

## Confederation and Maritime First Nations

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## Confederation and Maritime First Nations

WHILE ATTENDING THE 1864 CHARLOTTETOWN CONFERENCE, George Brown penned a letter outlining what he projected as the domains of the new federal and provincial governments. That Brown's exhaustive list makes no mention of First Nations people – and that the papers of all of the other “Fathers of Confederation” are similarly silent – offers a stark reminder of how marginalized were First Nations people, including the Mi'kmaq of Nova Scotia, New Brunswick, and Prince Edward Island as well as the Wolastoqiyik (Maliseet) and Peskotomuhkati (Passamaquoddy) of New Brunswick on the eve of Confederation.<sup>1</sup> Even though it did not occur to the architects of the British North America Act to consult with First Nations people, Section 91(24) of the 1867 legislation, which gave Ottawa jurisdiction over “Indians and lands reserved for Indians,” came to profoundly shape their lives. By 1876, the framework of federal Indian policy was in place with the passage of the Indian Act. Defining who was an “Indian,” the act gave to Ottawa authority over many specific aspects of First Nations peoples' lives while also extending to federal officials wide discretionary power. By the mid-1870s local federal Indian agencies were in place, and in 1880 a separate federal Indian Affairs bureaucracy – the Department of Indian Affairs – was established.

The histories of Maritime First Nations in the years since Confederation have only just begun to catch up to what has tended to be a more robust scholarship pertaining to the pre-Confederation era.<sup>2</sup> The divide between pre- and post-

1 G.P. Gould and A.J. Semple, eds., *Our Land: The Maritimes: The Basis of the Indian Claim in the Maritime Provinces of Canada* (Fredericton: Saint Anne's Point Press, 1980), 73-4.

2 Studies of the pre-Confederation era have dominated the field of Maritime First Nations history, beginning with the work of L.F.S. Upton and the 1979 publication of his influential *Micmac and Colonists: Indian-White Relations in the Maritimes, 1713-1867* (Vancouver: University of British Columbia, 1979). Since then, and often drawing from research in support of treaty and land claim court cases, the field has blossomed to include historians such as Brian Cuthbertson, Stephen Patterson, Andrea Bear Nicholas, John Reid, and William Wicken. More recently, scholarship has begun to address the post-Confederation and 20th-century experiences of Maritime First Nations peoples, though they almost exclusively focus on Mi'kmaq experiences to the exclusion of the Wolastoqiyik (Maliseet) and Peskotomuhkati (Passamaquoddy). See, for example, Bill Parenteau, “A ‘Very Determined Opposition to the Law’: Conservation, Angling Leases, and Social Conflict in the Canadian Atlantic Salmon Fishery, 1867-1914,” *Environmental History* 9, no. 3 (July 2004): 436-63; Bill Parenteau and James Kenny, “Survival, Resistance, and the Canadian State: The Transformation of New Brunswick's Native Economy, 1867-1930,” *Journal of the Canadian Historical Association* 13, no. 1 (2002): 49-71; Andrew Parnaby, “The Cultural Economy of Survival: The Mi'kmaq of Cape Breton in the Mid-19th Century,” *Labour/Le Travail* 61 (Spring 2008): 69-98; Daniel Paul, *We Were Not the Savages: Collision Between European and Native American Civilizations*, 3rd ed. (Black Point, NS: Fernwood Publishing, 2007); Jacob Remes, “Mi'kmaq in the Halifax Explosion of 1917: Leadership, Transience, and the Struggle for Land Rights,” *Ethnohistory* 61, no. 3 (Summer 2014): 445-66; Maura Hanrahan, “Resisting Colonialism in Nova Scotia: The Kesukwitk Mi'kmaq, Centralization, and Residential Schooling,” *Native Studies Review* 17, no. 1 (2008): 25-44; Peter Twohig, “Colonial Care Medical Attendance among the Mi'kmaq in Nova Scotia,” *Canadian Bulletin of Medical History* 13, no. 2 (1996): 333-53; William Wicken, *The Colonization of Mi'kmaq Memory and History, 1794-1928*:

Confederation Atlantic region scholarship on First Nations has been reinforced by policy-centred approaches that have drawn researchers to separate colonial and post-Confederation archival collections. However, the lived experiences of First Nations people suggest that the dividing line between pre- and post-Confederation that has been sketched by scholars was largely irrelevant to their daily lives. For the Mi'kmaq and Wolastoqiyik of Nova Scotia and New Brunswick and, in 1873, for Prince Edward Island's Mi'kmaq, the coming of Confederation did not mark an abrupt shift in their lived experiences. Rather, the decades of the late 19th and early 20th centuries that spanned Confederation was an era marked by continuity and were what historian Donald Soctomah calls "invisible years."<sup>3</sup> The four decades following Confederation, much like the preceding colonial years, was an era in which First Nations people existed on the margins of Maritime society, where they suffered from "turmoil and personal anguish."<sup>4</sup> Neglected by a federal government, whose preoccupation with westward expansion meant that Indian Affairs in the "settled east" was not prioritized, the Mi'kmaq and Wolastoqiyik, who had grown quite accustomed to fending for themselves under negligent colonial regimes, continued to live lives rooted, out of both necessity and choice, in Mi'kmaw and Wolastoqiyik cultures. While the early years following Confederation saw the intensification of such issues as reserve squatters and restrictive fish and game laws adversely affect Maritime First Nations, it was not until the second decade of the 20th century, with the arrival of Duncan Campbell Scott at the helm of the DIA, and with the increased interest of non-First Nations Maritimers in the affairs of First Nations people, that the weight of federal policies came to bear more fully upon Mi'kmaw and Wolastoqiyik communities. Only in the 1910s did federal policy become a force that demanded sustained and concerted resistance.<sup>5</sup>

The westward focus of the new federal government goes a long way to explaining these "invisible years." Since the Fathers of Confederation imagined a Canada from "sea onto sea," the immediate concerns of John A. Macdonald's new government was the westward expansion of the Canadian project – the building of a western railroad and the settling of the west by Anglo-European settlers. The biggest obstacles to this agenda were western First Nations, whose occupation of their

*The King v. Gabriel Sylliboy* (Toronto: University of Toronto Press, 2012); William Wicken, *Mi'kmaq Treaties on Trial: History, Land, and Donald Marshall Junior* (Toronto: University of Toronto Press, 2002); Martha Walls, *No Need of a Chief for this Band: The Maritime Mi'kmaq and Federal Electoral Legislation, 1899-1951* (Vancouver: University of British Columbia Press, 2010); Martha Walls, "'The teacher that cannot understand their language should not be allowed': Colonialism, Resistance, and Female Mi'kmaw Teachers in New Brunswick Day Schools, 1900-1923," *Journal of the Canadian Historical Association* 22, 1 (2011): 35-68; Martha Walls, "Mi'kmaw Women and St. Francis Xavier University's Micmac Community Development Program, 1958-1970," *Acadiensis* XLIV, no. 2 (Autumn 2015): 51-74.

3 Remes, "Mi'kmaq in the Halifax Explosion," 447.

4 Wicken, *Colonization of Mi'kmaw Memory and History*, 161.

5 For the Peskotomuhkati, whose territory spanned the New Brunswick-US border, Confederation, for very different reasons, did little to alter their lived experiences as the new federal regime refused to recognize Peskotomuhkati claims to "Canadian" territory or to regard them as a Canadian First Nation. To be certain, this had a profound impact on the lives of Peskotomuhkati people; but specific policies born of Confederation would, for this reason, little affect them.

traditional territories stood in the way of rail lines and immigrants. “Clearing the plains” became a top priority of the new federal government, which worked feverishly through the 1870s to negotiate a series of western numbered treaties designed to eliminate Aboriginal title and to confine First Nations to reserved land away from emerging European settlement.<sup>6</sup> Federal attention was again focused on Indian Affairs in the west with the 1885 Métis uprising, in which First Nations people were implicated.<sup>7</sup>

In contrast to the tens of thousands of western First Nations people who became the focus of the federal government after Confederation, there was the relatively small number of Mi’kmaq and Wolastoqiyik, who numbered 3,513 in Nova Scotia and New Brunswick by a federal count of 1868.<sup>8</sup> Precise numbers are elusive, and certainly regional variations existed, but generally Mi’kmaq and Wolastoqiyik populations fell during this era while settler populations boomed.<sup>9</sup> These losses are attributable to a host of interrelated factors. The poverty and hardship that accompanied the declining availability of resources led to poor physical health, lower rates of fertility, and decreased life expectancies. These contributed to a reduced population, and fuelled the belief among contemporaries that the “fewness of children amongst them too surely proves a doomed race.”<sup>10</sup> This neglect by the federal government was also shaped by the lack of immediacy posed by “Indian” land issues in the Maritimes. Despite never having ceded their territory, Maritime First Nations had, beginning in the early 19th century, been increasingly confined to reserve lands and, by Confederation, reserved tracts had been whittled away by settler incursions that had largely gone unchecked by colonial governments.<sup>11</sup> By the mid-19th century, necessity had compelled increasing numbers of Mi’kmaq and Wolastoqiyik – though by no means all – to settle in these designated communities.<sup>12</sup>

6 James Sawchuck, *Clearing the Plains: Disease, Politics of Starvation, and the Loss of Aboriginal Life* (Winnipeg: University of Regina Press, 2013).

7 See F. Laurie Barron and James B. Waldram, eds., *1885 and After: Native Society in Transition* (Regina: University of Regina, 1986).

8 “Comparative Statement of the Population of the different Indian Tribes and Bands,” Annual Report of the Secretary of State for the Year 1868, p. 29-30, Department of Indian Affairs Annual Reports, Library and Archives Canada (LAC), <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=61>.

9 Between 1861 and 1871 alone, the Nova Scotia population grew by 17.2 per cent, New Brunswick’s by 13.5 per cent, and Prince Edward Island’s by 17.5 per cent. See Phillip A. Buckner, “The 1860s: An End and a Beginning,” in *The Atlantic Region to Confederation: A History*, ed. Philip A. Buckner and John G. Reid (Toronto: University of Toronto Press, 1994), 363. Anthropologist Harald Prins notes that this “demographic surge” reduced the Mi’kmaq to just 0.5 per cent of the region’s entire population; see Harald Prins, *The Mi’kmaq: Resistance, Accommodation, and Cultural Survival* (Toronto: Harcourt Brace College Publishers), 165.

10 J. Bernard Gilpin, “The Indians of Nova Scotia,” *Nova Scotia Institute of Science Proceedings and Transactions* 4 (1875-1878): 250-81, in H.F. McGee, *The Native Peoples of Atlantic Canada: A History of Ethnic Interaction* (Toronto: McClelland and Stewart Ltd., 1972), 114.

11 Local colonial officials in the Maritimes had long displayed their disinterest in the plight of First Nations people. With the exception of a brief flurry of colonial interest in the 1840s into the plight of a suffering First Nations population, complacency and neglect characterized colonial policy. For an overview of colonial Indian policy, see Upton, *Micmacs and Colonists* and Walls, *No Need of a Chief*, 44-53.

12 Wicken, *Colonization of Mi’kmaq Memory and History*, 168.

Added to the economic and geographical marginalization of First Nations people was their exclusion from the political realm, which was facilitated over the course of the 19th century by an increasingly restrictive franchise that denied them the right to vote in colonial and, subsequently, federal and provincial elections.<sup>13</sup> Given the small – and shrinking – size of the Maritime First Nations population, their confinement to long-reserved tracts, and what Harald Prins has called their “political irrelevance,” it is little wonder that Canada’s federal government, like the Fathers of Confederation, took little interest in the Mi’kmaq and Wolastoqiyik.<sup>14</sup> Moreover, had Ottawa shown any desire to develop programs and policies suited to the particular needs of Maritime First Nations it would have struggled to do so; as G.P. Gould and A.J. Semple put it, “The federal government inherited what can only be described as a mess in Nova Scotia and New Brunswick.”<sup>15</sup> The federal government concurred with this assessment as it lamented in its first annual report on Indian affairs in 1868 that its work in the Maritimes was hampered by the “limited amount of information available.”<sup>16</sup>

Emblematic of Ottawa’s disinterest in Indian affairs in the Maritime Provinces was the slow emergence in the region of an ineffectual Indian Affairs bureaucracy. The federal government, following Confederation, gradually assumed control over a series of small, reserve-based schools, which became federal Indian day schools. Federal commitment to these schools was slim, and inadequate federal funding meant that formal schooling eluded many Mi’kmaq and Wolastoqiyik children; many of those who attended did so only irregularly.<sup>17</sup> Beginning in the 1870s, Indian agents were appointed and Indian agencies established. Ottawa divided the whole of New Brunswick into two administrative hubs – the North Eastern (Mi’kmaq) and the South Western (Wolastoqiyik) agencies – with each large territory overseen by a single full-time Indian agent. After 1873, they were joined by a single Prince Edward Island agency headquartered at Lennox Island and overseen by one “Indian Superintendent,” whose function mirrored that of Indian agents elsewhere. In Nova Scotia there emerged at first seven (and later a dozen) Indian agencies, each staffed by a part-time Indian agent. While full-time officials in New Brunswick and Prince Edward Island struggled to meet the demands of their large jurisdictions on meagre salaries, the part-time Nova Scotia agents were divided between their Indian

13 In New Brunswick and Prince Edward Island, where voting was contingent on property ownership, impoverished First Nations peoples were denied the vote; in Nova Scotia, First Nations people were explicitly disenfranchised in 1854, and provincial laws in New Brunswick in 1889 and in Prince Edward Island in 1922 would do the same. See Walls, *No Need of a Chief*, 51.

14 Prins, *The Mi’kmaq*, 164.

15 Gould and Semple, *Our Land: The Maritimes*, 70.

16 W. Spragge, D.S.I.A., 2 April 1868, Annual Report of the Secretary of State for the Year Ended 1868, p. 5, Annual Report of the Department of Indian Affairs, LAC, <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=37>.

17 For example, Chris Benjamin notes that a day school was not built at Sipekne’katik (Shubenacadie) until 1894 after two decades of requests from the community. See Chris Benjamin, *Indian School Road: Legacies of the Shubenacadie Indian Residential School* (Halifax: Nimbus Press, 2014), 17. As of 1901, 18 per cent of Mi’kmaq children enrolled in the federal Indian day school in the Maritime Provinces attended “regularly” and under half, just 41 per cent, were enrolled at all. See Walls, *No Need of a Chief*, 29.

department work and their other jobs. In many cases, for example, Indian agents were also parish priests who served larger flocks. In all three Maritime Provinces, ill-equipped Indian agents did their jobs ineffectively as evidenced by the fact that they regularly did not furnish reports to Ottawa.<sup>18</sup> The inadequacy of this level of supervision, particularly in Nova Scotia, was not lost on the federal government; in 1943 DIA officials acknowledged “The employment of part-time agents was never at any time wholly satisfactory.”<sup>19</sup> Jarvis Brownlie, writing of federal Indian Affairs in Ontario during this era, has suggested that while local Indian agents were subject to control “by higher-ranking officials,” they exerted profound and far-reaching influence in the day-to-day lives of First Nations communities.<sup>20</sup> This was not the case in the Maritime Provinces during the years of invisibility, for federal officials in Ottawa had little interest in the region and Indian agents’ effectiveness was undercut by the terms of their part-time employment. Although the new federal government had established a web of potentially powerful policies via its Indian Act, ineffectual oversight and weak Indian agents meant that the full impact of these policies would not be immediately felt in the Maritimes.

In many respects Ottawa’s absence from Maritime First Nations communities had horrific consequences for First Nations peoples, as the egregious disregard of the colonial era continued under federal jurisdiction. It is clear that some First Nations had hoped that federal union might be a remedy for the neglect and unchecked settler interferences that had marked the colonial era. Such a sentiment seemed to exist among the Wolastoqiyik at Tobique where, in the aftermath of attempts by the colonial government of New Brunswick to sell a tract of reserve land in the early 1860s, the federal government was seen by some as a potential solution to the “injustice done the tribe.”<sup>21</sup> Mi’kmaq Chief Charles Bernard of Lennox Island, PEI, voiced a similar perspective in 1873. On the heels of Prince Edward Island joining Confederation, Bernard was among those who wrote to the Earl of Dufferin with the hope that the “great destitution and suffering” that had in the past distinguished them from “their brethren in neighbouring provinces” would be reversed with the “privilege” of being “recognized henceforth by your Excellency as forming a portion (though small it may be) of the large family of British North American Indians.”<sup>22</sup> Any anticipation that the federal government would protect lands and resources or offer adequate support was quickly quashed as encroachment continued unabated. In its annual report of 1871, for example, the federal government took a hardline on relief: “Help will no longer be given to the idle and

18 Walls, *No Need of a Chief*, 54.

19 Director of Indian Affairs Brach to Supervisor of Mobilization, National Selective Service, 4 March 1943, RG 10, vol. 6769, file 452-20-7, LAC.

20 Robin Jarvis Brownlie, *A Fatherly Eye: Indian Agents, Government Power, and Aboriginal Resistance in Ontario, 1918-1939* (Don Mills, ON: Oxford University Press, 2003), 38; see also Robin Brownlie, “Man on the Spot: John Daly, Indian Agent in Parry Sound, 1922-1939,” *Journal of the Canadian Historical Association* 5, no. 1 (1993): 63-86.

21 Cited in Brian Cuthbertson, *Stubborn Resistance: New Brunswick Maliseet and Mi’kmaq in Defence of their Lands* (Halifax: Nimbus Publishing, 2015), 108.

22 Chief Charles Bernard, Joseph Snake, and Martin Francis to Earl of Dufferin, 7 November 1873, RG 10, vol.1907, file 2307, LAC.

the profligate, but only to those who show a disposition to advance and help themselves.”<sup>23</sup> This ad hoc and meagre support echoed inadequate colonial responses decades earlier to the same problems.

Under the federal regime, First Nations’ land continued to be subject to settler interference without state protection. Settlers, time and again, won contests for land that was claimed by First Nations people, compelling Nova Scotia Indian Agent D. McIsaac to urge Ottawa in 1882 to do more about the problem. “Trespassing,” he wrote,

seems to be considered something laudable by the [the whites], where a poor Indian is the victim. Notwithstanding that, by me as Indian Agent, notices have been repeatedly served on “squatters and trespassers” by constables from year to year, and by the high sheriff of the County, threatening them with legal proceedings, the offenders have not discontinued their depredations. Warrants have been issued by me for their apprehension and commitment to gaol, and they have up to this time eluded the officers of the law. I think it is high time that legal steps be taken for the apprehending of the guilty parties.<sup>24</sup>

Such legal steps were not forthcoming, and Mi’kmaq and Wolastoqiyik across the Maritimes continued to be plagued by settlers unlawfully claiming “Indian” land. The frustration endured by Chief Peter Julian attests to the ongoing problem. In 1894, Chief Julian complained to the DIA about a tract of land at Metepenagiag (Red Bank) that was claimed by non-First Nations settlers but that Julian insisted had been “granted to my forefathers . . . by King George III.” Ottawa’s solution was to sell the land to the squatters, but Chief Julian was adamant that “I will not allow the lands to be sold without my consent.” He cautioned that if “the Commissioner [i.e., Indian agent] is attempting anything of that kind, I will at once proceed to Ottawa to see that my rights are properly looked after and protected.”<sup>25</sup> Proceed to Ottawa Julian did, but he found no remedy.<sup>26</sup> Instead, three years later, Ottawa called for the contested land to be sold to the squatters. An 1897 DIA memorandum outlined the widespread problem of squatting on New Brunswick reserves, identifying 15 squatters at Big Hole, 27 at Red Bank, 12 at Tabunsintac, 12 at Richibucto, and 9 at Indian Point. All of these squatters, the memo noted, were on lands claimed illegally since before Confederation. Suggesting that it would be

23 Joseph Howe, Report of the Indian Branch of the Department of Secretary of State for the Provinces, 1871, p. 34, Department of Indian Affairs Annual Reports, LAC, <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=175>.

24 Report of Agent D. McIsaac, 30 September 1881, Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881, McIsaac to Superintendent General of Indian Affairs, p. 32, Department of Indian Affairs Annual Reports, LAC, <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=2125>.

25 Peter Julian to Minister of Indian Affairs, 1 September 1894, RG 10, vol. 2522, file 107,222-2, LAC.

26 J.D. McLean to Deputy Minister, 5 February 1896, RG 10, vol. 2522, file 107,222-2, LAC.

“impossible for the . . . local Agent to make any satisfactory settlement with the squatters on these reserves,” Ottawa suggested that DIA officials be sent to the area to negotiate a settlement that revolved around the squatters purchasing the land for \$1.25/acre. This decision to “push through” the surrenders and sale of these reserved tracts echoed colonial-era policies, further compromised reserve lands, and ran contrary to Mi’kmaw claims.<sup>27</sup>

Not only was their land not safeguarded, but new federal fishing regulations and provincial game laws further undermined First Nations’ access to resources in the post-Confederation era. The 1868 introduction of federal fisheries legislation aimed at managing Atlantic salmon fisheries, for example, made First Nations susceptible to the oversight of fishery inspectors for the first time, limited in fundamental ways their access to fish stocks, and created new competition between First Nations and non-First Nations fishers along Maritime rivers.<sup>28</sup> New provincial game laws similarly impinged on access to game. The impact of these new regulations is illustrated by frequent Mi’kmaw and Wolastoqiyik petitions, which claimed that their post-Confederation right to hunt and fish without restriction were guaranteed by the peace and friendship treaties negotiated with the Crown in the 18th century. In 1897 residents of the reserve at Bear River, Nova Scotia, complained that “unjust” game laws “cut [them] off from their only means of support during the winter months [and left] them in a state of destitution, which leads them to break the [game] laws and incur heavy penalties attached thereto for which their families as well as themselves have to suffer.” The community insisted that Ottawa act on its behalf to “secure . . . some terms from the Local Officials by which they may enjoy even part of their former privileges.”<sup>29</sup> Likewise, the Mi’kmaq of Bear River asserted that their right to unfettered hunting had been “been granted them by the Government of Great Britain.”<sup>30</sup> Ottawa, though, was unmoved by such complaints. Ottawa, far from acknowledging the legitimacy of treaty rights to resources, instead insisted that game laws were in the best interests of all people, including the Mi’kmaq.<sup>31</sup> Ever quick to undercut Mi’kmaw claims, Ottawa also insisted that any leniency shown to First Nations hunters who broke game laws “has been exercised as a matter of grace, and not of any recognized right on the part of the Indians who are at least as much interested in the observance of laws for the protection of the game, as any other class of the community can possibly be.”<sup>32</sup>

In the face of ongoing land pressures and reduced access to resources, and given that they, unlike First Nations in Ontario and Quebec, had no access to trust funds (monies for reserves that were accumulated via land sales), the Mi’kmaq and Wolastoqiyik experienced considerable poverty after Confederation.<sup>33</sup> Annual reports of Indian agents

27 William Orr, Memo RE: NB Indian Reserves, 11 June 1897, RG 10, vol. 2522, file 107,222-2, LAC. See also W.D. Hamilton, “Julian, Peter Nicholas,” *Dictionary of Canadian Biography Online*, XVI, <http://www.biographi.ca/>.

28 Parenteau, “A ‘Very Determined Opposition to the Law’,” 442.

29 Petition from Bear River, 9 February 1897, RG 10, vol. 6743, file 420-7, LAC.

30 Agent F. McDormand to Deputy Superintendent General, Indian Affairs, 22 February 1897, RG 10, vol. 6743, file 420-7, LAC.

31 Hayter Reed to F. McDormand, 18 March 1897, RG 10, vol. 6743, file 420-7, LAC; Hayter Reed to Deputy Minister of Marine and Fisheries, 18 March 1897, RG 10, vol. 6743, file 420-7, LAC.

32 J.D. McLean to Chief Joseph Knockwood, 20 March 1908, RG 10, vol. 6743, file 420-7, LAC.

33 Parenteau and Kenny, “Survival, Resistance, and the Canadian State,” 53.



are rife with attestations to the destitution of Maritime First Nations. In 1891, the suffering of the Mi'kmaq in Cape Breton was perversely twisted by the local Indian agent into a commendation of Mi'kmaq "morality." The Mi'kmaq, he wrote, "frequently suffer many privations" and "this evening they may not have to-morrow's breakfast in reserve for themselves and Families." Rather than advance remedies to this hardship, the agent praised the Mi'kmaq for suffering nobly instead of resorting to "theft from their white neighbours" – an act that was "utterly unknown."<sup>34</sup> In New Brunswick Agent William Fisher also commented on poverty, writing of the Wolastoqiyik in his agency that they were "very poor, having been dispossessed as civilization advances, of their former hunting grounds, and prohibited from spearing salmon, at one time their chief source of subsistence." Critiquing the lack of federal support, Fisher continued: "I feel that the poor Indian is entitled to a greater consideration on the part of the Dominion Government."<sup>35</sup> Federal solutions to this endemic poverty were inefficient and echoed the inadequate relief that had characterized the colonial era.

A colonial tendency to neglect the medical needs of the Mi'kmaq and Wolastoqiyik was also evident after Confederation. It was not lost on the federal government that the impoverishment of this era took a toll on the health of First Nations people. This point was clearly made by Agent John Foster of Shelburne, who observed that the Mi'kmaq in his agency "do not show that vitality, strength and endurance which they have been known to possess in bygone years." Foster blamed this on a "different way of living." The recent absence of "fresh fish and game [that] was [once] within their easy reach" had been replaced of necessity by an innutritious diet of "bread, tea and molasses for breakfast; tea, bread and molasses for dinner, and molasses, tea and bread for supper."<sup>36</sup>

Rather than respond to the poor – and deteriorating – health of the Mi'kmaq and Wolastoqiyik, the federal government opted to reduce health expenditures and to "place a salutary check upon the manufacture of doctors' bills for attendance upon sick Indians" and to carefully scrutinize all medical bills, paying only for those "specially authorized by the Department or by the Local Agents."<sup>37</sup> The DIA spelled

34 Report of Agent D. McIsaac, September 1891, Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1891, McIsaac to Deputy Superintendent of Indian Affairs, p. 43, Department of Indian Affairs Annual Reports, LAC, <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=7834>.

35 Report of William Fisher, 23 November 1875, Annual Report of the Department of the Interior for the Year Ended 30th June 1875, William Fisher to Superintendent General of Indian Affairs, p. 29, Department of Indian Affairs Annual Reports, LAC, <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=561>.

36 Report of Agent John Fraser, Shelburne, 15 July 1899, Annual Report of the Department of Indian Affairs for the Year Ended June 30 1899, Fraser to Superintendent General of Indian Affairs, p. 71, Department of Indian Affairs Annual Reports, LAC, <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=12569>.

37 Report of Joseph Howe, 1871, Report of the Indian Branch of the Department of the Secretary of State for the Provinces, 1871, "Nova Scotia and New Brunswick," p. 34, Department of Indian Affairs Annual Reports, LAC, <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=175>.

out its ongoing reticence to provide such care, informing its Indian agents in 1897 that “the Department will furnish medical attendance to a limited extent to such of the Indians as are unable to pay for the same themselves.” But it added that its paramount priority was frugality and that “the charge should be the lowest made to the poorest class of white patients and . . . it will be absolutely necessary to keep the accounts down to the lowest possible figure.”<sup>38</sup> The impact of such a policy was that, as in the colonial era, Mi’kmaq and Wolastoqiyik had spotty and ineffective access to state healthcare. Each year, agents recounted the prevalence of disease, and in 1895 the DIA noted the particularly poor health of First Nations people in “Nova Scotia and New Brunswick . . . [who] . . . do not seem to have fared as well as their brethren in other parts of the Dominion.”<sup>39</sup> Fifteen years later ill health continued to be a problem identified by Indian agents, especially as Maritime First Nations were ravished by tuberculosis (TB). Nova Scotia Indian Superintendent A.J. Boyd felt that Mi’kmaq stricken with TB were not receiving adequate care, writing in his annual report of 1910 that “so far as my observations enable me to judge, the poor Micmac seems to be forgotten in the programme.”<sup>40</sup> A few years later, Boyd again commented on another measure of poor health among the Mi’kmaq of Nova Scotia as he noted that a “high rate of mortality among infants continues to prevail.” Boyd also connected the poverty of Mi’kmaq with their poor health: “It is often difficult for the average Indian to make practical use of his knowledge of sanitary science, because circumstances will not permit. . . . Being very poor, he is without the means to improve his situation and, therefore, must content himself with things as they are.”<sup>41</sup>

Ottawa’s reticence to support the Mi’kmaq and Wolastoqiyik, as well as its lackluster mechanisms of oversight, certainly brought hardship to Maritime First Nations; but it also created a buffer between First Nations people and some of the Indian Act’s most offensive and potentially coercive elements – what Angela Wanhalla has referred to as a “slippage between policy and practice.”<sup>42</sup> Reserves were surely inadequate and perpetuated the federal neglect that created hardship for First Nations people, but these same spaces also “provided a measure of protection against brutal outside forces” and offered to the Mi’kmaq and Wolastoqiyik “space

38 Report of Acting DIA Accountant, 5 March 1897, RG 10, vol. 2162, file 33,613, LAC.

39 Report of Hayter Reed, Deputy Superintendent General of Indian Affairs, 2 December 1893, Annual Report for the Department of Indian Affairs for the Year Ended 30th June 1895, Reed to Superintendent General of Indian Affairs, p. xx, Department of Indian Affairs Annual Reports, LAC, <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=9797>.

40 Report of Indian Superintendent A.J. Boyd, 31 March 1910, Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1910, Boyd to Deputy Superintendent General of Indian Affairs, p. 60, Department of Indian Affairs Annual Reports, LAC, <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=21951>.

41 Report of A.J. Boyd, 13 April 1913, Annual Report of the Department of Indian Affairs for the Year Ended March 31 1913, Boyd to Deputy Superintendent of Indian Affairs, p. 77, Department of Indian Affairs Annual Reports, LAC, <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=25524>.

42 Angela Wanhalla, “Women ‘Living across the Line’: Inter-marriage on the Canadian Prairies and in Southern New Zealand, 1870-1900,” *Ethnohistory* 55, no. 1 (Winter 2008): 30.

and time in which to work out innovative cultural resistance strategies that accommodated white society without fully abandoning [their] ancestral heritage.”<sup>43</sup> In this way, the “invisible years” was also an era in which the Mi’kmaq and Wolastoqiyik, by virtue of both necessity and choice, lived lives in accordance with their own traditions and unencumbered by the full potential of federal policy.

Policies surrounding Indian status and marriage practices were areas in which such “slippage” could be seen during these “invisible years.” One of the key objectives of the Indian Act was to define who was an “Indian” and to determine who could – and could not – reside on reserves and access federal support. Specifically, the law denied Indian status to Indian women who married non-Indian men and Ottawa was empowered to intercede to ensure that such women had access to neither reserves nor other DIA services.<sup>44</sup> Such interferences, though, did not accompany federal Indian policy in the Maritimes. Instead, residents of Mi’kmaq and Wolastoqiyik reserves often continued to decide for themselves who belonged there and, not infrequently, Indian women who married non-Indian men continued to be welcomed on reserves (often along with their spouses). Although Ottawa was aware that such scenarios were common, for the first 40 years after Confederation it followed its practice prevailing elsewhere in Canada and did not interfere in the families of Maritime First Nations.<sup>45</sup> At the small New Germany Reserve in Lunenburg County, Nova Scotia, for example, a number of couples of Mi’kmaq wives and non-Indian husbands were welcomed in the community, and their presence well known to, and accepted by, local agents and DIA officials in Ottawa. The 1881 decennial census revealed that New Germany reserve was home to ten “Indians,” ten “Germans” and two “English” people.<sup>46</sup> A decade and a half later the DIA’s own annual report indicated “the Indians in [Lunenburg] county are of two classes – the half-breeds, who live at New Germany, and the Micmacs, who live at Gold River and at Bridgewater.”<sup>47</sup> Despite recognition that New Germany was inhabited by a number of non-Indians, neither the local Indian agents nor their superiors in Ottawa challenged the Indian status of residents of New

43 Prins, *The Mi’kmaq*, 167.

44 In 1869, the new federal government introduced the Gradual Enfranchisement Act. The first post-Confederation legislation to state that Indian women who married out would lose their status. The Gradual Enfranchisement Act also narrowed the definition of “Indian” by attaching to it markers of lineage and by stipulating that Indians were to have one-fourth Indian blood. See J.R. Miller, *Lethal Legacy: Current Native Controversies in Canada* (Toronto: University of Toronto Press, 2004), 32. The Indian Act of 1876 and its subsequent revisions reiterated that Indian women who married non-Indian men would lose their Indian status. Only in 1985 did the passage of Bill C31 retract this law, but not before an estimated 25,000 Indigenous women (not including their dependents and descendants) lost their Indian status. See Julia Emberly, “The Bourgeois Family, Aboriginal Women, and Colonial Governance in Canada: A Study in Feminist Historical and Cultural Materialism,” *Signs* 27, no. 1 (Autumn, 2001): 74-5.

45 Wanhalla, “Women ‘Living across the Line,’” 30.

46 Census Returns for the 1881 Canadian Census, RG 31, R233-35-2-E, District 11, Sub-district E, p. 8, LAC.

47 Report of Thomas Butler, 31 August 1896, Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1896, Butler to Superintendent General of Indian Affairs, p. 64, Department of Indian Affairs Annual Reports, LAC, <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=10520>.

Germany, their rights to live on reserve land, or their claims to DIA services such as schooling and relief. A similar scenario existed at the Mi'kmaw reserve of Ugpi'ganjig (Eel River), New Brunswick, where the community's decision to admit a number of outsiders, including five "white" men, was endorsed by the local Indian agent who recommended, apparently with success, that the superintendent general of Indian Affairs do the same.<sup>48</sup> William Wicken suggests that because Maritime First Nations were not subject to the annuity payment system that prevailed in Western Canada "there was no compelling financial or legal rationale to keep track of who was and who was not an 'Indian'" and that agents, therefore, "did not strictly enforce the Indian Act, so that many couples living on reserve or off were treated as though they were 'Indian', even though legally, they, or one of the couple, might not be."<sup>49</sup> Ottawa, in the first few decades following Confederation, clearly felt little compulsion to intercede in issues of community membership, including the policing of marriages between Indians and non-Indians. Instead, Mi'kmaq and Wolastoqiyik continued to determine who lived in their communities.

Mi'kmaw and Wolastoqiyik communities also continued to be served by their own political systems featuring community-centered leaders and region-wide affiliations that included a Mi'kmaq Grand Council and the Wabanaki Confederacy, both of which were firmly rooted in history and tradition. In 1899 the federal government aimed to bolster its control over the political affairs of Mi'kmaw and Wolastoqiyik communities with the application of the triennial system of band elections, a federally orchestrated system of elected chiefs and councilors that was intended to undermine traditionally named leaders. The triennial system was received variously, and by no means universally, by First Nations – and it certainly did not undermine their existing political systems. That Indian agents were aware of the continued influence of traditional political custom is illustrated in the remarks of a Cape Breton Indian agent, who in 1894 reported that the Mi'kmaq "hold their own unwritten or traditionary [*sic*] laws in equal reverence and regard" to the laws of the province. "In fact," he continued "if there be anything to ruffle the even tenor of their lives, it is a violation of the [traditional laws]."<sup>50</sup> Traditional leaders also continued to hold sway; the Mi'kmaw grand chief, for example, continued to be revered, and his insight and authority was not sublimated to elected chiefs as Ottawa intended.<sup>51</sup> Moreover, triennially elected councils that were supposed to support federal policy often acted instead to challenge it. One such issue taken up by elected councils was that of treaty-guaranteed hunting rights.<sup>52</sup> This issue, for example, was

48 R.A. Irving to Secretary of DIA, 22 July 1912, RG 10, vol.7760, file 27055-7, LAC.

49 Wicken, *Colonization of Mi'kmaw Memory and History*, 188. Department of Indian Affairs Secretary J.D. McLean explained that those eligible to vote in band council election included "persons who are adopted as members of communities"; see Walls, *No Need of a Chief*, 116.

50 Report of A. Cameron, 28 September 1894, Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1894, Cameron to Superintendent General of Indian Affairs, p. 41, Department of Indian Affairs Annual Reports, LAC, <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=9346>.

51 Walls, *No Need of a Chief*, 99-102, 124.

52 See, for example, Chief Joseph Knockwood to DIA, 5 March 1908, RG 10, vol. 6743, file 420-7, LAC.

pursued in 1906 by Chief Paul of *Sipekne'katik* (Shubenacadie), who headed a petition with 16 signatories that insisted that they had the right to freely hunt and sell moose and fish on the basis of “their Treaty made over two hundred years ago.”<sup>53</sup> Treaty rights, rooted in a centuries-old relationship with Britain, were foundational in the political grounding of the Mi'kmaw and Wolastoqiyik First Nations and they certainly mattered more than the work of a distant federal bureaucracy.<sup>54</sup>

In other ways, the rhythms of the lives of the Mi'kmaq and Wolastoqiyik did not change dramatically in the decades immediately following Confederation. Although increasing numbers of them took up farming, agriculture was not as warmly embraced by them as Ottawa would have liked. “Traditional” resource-centred undertakings continued instead, marking significant continuity in the lives of Maritime First Nations people even as they suffered land encroachments and as game and fish laws imposed limits on their resource use. Hunting and fishing remained important to the Mi'kmaq and Wolastoqiyik, and they defied fish and game wardens to fish and hunt “illegally.”<sup>55</sup> In 1899, fishing accounted for 22.4 per cent of Mi'kmaw income in New Brunswick, 8 per cent in Nova Scotia, and 3.3 per cent in Prince Edward Island. That same year, hunting accounted for 10 per cent of Mi'kmaw income in Nova Scotia and 2.3 per cent in New Brunswick, but less than half of a per cent on Prince Edward Island where game was rare. Obviously fishing and hunting remained important; however, diminished access to these resources also demanded that these pursuits be supplemented by newer economic strategies.

Prior to Confederation the Mi'kmaq had begun to participate in waged labour, and this trend continued in subsequent years. The years immediately following 1867 brought industrial growth and new prosperity to some people in the region. Although these benefits were uneven, and it is likely, as Philip Bucker observes, that “those who benefited least were the Native people of the region,”<sup>56</sup> some Mi'kmaw and Wolastoqiyik men and women found work in the new industrial order – the men as labourers, the women as domestics. New First Nations settlements, such as that on the Kings Road in Sydney, sprung up near industrial centres, giving the Mi'kmaq and Wolastoqiyik access to these lines of work.<sup>57</sup> As Andrew Parnaby notes of Cape Breton reserves of the 1860s and 1870s, the impact of this “new economy” was felt differently by Maritime First Nations.<sup>58</sup> Still, salaries from waged work became increasingly

53 Petition of Chief Paul, March 1906, and C.E Beckwith to Superintendent General, 5 March 1906, RG 10, volume 6743, file 420-7, LAC.

54 Instructive here might be Pam Palmater's account of her own political epiphany as young person: “When I was upset at how our treaties were ignored or violated, [the Elders] would tell me that our treaties have out-lasted every prime minister and minister of Indian affairs . . .” – a message, she added, that was designed to “ensure that government actions did not discourage our younger generations.” See Palmater, “My Tribe, My Heirs, Their Heirs Forever: Living Mi'kmaw Treaties” in *Living Treaties: Narrating Mi'kmaw Treaty Relations*, ed. Marie Battiste (Sydney, NS: Cape Breton University Press, 2016), 31-2.

55 Parenteau and Kenny, “Survival, Resistance, and the Canadian State,” 50.

56 Buckner, “The 1860s: An End and a Beginning,” 367.

57 Parenteau and Kenny, “Survival, Resistance, and the Canadian State,” 56. The site of the Kings Road Reserve was a popular Mi'kmaw camping place and was formally designated a reserve in 1882.

58 Parnaby, “Cultural Economy of Survival,” 94.

important and by 1905 accounted for 33 per cent of Mi'kmaw income in Nova Scotia and just over 50 per cent in New Brunswick while in Prince Edward Island waged earnings remained relatively insignificant in terms of Mi'kmaw income.<sup>59</sup>

The manufacture of handcrafts – items, such as baskets, axe handles, and barrels – was even more instrumental to Maritime First Nations' economies during this era, particularly for the Mi'kmaq of Prince Edward Island. In 1897, Maritime Mi'kmaq collectively earned more than 44 per cent of their incomes from the sale of such items, and on Prince Edward Island this reached 80 per cent.<sup>60</sup> Drawing on a host of economic undertakings that were rooted in their own traditions of harvesting and craft, First Nations people in the Maritimes after Confederation endeavored to compensate for a federal regime that, like its colonial predecessors, was unresponsive to their needs.

Traditional economic undertakings demanded mobility and, as before Confederation, the Mi'kmaq and Wolastoqiyik travelled their territories to fish, hunt, collect material for manufacturing, gather medicines, or, increasingly, to find waged work. The DIA frequently lamented this movement, and in 1894 declared itself unwilling to support any Mi'kmaq who had moved off reserve because this “would only encourage other Indians to make similar applications”; the department was resolutely committed to ensuring that “the Indians go to their own Reserves and reside thereon.”<sup>61</sup> Despite the position of the DIA, mobility remained a hallmark of Mi'kmaw and Wolastoqiyik life after Confederation. In fact, the coming of the railways lines that were so central to Confederation facilitated such movement.<sup>62</sup> In 1880 Visiting Superintendent to the Wolastoqiyik William Fisher commented that the “Indian character being so migratory, it is next to impossible to make up a very exact statement of the number of their people, more particularly when you consider that in many cases, their population is scattered over so much country.”<sup>63</sup> In the spring of 1912 the Indian agent at St. Peter's Cape Breton noted that “at this season, after planting, many of the Indians move out – some to fish, and others to work in the towns and industrial centres. Whole families thus leave, which accounts for the small attendance at the school.”<sup>64</sup> In New Brunswick, in particular, First Nations people travelled to Maine to take part in late-summer blueberry harvest and to work potato fields in the fall.<sup>65</sup> This migratory pattern gave to the Mi'kmaq and Wolastoqiyik a culturally centred means of coping with profound federal neglect as they managed to feed themselves, earn small livelihoods, and, in the face of lacking access to health care, use traditional health and healing practices.<sup>66</sup> Moreover, mobility allowed the

59 Walls, *No Need of a Chief*, 25.

60 Walls, *No Need of a Chief*, 18-23.

61 D.C. Scott to F.W. Borden, 21 June 1894, RG 10, vol. 7760, file 27054-1, LAC.

62 Prins, *The Mi'kmaq*, 179.

63 Report of William Fisher, 22 November 1880, Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1880, Fisher to the Superintendent General of Indian Affairs, p. 49, Department of Indian Affairs Annual Reports, LAC, <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=1705>.

64 Agent Report re: St. Peter's School, May 1912, RG 10, vol. 2910, file 185.723-8B, LAC.

65 Parenteau and Kenny, “Survival, Resistance, and the Canadian State,” 57-8.

66 Mi'kmaq would continue to draw on their own healing practices, remedies, and preventative care well beyond Confederation. See Twohig, “Colonial Care,” 341, 344.

Mi'kmaq and Wolastoqiyik to avoid the focused gaze of the federal government. They remained “unknowable” to federal officials, who consistently lamented their inability to even count the First Nations individuals under their charge.

As they engaged in their own political systems, followed customary means of subsistence subsidized by waged work and manufacturing, and moved about their territories, the Mi'kmaq and Wolastoqiyik did so in their own languages. Although the expansion of the settler society and the increased availability of day schools after Confederation inspired the Mi'kmaq and Wolastoqiyik to become increasingly fluent in English (and, in some areas of New Brunswick, French), their first language continued to be their own.<sup>67</sup> Results of the 1901 census indicate that in Nova Scotia the Mi'kmaq overwhelmingly indicated that “Indian” was their first language.<sup>68</sup> The gathering of the triennially elected band council at Lennox Island, Prince Edward Island, in 1905 suggests how English and First Nations languages coexisted in First Nations communities as the meeting was reportedly closed as “the assembly . . . sang Pow Wow . . . followed by the National Anthem.”<sup>69</sup> Moreover, it is clear that the Mi'kmaq and Wolastoqiyik valued very much the transmission of their language, and this is attested to by the fact that some communities insisted that teachers conduct classes in their own languages. This was the case, notably, in New Brunswick, where students at a number of Mi'kmaw day schools were taught by the Isaacs sisters – Mi'kmaw women whose pedagogy included the use of Mi'kmaq.<sup>70</sup>

Section 91(24) of the BNA Act would, in the long term, have a profound impact on all First Nations. However, in the Maritimes its impact was slight for the first few decades following union. Despite the existence of a potentially influential Indian Affairs policy and administration, federal neglect and an inefficient regional Indian Affairs administration meant that the daily lives of the Mi'kmaq and Wolastoqiyik were little changed by Ottawa's assumption of control over Indian Affairs. The experiences of Alice Mitchell, a Mi'kmaw woman from PEI who spent much of her life living off-reserve (and pressing her claim to a tract of land at Rocky Point), is typical insofar as Mitchell lived her life “independent of government aid always working herself for a living and supporting the rest of the family.”<sup>71</sup> As economic opportunities availed themselves, First Nations individuals and families fluctuated between life on and off reserves.<sup>72</sup> Indian agents' repeated characterizations of First Nations people as “quiet and inoffensive,” and as people who wished “to ‘live and let live’ in its truest sense,” speaks both to their invisibility in the years following Confederation and also to their ability to remain beneath the radar of federal Indian policy.<sup>73</sup>

67 Prins, *The Mi'kmaq*, 167.

68 Walls, *No Need of a Chief*, 32.

69 Lennox Island Band Council to J.O. Arsenault, 6 March 1905, RG 10, vol. 7936, file 32-57, part 1, LAC.

70 See Walls, “Colonialism, Resistance, and Female Mi'kmaw Teachers,” 35-68.

71 Petition of Alice Mitchell to Minister of the Interior, 20 June 1912, RG 10, vol. 7760, file 27057-5, LAC.

72 Hanrahan, “Resisting Colonialism in Nova Scotia,” 35.

73 Report of Thomas J. Butler, 5 August 1897, Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1897, Butler to Superintendent General of Indian Affairs, p. 63, Department of Indian Affairs Annual Reports, LAC, <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=11135>.

The relatively light touch of federal policy was temporary, however, and an invigorated federal interest in Maritime First Nations people and their lands, combined with an increasingly coercive federal policy, meant that by the early decades of the 20th century the Mi'kmaq and Wolastoqiyik faced increasing state interference in their lives. This growing interference was the result of many factors that coalesced under the ascendancy of Duncan Campbell Scott as the top bureaucrat of the Department of Indian Affairs in 1913. Assuming his job under a hailstorm of criticisms about the “failures” of assimilation policy in Canada, Scott’s fiscal conservatism and staunch commitment to the ideal of assimilation ensured that the DIA redoubled its efforts. The hallmarks of Scott’s DIA was a series of Indian Act amendments featuring new coercive policies and techniques of surveillance. For example, in 1914 an Indian Act amendment allowed Ottawa to spend Indian band funds for public works without the consent of a band while an amendment of 1920 briefly allowed for the involuntary enfranchisement of Indian men. That same year the DIA was empowered to compel Indian children between the ages of seven and fifteen to attend school, and in 1927 it became illegal for Indians to hire lawyers to represent them in claims against the government. Throughout his tenure, Scott was also steadfastly committed to bans on “Indian dancing.”<sup>74</sup> Abetting the work of the DIA in the Maritimes were settlers who, for a variety of reasons – and with considerable success – impressed upon Ottawa the importance of increased interference in the lives of Aboriginal people; department officials obliged by a more intense application of the existing infrastructure of policies as well as by developing new, more coercive ones. On assuming the helm of the DIA, for example, Scott took immediate steps to ratchet up surveillance of Maritime First Nations people by adjusting administrative practices, which included his 1914 adoption of a “uniform system . . . for the purpose of improving the method of recording and preserving the official correspondence at the different agencies.”<sup>75</sup> Scott also added a short-lived second Nova Scotian superintendent, appointing W.G. Foster to work alongside A.J. Boyd, who had been named to that position in 1907.<sup>76</sup> Scott anticipated that Foster’s work would “result in closer supervision of both Agents and Indians.”<sup>77</sup>

Scott also embraced a deliberate national program aimed at reducing First Nations’ reserve lands, viewing its sale as a way to reduce his department’s

74 Brian Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada* (Vancouver: University of British Columbia Press, 1986).

75 DIA Circular, 1914, RG 10, vol. 3183, file 456,000, LAC.

76 A.J. Boyd was appointed Indian Superintendent of Nova Scotia on 14 May 1907. See Report of A.J. Boyd, 31 March 1908, Annual Report of the Department of Indian Affairs for the Year Ended March 31st 1908, Boyd to Deputy Superintendent General of Indian Affairs, p. 72, Department of Indian Affairs Annual Reports, LAC, <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/item.aspx?IdNumber=20371>.

77 D.C. Scott to W.G. Foster, 4 January 1914, RG 10, vol. 3183, file 454,854, LAC. Foster’s tenure as superintendent in Nova Scotia came to an end in the summer of 1915 when he took leave to join the armed forces. See D.C. Scott to Hon. Martin Burrell, Acting Superintendent General, 20 August 1915, RG 10, vol. 3183, file 454,854, LAC. After Foster was killed in action in November of 1916, the second superintendent position in Nova Scotia remained vacant and A.J. Boyd again served as the sole superintendent for the province. See DIA Memorandum, 16 November 1916, RG 10, vol. 3183, file 454,854, LAC.



administrative burden while also bolstering its sagging coffers. In contrast to earlier similar federal initiatives that had targeted western Canada, this one was applied with rigor in the Maritimes. In 1915 Scott took up with Superintendent Boyd the issue of “the utilization of Indian reserves,” noting that the matter “should receive early and continuous attention” so that the department could “formulate a plan for dealing with each of the reserves in Nova Scotia, so that they can be developed for the benefit of the Indians, or, if no Indians are in residence on them and they cannot be so utilized, that they should be sold for their benefit.”<sup>78</sup> Continuing this mission, in early 1918, Scott called for surveys of Nova Scotia’s Indian reserves, instructing provincial superintendent A.J. Boyd to forward to Ottawa “specific information . . . with a view of determining the salability of each particular reserve.”<sup>79</sup> Later that year, Scott clarified that consideration for sale would be given not only to “uninhabited” reserves but also “would apply to reserves on which Indians reside, but of which they are not making sufficient use.”<sup>80</sup>

Scott, unlike his predecessors, was extraordinarily interested in the people who lived on the reserved lands. While this interest meshed with his administrative aims, it probably also reflected the growing recognition that the Mi’kmaq and Wolastoqiyik were not “dying races.” By 1911 their numbers (insofar as they could be counted) registered increases.<sup>81</sup> Perhaps nothing is more indicative of the Scott’s zeal in this regard than the case of the Mi’kmaw reserve at New Germany. As noted above, well into the 19th century, the DIA was content to accept that this reserve included a number of outsiders, including non-First Nations men who had married Mi’kmaw women from the community. In 1910 Ottawa’s interest in the New Germany reserve was redoubled when the DIA was made privy to a land dispute between reserve residents.<sup>82</sup> In 1913, the DIA, newly headed by D.C. Scott, took up the matter and requested from New Germany Indian Agent N. P. Freeman a report about the identities of those claiming lots at New Germany. Noting that New Germany was “mixed up somewhat by marriage,” Freeman insisted that while New Germany was home to a diverse population featuring people who were “white,” “half-breed,” or who had “some Indian [blood],” the residents had been “always classed as Indians.”<sup>83</sup> Numerous New Germany Indian agent reports had previously identified the multiethnic character of New Germany’s population, but Freeman’s report was the first of an Indian agent to not satisfy the DIA about the identities of residents and Ottawa demanded further investigation.<sup>84</sup> When a second

78 D.C. Scott to A.J. Boyd, 8 June 1915, RG 10, vol. 3183, file 454,854, LAC.

79 D.C. Scott to A.J. Boyd, 22 February 1918, RG 10, vol. 3183, file 454,854, LAC.

80 D.C. Scott to A.J. Boyd, 23 April 1918, RG 10, vol. 3183, file 454,854, LAC.

81 Wicken, *Colonization of Mi’kmaw Memory and History*, 196.

82 Mrs. Annie Foster “Indian Widow” to DIA Secretary J.D. MacLean, 4 February 1910, RG 10, vol. 3158, file 358,855, LAC.

83 N.P. Freeman to DIA, 16 May 1913, RG 10, vol. 2075, file 10,839, LAC.

84 The relatively high number of interracial marriages at New Germany was probably atypical, owing to the fact that the community was a small one (numbering just 66 at its peak in 1909) and given the dominance there of a single family that made it necessary for residents to seek marriage partners from outside the community. New Germany, though, was part of a larger trend identified by Bonita Lawrence, who notes that by the mid-19th century the bounds between colonizer and colonized were blurred by centuries of intermarriage. See Bonita Lawrence, *“Real” Indians and Others: Mixed Blood Urban Native People and Indigenous Nationhood* (Lincoln, NE: University of Nebraska Press, 2004), 48-9.

investigation revealed that four of the reserve's ten lots were claimed by three Mi'kmaq women who had married non-First Nations men, Scott turned to the DIA policy that denied Indian status to women who "married out." For a reserve where key tracts were claimed by people whose parentage (or grand parentage) included a non-Indian father, this would have profound ramifications. In 1919 the DIA announced that "the time has arrived at which it would be advisable to have a special investigation made with the view to the enfranchisement of the residents of [the New Germany] reserve." This is the first time that the DIA floated the prospect of enfranchising certain New Germany reserve residents who were deemed under law to be "non-Indians" and of disbanding the reserve itself.<sup>85</sup> In 1925, this plan came to fruition. In applying a long-established policy that denied to Indian women who married non-Indians their Indian status, key landholders were enfranchised, reserve land sold, and New Germany's status as a reserve revoked.

The "discovery" that key land holders at New Germany were people who were legally not regarded as "Indians" might have been enough during the coercive Scott years to warrant the reserve's disestablishment. The DIA, though, was also inspired and abetted by non-Mi'kmaq neighbors of New Germany, people who both objected to the presence there of "white" men and who strongly advocated for the reserve's disestablishment. In this, the disestablishment of New Germany highlights the power of settler society in the newly coercive Indian Affairs administration in the Maritimes by the early 20th century. Non-First Nations Maritimers had long been invested in Indian policy and, since its 1880 inception, the DIA's Maritime operations were notoriously shaped by patronage networks.<sup>86</sup> In the early decades of the 20th century, however, non-First Nations Maritimers – and not just those seeking employment or other personal advantages from the DIA – asserted with greater regularity interest in Indian policy and claims to its reform. This attention was not borne of an abiding concern about the plight of First Nations people but, rather, was the result of both their interest in accessing valuable "Indian" lands and resources and their fear that "Indians" were getting a "free ride."<sup>87</sup> Such concerns were part of a wider fixation on the equitableness of income and other taxes that were imposed in the early 20th century to offset the vast costs accrued by the First World War.<sup>88</sup> According to Shirley Tillotson, as the interwar tax burden extended beyond the

85 S. Bray, Chief Surveyor, to Deputy Minister, Memorandum, 15 December 1919, RG 10, vol. 2075, file 10,839, LAC.

86 Until the 1930s, the hiring of departmental staff – including Ottawa bureaucrats and field employees such as farm instructors and school teachers – hinged less on qualification or merit than it did on personal recommendation and private favours. See Vic Satzewich, "Patronage, Moral Regulation and the Recruitment of Indian Affairs Personnel, 1879-1900," *Canadian Review of Sociology & Anthropology* 33, no. 2 (May 1996): 226.

87 As Robin Jarvis Brownlie has noted with reference to Ontario, the early 20th century was an era in which "substantial public indifference" prevailed when it came to the rights and fates of Indigenous people; see Brownlie, *A Fatherly Eye*, xi. I am very appreciative of Shirley Tillotson's insight into how a widespread interwar "tax revolt" shaped Canadians' views about perceived inequalities in the tax policies applied to "Indian" people in Canada; see Shirley Tillotson, "The Power to Govern: Taxation and Democracy in Canada, 1917-1971" (unpublished manuscript, 2015).

88 J. Harvey Perry, *Taxes, Tariffs, & Subsidies: A History of Canadian Fiscal Development*, vol. 1 (Toronto: University of Toronto Press, 1955), 290-5.

wealthiest Canadians to those with more modest incomes a growing legion of disgruntled tax-payers felt themselves to be “objects of discrimination” and publicly denounced tax exemptions applied to certain groups as unfair, such as those to First Nations under the Indian Act.<sup>89</sup> As the New Germany example reveals, such concerns also fed new public critiques of mixed-race marriages on Indian reserves since “white” men receiving tax breaks were a particular affront to tax-paying citizens.

The DIA’s embrace of this growing public interest in Indian Affairs was linked to the issue of voter support. The Mi’kmaq and Wolastoqiyik still could not vote (except, where they operated, in triennial band elections), but non-First Nations men and women who were displeased about a slew of new taxes *could* cast ballots and they were “electorally . . . not [a group] to be ignored.”<sup>90</sup> More than that, this was an era in which the federal government, on the hunt for tax dollars, began to explore “how or whether to tax people who could not vote” – among them, First Nations. Both the quest for votes, and the DIA’s own inclination to erase tax-based distinctions between “Indians” and other Canadians, fuelled the DIA’s willingness to respond positively to the demands of prominent, non-First Nations citizens.

Non-First Nations Maritimers engaged with DIA policies on very many issues in the Maritimes in the early 20th century. Neighbours of the New Germany reserve, for example, were instrumental to the DIA’s investigations of the reserve and to its ultimate decision to disestablish it. Such neighbours complained vociferously about the operation of a federal Indian day school in the community, with one writing in a long and impassioned letter that it was “a matter of publick interest” that the New Germany reserve was “inhabited soley by White People who do not pay one cent of taxes.” This man was galled that reserve residents had “free school free land free use of publick highways kept up by tax on all other property of the surrounding country.” This state of affairs, he pontificated, “should not be tolerated by a Government over whose Hall of Deliberation the British flag floats.”<sup>91</sup>

Encroachment of Maritime First Nations’ land and resources (as well as Mi’kmaq and Wolastoqiyik resistance to such incursions) was an old pattern in the Maritimes; but by the early 20th century such disputes emerged in new contexts and had wider implications for Indian policy. Facing trying times as resources were depleted and as access to them was stymied by new laws, the Mi’kmaq and Wolastoqiyik, in their quest for food, handcraft materials, medicine, and waged work, left reserves and were routinely accused of “trespassing.”<sup>92</sup> Simultaneously, as urban communities expanded, they closed in on once-isolated Indian reserves. In addition to creating new sites of interaction and dispute between the Mi’kmaq and Wolastoqiyik and non-First Nations people, these circumstances inspired new claims of settler entitlement. Because “Indian land” – particularly in urban areas – became more valuable as cities grew, it was increasingly coveted by non-First

89 Tillotson, “Power to Govern,” n.p.

90 Tillotson, “Power to Govern,” n.p.

91 Jacob F. Penney to Charles Stewart, 6 March 1925, RG 10, vol. 6024, file 41-1-1, part 1, LAC.

92 Wicken, *Colonization of Mi’kmaq Memory and History*, 66; Ellice Gonzalez, *Changing Economic Roles for Micmac Men and Women: An Ethnohistorical Analysis* (Ottawa: National Museums of Canada, 1981), 55-8.

Nations Maritimers who desired to expand or capitalize on their urban holdings (and who felt that in the possession of First Nations such land was “wasted”). For example, the sale of the small urban reserve on Kings Road in Sydney, NS, and the relocation of its Mi’kmaq residents to a tract outside of the city, typified the renewed zeal and coercion of the Scott-era DIA. Beginning at the turn of the century, prominent politicians and business interests in Sydney lobbied for the relocation of this small urban reserve as a means of freeing up valued city land for development and wider public use.<sup>93</sup> When the Mi’kmaq refused to surrender the land – a concession legally required by the Indian Act in order for the land to be relinquished – the federal government bent to the pressure of this powerful Sydney lobby and, in 1911, amended the Indian Act so that the concession of the recalcitrant Sydney Mi’kmaq was no longer required prior to surrender. The amendment empowered Canadian municipalities with populations of 8,000 or more to force urban Indian reserves from city limits.<sup>94</sup> Ongoing public pressure and the creation and application of this new law ensured that in 1926 the Kings Road Reserve became the first (but not the last) urban reserve in Canada to be forcibly relocated under the auspices of this legislation.<sup>95</sup>

Similar pressure from non-First Nations Maritimers also shaped DIA policy regarding the settlement of First Nations people in other areas as well. In the 1910s, as the Mi’kmaq of Halifax County, NS, fought to remain on a disputed tract at Tufts Cove near Dartmouth, where they had lived “since time out of mind,” they were denied permission to stay by the DIA, in part because of the lobby of “white residents.”<sup>96</sup> The Mi’kmaq at Tufts Cove knew well that in this case of disputed land “we are unable to do much . . . without due backing from the Department” and when Ottawa refused to defend Mi’kmaq interests against those of the settler society, the tract was not granted.<sup>97</sup>

Finally, it was under Scott’s regime that perhaps the most coercive aspect of Canadian Indian policy came to bear on the Mi’kmaq and Wolastoqiyik as he invigorated school-based efforts at “civilizing” Maritime First Nations. To promote

93 For an excellent overview of the Kings Road relocation, see Wicken, *Colonization of Mi’kmaq Memory and History*, 201-28.

94 The Indian Act amendment, Section 49-A, stated: “In the case of an Indian Reserve which adjoins or is situated wholly or partly within an incorporated town or city having a population of not less than eight thousand, and which reserve has not been released or surrendered by the Indians, the Governor in council may, upon the recommendation of the Superintendent General, refer to the Judge of the Exchequer Court of Canada for inquiry and report the question as to whether it is expedient, having regard to the interest of the public and of the Indians of the band for whose use the reserve is held, that the Indians should be removed from the reserve or part of it.”

95 Geoffrey York, *The Dispossessed: Life and Death in Native Canada* (Toronto: Little, Brown and Company, 1992), 60-5; Martha Walls, “The Disposition of the Ladies: Mi’kmaq Women and the Removal of the King’s Road Reserve, Sydney, Nova Scotia,” *Journal of Canadian Studies* 50, no. 3 (2016): 538-65.

96 Jerry Lone Cloud to Secretary DIA, 27 November 1917, RG 10, vol. 2074, file 10,838, pt. 2, LAC; J.D. McLean to A.J. Boyd, 18 June 1913, RG 10, vol. 2074, file 10,838, pt. 1, LAC.

97 Jerry Lone Cloud to Secretary DIA, 27 November 1917, RG 10, vol. 2074, file 10,838, pt. 2, LAC. The Tufts Cove dispute only came to an end when the community was levelled and many of its residents killed in the Halifax explosion. See Remes, “Mi’kmaq in the Halifax Explosion of 1917.”

the assimilative agenda of his department, and to discourage the use of First Nations languages, the DIA began in 1920 to exclude First Nations people from its pool of day school teachers. This ended the successful work of teachers such as the Isaacs sisters, who for decades had taught Mi'kmaq pupils in New Brunswick federal day schools in Mi'kmaq.<sup>98</sup> With the goal of making day schools stronger forces of civilization, his newly appointed Nova Scotia Superintendent W.G. Foster was tasked with taking “every means in your power to increase the enrollment and average attendance. You should see that teachers are fitted and qualified for their important duties, and that schools are in every way true civilizing influences.” Scott also called on his Maritime staff to “be on the lookout for neglected children who might fall into immoral ways through neglect,” and urged them to “ascertain what institutions are willing to admit such children, and upon what terms.”<sup>99</sup>

Scott's interest in educational institutions for First Nations children underscored what would become the crowning piece of his educational policy for the Maritimes, and indeed, the pinnacle of the coercive state policy that emerged under Scott's direction: the construction in 1929 of the Maritime Province's only Indian residential school at Shubenacadie, Nova Scotia. The idea of a Maritime residential school was first banded about in the early 20th century, but gained traction in 1924 when Nova Scotia Indian Superintendent A.J. Boyd endorsed the idea. Believing that “institutions of this kind have been highly successful not only in teaching the three ‘R’s’ but also in providing young Indians with a technical education that enabled them . . . to be self-sustaining and useful citizens,” Boyd opined “what has been done in other parts of the Dominion should be susceptible to accomplishment also in Nova Scotia.”<sup>100</sup> Boyd's proposal found hearty support in Duncan Campbell Scott, who acknowledged his personal commitment to the project: “When we have this school established one of the desires of my official life will have been accomplished.”<sup>101</sup> Scott's stamp on the Shubenacadie Indian Residential School is clear. Dismissing growing early 20th century critiques of such institutions, the assimilationist Scott threw his support behind establishing such an institution in Nova Scotia; it became the 80th residential school in Canada and a profound symbol of the federal government's heightened exercise of authority over the Mi'kmaq and Wolastoqiyik. Perhaps it was because of the backlash then facing residential schooling that Scott cast the Shubenacadie institution as one for “orphans, illegitimates and neglected children” as well as children who “live too distant from Indian or public day schools to attend regularly.”<sup>102</sup> In a region, however, where the impoverishment of First Nations communities went largely unchecked, where medical supports were inadequate, where the day school system languished, and where government officials widely critiqued as inadequate the First Nations' childrearing practices, the parameters for student enrollment were, in practice, very broad and Mi'kmaq and Wolastoqiyik students from across the region were sent to the school.<sup>103</sup>

98 Walls, “Colonialism, Resistance, and Female Mi'kmaq Teachers,” 55-6.

99 D.C. Scott to W.G. Foster, 4 January 1914, RG 10, vol. 3183, file 454,854, LAC.

100 Report of Indian Superintendent Boyd for the Year 1923-24 on Indian Affairs in Nova Scotia, 19 May 1924, RG 10, vol. 6054, file 265-1, part 1, LAC.

101 Cited in Benjamin, *Indian School Road*, 35.

102 D.C. Scott to J.L. Ilesley, 1 March 1929, RG 10, vol. 6054, file 265-1, part 1, LAC.

103 Hanrahan, “Resisting Colonialism in Nova Scotia,” 37.

As part of a system intended to eradicate First Nations cultures, the Shubenacadie school had at its disposal considerable powers of coercion. In theory, students were to be enrolled only with the permission of parents or guardians but, in fact, signatures of the school principal or an Indian agent were often used instead – a tendency illuminated clearly in school records. In 1936, for example, the DIA explained to a Nova Scotian Indian agent the possibility of this scenario, saying of one prospective student that “it will be possible to place the boy in the residential school . . . without his father’s consent, the father not having shown an interest in him in the past.”<sup>104</sup> In another instance a child was accepted without parental approval when the local Indian agent dismissed a father’s objections to enrolment, saying that the father believed “wrongly of course, that children are not well cared for.”<sup>105</sup> In another instance, a child was admitted without such approval when an Indian agent could not “get hold of the boy’s father to sign the form as he is away some place.”<sup>106</sup> This, along with the fact that families regularly attempted to win the release of students, and pupils themselves sought the same objective by running away, attest to the fact that students – or “inmates” as the DIA not infrequently referred to them – were often enrolled at the Shubenacadie school against the wishes of their families. It is a testament to the power of the federal government that efforts to win students’ releases generally failed. The best hope that families had of avoiding the Indian residential school was to keep children out of it in the first place. Although Maura Hanrahan explores how this strategy was effective to a “remarkable degree” in *Kesukwitk* (southwestern Nova Scotia), this was not universal and an army of Indian agents and school officials, backed by the RCMP, had the capacity to force enrollment of students from across the region.<sup>107</sup> The Shubenacadie Indian Residential School, operating until 1967 and enrolling up to 175 students per year, saw approximately 2,000 Mi’kmaq and Wolastoqiyik children attend. As the only official Indian residential school in the Maritimes, the Shubenacadie school made residential schooling a truly national proposition and, perhaps more than anything, signified that DIA policy would now be applied systematically and universally throughout the nation. The unprecedented level of federal scrutiny and coercion that it unfurled upon the Mi’kmaq and Wolastoqiyik signalled the end of First Nations’ “invisibility” in the Maritime Provinces.

The British North America Act gave Canada’s federal government profound powers over First Nations people across the country. In the Maritime Provinces, though, these powers – which to be sure contained the seeds of great coercion – were applied weakly at first. As Ottawa was focused on more pressing concerns in

104 Frank Hoey to Agent MacNeil, 26 October 1937, RG 19, vol. 6057, file 265-10, part 2, LAC.

105 Agent E. Chaisson to Indian Affairs Branch, 7 December 1939, RG 10, vol. 6053, file 260-10, pt. 1, LAC.

106 Agent Frank Jackson to Secretary DIA, 11 July 1941, RG 10, vol. 6053, file 260-10, pt. 1, LAC.

107 Hanrahan explains that when confronted with school officials seeking to seize children for enrollment, parents would hide their children in dense woodlands in a territory the Mi’kmaq knew well owing to their transience. At the same time, the self-sufficiency of the people in *Kesukwitk*, which was derived from seasonal occupations, made them less dependent on DIA support and therefore less susceptible to DIA coercion. This strategy was abetted by the fact that the remote region received only rare visits from Indian agents. See Hanrahan, “Resisting Colonialism in Nova Scotia,” 41-2.

western Canada, it left the administration of First Nations people in the Maritimes to part-time Indian agents whose commitment to departmental exigencies was relatively lax. These circumstances left First Nations largely to their own resources. The cause of hardship at times, this circumstance also gave to the Mi'kmaq and Wolastoqiyik a certain latitude to continue to live – and often to struggle – according to their own practices and customs much as they had in the colonial era. It was only in the second decade of the 20th century, with the ascendancy of Duncan Campbell Scott to be the top bureaucrat of the Department of Indian Affairs, that the state was motivated to wield more fully its powers in the Maritime Provinces to help assure the realization of Canada's assimilative project. As Scott's DIA flexed its muscle to define who could and could not live on reserves, as it relocated the Mi'kmaq and Wolastoqiyik, and as it introduced to the Maritime Provinces the ultimate tool in the assimilative project – the Shubenacadie Indian Residential School – the era of “invisibility” that prevailed for Maritime First Nations in the decades following Confederation came to an end. Laying ahead for Maritime First Nations would be even greater federal coercion, notably a region-wide push for “centralization” that ended most dramatically in Nova Scotia with the coerced displacement in the 1940s of approximately half of the province's Mi'kmaw population and their resettlement at Eskasoni and Sipekne'katik (Shubenacadie).<sup>108</sup>

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108 On centralization of the Mi'kmaq in Nova Scotia see Lisa Lynne Patterson, “Indian Affairs and the Nova Scotia Centralization Policy” (MA thesis, Dalhousie University, 1985), and, for “less successful” efforts to centralize the Wolastoqiyik in New Brunswick, see Martha Walls, “Countering the ‘Kingsclear Blunder’: Maliseet Resistance to the Kingsclear Relocation Plan, 1945 1949,” *Acadiensis* XXXVII, no. 1 (Winter/Spring 2008): 3-30.