



## **Non Status and Off-Reserve Aboriginal Representation in New Brunswick Speaking for Treaty and Claims Beneficiaries**

### **KEY FINDINGS**

This report recommends the following recommendations:

- The New Brunswick Aboriginal Peoples Council (NBAPC) and its governmental and off-reserve leadership partners engage in discussions toward ensuring joint representation.
- The NBAPC be included as representative for this constituency in any treaty and land claims negotiations.
- The NBAPC and its governmental and on-reserve leadership partners engage in discussions towards ensuring the participation of this group and for NBAPC to represent them in these discussions.
- The NBAPC apply for research funding to conduct successive field research to engage with members of each of these never recognized communities.

### **INTRODUCTION**

The Constitution Act, 1982 expressly protects, in section 35, existing Aboriginal and treaty rights not only for registered Indian populations, but also for other Aboriginal populations, including Inuit, Metis, and as developed in the jurisprudence, non-Status Indians. For this reason, it is clear that negotiations affecting Aboriginal and treaty rights between federal and provincial governments and Aboriginal people in Canada have to avert to rights holders that fall outside the regime instituted by consecutive Indian Acts.

The New Brunswick Aboriginal Peoples Council is the Aboriginal voice for approximately 30,000 Status and Non-Status Aboriginal People who reside off-reserve in New Brunswick. The NBAPC provides services and programs to these off-reserve Aboriginal people, and acts as a political voice to address their concerns. NBAPC has been formally recognized by Aboriginal Affairs and Northern Development Canada since 1991; serving as a

representative body in relation to unextinguished rights and titles of Mi'kmaq and Maliseet in New Brunswick.

## **PURPOSE**

- This report considers the representation of non-Status and off-reserve Aboriginal populations in New Brunswick, within government negotiations.
- The purpose is to facilitate discussion between the New Brunswick Aboriginal Peoples Council, federal and provincial governments, and band councils representing on-reserve populations in negotiations.
- This report goes on to describe the organizational structure, representational capacity, and track record of advocacy of the NBAPC. In particular, the report documents the membership recognition process of NBAPC and its experience in representing non-Status and off-reserve Aboriginal populations through the administration of programs, in litigation, and in policy development.
- The final part of the report analyzes the demographics and representational options and wishes of four constituencies that make up the non-Status and off-reserve Aboriginal populations in New Brunswick.
- This report recommends that the NBAPC and its governmental and on-reserve leadership partners engage in discussions towards ensuring the participation of this group and for NBAPC to represent them in these discussions.
- The report also recommends that NBAPC apply for research funding to conduct successive field research to engage with members of each of these never recognized communities.

## **JURISPRUDENCE**

- The history of Aboriginal peoples in New Brunswick before the arrival of Europeans has been the subject of recent extensive litigation.
- Canadian courts including the Supreme Court of Canada have already made extensive findings with respect to the lives, history, and practices of Aboriginal people in the Maritimes in the pre-contact period.
- The Supreme Court of Canada found in *Sappier and Gray* that:
  - The way of life of the Maliseet and of the Mi'kmaq during the pre-contact period is that of a migratory people who lived from fishing and hunting and who used the rivers and lakes of Eastern Canada for transportation.
- In *R v Marshall*, the Nova Scotia Provincial Court made extensive findings about early Mi'kmaq history.
- The authors discuss the importance of treaties.

## **THE NEW BRUNSWICK ABORIGINAL PEOPLES COUNCIL (NBAPC)**

- A few of the NBAPC's main objectives include:

- To work together towards reaffirmation, protection and implementation of our Aboriginal, Treaty and Land Claim Rights as Aboriginal People of New Brunswick.
- To foster and strengthen cultural identity and pride among people of Aboriginal ancestry in New Brunswick.
- As a result of never surrendering their ancestral lands, the NBAPC stands committed to their inherent right to self-government. An aspect of this self-governance is to have the off-reserve Aboriginal population in the province exercise their right to self-identification and community acceptance.

## **METHODOLOGY**

- The first part of the report analyzes the demographics and representations options and wishes of four constituencies that make up the non-Status and off-reserve Aboriginal populations in New Brunswick. The four groups under consideration are Status Indians residing off-reserve, non-Status Indians residing off-reserve, General List Indians of the Harquail Clan, and the never registered populations.
  - The first group, Status Indians residing off-reserve have historically faced serious and often gender discriminatory legal obstacles to participation in the political life of their bands.
  - The second group, non-Status Indians, constitute the historical core constituency of NBAPC.
  - The third group, the General List Indians of the Harquail Clan have Status under the Indian Act, but because they are not recognized as a band and do not have land set aside for them as a reserve, they do not have access to the representational mechanisms of the Indian Act.
  - The fourth group, never registered populations, considers five Aboriginal communities for which there is historical evidence and who appear to have survived to the present day.

## **CONSTITUENCIES**

- The NBAPC represents Aboriginal populations not residing on reserves.
- Within this report, the authors describe the four main constituencies that make up Aboriginal people who are eligible for NBAPC membership.
- Furtherer, the authors make it clear that in describing these constituencies, the intent is not to further arbitrarily divide Aboriginal people in New Brunswick.

## **MAIN FINDINGS**

### **Recommendation 1**

We recommend that the NBAPC and its governmental and off-reserve leadership partners engage in discussions toward ensuring joint representation.

### **Recommendation 2**

We recommend that the NBAPC be included as representative for non-status off reserve Aboriginal people in New Brunswick in any treaty and land claims negotiations.

### **Recommendation 3**

We recommend that NBAPC and its governmental and on-reserve leadership partners engage in discussions towards ensuring the participation of the Harquail Clan and for the NBAPC to represent them in these discussions.

### **Recommendation 4**

We recommend that NBAPC apply for research funding to conduct successive field research to engage with members of each of these never recognized communities.

**For more information on this project visit:**

<http://uakn.org/research-project/non-status-and-off-reserve-beneficiaries-in-new-brunswick/>

### **ABOUT US:**

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The Urban Aboriginal Knowledge Network, the UAKN, is a community driven research network focused on the Urban Aboriginal population in Canada. The UAKN establishes a national, interdisciplinary network involving universities, community, and government partners for research, scholarship and knowledge mobilization. For more information visit: [www.uakn.org](http://www.uakn.org)



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