http://www.mikmaweydebert.ca/home/sharing-our-stories/exploring-our-histories/elders-stories/>

By the middle of the twentieth century, the Treaty Denial period had ruptured Mi'kmaw mobility, eroded generations of knowledge and reduced economic opportunities for communities across Nova Scotia. The reality is that people were overwhelmed and often unable to care for themselves and their communities. In the content that follows, it becomes clear that the loss of land was coupled with other aggressive British colonial, and then Canadian, policies related to education, culture and governance that damaged communities for generations.

### Children and Education

Tragically, Indigenous children were targeted directly during the Treaty Denial period. From the opening of the Shubenacadie Residential School in 1929, to the Indian Day Schools, policy-makers understood that focusing on children was a powerful path to eroding indigenous communities and culture. The traumatic legacies of European-Canadian control over education have affected all Indigenous peoples.

The earliest residential schools in Canada were created in the 1870s by the Federal Government. More than 130 residential schools existed throughout Canada between the 1870s and 1996, when the last school closed. The Shubenacadie Residential School was run by the Catholic Church from 1929 until it closed in June 1967.

Many parents faced threats and punishment if they did not comply with local Indian Agents; others agreed to send their children to residential schools believing they would receive an education. The indoctrination of Christianity and European-Canadian values and practices were central goals of the residential school system. Indigenous languages and cultures were forbidden. Children were punished severely for speaking or practicing Indigenous ways of life. Male and female children were segregated and not allowed to interact, even with their siblings.

At Shubenacadie, the first students were taught to do physical labour to maintain the school. In later years, they received limited education in the classroom as well as more academic religious instruction. Despite some schooling, which differed in content and style at different times, many survivors report harsh treatment, abuse and devastating alienation from family and community.

The Indian Day schools on reserve were created to continue the government's mandate and were often run by the same churches running the residential

schools. The treatment of and relationship to the communities varied. The most significant difference was that children returned home every day, but the assimilationist goals remained. The effects of the day schools have come to light only recently, and are still being understood.

In the 1960s, a widespread practice of removing Indigenous children from their homes and communities became known as the 60s Scoop. By the mid-twentieth century, the policies of the Treaty Denial period had devastated many communities. Seeing only poverty, many European-Canadian social workers assumed children weren't cared for and did not fully consider the implications of removing children from their communities and placing most of them in non-Indigenous homes. In later years, these children did not have access to the records of where they came from. Even today, in Nova Scotia, more than 23% of children removed from homes by social welfare are Indigenous, even though they make up only 6%.

Mi'kmaw children remain at risk of the harmful legacies from the Treaty Denial period. Communities across Mi'kma'ki have placed their well-being at the top of their priorities. Today, largely through the Mi'kmaw Education Act, Mi'kmaw communities have reclaimed Mi'kmaw education and are working towards healthier futures for young people.

### Health and Well-Being

The overall health of Mi'kmaw communities deteriorated during Treaty Denial. The onslaught of cultural, economic and social disruptions, dislocations and damage impacted generations of Mi'kmaw families and communities. Rates of health concern were, and continue to be, higher for Indigenous peoples. Most of issues are related to decades of

## 19TH CENTURY DISEASE

There is no question that poverty exacerbated the health of Mi'kmaw communities in the 19th and 20th centuries. Lower resistance to European diseases meant that communities were affected disproportionately. Here are a few significant disease outbreaks across Nova Scotia that show up in the historic record.

- **Antigonish 1801:** smallpox; families move to Cooks Cove, Guysborough County
- **Bear River 1846:** "sickness"
- **Tufts Cove 1847:** "destructive disease"
- **Antigonish 1850-51:** smallpox outbreak
- **Musquodoboit 1861:** smallpox outbreak

Mi'kmaw communities also experienced high rates of tuberculosis into the 20th century.

poverty, discrimination (environmental and otherwise) and lack of health-care resources.

Within this overall health context, European diseases affected Mi'kmaw communities disproportionately. Historical records of disease referred to variously in the historic records continued to impact communities into the 20th century. Reports of fevers (typhoid, scarlet, etc.), smallpox and tuberculosis were common and repeated themselves. The poverty of the Treaty Denial period gave way to diseases that were socio-economic in nature: diabetes, obesity, and heart disease among others.

Today, communities continue to face higher rates of negative health outcomes than other Nova Scotians. As of 2018, 80% of Mi'kmaw deaths are premature (<75 years old), compared to 38% for other Nova Scotians. Diabetes rates are twice the rate of other Nova Scotians. Mi'kmaw communities have higher rates of mental health concerns and addiction as well. Many organizations are working to combat these conditions; health is a major focus of Mi'kmaw leaders and community members.

### Community, Identity and Discrimination

The Treaty Denial period is marked by the potent racism and prejudice that permeated life and interactions between Mi'kmaw and non-Mi'kmaw communities. The European-Canadian commitment to eradicating Indigenous culture and life was so extreme that the *Indian Act* prohibited Indigenous people gathering together, performing ceremonies, and even dancing. While some individual interactions may have been tolerable, the legal, political and civic spaces had no understanding or acceptance for cultural diversity and differences in worldview.

Canadian policies targeted women for its assimilationist goals. As mentioned above, the *Indian Act* mandated that any woman who married a non-Indigenous man would lose her status, which also denied her children status. This policy lasted for more than a century. In 1985, Bill C-31 partially rectified the situation. More amendments to the *Indian Act* in the last decade have continued to try to make up for generations of lost women and children, but Indigenous women continue to feel the legacy of this *Indian Act* discrimination.

The seeds of change in Canadian society came in part from Canada's role in World War II and the signing of the United Nations Declaration of Human Rights in 1948. By 1951, some of the most prejudicial parts

## DID YOU KNOW?

Even though Indigenous people did not have citizenship in Canada until 1960, or the right to vote until 1956, more than 200 Mi'kmaq volunteered to fight in World War I and World War II. Furthermore, Sma'knisk (veterans) risked losing their First Nation status and gaining citizenship because official policy required servicemen to be citizens, and policy dictated that you could not be both a citizen and a status "Indian." The reality of this policy is unclear, as citizenship was granted temporarily, if at all. Coming home was just as complex, where people faced negotiating prejudice and other legacies of British colonialism before and after the wars.

of the *Indian Act* were amended. In 1969, Prime Minister Pierre Trudeau put forth a new assimilationist policy that became known as the White Paper. This policy again envisioned Indigenous people losing their status and assimilating into European-Canadian society. The reaction was swift from Indigenous peoples. Various position papers--called "Red Papers"--came in response from many Indigenous organizations. It is at this time that many Mi'kmaw rights organizations were founded. Ultimately, Treaty Renewal comes about due to these efforts.

Across sectors, the legacies continue. In 1990, the findings of the Donald Marshall Jr. inquiry exposed the pervasive and destructive discrimination of the judicial system. In the heritage and culture sector, the longstanding call for repatriation and access to ancestral cultural collections in museums came to the forefront starting in 1992. The 1996 Royal Commission on Aboriginal Peoples (RCAP) recommended sweeping changes across Canadian society. Nearly 20 years later, the Truth and Reconciliation Commission would make 94 recommendations, many of which echoed the RCAP changes. Many Mi'kmaw organizations and individuals, along with others, are in the midst of making these recommendations a reality.

These society-wide inquiries were paralleled by success for the Mi'kmaq at the Supreme Court of Canada. Together, they are the bedrock of the Treaty Renewal period. Starting in 1985, and continuing to the present, the Supreme Court has affirmed the eighteenth century treaty relationship many times. These victories have changed the future of Mi'kma'ki, and of Canada.

Mi'kmaw historians have remarked how difficult it is to research the Treaty Denial period. This is why Elders say that healing is part of historical work. It is difficult to engage the detail and extent of these experiences without having ways to move forward understanding the trauma of past generations.