



# DEBATES OF THE SENATE

---

2nd SESSION • 43rd PARLIAMENT • VOLUME 152 • NUMBER 14

---

## THE SENATE

MOTION PERTAINING TO MI'KMAW FISHERS  
AND COMMUNITIES—DEBATE CONTINUED

Speech by:  
The Honourable Patricia Bovey

Tuesday, December 1, 2020

## THE SENATE

Tuesday, December 1, 2020

### THE SENATE

#### MOTION PERTAINING TO MI'KMAW FISHERS AND COMMUNITIES—DEBATE CONTINUED

**Hon. Patricia Bovey:** Honourable senators, today, I also rise to speak to and fully support Senator Francis's motion:

That the Senate affirm and honour the 1999 Supreme Court of Canada *Marshall* decision, and call upon the Government of Canada to do likewise, upholding Mi'kmaq treaty rights to a moderate livelihood fishery, as established by Peace and Friendship Treaties signed in 1760 and 1761, and as enshrined in section 35 of the Constitution Act, 1982; and

That the Senate condemn the violent and criminal acts interfering with the exercise of these treaty rights and requests immediate respect for and enforcement of the criminal laws of Canada, including protection for Mi'kmaq fishers and communities.

Let me first commend Senator Francis on this initiative and for his and Senator Christmas' work on this issue in furthering the cause of Indigenous fishers, not only in the Atlantic provinces but across Canada.

Much, of course, has transpired since Senator Francis introduced this motion. Today, we are looking at a completely different situation in Atlantic Canada regarding the fishery. However, what remains is the need to live in peace and respect for one another, something I know the vast majority of Canadians, Indigenous and non-Indigenous, agree with.

The events of this past October are unacceptable, and the acts of the few are as abhorrent to the vast majority of Nova Scotians as they are to members of this chamber of sober second thought. It is incumbent upon law enforcement to maintain the peace and safety of all citizens. Use of violence and intimidation should be condemned by all.

Colleagues, we must keep in mind the recent path taken to arrive where we are today. The Constitution Act of 1982, in section 35, recognized the treaty rights of First Nations, Inuit and Métis, as Senator Dupuis has outlined. It is important to note that Aboriginal rights were not part of the original discussions on the patriation of the Constitution. Consultations with First Nations had not taken place at the outset. It took demonstrations to impress upon legislators that First Nations must be included in the Constitution Act in order to protect treaty rights.

I mention this because what has transpired since 1982 has been a journey of litigation, much of which revolves around the right of Indigenous peoples to fish. This path of litigation has led to several landmark cases before the Supreme Court regarding the constitutional rights and the infringement of Indigenous rights, as Senator Dupuis has just stated, including the *Sparrow* case in 1990, the first case after the repatriation of our Constitution; and

*R. v. Van der Peet* in 1996; *R. v. Gladstone* in 1996; and, of course, *R. v. Marshall* in 1999. The court has rendered decisions in each, which have attempted to interpret what is meant by section 35. It has also led to a patchwork quilt of treaty interpretations, which I think have muddied the waters in the absence of federal leadership and created a system based on species, traditions and conservation to name a few issues.

*R. v. Marshall* and its subsequent clarification upheld the treaty rights of the Mi'kmaq peoples to fish for a "moderate livelihood" subject to conservation oversight by the Department of Fisheries and Oceans.

Senators, when Donald Marshall decided to fish for eels he was doing so not just to provide a livelihood for his family, but for his people. What has transpired since 1999 has been unacceptable, and there has been a vacuum of leadership on the part of successive federal governments, which has contributed to the lack of trust between Indigenous and commercial fishers and DFO.

As Senator Cordy said in her speech to this motion:

... it has been 21 years since the *Marshall* decision upheld the Mi'kmaq treaty rights to a moderate livelihood fishery. Successive federal governments have avoided directly addressing these issues, and it is time for the federal government to step up and to take the lead.

I echo Senator Dupuis regarding the responsibility of the government to negotiate. Constructive negotiations between the Government of Canada and First Nations people, in my opinion, would be much more preferable to continued litigation because, as we have seen, litigation has not resulted in any satisfactory outcome on the waters. Indeed, it would be a truly important step of "reconciliACTION" in my view as we work towards solid reconciliation.

As Senator Francis stated in his speech:

The government has promised a nation-to-nation relationship based on the recognition of Indigenous rights, respect, cooperation and partnership. These words mean little if they are not soon followed by concrete action and results.

While I am certainly no expert on matters dealing with Canada's fisheries, I do see a commonality of interest between Indigenous and commercial fishers. Our oceans contain a great bounty, which can be shared by all. True conservation of this bounty is also in the interests of all, and the future good health of the fishery can only be assured through all parties working together.

As we have heard, the Mi'kmaq have been fishing in the waters of the Atlantic Ocean for thousands of years, which, as Senator Francis explained:

. . . governs the sustainability of our harvest. It is based on having respect and gratitude for all the natural resources provided by the Creator. This code of conduct teaches Mi'kmaq to take only what is needed for the well-being of the individual and community. We do not seek to over-exploit or deplete natural resources. We are keepers of traditional knowledge and sacred protectors of the land and resources.

As part of Bill C-55, which I sponsored in the last Parliament, money was set aside to afford for Indigenous input into the management of marine protected areas. When discussing the bill with academics who study the Arctic, it was made quite clear that the use of traditional Indigenous knowledge was intrinsic to their

Arctic research projects. Respecting this knowledge and the traditions which Indigenous peoples have developed for so many years can apply to the fisheries as well. The two go hand in hand.

Senators, from the friendship treaties of the 1760s to the myriad legal decisions over the past decades, including that of the *Marshall* case, we have seen the traditional rights of First Nations peoples upheld over and over again. It has been six years since the release of the Truth and Reconciliation Commission's, Calls to Action. What remains is to honour our agreements and to do so in a respectful manner that allows for these treaty rights to be exercised without the fear of violence on the oceans.

It is time we moved forward in order to share the resources we have been blessed with in this country so that all can prosper. Remember my family mantra, which I have said before, "We are all better off when we are all better off." That is certainly true in this instance. Thank you.

---