

COMMUNITY NOTICE



Kwilmu'kw Maw-klusuaqn Negotiation Office
Mi'kmaq Rights Initiative

Our Rights. Our Future.

December 17, 2012

BILL C-45 - FACTS AND OVERVIEW

Bill C-45: *Jobs and Growth Act, 2012*, first tabled in March 29, was passed through Senate on Friday, December 14th. This omnibus bill was passed with a vote of 50-27 and will now be sent to the Governor General who will sign off on it – making it law.

An omnibus bill is a proposed law that covers a number of different topics, but can be accepted by government in a single vote. (*Omnibus* is taken from the Latin meaning of “for everything”.)

Bill C-45, the Bill causing the most concern to First Nations across Canada, contains amendments to legislation relating to the environment, waterways, fisheries, reserve lands, and seasonal workers.

OVERVIEW OF BILL C-45

Fisheries Act - the definition of “Aboriginal Fishery” is amended. With the change, this fishery now “means that fish is harvested by an Aboriginal organization or any of its members for the purpose of using the fish as food, for social or ceremonial purposes or for purposes set out in a land claims agreement entered into with the Aboriginal organization.”

Other amendments remove habitat protections that currently exist, and replace them with protection for “fish of economic, cultural or ecological value”. Removing the habitat protection and focusing merely on fish, rather than the whole eco-system, is a significant change for First Nations who rely on fish and fish habitats, as part of our rights.

What does this mean for the Mi'kmaq?	The old Fisheries Act did not define “Aboriginal Fishery”. This new definition does not recognize a fishery for a moderate livelihood fishery, which is inconsistent with the Supreme Court of Canada affirmed Treaty Right, and so it is unconstitutional.
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Navigable Waters Protection Act – The bill provided a list of federally-protected waters. Lakes or rivers were not on this list are no longer protected by this Act.

What does this mean for the Mi'kmaq?	In Nova Scotia, the only waterways that will retain protection as navigable waterways are the LaHave River, Bras d'Or Lake, and Great Bras d'Or.
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Canadian Environmental Assessment Act - changes how the federal government does environmental assessments.

What does this mean for the Mi'kmaq?	The proposed changes could limit opportunities for the Mi'kmaq to examine and engage in the approval process for major development projects. This may lead to additional conflict between project proponents, governments and the Mi'kmaq.
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Indian Act - Contains amendments regarding reserve land designation and the process for Bands to lease reserve lands to third parties; and eliminates the need for the Governor in Council to approve, changing this to approval by the Band Council and the Minister. The new process for deciding on leasing lands was changed to a “simple majority” voting, which is the norm for most other major decisions made on-reserve.

What does this mean for the Mi'kmaq?	While this may benefit our Chiefs and Councils in their process of securing partners in economic development initiatives, the problem is that there was no consultation on these changes to the <i>Indian Act</i> and the Chiefs feel that the process by which these amendments were introduced calls into question the honour of the Crown.
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Employment Insurance Act - Changes have been introduced to Employment Insurance eligibility and criteria.

What does this mean for the Mi'kmaq?	Changes will affect seasonal workers, such as those in fisheries, who will only have six weeks to look for a job in their field before they must take available work within an hour's commute that pays at least 70 per cent of their previous salary.
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WHAT IS BEING DONE BY THE ASSEMBLY OF NOVA SCOTIA MI'KMAQ CHIEFS?

Over the past number of months, First Nations from across Canada have been up in arms about all the legislation being considered and how the federal government has not met their legal duty to consult and accommodate.

The Assembly of Nova Scotia Mi'kmaq Chiefs have been working together to oppose these legislative changes for quite some time. The Assembly has continued to express concerns, in writing to all levels of Government, including the Prime Minister, informing them that these changes fail to respect Mi'kmaq Rights and side-stepped the legal duty to consult under the *Consultation Terms of Reference for a Mi'kmaq-Nova Scotia-Canada Consultation Process* and under Article 19 of the *UN Declaration on the Rights of Indigenous Peoples*.

In June 2012, Chief Terrance Paul, Co-Chair of the Assembly of NS Mi'kmaq Chiefs and legal advisor from KMKNO, Bruce Wildsmith appeared before the Senate to discuss how this potential Bill would affect the Mi'kmaq peoples. In their presentation, Chief Paul clearly laid out how this Bill would impact our constitutionally protected rights, if passed.

A number of Mi'kmaq Chiefs also recently attended a Special Chiefs Assembly in Ottawa, where all the Chiefs of Canada decided to “unconditionally reject any Canadian or provincial legislation, policies or processes that impact our lands, air, water, resources or peoples, which have not obtained our free, prior and informed consent.”

The Assembly of Nova Scotia Mi'kmaq will continue to fight the provisions of this bill and have been working together to strengthen the message that they put forth on behalf of the Mi'kmaq of Nova Scotia, and all First Nations in Canada.

All First Nations leaders in Canada, including Mi'kmaq Chiefs and Councils, are closely examining how this will adversely impact our inherent rights and may leave First Nations with no choice but to take legal action against the Government of Canada.

WHAT CAN COMMUNITY MEMBERS DO NOW?

Regardless of this decision, the Mi'kmaq still have the right to fish for a moderate livelihood - affirmed by the Supreme Court of Canada in its 1999 *Marshall* decision.

The Assembly of Nova Scotia Mi'kmaq Chiefs support their community members who have stood united with our First Nations brothers and sisters across Canada, by attending last week's peaceful rallies held in Halifax and Sydney.

The Chiefs also encourage their members to express their concerns on how these changes will impact on our Aboriginal title and the protection of our Aboriginal and Treaty rights at community meetings, to your Chief and Council, and in letters to the government of Canada, your MPs and your MLAs.

The Assembly of Nova Scotia Mi'kmaq Chiefs will continue to provide updates to community members on what is being done by your leadership and where we are with our fight against these legislative changes.

For additional information, please contact:

Crystal Dorey
Communication Officer
Kwilmu'kw Maw-klusuaqn Negotiation Office
crystaldorey@mikmaqrights.com
902-843-3880

For information on the pending legislation, visit:
<http://www.parl.gc.ca/LegisInfo/Home.aspx?language=E&Parl=41&Ses=1>