Greetings from the President

Métis Nation of Alberta Annual General Assembly
Métis Rights Update
August 2017

These are exciting times for the Métis Nation! A series of legal and political developments and victories—at the provincial and federal levels—have put the need for reconciliation with the Métis Nation in the spotlight. Finally, both Canada and Alberta appear to be willing to negotiate with the Métis Nation of Alberta (“MNA”)—which includes its Locals, Regions, and the Provincial Council—for the recognition of Métis rights. This is an opportunity to finally move our Métis rights agenda—forward! We must now continue to work—together—to take advantage of these once-in-a-lifetime opportunities.

The Métis Nation within Alberta—through the MNA and its predecessors—has long led the way in fighting for the return of Métis lands and advancing Métis rights. We have always been leaders within the Métis Nation because we have worked—together—to build a strong, united Métis government here in Alberta. Now, as further detailed in the materials in this booklet, we have an opportunity to lead the way again and advance Métis self-government, harvesting rights, consultation and accommodation, and land claims.

As always, our strength comes from our focus on working together as a united Métis government that includes our members being at the heart of everything we do and our Locals, Regions, and Provincial Council working together for the benefit of the Métis Nation within Alberta. As always, the MNA is committed to ensuring that the rights of all our citizens—wherever they live in Alberta—are recognized and protected. We will never leave people behind or allow the Métis Nation within Alberta to be divided.

The booklet provides MNA members with copies of relevant materials and agreements from the last year that are important to advancing our rights-based agenda. We hope members find this document helpful in understanding the significant progress being made. Together, we will build a stronger Métis Nation!

Yours very truly,

Audrey Poitras
MNA President
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MEMORANDUM OF UNDERSTANDING ON ADVANCING RECONCILIATION

THIS AGREEMENT is made in triplicate this 30th day of January, 2017.

BETWEEN:

MÉTIS NATION OF ALBERTA
as represented by its President
(“MNA”)

-and-

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the Minister of Indigenous and Northern Affairs
("Canada")

(hereinafter referred to collectively as the "Parties" and individually as a "Party")

WHEREAS the Métis were one of the Aboriginal peoples who lived in the Northwest prior to Canada’s westward expansion following Confederation;

AND WHEREAS these Métis people referred to themselves and were recognized by others as the Métis Nation, and trace their roots to the western fur trade;

AND WHEREAS Métis in Alberta have established the MNA to represent them through democratically elected governance structures at the local, regional and provincial levels throughout the province;

AND WHEREAS the MNA is mandated to advance Métis rights, self-government and self-determination in Alberta as well as improve the cultural, social, physical, emotional and economic well-being of Métis in Alberta;

AND WHEREAS section 35 of the Constitution Act, 1982, states that “the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed” and “the ‘aboriginal peoples of Canada’ includes the Indian, Inuit and Métis peoples”;

AND WHEREAS the Supreme Court of Canada has noted that section 35 of the Constitution Act, 1982, calls for a process of reconciliation between the Crown and Aboriginal peoples through which the rights and outstanding claims of Aboriginal peoples are determined, recognized and respected through honourable negotiations with the goal of reaching just and lasting settlements;
AND WHEREAS the MNA, on behalf of Métis in Alberta, asserts Aboriginal rights and outstanding claims that are protected by section 35 of the Constitution Act, 1982, which require reconciliation;

AND WHEREAS the MNA also seeks to advance reconciliation through working with Canada to improve the individual and collective well-being of Métis in Alberta as well as close the gaps between the Métis and other Canadians;

AND WHEREAS Canada is committed to working, on a nation-to-nation, government-to-government basis with the Métis Nation, through bilateral negotiations with the MNA, in order to advance reconciliation and renew the relationship through cooperation, respect for Métis rights, and ending the status quo;

AND WHEREAS the Parties have agreed that their representatives will engage in a time-limited, exploratory discussion table with a view to identifying a mutually-acceptable path forward in order to advance reconciliation between the Crown and Métis in Alberta;

NOW THEREFORE the Parties agree as follows:

1. The Parties will establish and participate in an exploratory discussion table.

2. The objective of the exploratory discussion table will be to develop a mutually-acceptable framework agreement to serve as the basis for negotiations to advance reconciliation with Métis in Alberta.

3. The Parties recognize the importance of having the Province of Alberta's participation in a process to advance reconciliation, and will, when and where appropriate, encourage the Province of Alberta to contribute to the exploratory discussion table's discussions as an active participant.

4. The Parties recognize the unique history and jurisdictions of the Métis Settlements General Council and the eight Alberta Métis Settlements (collectively the “Métis Settlements”), as defined by the Métis Settlements Act, RSA 2000, c M-14, as well as the importance of having the Métis Settlements' participation in a process to advance reconciliation, and will, when and where appropriate, identify mutually agreeable mechanisms for the Métis Settlements to contribute to or potentially participate in the exploratory discussion table.

5. If the Parties are able to develop a mutually-acceptable framework agreement through the exploratory discussion table, the Minister of Indigenous and Northern Affairs will then take measures aimed at obtaining a formal negotiation mandate.

6. Unless the Parties otherwise agree, the exploratory discussion table will have at least one meeting every six weeks from the date this MOU comes into force, and, subject to paragraph 13, the exploratory discussion table's discussions will conclude by September 2017.
7. Each Party will determine who will represent it at the exploratory discussion table.

8. The Parties will jointly select a suitable time and place for each meeting.

9. Canada recognizes that the MNA requires reasonable capacity to participate in the exploratory discussion process contemplated under this MOU. The Parties will work to develop a mutually-acceptable workplan and budget to support the MNA’s participation in the exploratory discussion table. Any workplan, budget and funding agreement shall be consistent with the policies of the Department of Indigenous and Northern Affairs Canada.

10. Except for this paragraph 10 and paragraphs 11, 13 and 16, this MOU is not legally binding, is intended only as an expression of good will and political commitment, and does not create, amend, recognize or deny any legal or constitutional right or obligation on the part of either Party.

11. Whether or not disclosed to any person or persons,

   a. this MOU (other than paragraphs 10, 11, 13 and 16),
   b. all discussions of the exploratory discussion table, and
   c. all records, information and communications that disclose the content of discussions or the content of a Party’s positions or views

will be without prejudice to the legal rights of, and to the positions which may be taken by, any Party in any legal proceeding, negotiation or otherwise. Except for the purpose of enforcing paragraph 10, 11, 13 and 16, the Parties will not seek admission of or voluntarily tender, in a court of law or in any proceeding before a tribunal or board, evidence respecting this MOU or respecting any item mentioned in (b) or (c) of this paragraph 11.

12. The Parties will discuss the possibility of establishing a joint communications approach in relation to this MOU, which may include details on how and when the Parties would jointly inform the public or the media of the fact of this MOU and its contents.

13. Unless the Parties agree otherwise, in advance and in writing,

   a. all discussions of the exploratory discussion table will be held in camera and remain confidential,
   b. a Party will not disclose any records, information or communications that reveal the content of discussions or the content of the other Party’s positions or views, and
   c. during the term of the exploratory discussion table’s discussions, a Party will not disclose any records, information or communications of the exploratory discussion table that reveal the content of either Party’s positions or views.
14. This MOU comes into force when signed and, subject to paragraph 15, will remain in effect until it is replaced by a subsequent agreement between the Parties.

15. Either Party may terminate this MOU on 30 days' written notice to the other Party.

16. Unless the Parties otherwise agree in writing, the provisions of paragraphs 10, 11, 13 and 16 will survive the conclusion of the exploratory discussion table's discussions and any termination of this MOU.

IN WITNESS WHEREOF this MOU has been executed by the Parties as of the date first written above.

MÉTIS NATION OF ALBERTA

Audrey Poitras
MNA President

Bev New
MNA Co-Minister for Métis Rights

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Honourable Carolyn Bennett
Minister of Indigenous and Northern Affairs
Métis Nation of Alberta - Government of Alberta

Framework Agreement

THIS AGREEMENT is made in duplicate this 1st day of February 2017.

BETWEEN

HER MAJESTY THE QUEEN
in right of the Province of Alberta, as represented by the Minister of Indigenous Relations (hereinafter referred to as “Alberta”) AND

THE MÉTIS NATION OF ALBERTA, which has incorporated the Métis Nation of Alberta Association to act as its legal and administrative arm, as represented by its President (hereinafter referred to as the “MNA”)

(hereinafter referred to collectively as the “Parties” and individually as a “Party”)

WHEREAS a distinct Indigenous people—known as the Métis Nation—emerged in west central North America with their own language (Michif), culture, traditions, and way of life and forms of self-governance;

AND WHEREAS the Supreme Court of Canada has recognized that this Métis people was one of the Indigenous peoples who were living on the Prairies prior to Canada’s westward expansion as a country following Confederation;

AND WHEREAS Alberta recognizes and respects the Métis Nation’s unique history, traditions, culture and rights as an Indigenous people within Alberta as well as its important role in the history and development of western Canada generally and Alberta specifically;

AND WHEREAS section 35 of the Constitution Act, 1982, states that “the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed” and that “the ‘aboriginal peoples of Canada’ includes the Indian, Inuit and Métis peoples”;

AND WHEREAS the Supreme Court of Canada has recognized that the fundamental objective of the modern law of aboriginal and treaty rights is the reconciliation of Aboriginal peoples and non-Aboriginal peoples and their respective claims, interests and ambitions;

AND WHEREAS the MNA receives its mandate to represent members of the MNA living within Alberta (“Citizens”) through a centralized registration system wherein Citizens voluntarily authorize the MNA to promote, pursue, and defend aboriginal, legal, constitutional and other rights of Métis in Alberta and Canada;

AND WHEREAS these Citizens are democratically represented through the MNA’s Provincial Council, Regional Councils and Local Councils, which work—together—to provide effective and accountable representation of Citizens across Alberta;

AND WHEREAS Alberta recognizes the MNA’s representative role on behalf of its Citizens and is committed to working with the MNA, on a nation-to-nation basis, through this Framework Agreement, in order to advance reconciliation and enhance the MNA-Alberta relationship through recognition, collaboration, respect for Métis rights and working towards the advancement of Métis self-government and self-determination;
AND WHEREAS Alberta and the MNA have worked cooperatively for many decades in order to improve the socio-economic conditions of Alberta Métis, and, through this Framework Agreement, re-commit to working together on joint planning and developing collaborative policies, initiatives and programs that attempt to close the gap between Alberta Métis and other Albertans;

AND WHEREAS Alberta and the MNA also agree to work collaboratively through this Framework Agreement in order to find shared and practical understandings on how the principles set out in the *United Nations Declaration on the Rights of Indigenous Peoples* can be implemented in Alberta in a manner that is consistent with the Canadian Constitution and Alberta law;

NOW THEREFORE Alberta and the MNA covenant and agree as follows:

1. PURPOSE

1.1 The purpose of this Framework Agreement is to:

- Promote and facilitate the advancement of Alberta Métis by providing a process through which the parties will work cooperatively to develop and implement methods and measures to address the agreed needs and aspirations of Citizens as well as to preserve Métis identity and cultural heritage throughout Alberta.

- Build upon and enhance the respectful and cooperative relationship between Alberta and the MNA through clarifying and defining the nation-to-nation relationship between the parties as well as promoting reconciliation between Aboriginal peoples and non-Aboriginal peoples through the advancement of Métis rights.

2. PRIORITY ACTIONS

In order to achieve the purpose of this Framework Agreement, the Parties agree to the following priority actions:

2.1 Renewing and Strengthening the Nation-to-Nation Relationship between the Parties

In support of this goal, the Parties agree to:

- An annual meeting between the Premier of Alberta and the MNA President to discuss mutually agreeable subject matters and the progress achieved through the Framework Agreement;

- Quarterly meetings between the Minister of Indigenous Relations and the MNA President in order to assess the progress being made through the Framework Agreement;

- Recognition and support for the MNA’s organizational structure, including negotiating a mutually agreeable multi-year arrangement to provide core operational funding to the MNA as well as other potential funding arrangements on a case-by-case basis to support the purpose and priority actions contemplated under the Framework Agreement;

- Engage with the Government of Canada in relation to the existing Alberta-Canada-MNA tripartite self-government negotiation process as well as the implications of the Supreme Court of Canada’s decision in *Daniels v. Canada* for Alberta Métis;
• Discussing options for the legislative recognition of the MNA and its governance structures; and
• Other initiatives mutually agreed to by the Parties.

2.2 Facilitating the recognition and respect of Métis rights in Alberta that upholds the honour of the Crown and advances reconciliation

In support of this objective, the Parties agree to:

• Undertake appropriate collaborative historic and contemporary research on Métis communities in Alberta;

• Explore developing evidence informed, policy-based approaches to Métis rights recognition and related issues;

• Work towards the development of a non-Settlement Métis Consultation Policy that is consistent with provincial Aboriginal consultation policies in force in Alberta, subject to provincial Cabinet approval;

• Pursue collaborative discussions with the Ministry of Environment and Parks with respect to Métis harvesting rights;

• Pursue collaborative discussions with the Government of Canada on Métis rights issues, collaborative research and the Crown's consultation duties, where appropriate; and

• Other initiatives mutually agreed to by the Parties.

2.3 Develop a ‘whole-of-government’ approach to Métis issues that is culturally relevant, relies on evidenced-based and informed strategies and enhances the socio-economic well-being of Alberta Métis

In support of this goal, the Parties agree to:

• Facilitate strategic, collaborative MNA-Alberta partnerships across government;

• Work on developing a mutually agreeable approach to increase Alberta's engagement with the MNA in relation to its appointment process for provincial agencies, boards and commissions with a view to increasing MNA and/or Métis representation;

• Develop mechanisms that promote Alberta Ministries engaging with the MNA in the development of and design of policies, programs and initiatives that impact Alberta Métis;

• Work collaboratively to develop Métis-specific policies, programs and services that address the unique socio-economic needs and realities of Alberta Métis, including the potential delegation of appropriate provincial programs and services to the MNA;

• Develop capacity within Alberta to work with the MNA on research and assessment of Métis-specific socio-economic needs, outcomes and provincial service utilization through empirical data, including the potential use of the MNA’s Citizenship registry; and

• Other initiatives mutually agreed to by the Parties.
2.4 Increase economic opportunities for Alberta Métis with a view to enhancing community and individual wellbeing

In support of this goal, the Parties agree to:

- Develop the capacity of Métis individuals, businesses and communities to participate in economic opportunities;

- Improve the health and wellbeing of Alberta Métis;

- Improve academic achievement levels, learning outcomes as well as employment and training opportunities for Alberta Métis;

- Improve housing conditions and access to housing for Alberta Métis;

- Improve Métis access to justice and pursue Métis restorative justice measures;

- Improve the access that Alberta Métis have to provincial services, including health, education, and social supports;

- Pursue initiatives to support Métis children, youth and seniors; and

- Other initiatives mutually agreed to by the Parties.

3. STRATEGIES

3.1 Strategic Partnership Development and Joint Planning

3.1.2 Joint Planning

To facilitate appropriate participation of the MNA in the design of Alberta policies and programs which significantly affect its Citizens, the Parties will support joint planning and action between Alberta Ministries and the MNA. The MNA's identified primary interests include, but are not limited to:

- Environment and Climate Change;
- Education and Training;
- Health and Wellness;
- Women's Issues;
- Economy and Employment;
- Housing and Infrastructure; and
- Culture and Heritage.

Subject to appropriations by the Legislative Assembly, funding to support sector specific work plans in the above-mentioned joint planning areas will be determined annually through negotiations between the MNA and relevant Ministries.
3.2 Coordinating Committee of Senior Officials

In the interests of achieving the goals of this Framework Agreement and the joint planning set out above, the Parties agree to the creation of a Coordinating Committee of Senior Officials, co-chaired by one representative appointed by the MNA and one representative appointed by Alberta. The Coordinating Committee will also include the Deputy Ministers or designate from each of the participating Ministries. The Coordinating Committee will work collaboratively to identify and propose policy direction to the MNA President and relevant Alberta Ministers as well as call upon individuals, agencies, other institutions and resources as required to ensure strategies are in accordance with the intent and purpose of this Agreement. In order to guide its work, the Coordinating Committee shall develop mutually agreeable terms of reference and be required to prepare an annual report on its progress.

4. CAPACITY AND FUNDING

4.1 The Parties will work together to identify the capacity requirements necessary to develop and implement the goals, priority actions and strategies referred to in paragraphs 2.1, 2.2, 2.3, 2.4, and 3.1, and 3.2 of this Framework Agreement.

4.2 Where agreed upon, the Parties will work to develop and implement capacity building strategies to enhance the organizational, administrative and managerial capacity of the MNA, including its Local Councils and Regional Councils, including the development and implementation of a MNA business plan.

4.3 Subject to appropriation by the Legislative Assembly, a contribution towards the core funding of the operations of the MNA as well as support for its participation in the process set out by this Framework Agreement will be provided by the Government of Alberta though a funding agreement negotiated between the MNA and Alberta.

4.4 The parties agree that efforts will be made for multi-year contribution agreements to be achieved.

4.5 Subject to appropriation by the Legislative Assembly, the MNA and other Government of Alberta Ministries will enter into additional funding arrangements to support specific, mutually agreed upon objectives that will be identified in the business plans of the MNA and Government of Alberta Ministries.

5. REVIEW

5.1 The Parties will develop mutually agreeable Terms of Reference for a joint review of progress.

5.2 Based upon these Terms of Reference, a joint review on progress of the Framework Agreement will be conducted in 2018, 2021 and 2024 to assess the progress being made regarding the priority items identified in this Framework Agreement.

6. EXISTING AND FUTURE AGREEMENTS

6.1 Government of Alberta Ministries with existing funding relationships with the MNA will be encouraged to ensure that renewals or changes will be consistent with the objectives of this Framework Agreement.
7. NON-DEROGATION

7.1 Nothing in this Framework Agreement affects, abrogates or derogates from, or recognizes, affirms or creates any rights of the Métis people or Métis communities in Alberta.

7.2 Nothing in this Framework Agreement shall be construed so as to limit or expand the responsibilities and authorities of Alberta Ministries, departments and agencies in relation to their respective mandates.

7.3 The language and terms employed in this Framework Agreement are not intended to have legal meaning or effect or connote the legal positions of either the MNA or Alberta.

8. GENERAL

8.1 The term of this Framework Agreement shall be from the date it is signed by both Parties until March 31, 2027.

8.2 The progress evaluation in 2024 referred to above may provide the basis for possible renewal of this Framework Agreement in 2027.

8.3 This Framework Agreement may be amended from time-to-time by mutual consent in writing and renewed for a subsequent term.

8.4 Nothing in this Framework Agreement shall be construed so as to limit or restrict access by the MNA to other sources of potential provincial support and funding consistent with applicable policies and programs and services criteria.

8.5 This Framework Agreement is not legally binding, but reflects the Parties’ intentions and political commitments to each other.

IN WITNESS WHEREOF this Framework Agreement has been executed as of the date first written above.

Audrey Poitras
President
Métis Nation of Alberta

Rachel Notley
Premier
Government of Alberta

Karen Collins
Member of Provincial Council
Métis Nation of Alberta

Richard Feehan
Minister of Indigenous
Government of Alberta
TO: All Members
FROM: Audrey Poitras, MNA President
DATE: February 27, 2017
RE: Recent Agreements with Canada and Alberta

As many of you have likely already heard, the Métis Nation of Alberta ("MNA") has recently signed two important agreements with both the federal and provincial governments. Both of these agreements are now publicly available and can be found on the MNA’s website at www.albertametis.com. Copies of these agreements can also be obtained by contacting the MNA Head Office or our Regional Offices throughout the province.

These two agreements consolidate many of the positive developments we have been making politically here in Alberta as well as at the federal level in over the last year or so. These agreements also begin to strategically put the pieces into place to meaningfully implement our historic victory in the Harry Daniels case from April 2016 (the “Daniels Case”) as well as the recommendations of Mr. Tom Isaac, Canada’s Ministerial Special Representative on Métis Section 35 Rights, whose report was released in July 2016 (the “Isaac Report”).

In the upcoming months, the MNA will be initiating province-wide community consultations to update members on these agreements as well as to talk about our priorities for future negotiations with both Canada and Alberta. In the meantime, I wanted to provide this update to highlight some important aspects of these agreements as well as outline how they fit together and complement each other. As I stated at the signing of these two agreements, the “stars are aligning for Alberta Métis” to make some significant advances on our rights-based agenda in the near future.

From the positive relationships we have built with Premier Notley and her government, including the commitment in our new Framework Agreement to finally begin work with us on a nation-to-nation basis, to Prime Minister Trudeau’s commitment to finally put into place the nation-to-nation, government-to-government relationship the Métis Nation has sought with Canada for generations, I believe we have the wind at our backs and we must seize upon the once-in-a-generation opportunities that are before us.
This first agreement—the MNA-Canada MOU on Reconciliation—establishes a bilateral exploratory discussions process between ourselves and Canada in order to see if we can reach a formal Framework Agreement for negotiations on Métis rights and claims in Alberta by September 2017. This is a momentous development for Alberta Métis!

Exploratory discussion processes are an important step in Canada’s six stage Indigenous “claims” resolution processes. In the past, Métis south of the 60th parallel were completely excluded from these types of federal negotiation processes. Clearly, the direction from the Daniels Case and the Isaac Report; namely, that Métis can no longer be on the outside looking in at the federal level, is slowly taking hold. For more information on the MOU and answers to frequently asked questions visit: http://albertametis.com/2017/01/20617/

As set out in the MOU, these exploratory discussions will be focused on dealing with our Aboriginal rights and outstanding claims here in Alberta. More specifically, this process will include rights-based discussions on Métis self-government, Métis lands and redressing the failings of the federal Métis scrip system. We will also be talking about how to address the inequities our children, families and communities face because of discriminatory and colonial federal policies.

As I previously mentioned, in order to fully develop and prioritize subject matters for future negotiations, we will be undertaking province-wide consultations in the upcoming months. We want to hear from all of our members on what are the key issues we should incorporate into any future Framework Agreement with Canada. Rather than being stuck with a top-down national agenda, these exploratory discussions allow us to craft a ‘made-in-Alberta’ approach.
Related to this, it is also important to note that the Prime Minister’s commitment to working with the Métis Nation on a nation-to-nation, government-to-government relationship will be through bilateral negotiations with the MNA—not through any national process. Specifically, the MOU states,

**AND WHEREAS** Canada is committed to working, on a nation-to-nation, government-to-government basis with the Métis Nation, through bilateral negotiations with the MNA, in order to advance reconciliation and renew the relationship through cooperation, respect for Métis rights, and ending the status quo; [Emphasis added.]

This aspect of the MOU is consistent with the recent direction received from the 2016 MNA Annual General Assembly, which added the following important objective to the MNA Bylaws:

>[for the MNA] to negotiate, on behalf of the Métis in Alberta, a modern day treaty relationship with the Crown through a “land claims agreement” or other arrangement as called for and contemplated within the meaning of section 35(3) of the Constitution Act, 1982."

While we have much more work to do and a long road ahead of us, this MOU puts us on the right track. I look forward to our upcoming community consultation to provide further updates on what is happening at the federal level.
MNA-ALBERTA FRAMEWORK AGREEMENT

For over 30 years, our various MNA-Alberta Framework Agreements have guided our relationship with the province. Over these decades, we have seen many gains and successes by working collaboratively with the province. Our Framework Agreement provides the foundation for our relationship with Alberta.

It is a well-known fact that the last version of our Framework Agreement was whittled down by the previous provincial government with respect to language that recognized the Métis Nation and the MNA’s representative role. While this was disappointing, we persevered and tried to make the most out of what was a challenging period of MNA-Alberta relations.

With that era behind us, I am very pleased that our new Framework Agreement goes further than any of our previous agreements with Alberta. This is a testament to the commitment of Premier Notley and Minister Feehan to building relationships. As I have often said, I believe that if we get the recognition and relationship right, we will be able to make things happen. This agreement sets the course for us to finally get that foundation right.

Notably, this agreement also includes the following important additions:

- The agreement is between the Métis Nation of Alberta and the Government of Alberta. Previous versions of the agreement constantly added "Association" to our name in order to diminish the reality that we represent a distinct Indigenous people—the Métis.

- The agreement includes explicit commitments to pursue discussions on key rights-related issues such as harvesting and a Métis consultation policy. The success of this Framework Agreement will be measured on progress being made on these commitments.

- The agreement is for a 10 year period. In the past, the re-negotiation of the agreement every 3 or 5 years were distractions to keeping momentum under the agreement going.
Most importantly, the agreement commits to working with us on a “nation-to-nation” basis to advance Métis rights and reconciliation. Specifically, the Agreement states,

**AND WHEREAS** Alberta recognizes the MNA’s representative role on behalf of its Citizens and is committed to working with the MNA, on a nation-to-nation basis, through this Framework Agreement, in order to advance reconciliation and enhance the MNA-Alberta relationship through recognition, collaboration, respect for Métis rights and working towards the advancement of Métis self-government and self-determination;

Flowing from this overall intent, the agreement explicitly commits to “discussing options for the legislative recognition of the MNA and its governance structures.” As noted above, for far too often, the fact that our Nation’s legal and administrative arm is incorporated as an ‘association’ under Alberta’s Societies Act has been used against us to diminish the fact that we are a government for Alberta Métis. This commitment will allow us to explore other options with Alberta.

The agreement also commits Alberta to engage with us and Canada on the “implications of the Supreme Court of Canada’s decision in Daniels v. Canada for Alberta Métis.” We see this commitment as ensuring that Alberta will participate in our discussions with Canada, where required. It is important to note that while the Daniels Case affirms Métis are within federal jurisdiction, the province was and remains a key partner in making progress on some of our rights-related issues, in particular dealing with lands.

In closing, I want to thank the MNA Provincial Council, including our Co-Ministers for Métis Rights (Karen Collins and Bev New) as well as MNA staff and legal counsel for getting us here. Now the hard work begins! Ultimately, these two agreements will be measured by what they achieve for our children, families and communities here in Alberta. I am confident that through hard work and determination, we will see real results from these agreements for Alberta Métis.
FRAMEWORK AGREEMENT FOR ADVANCING RECONCILIATION

BETWEEN:

MANITOBA METIS FEDERATION INC.
as represented by its President
("MMF")

-and-

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the Minister of Indigenous and Northern Affairs
("Canada")

(hereinafter referred to collectively as the "Parties" and individually as a "Party")

WHEREAS the Métis were one of the Aboriginal peoples who lived in the Northwest prior to Canada’s westward expansion following Confederation;

WHEREAS these Métis people referred to themselves and were recognized by others as the Métis Nation, and trace their roots to the western fur trade;

WHEREAS within what is now known as Manitoba the Métis Nation established a vibrant community with its own identity, language, culture, institutions and way of life centered in the Red River Valley (the “Manitoba Métis Community”);

WHEREAS Canada’s assertion of control over the Red River Settlement was met with armed Métis resistance that resulted in Canada and a Métis-controlled provisional government entering into negotiations and a constitutional compact that ultimately led to the Manitoba Métis Community becoming Canada’s negotiating partner in the entry of Manitoba into Confederation and the passage of the Manitoba Act, 1870;

WHEREAS the Manitoba Act, 1870 included a solemn constitutional obligation that Canada would provide 1.4 million acres of land to the children of the Métis who were living in the Red River Valley in a prompt and effectual manner for the purpose of ensuring the Manitoba Métis Community secured a lasting place in the province they were negotiating partners in creating;
WHEREAS in the period following Manitoba’s entry into Confederation the constitutional commitment represented to the Manitoba Métis Community in section 31 of the 
Manitoba Act, 1870 was not implemented by Canada with care or diligence;

WHEREAS section 35 of the Constitution Act, 1982, states that “the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed” and “the ‘aboriginal peoples of Canada’ includes the Indian, Inuit and Métis peoples”;

WHEREAS the Supreme Court of Canada has noted that section 35 of the Constitution Act, 1982, calls for a process of reconciliation between the Crown and Aboriginal peoples through which the constitutionally-protected rights and outstanding claims of Aboriginal peoples are determined, recognized and respected through honourable negotiations with the goal of reaching just and lasting settlements;

WHEREAS on April 15, 1981 the MMF commenced litigation against Canada in relation to, among other things, section 31 of the Manitoba Act, 1870 for the purpose of securing a judicial declaration to assist it in extra-judicial negotiations with the Crown in pursuit of the overarching constitutional goal of reconciliation that is now reflected in section 35 of the Constitution Act, 1982;

WHEREAS on March 8, 2013, the Supreme Court of Canada released its decision in Manitoba Metis Federation Inc. v. Canada (AG) and held “[t]he unfinished business of reconciliation of the Métis people with Canadian sovereignty is a matter of national and constitutional import” and issued a declaration “[t]hat the federal Crown failed to implement the land grant provision set out in section 31 of the Manitoba Act, 1870 in accordance with the honour of the Crown”;

WHEREAS the Supreme Court of Canada recognized that the claim of the Manitoba Métis Community was “not a series of claims for individual relief” but a “collective claim for declaratory relief for the purposes of reconciliation between the descendants of the Métis people of the Red River Valley and Canada” and went on to grant the MMF standing by concluding “[t]his collective claim merits allowing the body representing the collective Métis interest to come before the court”;

WHEREAS the Manitoba Métis Community also asserts that it has Aboriginal rights protected within the meaning of section 35 of the Constitution Act, 1982, including but not limited to harvesting rights, which require reconciliation;

WHEREAS Canada is committed to working, on a nation-to-nation, government-to-government basis, with the Métis Nation, through bilateral negotiations with the MMF, in order to advance reconciliation and renew the relationship through cooperation, respect for Métis rights, and ending the status quo;
WHEREAS the Parties executed a Memorandum of Understanding on Advancing Reconciliation on May 27, 2016 and, based on that memorandum, have engaged in an exploratory discussions process to develop this mutually agreeable Framework Agreement;

WHEREAS Manitoba has been engaged and involved in the exploratory discussion process and has indicated it is also committed to advancing reconciliation with the Manitoba Métis Community as well as its willingness to continue to work with the MMF and Canada in activities conducted under the auspices of this Framework Agreement where Manitoba’s interests are engaged;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

DEFINITIONS

In this Framework Agreement, the following definitions apply:

“Final Agreement” means the agreement contemplated under section 4.2 of this Framework Agreement.

“Framework Agreement” means this agreement.

“Incremental Agreements” means those agreements contemplated under section 4.3.2 of this Framework Agreement.

“Interim Measures” means the measures contemplated by section 4.3.1 of this Framework Agreement.

“Main Table” means the regular meetings of the Negotiators contemplated under section 3.2 of this Framework Agreement.

“Manitoba” means Her Majesty the Queen in Right of the Province of Manitoba.

“Negotiation Process” means the mutually agreeable process set out within this Framework Agreement.

“Negotiators” means the individuals designated by each Party to the agreement.

“Principals” means the MMF President and the Minister of Indigenous and Northern Affairs.

“Purpose” means the underlying rationale for entering into this Framework Agreement that the Parties hope to address through arrangements or agreements reached under this Framework Agreement, whether interim, incremental or final.
“Shared Objectives” means the mutually agreeable overarching goals of the Parties that they agree to consider and advance through any arrangements or agreements reached under this Framework Agreement, whether interim, incremental or final.

1. THE PURPOSE OF THE NEGOTIATIONS

1.1 The Parties agree that the Purpose of the Negotiation Process contemplated under this Framework Agreement is to:

1.1.1 jointly develop a renewed nation-to-nation, government-to-government relationship between the Crown and the Manitoba Métis Community that advances reconciliation between the Parties consistent with the purpose of section 35 of the Constitution Act, 1982; and

1.1.2 to arrive at a shared solution that advances reconciliation between the Parties consistent with the purpose of section 35 of the Constitution Act, 1982 and the Supreme Court of Canada’s decision in Manitoba Metis Federation Inc. v. Canada (AG).

1.2 The Parties agree that the Purpose set out in section 1.1 will be advanced through engaging in the Negotiation Process described in this Framework Agreement with a view to arriving at mutually agreeable arrangements or agreements as further described below.

2. THE SHARED OBJECTIVES OF THE PARTIES

2.1 The Parties agree that the following Shared Objectives will inform the negotiations of future arrangements or agreements, whether interim, incremental or final:

2.1.1 recognizing and supporting a democratic, well-governed and accountable Manitoba Métis Community government, including the acknowledgment of Métis jurisdiction and law-making authority.

2.1.2 improving the cultural, social, physical, emotional and economic well-being of the Manitoba Métis Community;

2.1.3 enabling the participation of the Manitoba Métis Community in an economy that is sustainable, innovative, integrated and prosperous; and

2.1.4 establishing and structuring effective inter-governmental processes between the Manitoba Métis Community government and Canada that facilitate nation-to-nation, government-to-government relationships.

2.2 The Parties recognize that how these Shared Objectives will be advanced will be determined through the Negotiations Process established under this Framework Agreement.
3. THE NEGOTIATION PROCESS

3.1 The Parties commit to engaging in an interest-based Negotiation Process that fosters an open exchange of ideas, the frank discussion of interests and the joint analysis of issues. As a general principle, informal discussions are encouraged. Any statements made during the Negotiation Process, whether written or oral, will be without prejudice and will not be attributable to any Party.

3.2 The Negotiators will be responsible for the conduct and coordination of all negotiations and keeping their Principals updated throughout the negotiations. The Negotiators will jointly determine and agree to a schedule of negotiation meetings and the locations of those meetings. It is expected that the Negotiators will meet, at a minimum, once every 6 to 8 weeks. Unless otherwise agreed to by the Negotiators, the negotiating sessions will not be formally chaired.

3.3 Prior to beginning negotiations on any subject matter, the Parties will each make a presentation of their interests in relation to that subject matter. Roles and responsibilities of the Parties will be determined on the basis of the subject matter and the interests presented. Negotiations will be conducted at a Main Table.

3.4 The Main Table will be responsible for:

3.4.1 managing the Negotiation Process including work planning and setting of priorities;

3.4.2 negotiation of any arrangements or agreements to be brought to the Parties for their consideration;

3.4.3 implementing and managing openness and information sharing amongst the Parties throughout the Negotiation Process; and

3.4.4 implementing dispute resolution mechanisms as agreed.

3.5 The Negotiators may establish ad hoc working groups to research and report on specific issues or concerns as they deem fit. Any such working groups will report to the Main Table.

4. ENGAGING IN A RESULTS-ORIENTED NEGOTIATION PROCESS

4.1 The Parties are committed to focusing their respective efforts and resources on negotiating arrangements that are timely, results-oriented and aimed at achieving a shared and balanced solution that addresses the Purpose and Shared Objectives of this Framework Agreement. While not intended to be exhaustive or restrictive, the Parties have identified a series of subject matters that may be discussed as a part of the Negotiations Process, which are listed in Appendix A.
4.2 The goal of the Negotiation Process identified in section 4.1 shall be realized through a Final Agreement, which the Parties recognize may be comprised of a series of arrangements or agreements, that effectively achieves the Purpose and Shared Objectives of this Framework Agreement.

4.3 In order to achieve timely results toward advancing reconciliation and fulfilling the Purpose and Shared Objectives of the negotiations contemplated under this Framework Agreement, Negotiators may seek approvals from the Parties for the following types of arrangements or agreements over the course of the negotiations:

4.3.1 Interim Measures: Measures intended to protect the interests of the Manitoba Métis Community during negotiations.

4.3.2 Incremental Agreements: Agreements on individual or a group of matters listed in Appendix A in advance of, or in lieu of, a single, comprehensive Final Agreement.

4.4 Consistent with the results-oriented negotiation approach set out above, the Parties will focus their initial efforts and resources on reaching the following Interim Measures within one year of the signing of this Framework Agreement:

4.4.1 A consultation agreement or framework between the MMF and Canada that sets out a mutually agreeable process for addressing federal Crown consultation, and, where required, accommodation owing to the Manitoba Métis Community, including the provision of consultation capacity funding and the establishment of a MMF Consultation Office.

4.4.2 A mutually agreeable process to engage with the MMF in relation to any potential disposal of federal Crown lands within Manitoba where those lands may form a part of any future arrangement or agreement reached under this Framework Agreement.

4.5 Consistent with the results-oriented negotiation approach set out above, the Parties will focus their initial efforts and resources on reaching the following Incremental Agreements within two years of the signing of this Framework Agreement:

4.5.1 An agreement that recognizes the role, functions and jurisdictions of the Manitoba Métis Community government, including its relationship with other governments. This agreement will address:

(i) core self-government functions, including citizenship, citizenship registration and appeals, citizen rights and interests, jurisdiction, a constitution that recognizes the government’s structures at the local, regional and provincial levels, leadership selection and elections; and
(ii) provisions establishing the new nation-to-nation, government-to-government relationship between the Manitoba Metis Community government and other governments, including fiscal arrangements, legal status and capacity, and dispute resolution mechanisms.

4.5.2 The establishment of a “Lasting Place” Trust for the benefit of the Manitoba Métis Community to be used for potential future reconciliation arrangements between the federal Crown and the Manitoba Métis Community in relation to section 31 of the *Manitoba Act, 1870*. This agreement will address issues relating to the establishment of the trust, its purpose, beneficiaries and structure, potential financial options as well as other capacity building initiatives relating to the creation of a trust.

4.5.3 An agreement on Métis harvesting, which harmonizes existing laws and regulations of the Parties in relation to Métis harvesting rights protected by section 35 of the *Constitution Act, 1982*.

5. **IN VolvEMENT AND PARTICIPATION OF MANITOBA**

5.1 The Parties recognize the importance of having Manitoba’s participation in a process to advance reconciliation with the Manitoba Métis Community and agree that Manitoba shall be invited as an observer to all negotiation meetings held under the auspices of this Framework Agreement.

5.2 The Parties also agree that Manitoba may become a participant in the Negotiation Process where it indicates its willingness to become involved as a participant in the Negotiation Process, whether on a specific subject matter, interim measure or any agreement being discussed and negotiated between the Parties. Where the MMF, Canada and Manitoba agree this Framework Agreement may be amended to include Manitoba as a Party.

5.3 Matters in relation to the federal Crown’s failure to implement the Métis land grant provisions set out in section 31 of the *Manitoba Act, 1870* in a manner consistent with the honour of the Crown that are addressed in the Negotiations Process, will be discussed and concluded on a bilateral basis between the MMF and Canada. For greater certainty, any obligations flowing from this aspect of the negotiations shall be solely borne by Canada.

6. **COMMUNITY AND PUBLIC AWARENESS AND CONSULTATION**

6.1 The Parties may agree to develop mutually agreeable communication materials or undertake joint information, engagement or consultation sessions with the public or other relevant stakeholders as required.
6.2 The MMF is responsible for engagement and consultation with the Manitoba Métis Community, including Métis citizens, Locals, Regions, the MMF Cabinet, the MMF Assembly as well as other relevant stakeholders.

6.3 Canada will consult other Aboriginal groups whose credibly asserted or established Aboriginal or Treaty rights might be affected by arrangements or agreements negotiated under this Framework Agreement.

7. **FUNDING AND CAPACITY**

7.1 The Parties recognize that the MMF requires reasonable capacity to participate in the Negotiation Process contemplated under this Framework Agreement. To support the MMF’s participation in the Negotiations Process, Canada agrees to seek authority to provide funds in support of institutional capacity to address the items outlined in sections 4.4 and 4.5 of this Framework Agreement.

7.2 In addition to the commitment set out in section 7.1 of this Framework Agreement, and subject to federal eligibility and program requirements, MMF may access federal policies, funding and initiatives, that support the participation of Aboriginal groups in land, resources and self-government negotiations with Canada, which are subject to yearly appropriations of funds by Parliament.

8. **GENERAL**

8.1 Nothing in this Framework Agreement is intended or is to be interpreted so as to define, create, recognize, deny, affect or amend any rights, duties or obligations of any of the Parties.

8.2 Nothing in this Framework Agreement creates any legally enforceable obligations.

8.3 All negotiations conducted under this Framework Agreement and all related documents are confidential, subject to settlement privilege and without prejudice to legal positions the Parties may have or may take in any legal proceeding.

8.4 Nothing in this Framework Agreement is intended to constitute Crown consultation or accommodation obligations that may be owed by Canada to the Manitoba Métis Community.

8.5 This Framework Agreement may be amended with the written consent of the Parties.
This Framework Agreement is signed and agreed to by the Parties on the dates set out below.

MANITOBA METIS FEDERATION INC.

Per:

David Chartrand
President
Manitoba Metis Federation Inc.

Nov. 15, 2016

Date

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Per:

The Honourable Carolyn Bennett
Minister of Indigenous and Northern Affairs
Government of Canada

November 15, 2016

Date
APPENDIX A

SUBJECT MATTERS FOR THE NEGOTIATIONS

The Parties may address the following subject matters in the Negotiation Process:

- Building and Supporting Métis Self-Government
  - Citizenship and Registration
  - Constitution and Governance
    - Structure and Institutions of the Manitoba Métis Government
    - Jurisdiction and Law-Making Authority
    - Application and Enforcement of Manitoba Métis Government Laws
  - Fiscal Arrangements to Support Manitoba Métis Self-Government
    - Financial Transfer Arrangements
    - Resource Revenue Sharing
  - Tax Related Matters
  - Legal Status and Capacity of Manitoba Métis Government

- Supporting a Healthy, Secure and Prosperous Manitoba Métis Community
  - Identification of Shared Indicators and Determinants for a Healthy, Secure and Prosperous Manitoba Métis Community
  - Collecting Baseline Data on the Manitoba Métis Community to Identify Existing Needs and Gaps in relation to the Shared Indicators and Determinants;
  - The Strategic Investment of Resources, including Funding for the Delivery, Devolution or Intergovernmental Services Agreements, to Address Needs and Close Gaps in the Following Areas:
    - Language, Culture and Heritage
    - Education and Training
    - Child Care
    - Early Childhood Development
    - Child and Family Services
    - Administration of Justice
    - Housing and Infrastructure
    - Health Services and Promotion
    - Economic Development
    - Statistics and Policy Research

- Land Related Issues
  - The Role of Land in any Agreement or Agreements
  - Quantum, Selection and Management of Potential Settlement Lands
  - Water and Subsurface Rights
  - Wildlife, Fishing and Fisheries
  - Forestry
  - National and Provincial Parks
- Protected Areas
- Environmental Assessment
- Land Management

- Creation of a “Lasting Place” Trust
  - Establishment of the Trust
  - Purpose and Objectives of the Trust
  - Beneficiaries of the Trust
  - Trust Management and Operations
  - Capital Transfer to Trust

- Other Issues
  - A Formal Apology from Canada
  - Trans-Boundary Claims
  - Shared Territories and Overlapping Claims
  - Intergovernmental Relationships
  - Clarity on the Manitoba Métis Community’s Aboriginal Rights and Claim(s)
  - The Constitutional Status of Agreement or Agreements
  - Implementation, including an Implementation Plan for a Final Agreement
CANADA-MÉTIS NATION ACCORD

This Accord is effective from the 13th day of April 2017.

BETWEEN:

Her Majesty the Queen in Right of Canada
as represented by the Right Honourable Prime Minister

- and -

The Métis Nation
as represented by the Métis National Council and its Governing Members: the Métis Nation of Ontario, Manitoba Métis Federation, Métis Nation-Saskatchewan, Métis Nation of Alberta and Métis Nation British Columbia

(hereinafter collectively referred to as the “Parties”)

Whereas a distinct Aboriginal people—the Métis Nation—emerged with its own collective identity, language, culture, way of life and self-government in the historic Northwest prior to Canada’s westward expansion following Confederation;

And Whereas the Métis Nation continues to exist as a distinct Aboriginal people today and seeks to advance and exercise its right to self-determination including self-government within Canada;

And Whereas the Governing Members, through their registries and democratically elected governance structures at the local, regional and provincial levels, are mandated and authorized to represent the citizens who comprise the Métis Nation, including dealing with collectively held Métis rights, interests and outstanding claims against the Crown;

And Whereas the Métis National Council is mandated by the Métis Nation General Assembly to represent the Métis Nation at the national and international levels to advance issues of collective importance;

And Whereas section 35 of the Constitution Act, 1982, states that “the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed” and “the ‘aboriginal peoples of Canada’ includes the Indian, Inuit and Métis peoples”;

And Whereas in 2003 the Supreme Court of Canada in R. v. Powley recognized that Métis communities, which emerged prior to effective control, possess Métis rights that are protected as Aboriginal rights in section 35 of the Constitution Act, 1982;

And Whereas in 2013 the Supreme Court of Canada in Manitoba Métis Federation v. Canada (Attorney General)
confirmed that the Crown is in a fiduciary relationship with the Métis as a distinct Aboriginal people and stated that “the unfinished business of reconciliation of the Métis people with Canadian sovereignty is a matter of national and constitutional import”;

And Whereas in 2016 the Supreme Court of Canada in Daniels v. Canada (Indian Affairs and Northern Development) declared that the Métis are within section 91(24) of the Constitution Act, 1867 and that “reconciliation with all of Canada’s Aboriginal peoples is Parliament’s goal”;

And Whereas the Supreme Court of Canada has noted that section 35 of the Constitution Act, 1982 calls for a process of reconciliation between the Crown and Aboriginal peoples through which the rights and outstanding claims of Aboriginal peoples are determined, recognized and respected through honourable negotiations with the goal of reaching just and lasting settlements;

And Whereas Canada and the Métis Nation are committed to reconciliation and a nation-to-nation, government-to-government relationship, through regionally tailored exploratory discussions and/or negotiations between Canada and the Métis National Council’s Governing Members, in order to renew the relationship through cooperation, to further Métis self-government, while respecting Métis rights and ending the status quo;

And Whereas Canada and the Métis Nation are further committed to reconciliation and a nation-to-nation, government-to-government relationship through establishing a permanent bilateral mechanism between Canada and the Métis National Council and its Governing Members, as set out in the Accord, to enable annual priority setting, joint policy development and progress to be measured on an ongoing basis.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Objectives of the Accord

1.1 The Parties agree that it is in their common interest to establish a process for co-development and negotiation that will allow them to work together to:

1.1.1 Uphold the special constitutional relationship that the Métis Nation has with the Crown as partners in Confederation and as recognized and affirmed in section 35 of the Constitution Act, 1982;

1.1.2 Renew the Métis Nation-Crown relationship on a nation-to-nation, government-to-government basis;

1.1.3 Advance reconciliation of the rights, claims, interests and aspirations of the Métis Nation and those of all Canadians;

1.1.4 End the legacy of colonialism and colonial attitudes wherever they may remain in federal legislation, policies and practices;

1.1.5 Improve socio-economic conditions of Métis and their access to social and economic programs and services that address their needs;

1.1.6 Explore and support ways to address the historic and continuing impacts of unresolved claims and grievances of the Métis Nation; and

1.1.7 Promote and advance the recognition of the Métis Nation and commemorate its role and that of its leader, Louis Riel, in Canada’s western expansion.

2. Permanent Bilateral Mechanism

2.1 By signing this Accord, the Parties agree to establish a permanent bilateral mechanism (the “Permanent Bilateral Mechanism”) that will serve to:
2.1.1 Jointly establish policy priorities for the year ahead through an annual meeting with the Prime Minister of Canada;

2.1.2 Undertake joint policy development on the jointly established priorities;

2.1.3 Ensure that bi-annual meetings occur with Ministers responsible for policy development flowing from the jointly established priorities; and

2.1.4 Report on progress on an annual basis through the annual meeting with the Prime Minister of Canada.

2.2. The initial meeting of the Permanent Bilateral Mechanism will focus on the establishment of Terms of Reference to govern the work of the Permanent Bilateral Mechanism, as well as meeting schedules. Departments responsible for policy development flowing from the jointly established priorities will become involved in the work planning with the Métis National Council and its Governing Members. Any requisite working groups or other levels of engagement will be created based on that work plan. The Minister of Indigenous and Northern Affairs Canada, with the support of departmental officials, will be responsible for tracking progress of such working groups.

2.3. Meetings will also be held at least twice per year between the Minister of Indigenous and Northern Affairs Canada, key Ministers implicated through the jointly established priorities and work plans, and the Métis National Council and its Governing Members in an ongoing process to refine and deliver on the priorities identified via the Permanent Bilateral Mechanism. The Minister of Indigenous and Northern Affairs Canada, with the support of departmental officials, will be responsible for coordinating such meetings.

2.4. Quarterly meetings of relevant Assistant Deputy Ministers and senior officials from the Métis National Council and its Governing Members will be held to monitor and guide the work of technical-level working groups composed of subject matter experts; co-chairing would mirror the Ministerial-level meetings and could also be attended by Ministers’ staff in the role of observer. Indigenous and Northern Affairs Canada with the support of the Privy Council Office will be responsible for coordinating such meeting and for tracking progress.

3. Policy Priorities

3.1 Policy priorities will be established jointly by the Parties each year. These policy priorities will be attached as an Annex to this Accord.

3.2 An Annotated Agenda for four initial priorities is contained in Annex A to this Accord. This does not preclude work in other priority areas.

3.3 Policy priorities will be reviewed and renewed annually. The Parties may jointly decide to add more policy priorities to be worked on by the Parties in a given year and identify them in the Annex items to this Accord.

3.4 The Parties may enter into companion accords, agreements, protocols, or any other arrangements deemed suitable in order to achieve jointly established policy priorities, as decided by the Parties to this Accord.

4. Funding and Resourcing

4.1. The Parties agree to develop and update work plans based on concrete and specific objectives in order to address the various elements of this Accord that will enable full and effective engagement in the
4.2 Canada recognizes that the Métis Nation requires reasonable capacity to participate in the processes contemplated in this Accord. The Parties will work to develop a mutually-acceptable work plan and budget to support the Métis Nation’s participation in the Permanent Bilateral Mechanism. Any work plan, budget and funding agreement shall be consistent with the policies of the Government of Canada.

5. Respecting Bilateral and Tripartite Reconciliation Processes

5.1 Nothing in this Accord shall alter, affect, limit, constrain or impede existing or future exploratory discussions or negotiation processes to address Métis rights, interests or outstanding claims against the Crown that are put in place between a Governing Member and the Government of Canada.

5.2 The Parties recognize that bilateral or tripartite exploratory discussions and negotiation processes agreed to by a Governing Member and the Government of Canada also advance reconciliation with the Métis Nation and that the Permanent Bilateral Mechanism is designed to complement and enhance those provincial and/or regional processes.

5.3 Without limiting the generality of the foregoing, the Parties expressly agree that nothing in this Accord shall alter, affect, limit, constrain or impede the bilateral negotiation process established between the Government of Canada and the Manitoba Métis Federation in the Canada-MMF Framework Agreement that was executed on November 15, 2016, in order to advance reconciliation in a manner consistent with the 2013 Supreme Court of Canada decision in Manitoba Métis Federation v. Canada (Attorney General).

6. General

6.1 This Accord may only be amended in writing with the consent of the Parties.

6.2 Nothing in this Accord affects existing or future bilateral and tripartite processes that are in place between Canada and the Métis Nation or ongoing work of the Parties to address pressing socio-economic issues of the Métis Nation.

6.3 This Accord does not recognize, deny, define, affect or limit any Aboriginal or Treaty rights within the meaning of section 35 of the Constitution Act, 1982.


6.5 The Permanent Bilateral Mechanism would enable distinctions-based priority setting, joint policy development on shared priorities, and stock-taking between the Government of Canada and the Métis National Council and its Governing Members. However, proposals with significant policy and/or financial implications will require vetting through appropriate federal policy approvals process and that work will need to follow the policy and budgetary timelines of the Government of Canada.
IN WITNESS WHEREOF this Accord has been executed by the Parties as of the date first written above.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

The Right Honourable Justin Trudeau

The Honourable Carolyn Bennett
Minister of Indigenous and Northern Affairs

MÉTIS NATIONAL COUNCIL

Clément Chartier, President

Melanie Omeniho

MÉTIS NATION OF ONTARIO

Margaret Froh, President

France Picotte

MANITOBA METIS FEDERATION

David Chartrand, President

William Goodon

MÉTIS NATION-SASKATCHEWAN

Gerald Morin, Vice President

Glen McCallum

MÉTIS NATION OF ALBERTA

Audrey Poitras, President

Cecil Bellrose

MÉTIS NATION BRITISH COLUMBIA

Clara Morin Dal Col, President

Lissa Smith
ANNEX

Priorities Annotated Agenda

The following sections outline areas for co-development and negotiation by the Parties in their work on first year priorities:

1. Métis Nation Human Resources & Social Development

**Employment and Training:**
The Parties agree to work together to develop the next phase of Indigenous labour market programming. This will include exploring a multi-year Métis Nation-specific approach to and/or Accord in support of a renewed Aboriginal Skills and Employment Training Strategy (ASETS) or its successor strategy. Discussions will focus on important labour market elements including a discussion of issues related to youth, child care, labour market information, partnerships, governance, resources and mutual accountabilities.

The Parties will also discuss ways to strengthening Métis participation in the Strategic Partnership Fund as well as other Indigenous and non-Indigenous supports directed at improving the labour market conditions of Métis.

**Youth:**
The Parties agree to examine the current array of supports available to Métis youth (e.g., the Youth Employment Strategy), including accessing the information needed for them to gain the skills, work experience and abilities required to make a successful transition into the labour market or into post-secondary institutions. The parties will explore best practices to identify the need for programs or services that address the unique challenges of Métis Youth. The parties will also discuss strategies for improving Métis access to jobs, including those in the Canadian public service and in the federally regulated sector.

**Indigenous Early Learning and Child Care:**
The Parties will work together toward improving early learning supports for Métis children generally. The Métis National Council and Governing Members will participate in the development of a Canada-wide Early Learning and Child Care Framework to guide renewed programming approaches that could better support the early learning and child care distinct needs of Métis Nation children and families. The Parties will discuss how these needs can be met, including through a Métis Nation specific component of the Framework. The Parties will also explore the reach, accessibility and delivery of current federal initiatives for Métis families.

**Poverty Reduction:**
The Parties and the Métis Nation will work together to develop a Canadian Poverty Reduction Strategy that sets targets and timelines.

**Homelessness:**
The Parties will work together to ensure that a renewed Homelessness Partnering Strategy post-2019 can better serve clients who identify as Métis.

**Social Innovation:**
The Parties will explore opportunities to achieve better social and economic outcomes using emerging social innovation approaches, such as social finance and
social enterprise. This work will build on successful bilateral engagement to date, with the potential to contribute to the federal Social Innovation and Social Finance Strategy to be developed in 2017.

Education:

K to 12:
In conjunction with outcomes of the exploratory tables, the Parties will explore the need for and approaches to establishing linkages and cultural supports for Métis Nation students (K to 12) to improve their educational outcomes. The discussions at the national level will include an examination of current data on educational outcomes, identification of promising practices, and the level and supports for unique curriculum development to enhance educational outcomes. The discussions could include the need to develop better tracking mechanisms and the need for better intergovernmental protocols on Métis education (K to 12). The Parties will engage with representatives of provinces for these discussions.

Post-Secondary Assistance:
The Parties agree on the need to enhance Métis Nation students’ access to post-secondary educational resources to increase their participation in post-secondary education. Discussions will include exploring options for resourcing strategies and the need for new investments in Métis scholarships and bursaries.

Discussion will include examining current Métis access to student saving and financial assistance measures (i.e., Canada Student Loans and Grants, repayment assistance, Canada Education Savings Grant, and Canada Learning Bond) and how they support Métis Nation students.

Supports for Métis Nation Educational Institutes:
The Parties will explore ways of expanding the capacity of existing Métis Nation post-secondary institutions such as the Gabriel Dumont Institute, Louis Riel Institute and Rupertsland Institute and exploring the need for additional institutions. This will include identifying innovative programming for Métis students in these institutions. The Parties may agree to invite representatives of provinces to all or part of these discussions.

2. Fiscal Relations

Funding Mechanisms:
The Parties will work, on a government-to-government basis, to renew the fiscal relationship, based on cooperation and respect for Métis rights and move towards sufficient, predictable and sustained funding for the Métis Nation. This cooperative undertaking will aim to improve the federal approach to funding to ensure it is fair and equitable, while considering the unique needs and circumstances of the Métis Nation and its citizens.

Through a renewed fiscal relationship, the Parties seek:

- To establish funding approaches and financial transfer mechanisms that support government-to-government relationships;
- To meet shared accountability for closing the socio-economic outcomes gap between Métis Nation and other Canadians, including appropriate metrics and performance indicators;
- To promote the delivery of programs and services in an efficient and
cost-effective manner, including consideration of collective or cooperative arrangements; and
• To support the Métis Nation in furthering Métis-self-government.

3. Health and Wellness

The Parties will undertake to examine and consider options for acting on:
• Development of approaches to respond to specific health needs and priorities;
• Opportunities for Métis Nation to engage with the federal government in health and wellness policy, program development, and delivery;
• Continue and strengthen opportunities for Governing Members to undertake Métis-specific health research and surveillance to identify health issues; and
• Collaboration with federal and relevant provincial governments to work together, and within their jurisdictions, with Métis Nation leaders to determine areas of shared priority; and to improve the coordination, continuity and appropriateness of health services for Métis people.

4. Housing

The Parties will undertake the following:
• Indigenous and Northern Affairs Canada (INAC) and the Canada Mortgage and Housing Corporation (CMHC) will work with the Métis Nation to develop a Métis Nation-specific housing strategy; and,
• INAC, CMHC and the Métis Nation will work together to identify and advance opportunities including potential investments to improve Métis access to, delivery and control of, affordable and social housing.

5. Future Priorities

The Parties agree that the following topics are priorities in future years:
• Métis Section 35 Rights,
  Recognition and Reconciliation;
• Economic Development;
• Language and Culture;
• Métis Women;
• Environment;
• International;
• Residential Schools and Day Schools;
• Métis Veterans;
• Test case funding;
• Justice and Policing;
• Child and Family Services;
• Employment Equity;

and such other matters as mutually agreed to by the Parties.
Recent Legal Developments on Métis Consultation in Alberta
A Case Summary of MNA Local #125 v. Alberta

About This Document

This is a summary of the Alberta Court of Queen’s Bench’s (the “Court”) decision in *Fort Chipewyan Métis Nation of Alberta Local #125 v. Alberta*, 2016 ABQB 713. It has been prepared for the Métis Nation of Alberta (“MNA”). It is not legal advice and should not be relied on as such. It does not necessarily represent the views of the MNA, its Regions or its Locals.

Background on the Case

For over 80 years, the MNA has represented Alberta Métis. The MNA maintains a standardized and centralized registry of Métis citizens, which is financially supported by the federal government and presently includes over 33,000 individuals. As set out in the MNA Bylaws, these citizens (also known as members) voluntarily authorize the MNA to advance their collectively-held Métis rights, interests and claims. The MNA Bylaws also establish three levels of “Métis government,” which includes:

1. Local Councils (“Locals”) that include a President, Vice-President, Secretary and Treasurer who are elected by the members of the Local;

2. Regional Councils that include regionally elected Métis leadership (who also sit on the Provincial Council) as well as the Locals from within each of the MNA’s six Regions (see map); and

3. A Provincial Council that includes regionally and provincially elected leadership who are elected by members every four years through ballot box elections held province-wide.

While these structures are forms of Métis self-government, they currently use Alberta’s *Societies Act* in order to be recognized as separate legal entities for the purposes of accessing government funding, limiting potential liabilities, etc. Each Local is separately incorporated with their own set of bylaws, and some Locals maintain their own membership lists, which may not be the same as the MNA’s membership. The Fort Chipewyan Métis Nation of Alberta Local #125 (“FCM Local” or “Local”) is a part of the MNA’s overall governance structure, however, the Local brought forward this litigation in its individual capacity. Neither the MNA or MNA Region 1 (the MNA Region that the Local is located) participated in the litigation. Nor were the MNA’s Bylaws, membership registration system or authorization from its members *vis-à-vis* Crown consultation directly at issue in this case.
What Was the Case About?

This case involved an application for judicial review filed by the FCM Local of the decision of the Alberta Government ("Alberta" or the "Crown") that it did not owe the FCM Local a duty to consult—based on a credibly asserted Métis right—with respect to the Teck Frontier Oil Sands Mine Project (the "Project"). The Project is a proposed "truck-and-shovel" oil sands mine located about 110 kilometres north of Fort McMurray, in the Athabasca oil sands region of northeastern Alberta.

Teck Resources Limited ("Teck") is the Project’s proponent. As is required for a project of this nature, Teck submitted a draft Aboriginal Consultation Plan for the Project to Alberta. Teck’s proposed Aboriginal Consultation Plan identified the FCM Local in a list called "Group 1," meaning that Teck proposed to consult with the FCM Local to the fullest extent provided for in the Aboriginal Consultation Plan. Alberta, through Alberta Environment and Parks, reviewed Teck’s Aboriginal Consultation Plan and informed Teck that the FCM Local had no legally established rights. In response, Teck revised its Consultation Plan to state that “although Métis consultation requirements have yet to be clarified by the Government of Alberta, Teck has included potentially affected Métis communities...as a matter of best practice” (para. 11).

The FCM Local was actively involved in the environmental assessment process for the Project. Under Alberta’s regulatory regime, it submitted a Statement of Concern that asserted Métis rights to hunt, fish and gather would be adversely impacted by the Project, amongst other concerns. The Local attempted repeatedly to meet with the Crown about these issues. On several occasions, Alberta requested information from the Local about its membership requirements, the geographic scope of the community that the Local purported to represent, and information on the historic Métis community(ies) that the Local’s members claimed ancestral connections to, with a breakdown of the membership’s ties to those communities. The Local made several submissions to the Crown in attempts to respond to these questions.

After considerable correspondence back and forth, the Local received two letters from Alberta (the "Letters") indicating that that it had insufficient information to determine “whether there is a credible assertion that FCM [Local] is a rights-bearing Métis community,” therefore, the Crown’s duty to consult was not triggered. In response, the Local brought an application for judicial review, challenging the Letters. The Court was not asked to make determinations on the existence, scope or infringement of any Métis rights in the region protected by s. 35 of the Constitution Act, 1982. This case was only about whether a credible assertion of rights by the FCM Local had been made, sufficient to trigger Crown consultation obligations. (para. 109)
What Did the FCM Local Ask For?

The FCM Local asked the Court to do two things:

1. declare that Alberta was incorrect in making its decisions that no Crown duty to consult was owed to the Local and that Alberta breached the honour of the Crown in making these decisions; and

2. order that Alberta be required to consult and accommodate the Local regarding the Project prior to the Project being approved or constructed.

What the Court Said

The Supreme Court of Canada’s well-known three-part legal test for triggering the Crown’s duty to consult (known as the *Haida* test) requires the following: (1) the Crown has knowledge of an actual or asserted Aboriginal right or claim; (2) the Crown contemplates conduct that has the potential to affect that right or claim; and (3) there is a possibility that the contemplated Crown conduct could adversely impact the actual or asserted right.

In considering the *Haida* test in relation to “claims of unorganized Aboriginal collectives,” which the Court considered includes Métis communities that may not yet have their governance structures formally recognized by the Crown (para. 396), the trial judge held she needed to also determine whether there was credible evidence on two additional threshold questions:

- are the FCM Local’s members part of a rights-bearing Métis community (*i.e.*, do its members meet the requirements set out in *Powley*?)
- have the members of the rights-bearing Métis community authorized the FCM Local to represent it for the purposes of Crown consultation?

In effect, the Court added to the burdens for triggering the Crown’s duty to consult in relation to Métis communities by modifying the *Haida* test as follows:

1. the Crown has knowledge of an actual or asserted right of a Métis community (*i.e.*, credible evidence that a rights-bearing Métis community based on the *Powley* test can be established);
   a. there is credible evidence that the members of the organization asserting the right meet the requirements of the *Powley* test (*i.e.*, self-identify as Métis, are ancestral connection to the historic Métis community that grounds the rights assertion and they are accepted by the community); and
   b. there must be credible evidence that these Métis rights-holders authorize the organization for the purposes of Crown consultation (*i.e.*, express authorization vis-à-vis consultation as set out in bylaws, etc.)

2. the Crown contemplates conduct that has the potential to affect the actual or asserted right or claim; and

3. there is a possibility that the contemplated Crown conduct could adversely impact the actual or asserted right.

In order to justify the need for these additional requirements in the Métis context, the Court repeatedly relied on the following proposition from the Alberta Court of Appeal,
There is nothing ironic or improper about zealously guarding entrenched constitutional rights, and ensuring that only those truly entitled are allowed to assert those rights. Those who do enjoy such rights are entitled to expect that their rights will not be watered down by the recognition of unentitled claimants. (L’Hirondelle v. Alberta, para. 39)

The Court ultimately determined that, based on the evidence before it, the FCM Local had not demonstrated its members were a part of a rights-bearing Métis community, nor that it was clearly authorized on behalf of its members or by the Fort Chipewyan Métis Community (as the Court referred to it) for the purposes of Crown consultation (paras. 421-423). In arriving at this conclusion, the Court applied its modified Haida test as explained further below.

**Question 1: Is there a Fort Chipewyan Métis Community with Credible Rights Assertions that is owed Crown Consultation?**

Based on the “sparse and somewhat vague” record put forward by the FCM Local, the Court found that “the existence of an identifiable Métis community with a distinctive collective identity, living together in the same geographic area and sharing a common way of life, has not been demonstrated with a sufficient degree of continuity and stability to support a site-specific Aboriginal right.” (para. 354)

After reaching this conclusion based on the Local’s evidence, however, the Court went on to consider Alberta’s current Métis Harvesting Policy, which references Fort Chipewyan as both a historic and contemporary Métis community. Significantly, the Court held that “I will assume that the Alberta’s Métis Harvesting Policy does provide some evidence to establish on a prima facie basis that the Fort Chipewyan Métis Community is a rights-bearing community within a 160 km radius of Fort Chipewyan” (para. 365). Based on Alberta’s prima facie recognition, the Court went on to assess the FCM Local’s membership and whether it represented the Fort Chipewyan Métis Community for the purposes of Crown consultation.

**Question 1(a): Does the FCM Local Represent Métis Rights-Holders (i.e., members of the Fort Chipewyan Métis Community)?**

In Powley, the Supreme Court of Canada held that “as Métis communities continue to organize themselves more formally and to assert their constitutional rights, it is imperative that membership requirements become more standardized so that legitimate rights-holders can be identified … The inquiry must take into account both the value of community self-definition, and the need for the process of identification to be objectively verifiable.” (Powley, para. 29)

In this case, the Court considered the evidence provided by the FCM Local about its members and membership criteria, and concluded that it did not demonstrate that the Local’s members were members of a rights-bearing Métis community, however defined:

... I have come to the conclusion that the membership criteria in the FCM Local are vague and not objectively defined. There appears to be discretion exercised by the President or Vice-President in their review of applications prior to approval, but the basis for or criteria upon which that discretion must or can be exercised is not indicated. ... Overall, on the issue of identifying membership in the rights-bearing community, the information provided by the FCM Local to the Alberta Crown does not establish that membership in the FCM Local is determinable by the three Powley factors of ancestral connection, self-identification, and community acceptance. (paras. 358-359)
The Court went on to also make the point it did not accept FCM Local’s attempts to describe itself as being interchangeable with the Fort Chipewyan Métis Community:

I observe that in the written briefs of the FCM Local as well as the Record, there are numerous situations where the FCM Local appears to merge or blend its separate identity with the Fort Chipewyan Métis Community. In considering this judicial review application, it is important for this Court to clarify that it has treated the FCM Local as an organization registered under the Societies Act, which is distinctive from the Fort Chipewyan Métis Community. (para. 421)

**Question 1(b): Is the FCM Local Authorized to Represent the Fort Chipewyan Métis Community for the Purposes of Crown Consultation?**

The conclusion that the FCM Local was not interchangeable with the Fort Chipewyan Métis Community was not in itself fatal to the Local’s case. The Court restated previous direction from the Supreme Court of Canada that Aboriginal groups, including Métis communities, can authorize “organizations” to represent them for the purposes of asserting s. 35 rights and engaging in Crown consultation. The Court, therefore, asked whether the FCM Local was so authorized and set out the test for this authorization as follows at para. 397:

> the legal entity whose source of authority and nature of its representation are demonstrably determinable would have the appropriate legal standing to speak for the Fort Chipewyan Métis Community that is the Aboriginal collective right-bearer.

The Court provided two examples of other “organizations” that had satisfied this test in other litigation: the Labrador Métis Nation (“LMN”) and the North Slave Métis Alliance (“NSMA”). The Court quoted with approval from the Labrador Métis Nation case, stating that in that case:

> The LMN established through its memorandum and articles of association, including the preamble to its articles, that it had the authority of its 6,000 members in 24 communities to take measures to protect Aboriginal rights ... The court stated that anyone becoming a member of the LMN should be deemed to know they were authorizing the LMN to deal on their behalf to pursue the objects of the LMN, including those set out in the preamble to its articles of association. This was sufficient authorization to entitle the LMN to bring the suit to enforce the duty to consult in this case. (para. 374)

The Court also cited the *Enge* case, in which a similar conclusion was reached:

> In Enge, the court was satisfied that there was some evidence that the NSMA’s Constitution limited membership in the NSMA to Indigenous Métis who are descendants of the Métis people of the Northwest Territories who emerged prior to the Crown taking effective control of their traditional lands ... It also stated that the NSMA’s purposes and objects included promoting the recognition of the Aboriginal rights and title and treaty rights of the community ... and advancing and supporting their constitutional, legal, political, social, and economic rights. (para. 375)

In reviewing the facts of this case, however, the Court was unable to come to a similar conclusion with respect to the FCM Local. As noted above, the Court was unable to conclude that the Local represented Métis rights-holders (i.e., the members of the Fort Chipewyan Métis Community). Further, it was unable to conclude that the Fort Chipewyan Métis Community had authorized the FCM Local for the purpose of conducting consultations on its behalf:
... although an incorporated society may be able to represent an Aboriginal group, it must first demonstrate that it has authority to represent the group for that specific purpose. That authority, regarding the representation of Fort Chipewyan Métis Community, has not been established by the FCM Local on this Record. (para. 403)

The Court suggested that one way the FCM Local could have shown that it was properly authorized to conduct consultations would have been for such authorization to be explicit in its bylaws (para. 422). In this case, the Local’s bylaws were not even included in the evidence.

In order to bolster its conclusion that the FCM Local was not properly authorized by the Fort Chipewyan Métis Community, the Court noted the apparent gap between the actual membership of the Local and the estimated population of the rights-bearing Métis community (an population estimate that the FCM Local itself provided):

... it is difficult for this Court to accept (or reconcile) the claim by the FCM Local, having a membership that currently stands at 173 members, with the fact that the corporate entity purports to represent the Fort Chipewyan Métis Community, with a potential population of between 350 to 1000 individuals. In other words, a corporate entity with a membership of less than one-fifth of the total population of Fort Chipewyan Métis Community cannot claim to be representative of the entire Aboriginal community for the purpose of asserting Aboriginal rights and seeking consultation. (para. 411)

It also noted that the uncertainty resulting from the presence of other groups (i.e., the MNA, Regional Councils, other Locals, etc.) who, from time to time, purport to represent the same rights-bearing community was another reason that the Local’s claim to representativeness had not been made out:

Finally, the lack of clarity and apparent conflict between the FCM Local and the MNA Region 1 as to representation of the Fort Chipewyan Métis Community regarding the community’s Aboriginal right to consultation leads me to conclude that the issue of the FCM Local’s authority to act on behalf of that community is far from clear or well established. (para. 423)

Related to this uncertainty, the Court accepted Alberta’s argument “that it would amount to a waste of resources for the Alberta Crown to potentially have to consult with several separate organizations who state that they represent smaller or larger subsets of the same group in respect of the same interests and in the same project” (para. 408). The Court seems to suggest that the need for consultation efficiency can be a justification for not consulting with multiple groups claiming to represent the same rights-holders or community.

Other Issues the Court Addressed

The FCM Local’s Judicial Review Application was not Premature

Despite the fact that the regulatory process in relation to the Project was ongoing, the Court held that the judicial review application by FCM Local was not premature. Rather, the Local had received notice from Alberta that “confirmed” no consultation with FCM Local would be required regarding the Project, which was “incapable of being described as an ‘interlocutory’ decision. A decision that the duty to consult is not triggered might as well be an ‘effective end point’ for the Fort Chipewyan Métis Community…” (para. 139)
Engagement does not Equate to Recognition for Crown Consultation Purposes

The FCM Local alleged that Alberta had led it to believe that the duty to consult had already been triggered, and that Alberta would deal with it as the representative of the Fort Chipewyan Métis Community. The Court held that it was not the case that recognition was conferred on the FCM Local through “estoppel,” that is, through Alberta’s meetings with the Local and the acceptance of its Statement of Concern filed in relation to the Project, the government agreed that the Local was owed consultation. The Court held that these actions were not conclusive of FCM Local’s standing as an authorized representative of the rights-bearing Métis community (paras. 412-416).

Provincial and Federal Crowns Can Come to Different Conclusions on Consultation

The FCM Local was advised by the federal Crown, through the Canadian Environmental Assessment Agency, which was also reviewing the Project, that it had done a preliminary assessment that showed potential adverse impacts on the FCM Local’s Aboriginal rights, and as such, the duty to consult was triggered with respect to the Project (para. 18). The Court held that the duty to consult is divisible between the federal and provincial Crowns, that is, decisions on consultation made by one level of government does not deprive the other level of government of the ability “to conduct an independent evaluation as to whether or not the duty to consult … is triggered.” (para. 475)

Take-Aways and Conclusions

Fort Chipewyan provides several new considerations related to how the authorization to represent rights-bearing Métis communities for Crown consultation purposes will be considered by the courts. While the case is largely driven by the evidence (or lack thereof) on key issues, there are some key take-aways for Métis groups advancing consultation claims:

- Courts will accept that organizations can be authorized to advance collectively-held Métis rights, however, evidence that the group’s membership is objectively verifiable (i.e., membership requirements must follow a standardized process, membership determinations must not be susceptible to political interference, etc.) and that members are actually rights-holders (i.e., members self-identify as Métis, ancestrally connect to the historic Métis community grounding the right and are accepted by the community) will be required.

- If a group is planning on advancing Crown consultation claims on behalf of its members, it should obtain clear authorization to that effect (i.e., include the authorization in the organization’s bylaws, etc.). Related to this, Métis groups with multiple levels of governance must ensure there is clarity on who is authorized to do what in relation to consultation. Uncertainty on these issues and internal disputes may be used by governments to deny consultation.

- Courts will consider the representativeness of a Métis group asserting a consultation obligation (i.e., does the group represent a significant percentage of the total Métis community). In this case, the Court indicated that the Local’s representation of less than 1/5th of the total estimated population was not enough. As such, relying on Census numbers or over-exaggerating a community’s potential population may be unhelpful. For example, many individuals that identify as “Métis” in a Census may not meet the requirements of the Powley test, so these numbers should not be accepted as the starting points.
While this case is helpful in providing some judicial clarity on Métis consultation issues, it is also disconcerting in relation to the additional burdens being placed on Métis communities in their struggles to advance their rights and claims. It is a fact that most Métis communities receive little to no funding from either the federal or provincial governments to support their governance structures at the local, regional and provincial levels. Moreover, these Métis-created governance structures are often ignored or undermined by governments when their rights assertions become inconvenient. In effect, these new legal requirements become new judicially-created barriers to Métis successfully asserting their rights, which invoke constitutional obligations.

For example, while the Court tacitly acknowledges that there is very likely a rights-bearing Fort Chipewyan Métis Community (based on Alberta’s own Métis Harvesting Policy), it does not seem overly concerned that there is no process in place to ensure this community is actually consulted by Alberta. In effect, there may be credible Métis rights assertions, but no remedy (i.e., consultation) because of government neglect or indifference. Such an approach flies in the face of upholding the honour of the Crown. Moreover, while the Court is quick to point out the Local’s failings in dealing with consultation properly, it seems unconcerned about Alberta’s corollary duty to negotiate with the Métis on these issues, as recently reaffirmed by the Supreme Court of Canada in Daniels v. Canada that based on Haida, Tsilhqot’in Nation and Powley “a context-specific duty to negotiate when Aboriginal rights [is] engaged.” (para. 56)

It’s also worth noting that in Powley the Supreme Court of Canada rejected arguments from the Ontario Government that recognizing Métis rights and identifying Métis rights-holders was too difficult because of competing organizations claiming to represent Ontario Métis. The Supreme Court held, “the difficulty of identifying members of the Métis community [for the purposes of Crown consultation] must not be exaggerated as a basis for defeating their rights under the Constitution of Canada” (Powley, para. 49). In the same way, challenges in setting up effective and legally sound Métis consultation processes cannot justify constitutional duties being completely denied or ignored. Presently, Alberta has only implemented a consultation policy with the 8 Alberta Métis Settlements, which is not based on the recognition of Métis rights.

In the authors’ opinion, this case re-affirms the urgent need for Alberta to work with the MNA, which includes its Regions and Locals, to develop and implement a Métis consultation policy. Clearly, any consultation approach must be consensual amongst the MNA’s component parts. It will also need to be grounded on the MNA’s objectively verifiable registry system as well as the express authorization the MNA obtains from its members vis-à-vis consultation. This case should be seen as a call to action for all governments to work with the legitimate representatives of Métis communities to sort out consultation issues, not as a way to identify new strategies and roadblocks to limit Métis from accessing the constitutional rights and duties owed to them.

About the Authors

This summary was prepared by Jason Madden, Zachary Davis and Megan Strachan of the law firm Pape Saltte Teillet LLP, which represents the MNA and other Métis communities from Ontario westward. Over the last decade, Mr. Madden has been involved in much of the Métis rights litigation advanced in western Canada, including the Goodon, Lavolette, Belhumeur and Hirsekorn cases, and, has represented various Métis groups in all of the Métis rights related cases decided by the Supreme Court of Canada. Additional information about the authors and the firm is available at www.pstlaw.ca.

March 7, 2017
Recent Legal Developments on Métis Consultation in Alberta
A Case Summary of MNA Local #1935 v. Alberta

About this Document
This is a summary of the Alberta Court of Queen’s Bench’s (the “Court”) decision in Métis Nation of Alberta Association Fort McMurray Local 1935 v. Alberta, 2016 ABQB 712 (“Fort McMurray”). This document has been prepared for the Métis Nation of Alberta (“MNA”). It is not legal advice and should not be relied on as such. It does not necessarily represent the views of the MNA, its Regions or Locals.

Fort McMurray was heard in conjunction with Fort Chipewyan Métis Nation of Alberta Local #125 v. Alberta, 2016 ABQB 713 (“Fort Chipewyan”) and released at the same time. The Court wrote that Fort Chipewyan is a “jurisprudential supplement” to Fort McMurray. A separate case summary has been developed for Fort Chipewyan, which includes many of the defined terms used in this summary. These summaries should be read together.

What was the Case About?
Similar to Fort Chipewyan, the MNA Fort McMurray Local #1935 (“FM Local” or “Local”) is a part of the MNA’s overall governance structure, however, neither the MNA or MNA Region 1 (the MNA Region that the FM Local is located) participated in the case.

The FM Local initiated a judicial review (i.e., a legal challenge to a decision made by government) related to the consultation process for five projects. Three are oil sands exploratory projects, one is the renewal of a water licence, and another is an in situ oil sands commercial development (together, the “Projects”).

The FM Local was active in the regulatory process for each of these Projects, including submitting Statements of Concern. The Local asserted that the Projects had the potential to adversely impact Métis rights, and the Crown’s duty to consult was owed to it regarding the Projects.
Throughout the Projects’ regulatory review, Alberta continually stated that no duty to consult was triggered in relation to the FM Local because Alberta had insufficient information to show that there was a rights-bearing Métis community in the area, represented by the Local. This was communicated in three separate letters (the “Decision Letters” or “Decisions”).

What Did the FM Local Ask For?
The FM Local asked the Court to quash (i.e., cancel) the Decision Letters, and to direct Alberta to consult with the Local on the five Projects.

What the Court Said

*The Case in a Nutshell*

There was one main issue before the Court—whether Alberta breached the principles of procedural fairness in the process it followed to make the Decisions that the Crown’s duty to consult was not triggered with respect to the FM Local’s rights assertions. The Court concluded that Alberta had breached procedural fairness when making some of the Decisions. This was dealt with as preliminary issue (i.e., before the Court assessed whether Alberta’s Decisions were correct or reasonable). The Court directed Alberta to go back and make the successfully challenged Decisions again, ensuring procedural fairness and taking into account the Court’s reasoning in *Fort Chipewyan*.

*Question 1: Whether and What Level of Procedural Fairness was Owed in this Case?*

Imposing procedural fairness standards upon decision-makers is intended to ensure that decisions are not made arbitrarily, and that the authority entrusted to administrative decision-makers is not abused. The Court had to assess whether and what level of procedural fairness was required.

The same level of procedural fairness does not attach to every decision made by the Crown. In weighing the relevant factors and significance of the Decisions (i.e., dealing with constitutional rights), the Court found that in this situation strict requirements of procedural fairness—closer to the judicial or trial model—should be imposed on the Crown’s decision as to whether its duty to consult the FM Local was triggered:

> In [the Court’s] view, the circumstances that engaged the question of whether a duty to consult is triggered in relation to a constitutional Aboriginal right “require full and fair consideration of the issues, and the claimant and others who important interests are affected by the decision in a fundamental way must have meaningful opportunity to represent the various types of evidence relevant to their case and have it fully and fairly considered.” (para. 178)

The Court determined that “strict” adherence to procedural fairness was required in this case and framed the question before it as follows: “did [the Crown] … provide the FM Local with adequate and meaningful opportunity to present the various types of evidence relevant to their case and have it fully and fairly considered?” (para. 179)
Question 2: Was the Requisite Level of Procedural Fairness Met in this Case?

The short answer is “no” based on the various reasons that follow:

Alberta Failed to Provide a Promised Preliminary Assessment

The Court first dealt with a general failure of the Crown to live up to the legitimate expectations of the FM Local regarding the process that the Aboriginal Consultation Office (“ACO”) would follow in making determinations on the duty of consult in relation to the Projects.

The ACO, through an email to the FM Local, pledged to provide the FM Local with a preliminary assessment of the FM Local’s rights by “either late Monday or first thing Tuesday.” No preliminary assessment was ever provided, until the Crown’s Decision Letters that form the basis for this judicial review were issued. The Court held that this email constituted a representation to the FM Local as to the procedure that the ACO would follow, and that the ACO failed to adhere to that procedure: “It is unfair and procedurally wrong for the ACO to have reneged on a substantive promise of that nature in the context of FM Local’s claim to constitutionally recognized Aboriginal rights or interests.” (para. 174)

Alberta’s Process Leading to the Decision Letters was Flawed

Two of the Decision Letters were found to have breached the duty of procedural fairness. These letters are referred to as ACO Decision Letter 1 and 2, as they were called in the Court’s decision. Both were issued by the ACO and stated that “Alberta does not have enough information to determine whether there is a credible assertion that [the FM Local] is a rights-bearing community,” and therefore, consultation with the Local was not required. (para. 47)

While the Court was not convinced that ACO Decision Letter 2 contained a reviewable decision, it said to the extent that it did so, the reasoning from ACO Decision Letter 1 applied to it. Regarding ACO Decision Letter 1, the Court concluded that procedural fairness was breached by Alberta for to three reasons:

1. it failed to provide sufficient time to respond to the information it requested;
2. it failed to provide clear deadlines within its process for making the decision; and
3. it failed to demonstrate that it fully and fairly considered the information submitted to it by the FM Local ( paras. 215-216).

As part of the regulatory processes for the Projects, Alberta requested information from the Local about its membership requirements, the geographic scope of the community that the Local purported to represent, and information on the historic Métis community at issue. The Local responded to these requests by submitting additional evidence, but made clear that it was difficult to do so given the short deadlines Alberta imposed (usually of two weeks, though one five-day extension was granted with respect to one of the Projects).

The Court said the first flaw in Alberta’s process was that the deadlines given to provide the requested information were “extremely short, inflexible and appeared to be arbitrarily imposed.” (para. 196) The Court held that the information Alberta requested was detailed and would require “some time and expertise to answer.” (para. 196) In light of this, the two weeks imposed to provide the extensive information requested by Alberta was “unjustifiable.” (para. 213).
Second, the Court highlighted the lack of clarity and guidance provided by the ACO to the Local throughout the process, particularly with respect to applicable deadlines, holding that “the ACO should have been clearer at a very early stage about its procedure, including the deadlines it has imposed and any extensions granted.” (para. 211)

Third, the Court highlighted the ACO’s failure to demonstrate that it had fully and fairly considered all the information submitted by the FM Local. An ACO staff member noted in internal correspondence, for example, that she had not had time to look at all the evidence submitted by the Local. There was no further reference to whether Alberta had actually reviewed this evidence. After the date of this internal correspondence, the Local submitted additional information on December 10, 2014 at 11:49 am and 1:57 pm. It was on this same day, less than two and a half hours after the Local’s last submission, that ACO Decision Letter 1 was issued.

Finally, the ACO Decision Letter 1 did not disclose the information on which Alberta had relied to deny its duty to consult. The duty of fairness requires decision makers in the ACO’s position to disclose the information they rely on (paras. 200-201). Related to this, the Court wrote:

… the ACO has failed to satisfactorily demonstrate that the entirety of the information provided to it by the FM Local was reviewed, prior to its decision of December 10, 2014 as far as all the projects impacted by this decision are concerned. A situation where, in respect of Decision Letter 1, FM Local submits the requested information on December 10, 2014 and the ACO released its decision on the same day (December 10, 2014) is unacceptable. That evidence does not demonstrate that the ACO exercised its discretion to review evidence provided by the FM Local in a manner consistent with procedural fairness; and in fact, opens the door for the conclusion that it did not. (para 202)

Take-Aways and Conclusions

While the Court’s decision in Fort McMurray does not direct Alberta to alter its decision with respect to whether a duty to consult is owed to the FM Local, it does require that Alberta engage in better and more transparent decision-making processes when making such determinations in the future. This judicial guidance is helpful given the fact that Alberta continues to use a “case-by-case” approach to assessing Métis consultation assertions and ongoing challenges Alberta Métis have in dealing with the ACO. This guidance may also be helpful to Métis in other jurisdictions. In particular, the following principles flow from the case:

- The Crown’s assessment process regarding whether a Métis group is owed consultation based on its assertions demands strict procedural fairness given the interests as stake (i.e., constitutional rights and duties).

- If procedural commitments are made to a Métis group in a consultation assessment process (i.e., providing a preliminary assessment, etc.), the Crown must follow through on those commitments, or its process may be determined to be defective, requiring it to do it again.

- The Crown must provide clarity about its deadlines in the decision-making process as well as providing a reasonable amount of time for additional information to be gathered and submitted, along with providing clarity around extensions.
- The Crown must demonstrate that it has fully considered all the information provided by the Métis group making the consultation assertion prior to making its decision.

While these are procedural rather than substantive protections, they at least provide Métis groups with a sense of some of the safeguards they can ask for and rely on in having their consultation assertion assessments considered by governments.

As already highlighted in our *Fort Chipewyan* summary, these cases reinforce the urgent need for Alberta to work with the MNA, which includes its Regions and Locals, to develop and implement a Métis consultation policy. More specifically, this case also highlights some of the process related challenges the ACO’s “case-by-case” approach to Métis consultation creates.

Collectively, these cases should be seen as a call to action for all governments to work with the legitimate representatives of Métis communities to sort out consultation issues, not as a way to identify new strategies and roadblocks to limit Métis from accessing the constitutional rights and duties owed to them.

About the Authors

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March 7, 2017
MAR 13 2017

[Redacted] President Métis Local

[Redacted] President

[Redacted] President

Dear [Redacted]

Thank you for your letters

In your [Redacted] letter, you characterized the Government of Alberta’s [Redacted] discussions with [Redacted] Métis local associations as rights-based. In the context of [Redacted] Alberta does not currently engage in rights-based discussions with Local Associations. Our colleagues at Indigenous Relations lead a separate process to address credible rights assertions made by Métis communities. If you have not already done so, I would encourage you to contact Mrs. Kim Bastow at Indigenous Relations, to engage with the Government of Alberta in this process. Mrs. Bastow can be reached at 780-218-2830 (dial 310-0000 for a toll-free connection), or at kim.bastow@gov.ab.ca.
As you know, Honourable Richard Feehan, Minister of Indigenous Relations, has been given a mandate to engage with the Métis Nation of Alberta (MNA), Métis locals, and other non-Settlement Métis communities to proceed with the development of a non-Settlement Métis Consultation policy. Discussions regarding development of the policy are presently underway between Indigenous Relations and the MNA, and I encourage you to connect directly with the MNA regarding this process.

Sincerely,

Shannon Phillips
Minister

cc: Honourable Rachel Notley
Premier of Alberta

Honourable Margaret McCuaig-Boyd
Minister of Energy

Honourable Richard Feehan
Minister of Indigenous Relations

Andre Corbould
Deputy Minister of Environment and Parks

Ronda Goulden
Assistant Deputy Minister of Policy and Planning, Environment and Parks

Scott Duguid
Environment and Parks

Kim Bastow
Indigenous Relations
Principles respecting the Government of Canada’s relationship with Indigenous peoples

The Government of Canada is committed to achieving reconciliation with Indigenous peoples through a renewed, nation-to-nation, government-to-government, and Inuit-Crown relationship based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change.

Indigenous peoples have a special constitutional relationship with the Crown. This relationship, including existing Aboriginal and treaty rights, is recognized and affirmed in section 35 of the Constitution Act, 1982. Section 35 contains a full box of rights, and holds the promise that Indigenous nations will become partners in Confederation on the basis of a fair and just reconciliation between Indigenous peoples and the Crown.

The Government recognizes that Indigenous self-government and laws are critical to Canada’s future, and that Indigenous perspectives and rights must be incorporated in all aspects of this relationship. In doing so, we will continue the process of decolonization and hasten the end of its legacy wherever it remains in our laws and policies.

The implementation of the United Nations Declaration on the Rights of Indigenous Peoples requires transformative change in the Government’s relationship with Indigenous peoples. The UN Declaration is a statement of the collective and individual rights that are necessary for the survival, dignity and well-being of Indigenous peoples around the world, and the Government must take an active role in enabling these rights to be exercised. The Government will fulfill its commitment to implementing the UN Declaration through the review of laws and policies, as well as other collaborative initiatives and actions. This approach aligns with the UN Declaration itself, which contemplates that it may be implemented by States through various measures.

This review of laws and policies will be guided by Principles respecting the Government of Canada’s Relationship with Indigenous peoples. These Principles are rooted in section 35, guided by the UN Declaration, and informed by the Report of the Royal Commission on Aboriginal Peoples (RCAP) and the Truth and Reconciliation Commission (TRC)’s Calls to Action. In addition, they reflect a commitment to good faith, the rule of law, democracy, equality, non-discrimination, and respect for human rights. They will guide the work required to fulfill the Government’s commitment to renewed nation-to-nation, government-to-government, and Inuit-Crown relationships.

These Principles are a starting point to support efforts to end the denial of Indigenous rights that led to discrimination and assimilationist policies and practices. They seek to turn the page in an often troubled relationship by advancing fundamental change whereby Indigenous peoples increasingly live in strong and healthy communities with thriving cultures. To achieve this change, it is recognized that Indigenous nations are self-determining, self-governing, increasingly self-sufficient, and rightfully aspire to no longer be marginalized, regulated, and administered under the Indian Act and similar instruments. The Government of Canada acknowledges that strong Indigenous cultural traditions and customs, including languages, are fundamental to rebuilding Indigenous nations. As part of this rebuilding, the diverse needs and experiences of Indigenous women and girls must be considered as part of this work, to ensure a future where non-discrimination, equality and justice are achieved. The rights of Indigenous peoples, wherever they live, shall be upheld.

These Principles are to be read holistically and with their supporting commentary. The Government of Canada acknowledges that the understandings and applications of these Principles in relationships with First Nations, the Métis Nation, and Inuit will be diverse, and their use will necessarily be contextual. These Principles are a necessary starting point for the Crown to engage in partnership, and a significant move away from the status quo to a fundamental change in the relationship with Indigenous peoples. The work of shifting to, and implementing, recognition-based relationships is a process that will take dynamic and innovative action by the federal government and Indigenous peoples. These Principles are a step to building meaning into a renewed relationship.

1. The Government of Canada recognizes that all relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government.

This opening Principle affirms the priority of recognition in renewed nation-to-nation, government-to-government, and Inuit-Crown relationships. As set out by the courts, an Indigenous nation or rights-holding group is a group of Indigenous people sharing critical features such as language, customs, traditions, and historical experience at key moments in time like first contact, assertion of Crown sovereignty, or effective control. The Royal Commission on Aboriginal Peoples estimated that there are between 60 and 80 historical nations in Canada.

The Government of Canada’s recognition of the ongoing presence and inherent rights of Indigenous peoples as a defining feature of Canada is grounded in the promise of section 35 of the Constitution Act, 1982, in addition to reflecting articles 3 and 4 of the UN Declaration. The promise mandates the reconciliation of the prior existence of Indigenous peoples and the assertion of Crown sovereignty, as well as the fulfillment of historic treaty relationships.

This principle reflects the UN Declaration’s call to respect and promote the inherent rights of Indigenous peoples. This includes the rights that derive from their political, economic, and social structures and from their cultures, spiritual traditions, histories, laws, and philosophies, especially their rights to their lands, territories and resources.

Canada’s constitutional and legal order recognizes the reality that Indigenous peoples’ ancestors owned and governed the lands which now constitute Canada prior to the Crown’s assertion of sovereignty. All of Canada’s relationships with Indigenous peoples are based on recognition of this fact and supported by the recognition of Indigenous title and rights, as well as the negotiation and implementation of pre-Confederation, historic, and modern treaties.

It is the mutual responsibility of all governments to shift their relationships and arrangements with Indigenous peoples so that they are based on recognition and respect for the right to self-determination, including the inherent right of self-government for Indigenous nations. For the federal government, this responsibility includes changes in the operating practices and processes of the federal government. For Indigenous peoples, this responsibility includes how they define and govern themselves as nations and governments and the parameters of their relationships with other orders of government.


Reconciliation is an ongoing process through which Indigenous peoples and the Crown work cooperatively to establish and maintain a mutually respectful framework for living together, with a view to fostering strong, healthy, and sustainable Indigenous nations within a strong Canada. As we build a new future, reconciliation requires recognition of rights and that we all acknowledge the wrongs of the past, know our true history, and work together to implement Indigenous rights.

This transformative process involves reconciling the pre-existence of Indigenous peoples and their rights and the assertion of sovereignty of the Crown, including inherent rights, title, and jurisdiction. Reconciliation, based on recognition, will require hard work, changes in perspectives and actions, and compromise and good faith, by all.

Reconciliation frames the Crown’s actions in relation to Aboriginal and treaty rights and informs the Crown’s broader relationship with Indigenous peoples. The Government of Canada’s approach to reconciliation is guided by the UN Declaration, the TRCs Calls to Action, constitutional values, and collaboration with Indigenous peoples as well as provincial and territorial governments.

3. The Government of Canada recognizes that the honour of the Crown guides the conduct of the Crown in all of its dealings with Indigenous peoples.

The Government of Canada recognizes that it must uphold the honour of the Crown, which requires the federal government and its departments, agencies, and officials to act with honour, integrity, good faith, and fairness in all of its dealings with Indigenous peoples. The honour of the Crown gives rise to different legal duties in different circumstances, including fiduciary obligations and diligence. The overarching aim is to ensure that Indigenous peoples are treated with respect and as full partners in Confederation.

4. The Government of Canada recognizes that Indigenous self-government is part of Canada’s evolving system of cooperative federalism and distinct orders of government.

This Principle affirms the inherent right of self-government as an existing Aboriginal right within section 35. Recognition of the inherent jurisdiction and legal orders of Indigenous nations is therefore the starting point of discussions aimed at interactions between federal, provincial, territorial, and Indigenous jurisdictions and laws.

As informed by the UN Declaration, Indigenous peoples have a unique connection to and constitutionally protected interest in their lands, including decision-making, governance, jurisdiction, legal traditions, and fiscal relations associated with those lands.

Nation-to-nation, government-to-government, and Inuit-Crown relationships, including treaty relationships, therefore include: (a) developing mechanisms and designing processes which recognize that Indigenous peoples are foundational to Canada’s constitutional framework; (b) involving Indigenous peoples in the effective decision-making and governance of our shared home; (c) putting in place effective mechanisms to support the transition away from colonial systems of administration and governance, including, where it currently applies, governance and administration under the Indian Act; and (d) ensuring, based on recognition of rights, the space for the operation of Indigenous jurisdictions and laws.

5. The Government of Canada recognizes that treaties, agreements, and other constructive arrangements between Indigenous peoples and the Crown have been and are intended to be acts of reconciliation based on mutual recognition and respect.

This Principle recognizes that Indigenous peoples have diverse interests and aspirations and that reconciliation can be achieved in different ways with different nations, groups, and communities.

This principle honours historic treaties as frameworks for living together, including the modern expression of these relationships. In accordance with the Royal Proclamation of 1763, many Indigenous nations and the Crown historically relied on treaties for mutual recognition and respect to frame their relationships. Across much of Canada, the treaty relationship between the Indigenous nations and Crown is a foundation for ongoing cooperation and partnership with Indigenous peoples.

The Government of Canada recognizes the role that treaty-making has played in building Canada and the contemporary importance of treaties, both historic and those negotiated after 1973, as foundations for ongoing efforts at reconciliation. The spirit and intent of both Indigenous and Crown parties to treaties, as reflected in oral and written histories, must inform constructive partnerships, based on the recognition of rights, that support full and timely treaty implementation.

In accordance with section 35, all Indigenous peoples in Canada should have the choice and opportunity to enter into treaties, agreements, and other constructive arrangements with the Crown as acts of reconciliation that form the foundation for ongoing relations. The Government of Canada prefers no one mechanism of reconciliation to another. It is prepared to enter into innovative and flexible arrangements with Indigenous peoples that will ensure that the relationship accords with the aspirations, needs, and circumstances of the Indigenous-Crown relationship. The Government also acknowledges that the existence of Indigenous rights is not dependent on an agreement and, where agreements are formed, they should be based on the recognition and implementation of rights and not their extinguishment, modification, or surrender.

Accordingly, this Principle recognizes and affirms the importance that Indigenous peoples determine and develop their own priorities and strategies for organization and advancement. The Government of Canada recognizes Indigenous peoples’ right to self-determination, including the right to freely pursue their economic, political, social, and cultural development.

6. The Government of Canada recognizes that meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources.

This Principle acknowledges the Government of Canada’s commitment to new nation-to-nation, government-to-government, and Inuit-Crown relationships that builds on and goes beyond the legal duty to consult. In delivering on this commitment, the Government recognizes the right of Indigenous peoples to participate in decision-making in matters that affect their rights through their own representative institutions and the need to consult and cooperate in good faith with the aim of securing their free, prior, and informed consent.

The Supreme Court of Canada has clarified that the standard to secure consent of Indigenous peoples is strongest in the case of Aboriginal title lands. The Supreme Court of Canada has confirmed that Aboriginal title gives the holder the right to use, control, and manage the land and the right to the economic benefits of the land and its resources. The Indigenous nation, as proper title holder, decides how to use and manage its lands for both traditional activities and modern purposes, subject to the limit that the land cannot be developed in a way that would deprive future generations of the benefit of the land.

The importance of free, prior, and informed consent, as identified in the UN Declaration, extends beyond title lands. To this end, the Government of Canada will look for opportunities to build processes and approaches aimed at securing consent, as well as creative and innovative mechanisms that will help build deeper collaboration, consensus, and new ways of working together. It will ensure that Indigenous peoples and their governments have a role in public decision-making as part of Canada’s constitutional framework and ensure that Indigenous rights, interests, and aspirations are recognized in decision-making.

7. The Government of Canada recognizes that respecting and implementing rights is essential and that any infringement of section 35 rights must by law meet a high threshold of justification which includes Indigenous perspectives and satisfies the Crown’s fiduciary obligations.

This Principle reaffirms the central importance of working in partnership to recognize and implement rights and, as such, that any infringement of Aboriginal or treaty rights requires justification in accordance with the highest standards established by the Canadian courts and must be attained in a manner consistent with the honour of the Crown and the objective of reconciliation.

This requirement flows from Canada’s constitutional arrangements. Meaningful engagement with Indigenous peoples is therefore mandated whenever the Government may seek to infringe a section 35 right.

8. The Government of Canada recognizes that reconciliation and self-government require a renewed fiscal relationship, developed in collaboration with Indigenous nations, that promotes a mutually supportive climate for economic partnership and resource development.

The Government of Canada recognizes that the rights, interests, perspectives, and governance role of Indigenous peoples are central to securing a new fiscal relationship. It also recognizes the importance of strong Indigenous governments in achieving political, social, economic, and cultural development and improved quality of life.

This Principle recognizes that a renewed economic and fiscal relationship must ensure that Indigenous nations have the fiscal capacity, as well as access to land and resources, in order to govern effectively and to provide programs and services to those for whom they are responsible. The renewed fiscal relationship will also enable Indigenous peoples to have fair and ongoing access to their lands, territories, and resources to support their traditional economies and to share in the wealth generated from those lands and resources as part of the broader Canadian economy.

Principles respecting the Government of Canada's relationship with Indigenous peoples

A fairer fiscal relationship with Indigenous nations can be achieved through a number of mechanisms such as new tax arrangements, new approaches to calculating fiscal transfers, and the negotiation of resource revenue sharing agreements.

9. The Government of Canada recognizes that reconciliation is an ongoing process that occurs in the context of evolving Indigenous-Crown relationships.

This Principle recognizes that reconciliation processes, including processes for negotiation and implementation of treaties, agreements and other constructive arrangements, will need to be innovative and flexible and build over time in the context of evolving Indigenous-Crown relationships. These relationships are to be guided by the recognition and implementation of rights.

Treaties, agreements, and other constructive arrangements should be capable of evolution over time. Moreover, they should provide predictability for the future as to how provisions may be changed or implemented and in what circumstances. Canada is open to flexibility, innovation, and diversity in the nature, form, and content of agreements and arrangements.

The Government of Canada also recognizes that it has an active role and responsibility in ensuring the cultural survival of Indigenous peoples as well as in protecting Aboriginal and treaty rights.

The Government of Canada will continue to collaborate with Indigenous peoples on changes to federal laws, regulations, and policies to realize the unfulfilled constitutional promise of s.35 of the Constitution Act, 1982.

10. The Government of Canada recognizes that a distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of the First Nations, the Métis Nation and Inuit are acknowledged, affirmed, and implemented.

The Government of Canada recognizes First Nations, the Métis Nation, and Inuit as the Indigenous peoples of Canada, consisting of distinct, rights-bearing communities with their own histories, including with the Crown. The work of forming renewed relationships based on the recognition of rights, respect, co-operation, and partnership must reflect the unique interests, priorities and circumstances of each People.

Summary

The Government of Canada recognizes that:

1. All relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government.
2. Reconciliation is a fundamental purpose of section 35 of the Constitution Act, 1982.
3. The honour of the Crown guides the conduct of the Crown in all of its dealings with Indigenous peoples.
4. Indigenous self-government is part of Canada’s evolving system of cooperative federalism and distinct orders of government.
5. Treaties, agreements, and other constructive arrangements between Indigenous peoples and the Crown have been and are intended to be acts of reconciliation based on mutual recognition and respect.
6. Meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights on their lands, territories, and resources.
7. Respecting and implementing rights is essential and that any infringement of section 35 rights must by law meet a high threshold of justification which includes Indigenous perspectives and satisfies the Crown’s fiduciary obligations.
8. Reconciliation and self-government require a renewed fiscal relationship, developed in collaboration with Indigenous nations, that promotes a mutually supportive climate for economic partnership and resource development.
9. Reconciliation is an ongoing process that occurs in the context of evolving Indigenous-Crown relationships.
10. A distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of the First Nations, the Métis Nation and Inuit are acknowledged, affirmed, and implemented.

Date modified:
2017-07-19

July 20, 2017

Ms. Audrey Poitras, President
Métis Nation of Alberta
Suite 100, 11738 Kingsway Avenue
Edmonton AB T5G 0X5

Dear Ms. Poitras:

Métis Harvesting in Alberta Policy Review

We are pleased to advise you that Alberta will be undertaking a review of our Métis Harvesting in Alberta policy. We look forward to continuing to work collaboratively with the Métis Nation of Alberta and your members to review the policy.

Alberta is interested in discussions on:
- Where harvesting may take place;
- The extent of potential historical regional Métis communities and areas in Alberta;
- Potential roles for the Métis Nation of Alberta to participate in the identification of potential eligible Métis harvesters; and
- Opportunities for the Métis Nation of Alberta to participate in reporting subsistence harvesting information to better inform fish and wildlife management.

In reviewing the policy, we will be applying consistency with existing case law, including Powley, L’Hirondelle and Hirsekorn. The Departments of Environment and Parks and Indigenous Relations will be leading the work and have identified Travis Ripley and Carcey Hincz to undertake this policy review with your officials. We also recognize the context that Daniels brings to this policy review.

Mr. Ripley can be reached at 780-427-7763 or by email at travis.ripley@gov.ab.ca, and Mrs. Hincz can be reached at 780-638-4375 or by email at carcey.hincz@gov.ab.ca. We look forward to collaborating with you towards a positive outcome.

Sincerely,

Andre Corbould  
Deputy Minister  
Environment and Parks

Donavon Young  
Deputy Minister  
Indigenous Relations

cc: Ronda Goulden, Environment and Parks  
Travis Ripley, Environment and Parks  
Stan Rutwind, Indigenous Relations  
Carcey Hincz, Indigenous Relations