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Lawmaking for Nation Rebuilding

Learning from Listuguj First Nation

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“Lawmaking for Nation Rebuilding” was a virtual thinktank hosted by the Rebuilding First Nations Governance Project and the [Centre for First Nations Governance](#) on May 10, 2022. It was held to inform the work of Upper Nicola First Nation as the people begin drafting laws to implement their inherent right to self-government. It was also attended by other project partner First Nations across Canada. The thinktank featured case studies on the lawmaking experiences of Listuguj and Nipissing First Nations as well as presentations from Canadian legal experts. The following is a written summary of one of those presentations.

Presentations by Chief Darcy Gray, Listuguj First Nation and
Dr. Fred Metallic, Director of Natural Resources Listuguj First Nation

Introduction

In 1981, Quebec police officers raided Listuguj First Nation to challenge the right of Mi'gmaq to fish within their territory. This instigated the need for Listuguj First Nation to establish an approach to fisheries management that would protect the community's control of their fisheries. This led to the development of the Mi'gmaq Fisheries Law (1994) as well as the Listuguj Ranger Law (1994).

Listuguj First Nation's Lobster Law – enacted in 2019 – builds off these pre-existing laws. The creation of the Lobster Law represents a continued effort to advance Mi'gmaq law within commercial fisheries that empowers citizens to practice their right to fish and rely on their resources to sustain themselves. Furthermore, through the enactment of the Lobster Law, Listuguj First Nation has been able to increase their own-source revenues through the establishment of a commercial fishery. The Lobster Law also prioritizes fishing in a sustainable manner to protect the resource for future generations. The creation and implementation of these laws relied on Mi'gmaq ways of knowing and being.

The following are lessons drawn from Listuguj First Nation’s lawmaking process, to inform First Nations who seek to develop laws reflective of their inherent rights. This guide is adapted from a presentation delivered by Chief Darcy Gray and Dr. Fred Metallic entitled *Ge’mawiagnutmatinej Jagejewei: Advancing Mi’gmaq law into ‘Commercial Fisheries’*. This presentation emphasizes the role of Mi’gmaq law – and Indigenous law more broadly – in upholding Aboriginal rights and responding to Canadian law and colonial legal systems.

The Law-Making Process: Engagement, Drafting, and Enacting Laws

Start with your creation story

It is critical to start with a deep understanding of a First Nation’s creation story. It is most effective to start the narrative here and not with the events that took place following contact with settlers. Listuguj’s creation story explains how they came to occupy their territories, a process that brings out the values and responsibilities that inform the creation of law(s).

Define the Territory

Another important element of the lawmaking process is to identify the territory that a nation exists within and has responsibilities to; and understand the history of the land. For Listuguj First Nation, this process has supported an understanding of their rights and obligations to their territories. This practice also helps to resist the narrative that political and governance systems were not in place prior to the arrival of settlers. Treaties cannot and did not diminish or limit a nation’s inherent rights. Instead, treaties granted settlers the right to live on Indigenous lands in return for certain government obligations. Ensure that provincial and federal governments recognize and uphold treaties and treaty responsibilities.

Knowledge, Knowledge Systems, and Teachings

Embed cultural practices and beliefs within laws. By utilizing the tools within your nation’s knowledge system and teachings, it is possible to develop culturally appropriate and effective laws. Specifically, language and the use of a nation’s language should be incorporated into the lawmaking process. Remember that laws are not only created, but they are also *lived* and should be informed by lived experiences.

Don’t do it alone: the need for community engagement

To ensure that cultural practices and beliefs are incorporated within laws, you need community engagement. Engaging citizens of a nation helps to develop strong laws. To reflect the desires of the community, Listuguj Mi’gmaq Government participated in a community engagement process that occurred over 2 years, with more than eight hundred acts of participation. These included facilitated meetings, surveys, and conversations to identify community concerns and determine a clear direction for their fisheries.

The community worked together to develop four guiding principles for its Lobster Law: Ango’tmuq; Apajignmuen; Gepmite’tmnej; and Weltetmeg (see figure 1 for description). Furthermore, because Listuguj First Nation ensured that the community was engaged in determining how they wanted to manage their own fishery, the plans developed relied on four

pillars established by the community (see figure 2). These principles inform the law's implementation and interpretation. By working together as a community to incorporate and depend on the nation's knowledge and knowledge systems, it is possible to adequately address your nation's needs and concerns in your own laws and resist the colonial systems and ways of being that Canada attempts to impose.

In developing new laws, Listuguj Mi'gmaq Government was careful to build off Mi'gmaq laws that were already enacted. However, it was important for the community to participate in developing a plan that was reflective of their current needs and wants. Furthermore, this process played an important role in building trust, which supports the implementation of laws.

Following the engagement process, Listuguj Mi'gmaq Government presented the Lobster Law to the community. The law was then voted on by the community. After receiving the approval from the community, the law was then voted on by council and implemented. This demonstrates that the Lobster Law was established collectively and collaboratively.

9.0 Ta'n telgaqamat'mg Jagejeweï Gplutaqan: LMFN Law on Lobster Fisheries (Cont'd)

Ango'tmuq: 'Taking care of something in a careful manner.' The term also suggests 'acknowledgement' and 'responsibility,' when using the resources of the territory.

Weltetmeg: 'We agree in thought.' This is a form of 'consensus-building' to reach a shared agreement.

Gepmite'tmnej: 'Respect.' In caring for the lobster, we need to respect that everybody brings knowledge and has a role to play in fisheries' management.

Apajignmuen: 'Sharing' and 'giving back' to one's community, thus strengthening relations.



(Figure 1: Guiding Principles for the Lobster Law from *Ge'mawiagnutmatinej Jagejeweï: Advancing Mi'gmaq law into 'Commercial Fisheries'*, Dr. Fred Metallic)

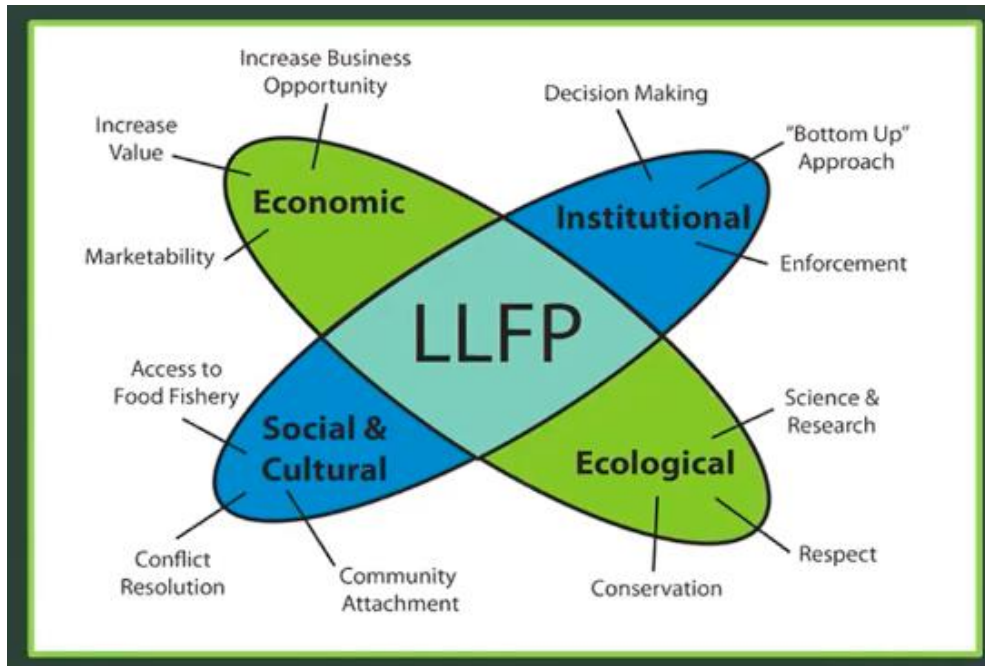


Figure 2 (Listuguj Lobster Fishing Plan, from Dr. Fred Metallic's presentation, *Ge'mawiagnutmatinej Jagejewe: Advancing Mi'gmaq law into 'Commercial Fisheries)*

Resisting other governments' control over Land's, Waters, and First Nations

Successfully enacting your own laws is a key tool for re-asserting control over lands, waters, and communities. They serve to replace Canada's attempts to assert control through its own laws such as the Fisheries Act (1868) and the Indian Act (1876). However, such a process requires persistence.

The events that took place in 1981 sparked the need for Mi'gmaq to protect their inherent rights against Crown assertions of control. Specifically, a key element of Mi'gmaq resistance took place within the courts. By ensuring that the law affirmed the inherent rights of Mi'gmaq, Listuguj First Nation was able to create its own laws based on legal precedent. For example, in *R v Marshall*, the Supreme Court of Canada held that the right to fish for a moderate living is a treaty right for Mi'gmaq and as such, cannot be contradicted by the federal government. However, this ruling did not end the challenges experienced by Mi'gmaq.

In 2017, the federal government attempted to intervene in the management of the Listuguj fishery which would further limit the ability of Mi'gmaq to practice their inherent rights. To respond to this, the Listuguj Mi'gmaq Government and its Natural Resources Directorate developed the Listuguj Lobster Fishing Plan. This plan was developed in collaboration with community members and was another important act of resistance.

In 2018, the Gespe'gewa'gi fisheries was launched as a distinct fishery that belongs to the territory. The enactment of the Lobster reflected the continued efforts of Mi'gmaq to practice their rights to self-government. In June 2021, the Department of Fisheries and Oceans signed a Rights Recognition Agreement with Listuguj First Nations. This agreement protects Mi'gmaq

rights from being challenged by the federal government by recognizing Listuguj's right to create and implement its own laws.

Lessons on Implementation

Creating laws that enable self-determination is important but once a law is implemented, it must remain durable. To do this, Listuguj Mi'gmaq Government put in place several key elements.

First, the Listuguj Lobster Oversight Board was designed to monitor and oversee the implementation of the Lobster Law. As well, the annual lobster fishing plan is designed to authorize fishers and fishing gear as well as manage sustainability. It determines how Listuguj Mi'gmaq may use and dispose of lobster under the law.

A key challenge is developing appropriate compliance mechanisms to uphold laws. There may be a need to develop subsequent laws to uphold the original law. For example, The Ranger Law (1994) was developed to help enforce fishing laws.

Another challenge for Listuguj First Nation was ensuring that rangers were treated as Listuguj officers. Initially, the federal government tried to intervene in the creation of a ranger program by preventing rangers from acting under Listuguj jurisdiction and authority. Fortunately, after 2 years of negotiations, Listuguj First Nations proved that the Ranger Law was a part of self-governance and rangers did not need authority from the federal government. The implementation of the ranger law played an important role in minimizing conflict between fishers and enforcement officers. Not only does the Ranger Law ensure that members are compliant with the law through collaborative mechanisms, but the law also prioritizes the health and safety of fishers as well as the sustainability of the fisheries.

Evolution of the Law: Reflection and Next Steps

While Mi'gweite'm is an event that remembers the events that took place in 1981, more recently this day also acts to celebrate the journey that Mi'gmaq have taken to practice their inherent rights and honour those who made such progress possible. However, the work is not done. Progress happens over time. Following the implementation of the Lobster Law, Listuguj First Nation is also working to develop a restorative justice model that will provide an alternative to federal and provincial courts for fishers who violate Mi'gmaq laws.

There will be gaps and new challenges that need to be addressed even after the enactment of a law. For Listuguj First Nation, there are continued efforts to empower youth and community members to utilize Mi'gmaq law and knowledge systems despite the challenges with the colonial legal landscapes. This work will continue to benefit the lawmaking process over time.