

## **Uphold the Hereditary Rights of the Indigenous Peoples!**



(D. Kellar)

### **Say No! to Criminalization of Six Nations Land Defenders**

- **Court Injunctions Will Not Deter the Haudenosaunee from Affirming Their Sovereignty**  
- *Philip Fernandez* -
  - **Colonial Logic Behind Legal Reasoning**
    - **Open Letter from Williams Family**
- **Statement from Concerned Haudenosaunee Women Regarding Injunctions at 1492 Land Back Lane**

### **All Eyes on Mi'kma'ki**

- **Mi'kmaw People Expand Moderate Livelihood Lobster Fishery**  
- *Sarah Mullgrave* -
    - **Sale of Clearwater Seafoods**
-

**Say No! to Criminalization of Six Nations Land Defenders**

## **Court Injunctions Will Not Deter the Haudenosaunee from Affirming Their Sovereignty**

**- Philip Fernandez -**



Land defenders from the Six Nations of the Grand River (Haudenosaunee) in Caledonia, about 100 kilometres south west of Toronto, stopped construction on the McKenzie Meadows housing development on July 19, 2020 and reclaimed the land as unceded Haudenosaunee territory. They renamed it 1492 Land Back Lane and have remained on the land to assert their sovereignty despite escalating Canadian state violence.

The land defenders have been occupying the property to stop a land development for which there is no free, prior and informed consent from the Haudenosaunee. The occupiers believe that were the developer to proceed with the development that would effectively destroy the ability to resolve the underlying dispute over the lands. Foxgate Development Inc. had originally applied for an injunction at the Ontario Superior Court ordering that the land defenders be removed. On July 31, an interim injunction was granted by Justice John R. Harper. On August 25 the injunction was upgraded from temporary to interlocutory, a stronger type, and on October 22 the injunction was made permanent. Justice Harper granted the injunction without hearing any evidence from the Haudenosaunee with respect to their land claim.

Reporting on the October 22 hearing for APTN News, Brett Forester explained that the person the court had named the sole leader of the occupation and the defendant in the case, Skyler Williams, attempted to put forward a constitutional question and asked that the provincial and federal Crown be named as third parties to the hearing.

Williams filed an affidavit on October 20 in which he argued that the Crown, not him, should be liable for damages for failing in their duty to consult with the community regarding development of the disputed land. The affidavit said, "The claim is that the Crown is liable for those and any other damages due to their negligence in failing to ensure that the Duty to Consult was fulfilled on lands known to them to be legitimately contested by the people of Six Nations."

The judge refused to hear the argument, finding Williams in contempt and therefore not "allowed to participate." He said "Any material pleadings that he has filed -- which I have not seen, but I understand that he's filing a statement of defence and a counter claim -- that they will be struck."

Earlier, when deciding on the interlocutory injunction, Justice Harper had used a three part test -- called the RJR MacDonald test. After considering whether Foxgate's case had merit, he decided whether the harm caused by not granting the injunction would be irreparable. He ruled that these standards were met and considered who would be harmed the most if the injunction was granted -- a consideration called the balance of convenience. One would think that this would lead to a determination in favour of the Indigenous people, those who have a land claim, as developing the land would effectively eliminate their just claim. However, as a 2019 study by Indigenous thinktank the Yellowhead Institute highlights, 81 per cent of injunctions sought by corporations and private interests against Indigenous people defending land claims are granted by Canadian courts, as was the case with the injunctions granted to Coastal GasLink against the Wet'suwet'en in northern BC, for example.



**October 25, 2020. Delegation from the Ontario Federation of Labour and the Canadian Union of Public Employees-Ontario join the land defenders in Caledonia.**

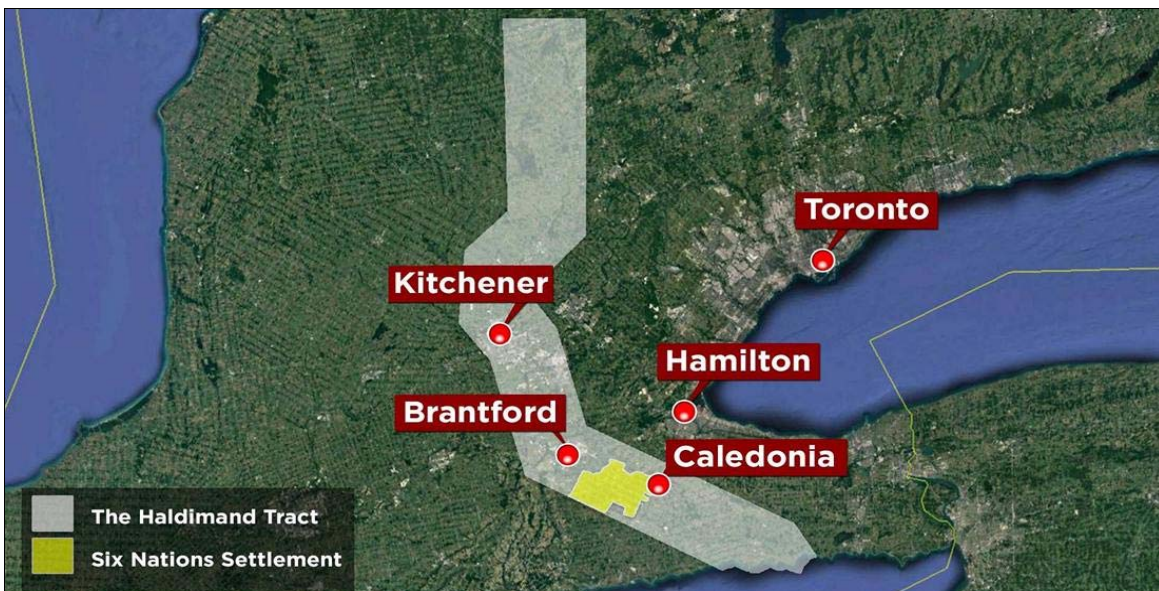
According to a report in the *Hamilton Spectator* on October 29, the McKenzie Meadows subdivision was to be the "first phase of a much bigger housing development that would extend to the border of the Six Nations of the Grand River, the biggest First Nations reserve by population in Canada." Despite attempts by Foxgate to win support for their development it is opposed by the vast majority of the people living on Six Nations territory. On August 15 the hereditary chiefs stated: "The Haudenosaunee Confederacy Chiefs Council is opposed to this development and as the holder of collective rights for the Haudenosaunee people has not granted any type of consent which would allow this development to proceed."

The just struggle of the Haudenosaunee land defenders has been met by state violence of the police, courts and government. To date, 33 Haudenosaunee and their allies have been arrested and criminally charged including on August 5 when more than 100 fully armed OPP invaded sovereign Haudenosaunee territory, using tasers and rubber bullets against the land occupiers. Reinforcements from the community forced the OPP to retreat. Those arrested appeared in court on November 25 to face criminal charges but their cases have been postponed to January 12 at the request of the defence to allow more time for consultation and preparation with the accused.

Premier Doug Ford criminalized the land defenders during an August 6 press conference following the OPP paramilitary assault against the land defenders when he said: "You know, you just can't go in and just take over people's future homes, it's wrong. And then, when the police come... they get an outhouse, toss it over from a bridge onto a police car, then they start throwing rocks at the police car! Like, enough is enough ... people have to obey the rules. I don't care where you come from, you know, what your race, creed, colour, whatever, we have one country, one rule, and that is it!" For its part, the Trudeau government has taken no steps to intervene to assist the Six Nations nor to engage in meaningful discussions to come to a peaceful resolution of this struggle.

The Ontario Superior Court hearing regarding Foxgate's application for a permanent injunction against the land defenders began in Cayuga, Ontario, on October 9. At the hearing, Skyler Williams, who, on the basis of his Facebook postings, was declared by the court to be the leader of the land defenders, asserted in an affidavit: "I am a Haudenosaunee man who does not belong before this colonial court. As a Mohawk of the Wolf Clan and of the Haudenosaunee Confederacy... I believe and follow the Great Law of Peace." When, in the course of the hearing, Williams agreed that he had indeed defied the injunction, presiding Judge Harper was "astounded" and arrogantly lectured Williams, saying: "It is not an option to take the law into your own hands, to occupy others' lands."

"Others," notably the Canadian state and private interests, in fact have been stealing and occupying Haudenosaunee lands for almost 250 years. The Haldimand Treaty of 1784 granted the Haudenosaunee 950,000 acres "six miles deep" on both sides of the Grand River for their use and the use of their descendants in perpetuity. This was to compensate the Six Nations for the loss of their traditional territories, a consequence of their fighting as allies on the losing British side in the American Revolutionary War. This land has since been reduced to less than 47,000 acres today (see map below).



There are currently more than 30 outstanding land claims with more on the horizon as the Haudenosaunee continue their historical research on lands they lost through government land-grabs and other illegal means. From the beginning, the Canadian state, as representative of the Crown, has refused to prohibit the building of towns and cities on these lands without the approval of the Haudenosaunee.

In 2006, the Haudenosaunee successfully reclaimed another private housing project, the Douglas Creek Estates (DCE) subdivision, renaming it Kanonhstaton, Mohawk for "The Protected Place." Canadians stood shoulder to shoulder with the Haudenosaunee land defenders in 2006, as they do again today. The camp established by the Haudenosaunee land defenders today is across the road from Kanonhstaton.

The violence and perfidy of the racist Canadian state against the Haudenosaunee is longstanding and includes the forcible removal of the Confederacy Council from its offices in 1924 by the RCMP, shortly after which government officials set up a band council under the *Indian Act* in an election in which only a small number of people participated.

In a post on his Facebook page on November 25, the 130th day of the land claims fight, Skyler Williams noted: "Despite the number of days we are just as determined as ever to keep moving forward. Keep on building and growing. So much has been stolen. This is the line too far. Our community will not be hemmed in. We will not stand by and continue to watch as our lands are stolen or let our nations be divided. Federal and provincial governments still after all this, continue to drag their feet. Leaving this in the hands of the OPP is absolutely unacceptable. We have been ready to start this dialogue. There is no reason this didn't start months ago. Yet here we are still waiting with the threat of the OPP ever present."

Everyone is invited to visit the land defenders at their camp and even stay overnight to show their support. Those who can are urged to contribute to the 1492 Land Back legal fund [here](#). Contributions can also be made to the functioning of the land defenders' camp with an e-transfer to [landback6nations@gmail.com](mailto:landback6nations@gmail.com). Already more than 4,500 people across Turtle Island have donated close to \$360,000 in a campaign to raise half-a-million dollars for legal defence, a measure of the level of support for the just stand of the Haudenosaunee.



October 25, 2020. Banner hangs from overpass on Highway 403 in Hamilton.

***Hands Off the Haudenosaunee!  
Uphold Indigenous Sovereignty!***

(With files from *Hamilton Spectator*, *Yellowhead Institute*, *Turtle Island News*. Photos: *OFL*, *Six Nations of the Grand*, *J. Whattam*.)

# Colonial Logic Behind Legal Reasoning



Karl Dockstader, a member of the Oneida Nation of the Thames, journalist and co-host of Niagara's CKTB 610 AM radio program "One Dish, One Mic," provides the following background to the court case of the Haudenosaunee people, 1492 Land Back Lane and the colonial theft of their lands on the Grand River.

"The legal reasoning that Justice Harper is using to soften the balance of convenience conditions in favour of the developer is based on the comments of Justice Robert J. Sharpe in a 2019 Canadian law book: 'Property rights are sacrosanct...the balance of convenience and other matters may have to take second place to the sacrosanctity of property rights in matters of trespass.'

"Indigenous rights are protected by the Canadian Constitution. Canadian property rights are not protected by the Constitution of Canada, but they are considered so central to the Canadian sense of identity and wealth that they experience strong protection.

"This is not a precedent being set. The Canadian sacrosanctity of property rights has been given such weight in injunctive relief hearings that it regularly outweighs the other considerations of the tripartite interlocutory injunctive relief test. The standard for a permanent injunction is different.

"A permanent injunction [...] is effectively the court determining if the land belongs to the developer.

"Justice Harper named Skyler Williams as the sole leader of the 1492 Land Back Lane defence -- to the objection of Mr. Williams -- and ordered him to have the land vacated. Justice Harper will not hear any underlying constitutional arguments unless the disputed property is vacated by the Haudenosaunee people and their supporters, he stated in court.

[...]

## "Court, Conflict and 'Reconciliation'

"This year high profile Indigenous rights cases stemming from a historical Sipekne'katik court victory and a historical Wet'suwet'en court victory have been in the news for not having those court rulings result in legislation or policy that implements the rights affirmed in the cases. The

Mi'kmaw fishers and the Wet'suwet'en people engaged in the formal court processes, achieved some level of success in the court system, only to still have their rights effectively thwarted.

"British Columbia Supreme Court Justice Marguerite Church granted Coastal Gaslink a temporary injunction to remove Wet'suwet'en land defenders in 2018. After six months of consideration Her Honour ruled in 2019 to upgrade the injunction from interim to interlocutory. Justice Church gave a narrow consideration to Indigenous law, and specifically said a blockade was not a traditional practice.

"The treaty rights of Mi'kmaw fishers were affirmed by the Supreme Court of Canada in 1999. Mi'kmaw fishers successfully used the courts to show that they had an inherent right to support themselves through fishing. The court granted the right but stressed the importance of negotiating, not adjudicating a solution.

"The Department of Fisheries and Oceans was given the power by the courts to restrict the level of fishing. They have used that power to restrict Indigenous fishing without defining the limits in a way that the Mi'kmaw fishers believe respects their inherent rights. Twenty-one years after the court ruling the Sipekne'katik government started to regulate their own system. The violent pushback by non-Indigenous fishers has bitterly aggravated the results of the DFO [Department of Fisheries and Oceans Canada) inaction and exposed the threat of not implementing policies that reflect court rulings.

"There are key differences between the fight for Indigenous rights by the Wet'suwet'en, the Sipekne'katik, and these Haudenosaunee land defenders. The commonality may be that land and rights on paper are much harder to implement in actual practice.

### **"What About the Duty to Consult?"**

"In 2004 the Supreme Court of Canada established that the Crown has a duty to consult in the *Haida Nation v BC* case. Justice Harper referenced this case in his ruling to change the injunction from temporary to interlocutory: 'Knowledge of a credible but unproven claim suffices to trigger a duty to consult and accommodate. The content of the duty, however, varies with the circumstances.'

"Justice Harper then went on to decide in this case that 'it is not possible to differentiate between tenuous claims, claims possessing a strong *prima facie* case and established claims when those resorting to self-help refuse to engage in the court process.'

"In the interlocutory injunction ruling His Honour establishes a timeline starting with the previous purchase of the lands in 2003 and ending with the current purchase of 176 homes. Justice Harper illustrates that it wasn't until the end of the process that these land defenders 'initiate their resort to self-help and associated violence.'



"Notwithstanding the complexity of Justice Harper characterizing the interaction between the police and Indigenous people as land defender violence there have been documented public consultations. While the consultations were sparsely attended, the majority of Six Nations people attending them opposed any form of development on this property.

"Fair consultation on the Haldimand Tract is an area where the law, the history of Six Nations, and

Nation to Nation relationships wade into complex territory. The Six Nations band council and the Haudenosaunee Confederacy traditional leadership have been firm that they consider the way the land was transferred from Haudenosaunee people to non-Indigenous people to be completely unfair.

"1492 Land Back Lane is across the street from Kanonhstaton, an area that in 2006 was reclaimed from developers trying to add an urban intense development on the doorsteps of the Six Nations reserve. The political dynamics have shifted since the 2006 reclamation, but the unresolved underlying Six Nations claim to justice and desire for land back has not."

(With files from Karl Dockstader. Photos: S.D. Donald, Land Back 1492.)

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## Open Letter from Williams Family



October 9, 2020. Toronto Land Back march.

About a hundred years ago, in 1927, when First Nation peoples were increasingly organizing land claims, the federal government amended the *Indian Act* to make it illegal for anyone to fundraise for First Nation peoples' legal representation. It also made it illegal for any litigator to represent any First Nation person in a judicial proceeding. The penalty for such activity was a fine and/or imprisonment.

As Haudenosaunee people continue to fight the colonial theft of land along the Grand River, the government still criminalizes our resistance.

Today, it is legal under Canadian law for us to hire lawyers and make land claims. But now, court injunctions allow those who desire our land to legally swoop in and take it while we are forced to navigate costly and lengthy court proceedings. This is hardly progress. When Haudenosaunee Land Defenders and our allies are required to defy injunctions to protect our territories, we are arrested, charged, and threatened with incarceration. It is still a crime to fight for our lands, but we are still fighting. Land defence criminalization is meant to divide families, nations, and allies, in order to scare us into





submission. Knowing this, Caledonia mayor Ken Hewitt has publicly applauded the police for "taking a stand" in arresting and charging our family for participating in the 1492 land defence. Hewitt said he looked forward to more arrests of our family members, and suggested the courts keep us in jail.

This is especially alarming as these comments from Ken Hewitt come several weeks following the Haldimand Police Service Board's comments and recommendation that the OPP re-evaluate their "Indigenous Critical Incidents Policy"-- crafted to ensure that there are not Indigenous fatalities during land disputes. Ken Hewitt made no condemnation of these very concerning comments from his Police Service Board.

Our children hear these words and rightly fear for our safety, and their own. They want the residents of Caledonia and the people of Canada to reflect on the impacts of land defence criminalization on Indigenous families. As the inheritors of all our collective actions, our children -- Nora, Lola, and Makiyah -- are speaking about what they see, and we are listening. The real attack against our family is the ongoing assault on Haudenosaunee lands, culture, and community, and politicians' personal attacks remind us to seek strength in our collective struggle for peace.

*Kahsenniyo and Skyler Williams*

### **Nora Williams, 18**

My name is Nora Williams, Kahsenniyo and Skyler are my parents. I'd like to address the recent comments made by Haldimand County mayor Ken Hewitt, specifically that he "will continue to support the OPP in their efforts and applaud them for taking the stand such as arresting family members of Skyler Williams." I do not appreciate being attacked in such a manner. To try and convince police forces to focus on the partner, elders and teenage children of a land defence spokesperson is cowardly. Whether you're simply trying to force my father's hand, or if you've simply decided to ignore basic human rights, either are beyond my understanding. If you're so desperate for us to behave as "Canadians" and not care about our land and traditions, what is your own moral code as a Canadian government official?

Instead of trying to understand, you chose force. Instead of reason, you chose underhanded and violent tactics. Instead of basic rights, you chose to try to expand what power you have in a shameful attempt to sway OPP officials to target the elderly and children. Instead of questioning our right to land, question your own right to land. These kinds of attacks will not change my opinions and actions to defend my land and my traditions.

### **Lola Williams, 14**

My name is Lola Williams -- Skyler Williams is my Dad. He has been a land defender for as long as I can remember. Me and my Dad have always been very close. Our entire family has always been very close. I am proud of both of my parents. But right now, after reading the Haldimand Police Services Board recommendations, and then the mayor Ken Hewitt applauding the OPP for arresting my Mom, and encouraging them to go after others in my family, I'm scared. I'm scared of what this means for my grandparents, my sisters and me. I go to school in Caledonia. The OPP have set up right across the road from my school. These are the people that shot at my Dad and arrested my Mom when she was alone. Now I have to see them every time I look out the window or go to lunch. Every time I walk out the front doors of the school, I see all these white men with guns who are being encouraged to target me and my family. I am so disappointed that the Mayor of the County that I go to school in would choose to make such hateful and dangerous comments to target teenage girls and my elderly grandparents.

## Makiyah Williams, 16

My name is Makiyah, I am the daughter of Skyler and Kahsenniyo. I am writing this letter because I would like to address the comments made by Haldimand County mayor Ken Hewitt. These comments are wrong and racist. I am an Indigenous youth from Six Nations. Seeing these racist and awful comments was troubling and sickening. How is Caledonia supposed to be represented by someone who openly targeted my parents, and applauded the OPP for arresting my Mom? Hewitt is putting our family in danger, without understanding the impacts it has on my parents, grandparents, sisters, and on the generations to come. Tell me how this is okay.

Being a student in Caledonia means I am at risk for being targeted and threatened. Any threat to my family threatens me and my sisters. It is heartbreaking and saddening to see politicians cheer when my Mom was arrested for tending to her Haudenosaunee responsibilities as a Mohawk woman. Imagine this was your family being targeted: how would you feel? It's so hard to consistently worry about what will happen next, to worry for my sisters' safety. Our people know how this feels, and our responsibilities will always guide our actions, even when we are afraid.

*(Yellowhead Institute, October 28, 2020 Photos: N.G. Farreal, S. Williams.)*

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## Statement from Concerned Haudenosaunee Women Regarding Injunctions at 1492 Land Back Lane



This statement is issued on behalf of a group of Haudenosaunee women who are opposed to the use of injunctions against our people, who are exercising our sovereignty over our land.

Haudenosaunee have maintained our distinct worldview and ceremonial practices despite generations of colonial violence and violations of our rights. Our traditions and cultural knowledge are a sacred inheritance that we have an absolute right to practice. We have the responsibility to protect this inheritance for our future generations. In accordance with our worldview, all matters regarding land are the responsibility of the women. As caretakers and stewards of the land, women play a vital role in governance and decision-making.

Courts violate and criminalize the rights and responsibility of our women by preventing us from fulfilling our responsibilities to the land and our future generations in accordance with Haudenosaunee Law.

We must also speak to the emotional and spiritual harm that these injunctions bring to our people.

Our people should never have to suffer emotional distress for engaging in traditional laws and customs and the land should never have to suffer from the absence of our caretaking. We denounce this system for sowing violence and disrupting the peace within our community.

We are rightful title holders, and injunctions deny us our inherent right to our land. Injunctions also authorize police violence against our people. Our sovereignty is inherent while Canada's perceived authority is a product of violent colonialism and genocide. Injunctions seek to make this reality invisible, a tool of the court to sanction more violence and dispossession.

We oppose the broad use of injunctions that are meant to stifle our people from seeking justice. Court decisions which prevent Haudenosaunee people from engaging in our cultural practices impact all future generations of Haudenosaunee children.

It is our responsibility to protect the inheritance of our children and we will fulfill this commitment.

These matters are complex and we do not believe this court is the appropriate forum to deliberate our concerns or resolve our issues. We will continue to resist the criminalization of our people and illegitimate development in our territory. We call on the Crown, our allies, to stop the use of injunctions against our people.

## Background

On July 19, 2020, Haudenosaunee Land Defenders stopped a housing development within the Haldimand Tract. The so-called McKenzie Meadows became 1492 Land Back Lane.

On July 31, 2020, an interim injunction order was placed on the camp, instructing all Land Defenders to leave and allow construction to resume.

On August 5, 2020, the Ontario Provincial Police (OPP) enforced the injunction and brought violence to our community, tasing and shooting rubber bullets, arresting several people, and forcibly removing us from our territory.

In response to this violence, community members blocked roads to ensure ongoing and safe access to 1492 Land Back Lane. Following the OPP enforcement, our presence was re-established at the camp later that day.



On August 7, Haldimand County was granted an injunction meant to clear roads and railways through our territory and the July 31 interim injunction granted to the developer was made permanent. Injunctions regarding the roads and rail lines are going to be heard in court again on August 25, 2020 and potentially be made permanent as well.

Land Defenders at 1492 Land Back Lane demand respect for our community decisions making and justice for the illegitimate land development in our territory.

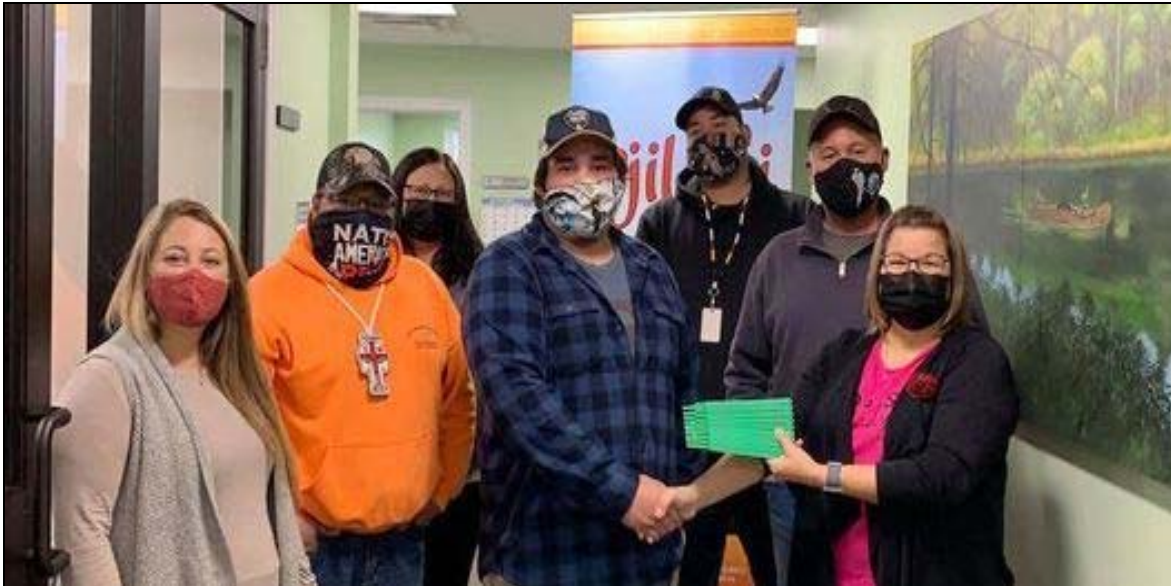
We call on our allies to continue amplifying these demands peacefully and safely.

*(Yellowhead Institute, August 24, 2020. Photos: Yellowhead Institute, OFL.)*

All Eyes on Mi'kma'ki

## Mi'kmaw People Expand Moderate Livelihood Lobster Fishery

- Sarah Mullgrave -



**November 4, 2020. Members of Pictou Landing First Nation pick up their tags to participate in the moderate livelihood lobster fishery.**

Mi'kmaw First Nations in Nova Scotia continue to expand their moderate livelihood lobster fishery. Chief Andrea Paul of the Pictou Landing First Nation (PLFN) announced on November 4 that her community had implemented its plan for such a fishery. "It was a great day, our fishers were really happy that we were finally moving ahead with our plan. So at 9 o'clock they started lining up to pick up their tags, they're very happy," she told CBC's *Information Morning Nova Scotia*. The PLFN, located on Nova Scotia's north shore on the Northumberland Strait, joins the Sipekne'katik First Nation that began its self-regulated moderate livelihood lobster fishery on September 17 in St. Mary's Bay in the southwest of the province, and the Potlotek First Nation that began its fishery in St. Peter's Bay on the south shore of Cape Breton on October 1. All three communities are exercising their rights as enshrined in the Peace and Friendship Treaties signed in 1760-61 between the Mi'kmaw people and the British Crown, supported by two Supreme Court rulings in 1999. The Membertou First Nation on Cape Breton has also indicated its intention to exercise its fishing rights in the near future.

The PLFN has published three documents on its website detailing how it will be managing its lobster fishery. The document titled "Netukulimk Livelihood Fisheries Policy and Protocol," explains that "Netukulimk is defined as the use of the natural bounty provided by the Creator for the self-support and well-being of the individual and the community by achieving adequate standards of community nutrition and economic and spiritual well-being without jeopardizing the integrity, diversity or productivity of the 'natural bounty.'

"The principle of Netukulimk has been the foundation of sustaining Mi'kmaw families, communities and society since time immemorial."<sup>[1]</sup> It further goes into matters such as the protection of Treaty Rights, sustainability of the fishery, economic, social, environmental and cultural principles, as well as maintaining peaceful relations with neighbouring communities, among other considerations, to guide the fishery.

The document titled "Netukulimk Livelihood Fisheries Plan" goes into the practical measures and conditions that PLFN members must be in conformity with to be authorized by the PLFN to take part in the fishery, such as registration and identification, safety requirements, conservation measures and catch prohibitions, authorized fishing gear, as well as trap allotment.[2] An appendix to the plan provides the detailed requirements from Transport Canada for fishing vessel safety requirements.[3] The PLFN authorizes each fisher to use no more than 30 traps. The PLFN fishery will close from December 14 to May 1, 2021, the opening day of the commercial lobster fishing season in that area, which runs until June 30 with the exception of two small sections that open in May and end in July.



Contrary to attempts by the Canadian government, the Department of Fisheries and Oceans (DFO), and others defending monopoly right to portray the Mi'kmaw fishers as acting against the well-being of the fishery and to sow divisions with fishers who take part in the commercial fishery, reality shows this is not the case. The considered and disciplined approach toward the lobster fishery taken by the Mi'kmaw people and the just exercise of their sovereignty and treaty rights shows that they are part of the modern working class on Turtle Island that all together is striving for the recognition of rights and to exercise control over their conditions of life and work.





November 1, 2020. "All Eyes on Mi'kma'ki" demonstration in Montreal.

### Ongoing Threat of State Interference

An October 30 press release from the Assembly of Nova Scotia Mi'kmaw Chiefs titled "DFO Planning Action to Seize Traps" shows the ongoing threat of interference from the Canadian state in the Indigenous fishery. It states:

"The Assembly of Nova Scotia Mi'kmaw Chiefs (Assembly) has received information indicating the Department of Fisheries and Oceans' Conservation and Protection Department may be moving in to seize community authorized gear and traps from the Mi'kmaw Moderate Livelihood fishery across Nova Scotia. The Assembly condemns this action and demands all planned action related to seizure is aborted.

"The Supreme Court of Canada has recognized the Mi'kmaq Right to fish for a moderate livelihood, and as also stated publicly by Minister Jordan herself, this fishery is legal. Therefore, the Mi'kmaq of Nova Scotia have remained clear, that we will continue to exercise our treaty right to fish and sell fish for a moderate livelihood.



"The DFO Conservation and Protection Department's continued negligence and harassment of harvesters fishing legally pursuant to their Treaty Rights is a direct violation of Constitutional Rights. The Minister of DFO has also been acting in bad faith during ongoing Consultations and in a manner inconsistent with the honour of the Crown.

"The Assembly is gravely concerned for the well-being and safety of Mi'kmaw harvesters and they are demanding that the harassment ends immediately."

It is crucial that everyone continue to stand with the Mi'kmaq, oppose any interference by the Canadian state in their fishery and demand that Canada adhere to its treaty obligations.

***Support the Mi'kmaw Fishers in the Exercise of Their Treaty Rights!  
All Eyes on Mi'kma'ki!***

## Notes

1. Netukulimk Livelihood Fisheries, Policy and Protocol, Version 7 (Final), October 2020.
2. Netukulimk Livelihood Fisheries Plan, Version 7 (Final), October 2020.
3. Netukulimk Livelihood Fisheries Harvest Plan, Appendix I, Version 7 (Final), October 2020.

(With files from CBC News. Photos: TML, Pictou Landing First Nation, No Border Media, Agent DNR)



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## Sale of Clearwater Seafoods



**November 5, 2020. Demonstration for moderate livelihood fishery outside Clearwater facility in Bedford, prior to the sale.**

On November 9, the media announced the sale of Clearwater Seafoods, the largest private Canadian seafood monopoly in Atlantic Canada, to a partnership of Premium Brands Holdings Corporation based in Vancouver, BC and a group of Mi'kmaw First Nations led by the Membertou First Nation.

The buyers agreed to pay a purchase price of \$1 billion and to assume Clearwater's debts. Each of the partners will own 50 per cent of the company which is the largest holder of shellfish licences and quotas in Canada. According to business analysis firm Dunn & Bradstreet, Clearwater Seafood Incorporated has U.S.\$539 million in assets, a net income of U.S.\$31.31 million on U.S.\$462.81 million in sales in 2019, and 1,941 employees in total. It holds major offshore rights to harvest clams, crab, lobster, scallops and shrimp off the northeastern coast of Canada. Clearwater Seafood operates its own fleet of ships, along with offshore and onshore processing facilities.

Clearwater Seafoods came into existence in 1976. It was made possible as a result of the Kirby Report -- *Navigating Troubled Waters: A New Policy of Atlantic Fisheries* -- commissioned by the Pierre Elliot Trudeau Liberal government in 1982, which attacked the livelihoods of small inshore fishers as a "rural-romantic" approach to fishing. The Kirby Report justified the handover of millions of dollars in subsidies and hundreds of millions in offshore seafood resources, which

rightfully belong to the Mi'kmaq, the people of Nova Scotia and Canada, to a small group of private monopolies, including Clearwater Seafoods, which has become the biggest seafood monopoly in Atlantic Canada.

Clearwater Seafoods has had the blessing of the Department of Fisheries and Oceans (DFO) to self-regulate, make up its own rules, and fish year-round to maximize profits, while small independent fishers and the Mi'kmaq are bound by DFO's rules, regulations and quotas. Currently DFO officers are seizing and destroying the lobster traps and nets of Mi'kmaq lobster fishers who are affirming their sovereign right to trap lobster in pursuit of a "moderate livelihood."

According to media reports Clearwater has been in talks with the purchasers for months. A March 2020 press release said: "Clearwater's board of directors has determined it is timely, prudent and in the best interests of the company and its stakeholders to commence the strategic review in light of the company having recently received several expressions of interest."

Media reports say the Mi'kmaq coalition will invest \$250 million, financed by a 30-year loan from the First Nations Finance Authority (FNFA). The FNFA was created by an act of Parliament in 2005. Its stated purpose is to enable First Nations to borrow private money through banks and other lenders at "preferential rates" to finance infrastructure projects. Since its founding the FNFA has financed almost \$1 billion in loans to 112 First Nations. It is noteworthy that on June 2, the federal government announced that First Nations with existing loans with the FNFA will receive "interest payment relief" to the tune of \$17.1 million.

On November 10, the FNFA put out a press release noting: "FNFA has approved a \$250 million loan to the Mi'kmaq First Nations Coalition to purchase Clearwater's Canadian offshore fishing licences. Under the announced agreement, the First Nations will receive contractual revenues on a quarterly basis from Clearwater which will have a significant impact by creating revenue and boosting their economies."

The sale was announced right in the midst of the current battle being waged by the Mi'kmaq First Nations to assert their sovereignty and conduct their own self-regulated moderate livelihood lobster fisheries. Chief Terry Paul of the Membertou First Nation said that the purchase of Clearwater was "strictly a commercial transaction" that will not impact the efforts of the Mi'kmaq to establish their own self-regulated moderate livelihood fishery. He described the purchase as "a generational acquisition that would be felt across our communities for the next seven generations."

Just one week earlier, Chief Paul had resigned from the Assembly of Nova Scotia Mi'kmaq Chiefs, where he held the Fisheries portfolio for many years. The CBC reported on October 28 that Chief Paul said that he could no longer work with the chief's assembly because the DFO was successfully practising a divide-and-conquer strategy and undermining the unity of the Mi'kmaq.

Additionally, the Membertou First Nation recently bought two of eight lobster-harvesting licences from Clearwater Seafoods for \$25 million. These licences enable the Membertou First Nation to fish in an area designated Lobster Fishing Area 41, a vast area 80 kilometres off the southern tip of Nova Scotia which has been the exclusive preserve of Clearwater Seafoods for decades.

Following the announcement of the sale of Clearwater Seafoods, Dr. Rick Williams, Research Director for the Canadian Council of Professional Fish Harvesters and author of *A Future for the Fishery: Crisis and Renewal in Canada's Neglected Fishing Industry*, expressed concern that the deal could rekindle tensions between Indigenous and non-Indigenous fishers. He pointed out to the CBC that "Clearwater has had a history of conflict with owners of smaller, family-owned fishing enterprises." He noted that while the company has pushed for a more monopolized corporate fisheries model, inshore fishing groups have urged the federal government to maintain harvesting in local communities. "Now that Clearwater is perceived to be a First Nations-owned



company, that adds to the mistrust about the expansion of Indigenous fisheries. It will add to fears that a large company can buy up lobster licences through First Nations that they weren't able to buy as a company," he said.

From start to finish, the Canadian state bears responsibility for the destruction of the livelihoods of the fishers in the Atlantic fishery and for state-organized violence to deprive the Mi'kmaq of their hereditary and treaty fishing rights as sovereign peoples. Financing partnerships between Indigenous nations and private interests is both an attempt to extinguish Indigenous rights and to integrate Indigenous peoples into the globalized fisheries industry which has brought nothing but despair to fishers at home and abroad, and to abrogate the Crown's fiduciary responsibility to Indigenous peoples' rights and claims.

*(With files from Halifax Examiner, CBC, First Nations Finance Authority, Toronto Star. Photo: Solidarity Kijipuktuk)*

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