

PROTECT OUR CULTURE:

An Intellectual
Property Guide
for Mi'kmaq

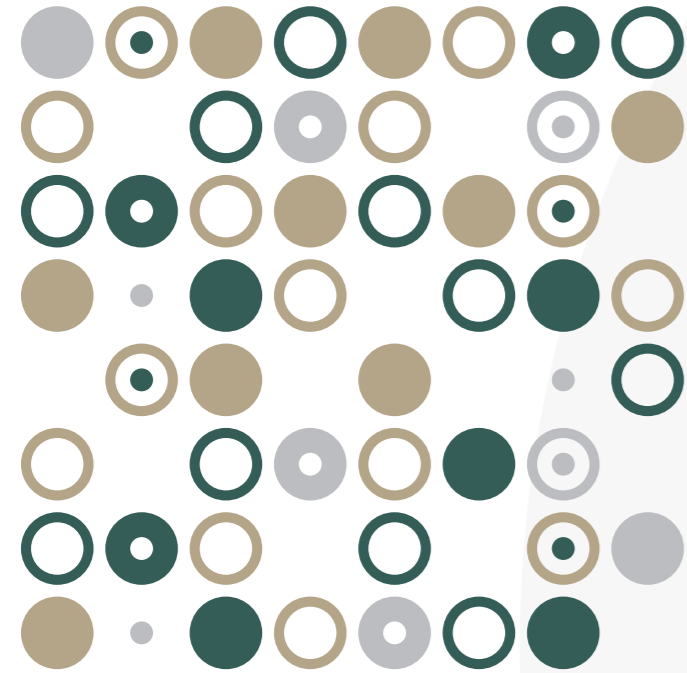
Kwilmu'kw Maw-klusuaqn

DECEMBER 2022

INTRODUCTION

This document provides a short introduction to intellectual property rights and protection. It is intended to provide information to Mi'kmaw artists, crafters, performers, inventors, designers, and cultural sector producers to protect their creations.

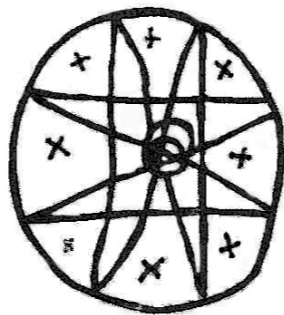
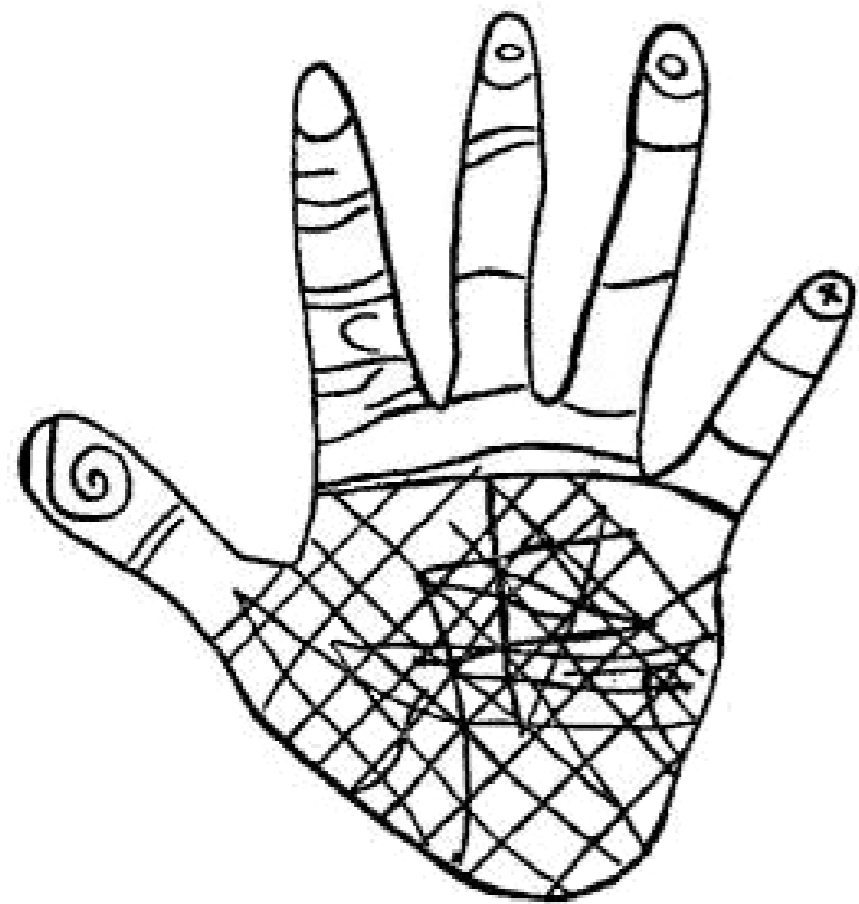




THE COMMON LAW & MI'KMAW LAW

This guide and the protections it outlines are settler Canadian legal principles and concepts of property, rooted in the English common law system. Within this system, intellectual property is primarily intended to protect individual property rights, not collective, community, or Nation rights.

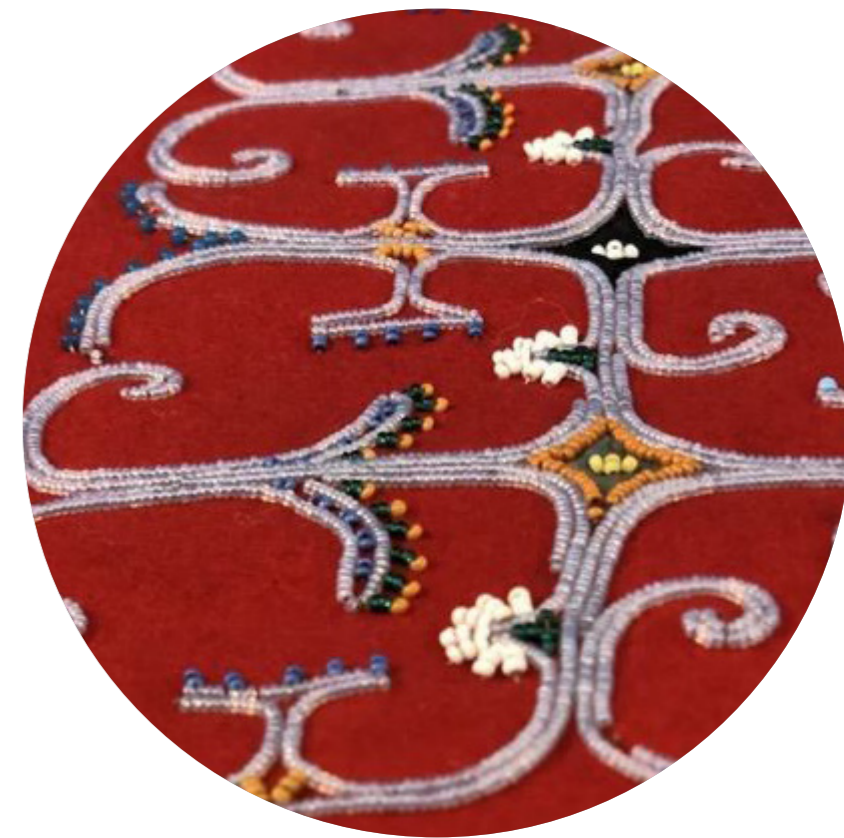
However, the settler law framework and its elements are not the only legal system in Mi'kma'ki. As Mi'kmaq, we must never forget that all Mi'kmaq have a collective responsibility to ourselves and all our relations to protect our own and the Nation's cultural knowledge and expressions and to guard against appropriation of our heritage. Our well-being as individuals and as people are affected when our heritage and expressions of self and of what it means to be Mi'kmaq are taken from us. When one of us is injured, we are all injured.



CULTURAL APPROPRIATION

Cultural appropriation is the unauthorized 'borrowing' of expressions, artistic styles, symbols, and/or knowledge from one culture to another culture. For example, 'borrowing' Mi'kmaw traditional practices and using them within the non-Mi'kmaw culture, such as a clothing designer putting a Mi'kmaw petroglyph on their clothing line without any consultation or authorization by the Mi'kmaq.

When we ensure that individual Mi'kmaw creators and performers are protected from unauthorized use of their works, we help to ensure that non-Mi'kmaw do not appropriate and use the spiritual and cultural elements of Mi'kmaw culture and heritage for their own benefit, or without the permission of the Mi'kmaw people. This includes ensuring Mi'kmaw research protocols are respected.



WHAT IS INTELLECTUAL PROPERTY?

Intellectual property (IP) refers to *creations of the mind*. This includes everything from works of art to scientific inventions.

Intellectual property rights protect one's products and designs from unauthorized use. These rights ensure that the maker or designer of a work, a design, or an invention receives proper credit for their work, and receives the full benefit from the sale or use of the intellectual property they created.

Examples of intellectual property include but are not limited to things such as paintings, beadwork, carvings, books, designs, symbols, inventions, new technologies, or new brands.

Intellectual property can be "tangible" or "intangible." Tangible assets are things that can be touched or felt or seen – like a Mi'kmaw sculpture, a Mi'kmaw beaded necklace or a painting by a Mi'kmaw painter. "Intangible assets" cannot be touched, like a computer program, or a trade secret (like a recipe).



INDIGENOUS TRADITIONAL KNOWLEDGE & TRADITIONAL CULTURAL EXPRESSIONS

Indigenous Traditional Knowledge (ITK) refers to the wisdom, expertise, skills, and practices of Indigenous peoples related to such things as fostering and maintaining biodiversity, medicine and health, or production of tools, clothing, or decorative arts.

Traditional Cultural Expressions (TCE) are the forms in which traditional culture is expressed, as part of the cultural and social identity, core values, and beliefs of an Indigenous community. Protecting these cultural expressions promotes the preservation of cultural heritage and creativity.

Traditional Cultural Expressions can be both tangible (like beaded earrings) or intangible (a creation story). Other examples include oral stories, artwork, clothing, traditional songs, dances, or ceremonies. Both traditional knowledge and traditional cultural expression can be held collectively by a Nation, a community, a family or clan. They are not rigid and unchanging but may evolve and change over time as they are passed down from generation to generation.

If Mi'kmaw intellectual property and cultural expressions are not properly protected they could be claimed or used by others without Mi'kmaw authorization.

Examples of Mi'kmaw Intellectual Property

- Traditional Mi'kmaw Medicines
- Traditional Mi'kmaw Stories
- Traditional Mi'kmaw Dances
- Traditional Mi'kmaw Basket Making
- Traditional Mi'kmaw Wooden Flowers
- Traditional Mi'kmaw Petroglyphs
- Traditional Mi'kmaw Beadwork
- Traditional Mi'kmaw Way of Life

Examples of Mi'kmaw Cultural Expression

- Healing Salve
- Children's Book about Kluscap Legends
- Kojua Demonstration at a Mawio'mi
- Sewing Basket with Quillwork
- Wooden Flower Making Class
- Mi'kmaw License Plate
- Beaded Moccasins
- Painting





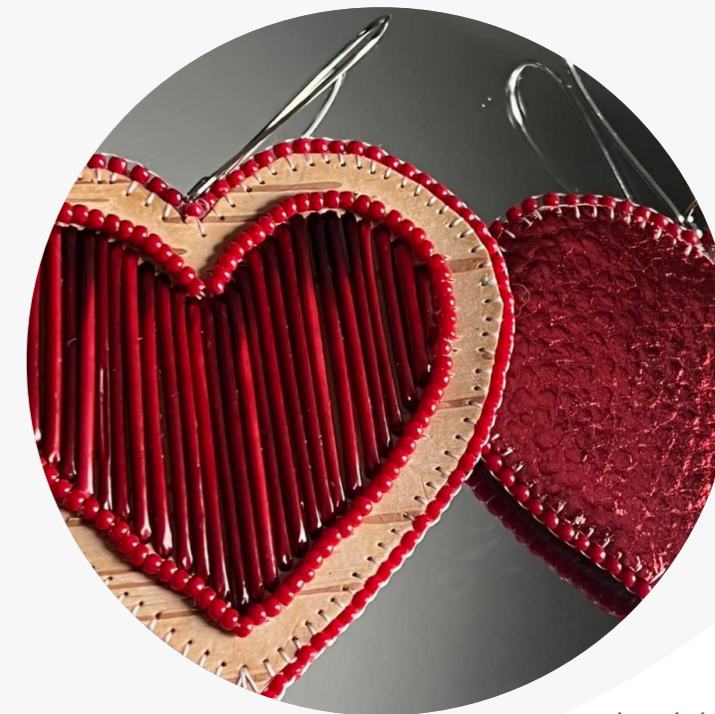
Quillbox by
Crystal Dorey



Beadwork by
Mairi Denny



Beadwork by
Breanne Bernard



Beadwork by
Jaden Prosper

IS THERE A DIFFERENCE BETWEEN MY PERSONAL INTELLECTUAL

The difference between personal intellectual property and a collective or community intellectual property is that your personal intellectual property is yours alone, while collective or community property is owned by a group of individuals, a community, or a First Nation.

For example, in Mi'kma'ki, a Mi'kmaw can own intellectual property of their own brand of merchandise or designs while Mi'kmaq collectively may own intellectual property in the branding of Mi'kmaw designs and practices used throughout Mi'kma'ki, such as the L'nu symbol.

PROPERTY & A COLLECTIVE OR COMMUNITY INTELLECTUAL PROPERTY?

Protecting Mi'kmaw cultural expressions to ensure that non-Mi'kmaw do not appropriate the unique culture and identity of the Mi'kmaw Nation can be more difficult than protecting individually owned intellectual property. Intellectual property protection is based on protecting the rights of an individual's

creations, innovations, and inventions. Unfortunately, the legal system for protecting individual IP is not easily or quickly adapted to protect a community's or a Nation's rights in their cultural practices. Nations must be aware of this fact and work towards protecting their cultural property.

MI'KMAWITASIK

Mi'kmaw Made



MI'KMAWITASIK (MI'KMAQ MADE)

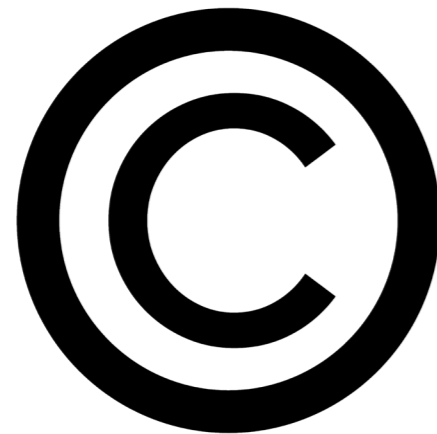
One of the ways that Mi'kmaq in Nova Scotia are collectively working together to protect Mi'kmaw cultural and intellectual property is through the Mi'kmaw Authenticity Trademark – Mi'kmawitasik (Mi'kmaq Made).

The issue of collective Indigenous property rights is currently being addressed by Indigenous peoples across the world through the World Intellectual Property Organization (WIPO).



HOW CAN I PROTECT MY INDIVIDUAL INTELLECTUAL PROPERTY?

In Canada, your intellectual property may be protected by the laws relating to copyright, patent, trademark, geographical indications, industrial design, or trade secrets. Which one to use depends on your situation.



COPYRIGHT

Copyright is the exclusive legal right to produce, reproduce, publish or perform an original literary, artistic, dramatic or musical work. It can protect many different forms of intellectual property. The creator is usually the copyright owner. One exception to that rule arises when the creator created the work in the course of their employment. In that case, the employer owns the copyright in and to the work.

When you own the copyright in a work, you have the right to control how it is used and protect its value. Others who want to use the work are required get your permission before using it in any way. Generally, an original work is automatically protected by copyright the moment you create it. You can also register your copyright with the Canadian Intellectual Property Office who will issue you a certificate confirming your copyright.

Copyright exists in Canada during the lifetime of the creator of the work and for 50 years following the creator's death. After that, subject to certain exceptions, the work is in the public domain, and anyone can use it. Under copyright legislation it is not possible to protect your work forever. Copyright protection always expires, even if it is possible to extend it for a period beyond the lifetime of the creator. However, it is important to note that copyright can be inherited and passed down to future generations.

TRADEMARK

Another form of intellectual property protection is known as a trademark.

A trademark is a combination of letters, words, sounds, designs or features which distinguish one supplier's goods or services from those of other suppliers. Trademarks are unique. Famous instantly recognizable trademarks include the McDonald's arches or Nike's swoosh. These trademarks inform the consumer or purchaser of the reputation and reliability of the good or service.

Some First Nations and other Indigenous groups in Canada have developed trademarks which can only be used by their members. The Cowichan First Nation in BC has a trademark can only be placed on woolen goods made by Nation members using traditional knitting techniques. A purchaser therefore knows that she or he is purchasing a genuine Cowichan made item, not something mass produced in a factory. In Nova Scotia, we have developed an Authenticity

Trademark for Mi'kmaw made goods and services that assures purchasers that what they are purchasing is authentically Mi'kmaq.

Trademarks can be registered with the Canadian Intellectual Property Office. By registering your trademark, you protect it under law from misuse by others, and you gain exclusive rights to use it throughout Canada for 10 years, which can be renewed.



GEOGRAPHICAL INDICATIONS

Geographical Indications are signs used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. This is a very distinctive branding tool that can promote the natural or human factors within a given territory. Examples include Columbian Coffee, Italian Parmigiano, Darjeeling Tea, French Champagne, or the Panama Straw Hat. As Mi'kmaq within our traditional territory throughout Mi'kma'ki, this is something we may want to consider in the future.

PATENT

A patent allows you as an inventor to control the use of and be reimbursed for any use of the product, machine, or process that you invented. Some examples of patented products include bluetooth, ibuprofen, and the three-point seatbelt.

The patent gives the inventor the right to stop other people from making, selling or using your invention. They are granted for new, useful inventions. Patents last for 20 years from the date on which the patent application was filed. Patents can be licenced to others or sold by the patent holder.



INDUSTRIAL DESIGN

Industrial designs are the features of a product that give it eye appeal. The Kitchen Aid stand mixer, the shape of the Austin Mini Cooper, the classic Coca Cola bottle are all examples of industrial design. The distinct shape and features give these products a competitive edge.

Industrial designs can be registered with the Canadian Intellectual Property Office which protects the designer's rights to control the use of and benefit from the registered design for up to 10 years. Like the property protected by a patent, the creator of the industrial design may sell or licence the design to others.





Baskets by
Virick Francis



TRADE SECRETS

Trade secrets include any business information that has commercial value coming from its secrecy. Trade secrets can be very valuable. The formulas for the seven herbs and spices in Kentucky Fried Chicken, McDonald's Big Mac sauce, and WD-40 are all famous examples of trade secrets.

There are minimum requirements to be met to protect trade secrets. For example, the information must be valuable, it must be a secret, and the holder of the trade secret must do things to show it's a secret and not widely known or in the public domain.

Trade secrets are not protected by any specific legislation or registration process. You can keep your trade secret private or secure by locking it in a safe place and not telling anyone what it is or where it is hidden. Today, however, most trade secrets are protected by requiring anyone who has access to the secret information to sign a non-disclosure agreement.



INDIGENOUS INTELLECTUAL PROPERTY & UNDRIP

On June 21, 2021, Canada passed the *United Nations Declaration on the Rights of Indigenous Peoples Act (UNDRIP)*. This Act will help in the development of laws that pertain to Indigenous Peoples of Canada. It will help interpret and apply those laws in Canada that affect Indigenous peoples such as Intellectual Property protection laws. The Act is very new and although we do not know how it will be implemented, it is hoped that Indigenous Peoples' rights, including rights to Intellectual Property control and ownership will be included in the way the Act is applied. To date, Nova Scotia has not incorporated *UNDRIP* into legislation.

Article 31 of the *Declaration* gives Indigenous People "the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures... They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions."

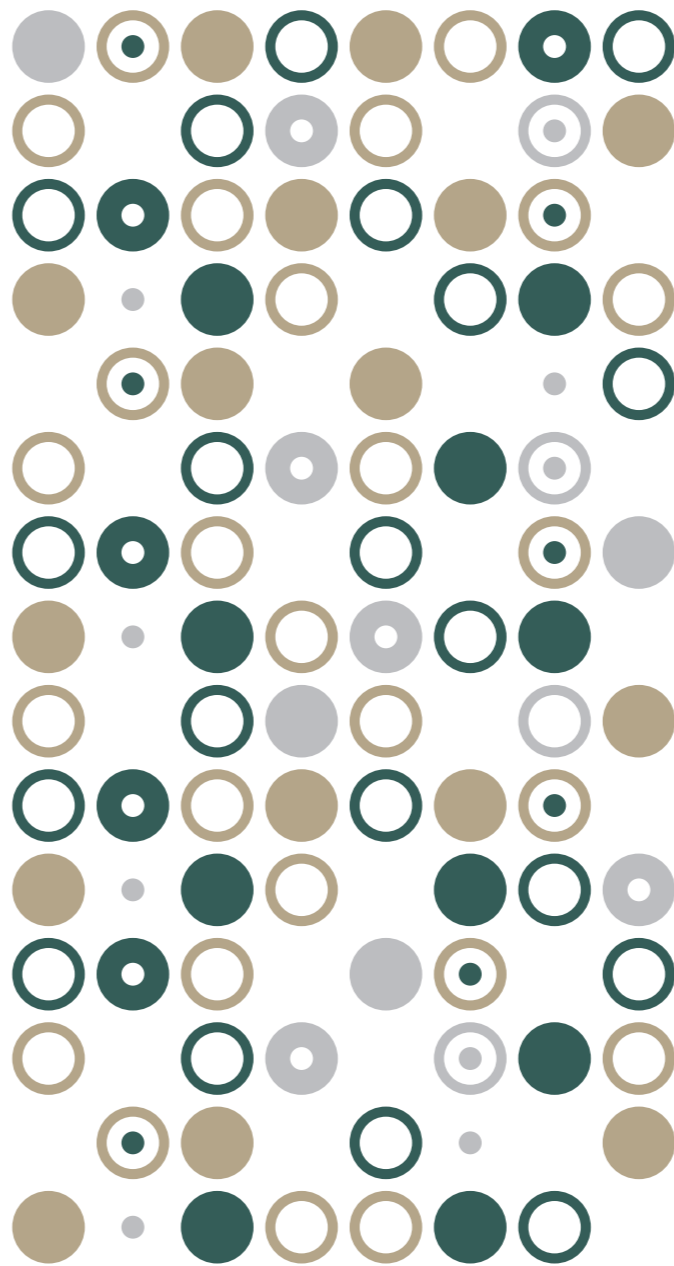
These clauses, along with others in *UNDRIP*, may lead to greater protection of Indigenous, including Mi'kmaw intellectual and cultural property, knowledge and cultural expression.



NEXT STEPS TO PROTECT YOUR CREATIONS

If you are a Mi'kmaw artist, crafter, writer, designer, songwriter, performer, cultural tourism operator or inventor, protect your work as best you can using the legal tools provided in this document.

- 1) **Mi'kmaw Protections:** Register to use the Mi'kmawitasik brand certification trademark.
- 2) **Government of Canada Protections:** You can apply for these legal protections online through the Government of Canada website. Please see additional resources on the next page.
- 3) **Inheritance Protections:** Intellectual Property can be inherited. Be sure to include your copyright and other legal protections in your will to pass on to your future generations.



ADDITIONAL RESOURCES

Canadian Intellectual Property Office (CIPO)

- CIPO supports Canadian businesses and entrepreneurs by providing them with information and guidance
- Website: www.canada.ca/en/services/business/ip
- Email: IC.contact-contact.IC@canada.ca
- Phone: 1-866-997-1936

Indigenous People and Intellectual Property in Canada

- Through Innovation, Science and Economic Development Canada (ISED), there are a wide variety of educational resources and grants available to support the protection of Indigenous IP
- Website: www.ised-isde.canda.ca/site/intellectual-property-strategy/en/indigenous-peoples-and-intellectual-property
- Email: indigenous-IP@canada.ca
- Phone: 613-952-4356

World Intellectual Property Organization (WIPO)

- WIPO's Indigenous Portal provides access to information for, and relating specifically to Indigenous peoples and local communities
- Website: www.wipo.int/tk/en/indigenous
- Email: Traditional Knowledge Division grtkf@wipo.int
- Phone: +41 22 338 9111
Monday to Friday, 9am-6pm CE (Geneva, Switzerland)

Mi'kmaw Ethics Watch (MEW)

- In Nova Scotia, all research involving collective Mi'kmaw knowledge, culture, arts, spirituality, or traditions, or having the potential to impact treaty or Aboriginal rights must be reviewed by Mi'kmaw Ethics Watch.
- Website: www.cbu.ca/indigenous-affairs/mikmaw-ethics-watch
- Email: mew@cbu.ca
- Phone: 888-959-9995