



**Statement of Principles on Crown Consultation and Accommodation
with Métis in Alberta**

*Unanimously Adopted by the 88th Annual General Assembly
August 6th & 7th, 2016*



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Executive Summary

The Métis Nation emerged—as a distinct Indigenous people—in the area of west central North America commonly known as the ‘Old Northwest,’ which includes what is now known as the Province of Alberta (“Alberta”).

As an Indigenous people, the Métis Nation possesses the inherent right of self-government and self-determination as well as all the other rights in relation to their lands, territory, culture, and way of life as recognized within the *United Nations Declaration on the Rights of Indigenous Peoples* and other international instruments.

In addition, the Métis Nation is one of the Aboriginal peoples of Canada within the meaning of s. 35 of the *Constitution Act, 1982*, which recognizes and affirms the Aboriginal and Treaty rights of the Indian, Inuit, and Métis peoples.

The Métis Nation of Alberta (“MNA”) represents the Métis Nation and its citizens within Alberta. The MNA has established a democratic governance structure, which includes a Provincial Council, Regional Councils (“Regions”), and Local Councils (“Locals”). Unless otherwise indicated, a reference to the MNA in this document is a reference to the Provincial Council, Regions, and Locals taken together.

The MNA currently has over 35,000 citizens from across Alberta. The MNA’s bylaws require its prospective citizens to demonstrate that they self-identify as Métis (as distinct from other Aboriginal peoples), are of historic Métis Nation ancestry, and are accepted by the Métis Nation in order to become registered. Through this objective and verifiable registration process, the MNA identifies and registers the citizens of Métis Nation living in Alberta based on its inherent right to determine its membership. Importantly, the MNA’s registration process requires the collection of the information needed to ensure that all MNA members connect ancestrally to an historic, rights-bearing Métis community.

To date, Canadian courts have recognized that Métis rights—as Aboriginal rights protected by s. 35—are collectively-held by regional Métis communities. Throughout Alberta, there exist regional rights-bearing Métis communities, which are inter-connected and indivisible parts of the Métis Nation as a whole and the Métis Nation in Alberta in particular. As set out in the MNA’s bylaws, when individual Métis apply to the MNA for citizenship they voluntarily authorize the MNA—consisting as it does of the Provincial Council, Regions, and Locals—to represent their collectively-held rights, interests, and claims as members of regional, rights-bearing Métis communities throughout Alberta.



Flowing from the honour of the Crown and s. 35, the Crown (both federal and provincial) has a duty to consult and accommodate rights-bearing Métis communities through their authorized representatives when governments contemplate conduct that may adversely affect asserted or established Métis rights, interests, and claims. In Alberta, as a result of the authorization process described above, this consultation and accommodation must take place with the MNA through its relevant governance structures.

Currently, the Government of Alberta (“GoA”) has a policy that requires consultation with the Métis Settlements to address potential impacts of contemplated government conduct on Métis Settlement members’ harvesting and traditional use activities, but the GoA’s approach to consultations with regional, rights-bearing Métis communities remains *ad hoc* and discretionary. As a result, Crown consultation with the regional, rights-bearing Métis communities in Alberta occurs rarely, if at all.

At the provincial, regional, and local levels, the MNA has consistently and repeatedly advocated for the collaborative development and implementation of a GoA policy that would ensure meaningful consultation with regional, rights-bearing Métis communities in Alberta, consistent with the honour of the Crown and s. 35’s purpose of advancing reconciliation.

In October 2015, Alberta’s Minister for Indigenous Relations received Cabinet approval to develop a Métis consultation policy on the basis that an eventual policy needs the MNA’s support, including the support of the MNA’s citizens, Locals, Regions, and Provincial Council. This opportunity has been viewed as a significant breakthrough for advancing Métis rights in Alberta, since for many years the GoA has refused to consult with Métis.

As a starting point, the MNA initiated internal consultations in the late fall of 2015 in order to begin to develop a consensual model for Métis consultation supported by MNA members and governance structures, including Local, Regional, and Provincial Councils. These preliminary consultations included holding workshops with every MNA Region, to which regional and local leadership were invited.

As a follow up to these workshops, a Technical Working Group (“TWG”) made up of representatives of every MNA Region was established. The TWG was mandated “to reach consensus on the main substantive points the MNA Provincial Office, Regions and Locals want to see reflected in provincial government policy for consultation with Métis, with the goal of providing for recognition of the need to consult with s. 35 rights-bearing Métis collectives in the manner they choose to be consulted.” TWG members were tasked with reporting back to their respective Regional Councils.



The product of this preliminary consultation process is the attached “Statement of Principles on Crown Consultation and Accommodation with Métis in Alberta” (“Statement of Principles”), which is intended to serve as a statement of the issues and interests that an eventual GoA Metis consultation policy will have to address. It is hoped that the Statement of Principles will serve as a starting point for negotiations between the Provincial, Regional, and Local Councils leading to consensus based regional consultation protocols. These regional consultation protocols would define the process for consultations and the negotiation of accommodations—including who will take the lead in such processes in a given situation—for specific geographic areas in the province.

On August 7th, 2016, the 88th MNA Annual General Assembly unanimously adopted this Statement of Principles pursuant to the following resolution:

WHEREAS the Crown has a constitutional obligation to consult with and, where appropriate, accommodate Métis in Alberta when governments contemplate conduct that may adversely affect asserted or established Métis rights, interests, and claims;

AND WHEREAS the Government of Alberta currently has no formal policy requiring consultation with Métis in Alberta not living on the Métis Settlements, and the Government of Alberta’s approach to consultation with Métis is ad hoc and discretionary;

AND WHEREAS at the provincial, regional, and local levels, the Métis Nation of Alberta has consistently and repeatedly advocated for the collaborative development and implementation of a Government of Alberta policy that would ensure meaningful consultation with Métis in Alberta;

AND WHEREAS the Statement of Principles on Crown Consultation and Accommodation with Métis in Alberta (“Statement of Principles,” attached hereto as Appendix A) was developed and agreed to by a Technical Working Group made up of representatives of every Region of the Métis Nation of Alberta in order to serve as a statement of the principles to which Crown consultation and accommodation with Métis in Alberta must adhere;

THEREFORE BE IT RESOLVED that the Annual General Assembly of the Métis Nation of Alberta endorses the Statement of Principles and mandates the Métis Nation of Alberta to undertake the following:

- 1) Negotiations with the Government of Alberta to develop a provincial government policy consistent with the Statement of Principles requiring Crown consultation with Métis in Alberta;*



- 2) *Negotiations between the Provincial, Regional, and Local Councils to develop consensus based regional consultation protocols consistent with the Statement of Principles that will define the processes by which the Crown and industry ought to consult with Métis in specific geographic areas of Alberta; and*
- 3) *Preparation of proposed amendments to the Métis Nation of Alberta's Policy Guidelines Regarding the Duty to Consult and Accommodate Métis Aboriginal Rights and Interests in Alberta (July 2009) to ensure its consistency with the Statement of Principles.*

Moved by Cliff Supernault

Seconded by Karen Collins

Carried Unanimously

As set out in the resolution above, this Statement of Principles will now guide the MNA's discussions with the GoA as well as future consultation and work within the MNA to operationalize this document.



Background

In 1982, Métis rights, like all Aboriginal rights, were constitutionally protected by s. 35 of the *Constitution Act, 1982*, and the Métis were expressly recognized as one of Canada's Aboriginal peoples.¹ This was the culmination of the Métis Nation's long struggle to be recognized as a distinct Aboriginal people and to have their rights, interests, and claims constitutionally entrenched.

While the Métis Nation had hoped that the Crown would negotiate with the MNA and other Métis governments to determine, recognize, and respect Métis rights, constitutional discussions in the late 1980s and early 1990s failed. As a result, in the mid 1990s, Métis began to turn to the courts to ensure that s. 35's purpose was met.

In 2003, in *R. v. Powley*, the Supreme Court of Canada confirmed that s. 35 recognizes and affirms the Aboriginal rights of the Métis and that “[t]he purpose and the promise of s. 35 is to protect practices that were historically important features of these distinctive communities and that persist in the present day as integral elements of their Métis culture.”²

On the heels of the *Powley* decision, in 2004, the Supreme Court of Canada held in *Haida* that the honour of the Crown requires that the rights claimed by Aboriginal groups who have yet to conclude treaties be determined, recognized, and respected. This obliges “the Crown, acting honourably, to participate in processes of negotiation” and, while these processes are ongoing, to consult and, where appropriate, accommodate Aboriginal interests.³

Following *Haida*, the MNA began to work on ensuring that the Crown's duty to consult the Métis in Alberta was fulfilled. In July 2009—after province-wide consultations with MNA citizens and local, regional, and provincial governance structures—the MNA's Annual General Assembly (“AGA”) unanimously adopted the *Policy Guidelines Regarding the Duty to Consult and Accommodate Métis Aboriginal Rights and Interests in Alberta* (“Policy Guidelines”).

¹ *Constitution Act, 1982*, s. 35.

² *R. v. Powley*, [2003] 2 S.C.R. 207 at para. 13.

³ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511 at para. 25.



These *Policy Guidelines* set out how the MNA’s various governance structures—Provincial Council, Regions, and Locals—each have a role to play with respect to ensuring that meaningful Crown consultation occurs in order to protect collectively-held Métis rights, interests, and claims throughout Alberta. The *Policy Guidelines* frame the MNA’s current vision of how Crown consultations with rights-bearing Métis communities ought to be conducted in Alberta.

Unfortunately, unlike in other provinces, neither the GoA nor the Federal Government (“Canada”) worked with the MNA or provided any capacity support to the MNA—whether at the provincial, regional, or local level—in order to implement the *Policy Guidelines*. Instead, up until recently, both levels of government have largely ignored the need to ensure meaningful consultation and accommodation with Métis communities in Alberta.

Notably, in some areas of Alberta, MNA Regions and Locals have pushed forward on consultation. The lack of clear and consistent government recognition or support, however, has led to mixed results. The GoA’s current approach to consultation with Alberta’s regional, rights-bearing Métis communities as represented by the MNA—whether at the provincial, regional, or local level—remains discretionary and *ad hoc*. The GoA does not direct project proponents to consult with the MNA. This creates serious challenges, and is a breach of the constitutional duties the GoA owes regional, rights-bearing Métis communities across Alberta.

The MNA, whether at the provincial, regional, or local level, does not receive the same notice of proposed projects in Métis traditional territories as do First Nations or the Métis Settlements. Nor does the MNA receive capacity support for Crown consultation, as do First Nations and the Métis Settlements. In fact, the MNA receives no core capacity funding for Crown consultation from either the federal or provincial governments.

The newly elected provincial NDP government recognized the need to do more on Métis consultation. After significant lobbying efforts by the MNA, including its Regions and Locals, in October 2015 the Alberta Minister for Indigenous Relations received Cabinet approval to develop a Métis consultation policy with the MNA for “non-Settlement Métis communities.” This represented a significant breakthrough after years of the government refusing to engage in any substantive discussions regarding Crown-Métis consultation.

Flowing from this Cabinet mandate, on January 19, 2016, senior officials from the GoA’s departments of Indigenous Relations and Justice met with representatives of the MNA. During this meeting, the GoA agreed to work with the MNA to develop a Métis consultation policy on the basis that support for this work would be garnered from the MNA’s Locals. The MNA hopes that this new policy will establish a framework for meaningful consultations with the regional, rights-bearing Métis communities in Alberta.



In anticipation of this formal mandate being obtained, the MNA began to have discussions on this important initiative and develop a broader Métis community engagement plan. As such, workshops were held between October 2015 and February 2016 with each of the MNA's six Regions. Representatives of each Region's constituent Locals were invited to these workshops. These sessions were well attended by both local and regional MNA leadership from across the province.

As an outcome of these workshops, a Technical Working Group ("TWG") made up of representatives of every MNA Region was established. The TWG was mandated "to reach consensus on the main substantive points the MNA Provincial Office, Regions, and Locals want to see reflected in provincial government policy for consultation with Métis, with the goal of providing for recognition of the need to consult with s. 35 rights-bearing Métis collectives in the manner they choose to be consulted." TWG members were tasked with reporting back to their respective Regional Councils.

Based on the feedback received at the regional workshops, the TWG developed the attached "Statement of Principles" over the course of six in person meetings and four teleconferences. The Statement of Principles build on the *Policy Guidelines* that were adopted by the MNA Annual General Assembly but take into account legal, policy, and on-the-ground developments that have occurred since 2009, including the fact that some Locals have developed internal capacity to deal with consultation issues. In developing the Statement of Principles, the TWG made its decisions by consensus. All of the TWG's members support the Statement of Principles as drafted.

The Statement of Principles is intended to be used as a mandate and guide for the MNA's engagement with the GoA to develop a policy regarding consultation and accommodation with regional rights-bearing Métis communities in Alberta. It will serve as a clear statement of the issues that an eventual provincial policy must address and of the nature of the policy that the MNA is mandated to support.

The Statement of Principles is also intended to serve as a framework that will structure further work internal to the MNA. In particular, it is hoped that the Statement of Principles will serve as a starting point for negotiations between the Provincial, Regional, and Local Councils leading to consensus based regional consultation protocols. These regional consultation protocols would define the process for consultations and the negotiation of accommodations—including who will take the lead in such processes in a given situation—for specific geographic areas in the province.

The MNA is now in the process of seeking further input on the Statement of Principles from MNA citizens, Locals, Regions, and Provincial Council. The position of the MNA on this matter will not be considered final or official unless and until the Statement of Principles is approved at the MNA's Annual General Assembly—the MNA's highest governing authority—where all citizens have an opportunity to participate.



Statement of Principles

Whereas the Métis Nation emerged—as a distinct Indigenous people—in the area of west central North America commonly known as the ‘Old Northwest,’ which includes what is now known as the Province of Alberta (“Alberta”);⁴

Whereas, as an Indigenous people, the Métis Nation possesses the inherent right of self-government and self-determination as well as all the other rights in relation to their lands, territory, culture, and way of life as recognized within the *United Nations Declaration on the Rights of Indigenous Peoples* and other international instruments;

Whereas the Métis Nation is one of the Aboriginal peoples of Canada within the meaning of s. 35 of the *Constitution Act, 1982*, which recognizes and affirms the Aboriginal and Treaty rights of the Indian, Inuit and Métis peoples;

Whereas the Métis Nation of Alberta (“MNA”) represents the Métis Nation and its citizens within Alberta and, as set out in its bylaws, consists of a Provincial Council, Regional Councils (“Regions”), and Locals Councils (“Locals”);⁵ for greater certainty, unless otherwise indicated, a reference to the MNA in this document is a reference to the Provincial Council, Regions, and Locals taken together;

Whereas to date Canadian courts have recognized that Métis rights—as Aboriginal rights protected by s. 35—are collectively-held by regional Métis communities, and whereas throughout Alberta there exist regional, rights-bearing Métis communities, which are inter-connected and indivisible parts of the Métis Nation as a whole and the Métis Nation in Alberta in particular;

Whereas, as set out in the MNA’s bylaws, individual Métis who apply to the MNA’s registry for citizenship voluntarily authorize the MNA—consisting as it does of a Provincial Council, Regions, and Locals—to represent their collectively-held rights, interest, and claims as members of regional, rights-bearing Métis communities throughout Alberta;

Whereas, based on the authorization given to it by its citizens, the MNA’s Provincial Council, Regions, and Locals are mandated to work together to represent the Métis in Alberta and the regional, rights-bearing Métis communities throughout the province;

⁴ *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 2; Bylaws of the Métis Nation of Alberta Association (Updated – December 18, 2015) at art. 3.2(c).

⁵ Bylaws of the Métis Nation of Alberta Association (Updated – December 18, 2015) at art. 12.1.



Whereas, flowing from the honour of the Crown and s. 35, the Crown (both federal and provincial) has a duty to consult and accommodate the MNA as the authorized representative of regional, rights-bearing Métis communities throughout Alberta when governments contemplate conduct that may adversely affect asserted or established Métis rights, interests, and claims;⁶

Whereas the MNA has consistently and repeatedly advocated for the development and implementation of a policy that would ensure meaningful consultation with regional, rights-bearing Métis communities in Alberta, consistent with the honour of the Crown and s. 35's purpose of advancing reconciliation;

Whereas the current federal and provincial governments have pledged to implement the *United Nations Declaration on the Rights of Indigenous Peoples*, which requires States to consult and cooperate in good faith with the Indigenous peoples through their own representative institutions in order to obtain their free and informed consent prior to the adopting legislative or administrative measures or approving projects that may affect them or their lands or territories and other resources;⁷

Whereas, in October 2015, Alberta's Minister for Indigenous Relations received Cabinet approval to develop a Métis consultation policy with the MNA on the basis that an eventual policy needs the support of the MNA; and

Whereas, as a starting point, the MNA initiated internal consultations in the late fall of 2015 in order to begin to develop a consensual model for Métis consultation, which is supported by MNA members as well as its governance structures, including at the local, regional, and provincial levels;

The MNA adopts the following Statement of Principles on Crown Consultation and Accommodation with Métis in Alberta, which are interrelated, inform each other, and must be read as a whole:

- 1) **Purpose of Métis Consultation and Accommodation in Alberta.** Consultation must allow for both the MNA and the Crown to understand and assess the adverse effects of proposed developments or policies on Métis rights, interests, and claims in Alberta. Accommodation, for its part, must seek to prevent or limit and address these adverse effects through consent seeking engagements that aim to achieve mutually agreed upon arrangements.

⁶ *Behn v. Moulton Contracting Ltd.*, [2013] 2 SCR 227 at para. 30.

⁷ *United Nations Declaration on the Rights of Indigenous Peoples*, arts. 19 & 32(2).



- 2) **Objectives of Métis Consultation and Accommodation.** In engaging in the consultation and accommodation process, the MNA seeks five interrelated objectives:
- a. **Protection of the Environment.** The environment sustains us all, and a healthy environment is essential to the well-being and vitality of all Albertans, including the Métis. Concern for and cooperation to ensure the protection of the environment must be a guiding principle underlying all Crown consultation with and accommodation of the rights-bearing Métis communities in Alberta.
 - b. **Protection of Métis Rights, Claims, and Interests.**⁸ Consultations must not only seek to assess the actual and potential effects of a proposed development or policy on Métis traditional land use, but also on collectively-held Métis rights, claims, and interests, as well as the exercise of rights and traditional practices and customs by present and future generations of Métis.⁹ Accommodations must serve to protect Métis rights, claims, and interests.
 - c. **Protection of Métis Culture, Traditions, and Quality of Life.** The Métis are a distinct Aboriginal people with a special relationship to their lands and traditional territories as well as distinctive practices, customs, and traditions in relation to these lands and territories.¹⁰ This distinctive Métis culture, traditions, and quality of life must be protected and enhanced through consultation and accommodation for the benefit of Métis children, youth, families, and communities today as well as for generations to come. Consultation must not be limited to effects on current harvesting and traditional use activities.¹¹ Consultation must include consideration of cumulative impacts.¹²

⁸ *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, [2010] 2 SCR 650 at para. 34.

⁹ *Gitxaala Nation v. Canada*, 2016 FCA 187 at para. 317; Métis Nation of Alberta, *Policy Guidelines Regarding the Duty to Consult and Accommodate Métis Aboriginal Rights and Interests in Alberta* (July 2009) at p. 3, point 4.

¹⁰ *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, [2011] 2 SCR 670 at para. 75.

¹¹ *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, [2010] 2 SCR 650 at para. 47.

¹² *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388 at para. 1; *Brokenhead Ojibway First Nation v. Canada (Attorney General)*, 2009 FC 484 at para. 28.



d. **Advancing Métis Self-Determination and Self-Government.**

Consultation and accommodation processes must work to support and advance the Métis Nation's inherent right to self-determination and self-government. Alberta Métis, through the MNA, have developed unique self-government structures specific to their needs and circumstances. This self-government model of interrelated local, regional, and provincial levels must be respected and enhanced through consultations and accommodation. They must not be replaced by pan-Aboriginal or colonial models, such as the *Indian Act* band model of governance.

e. **Moving Towards a Modern Day Treaty.** Section 35 of the *Constitution Act, 1982* demands that Métis rights, interests, and claims in Alberta be determined, recognized, and respected through a process of honourable negotiations leading to a modern day treaty between the Crown and the MNA, consisting as it does of a Provincial Council, Regions, and Locals.¹³ Consultation and accommodation serves to protect rights, interests, and claims pending their resolution through negotiations between the Crown and the MNA.¹⁴

3) **Métis Rights are Collective Rights.** Métis rights, like all Aboriginal rights, are held collectively rather than individually.¹⁵ To date, the courts have recognized that Métis rights are collectively held by Métis communities, which are regional in nature as opposed to settlement based.¹⁶ These regional, rights-bearing communities are represented by the MNA, but do not necessarily correspond to the MNA's current administrative boundaries. Some collectively held Métis rights—such as land use rights—are exercised by individuals; other collectively held Métis rights—such as the inherent right to self-determination, including self-government—are exercised by the MNA, whether at the provincial, regional, or local levels.

4) **The Crown's Duty to Consult is Owed in Relation to Rights, Claims, and Interests.** The Crown's duty to consult and accommodate—which is triggered when government has knowledge, real or constructive, of a Métis right, interest, or claim and contemplates conduct that might adversely affect it¹⁷—is owed to Aboriginal rights-holding collectives. Accordingly, the Crown's duty is owed to

¹³ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511 at paras. 25.

¹⁴ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511 at paras. 20, 25.

¹⁵ *R. v. Sparrow* [1990] 1 SCR 1075 at 1112; *R. v. Powley*, [2003] 2 SCR 207 at para. 12.

¹⁶ *R v Hirsekorn*, 2013 ABCA 242 at para. 63.

¹⁷ *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, [2010] 2 SCR 650 at para. 3.



regional, rights-bearing Métis communities.¹⁸ While Métis citizens may personally exercise some collectively held Métis rights—such as land use rights—the Crown’s duty is owed to the collective that holds the rights—the regional, rights-bearing Métis community. An individual’s personal interests related to Métis rights are addressed through the Crown’s consultation and accommodation with the regional, rights-bearing Métis community to which that individual belongs.

- 5) **The MNA is Authorized to Deal with Crown Consultation on behalf of Regional, Rights-Bearing Métis Communities in Alberta.** Consultation respecting potential adverse impacts on Métis rights, claims, and interests must take place with the duly authorized representative of rights-bearing Métis communities.¹⁹ The MNA—consisting as it does of a Provincial Council, Regions, and Locals—is the sole duly authorized representative of Alberta’s rights-bearing Métis communities. The MNA receives this express authorization from its citizens, who join the MNA voluntarily²⁰ and who, by doing so, accept that the MNA will act on their behalf to advance the objectives set out in the MNA’s bylaws.²¹ Among other things, the MNA’s bylaws state that the MNA’s objective is “[t]o promote, pursue and defend aboriginal, legal, constitutional, and other rights of Métis in Alberta and Canada.”²² MNA citizens from across Alberta have authorized the MNA to act on their behalf in this way.
- 6) **The MNA is Empowered to Determine who will Conduct Consultations with the Crown on behalf of Potentially Affected Rights-Bearing Métis Communities.** The Crown must engage with Aboriginal groups at the level requested by the groups themselves.²³ Whether consultations between the Crown and the MNA will be led by the MNA at the provincial, regional, or local level is

¹⁸ *Behn v. Moulton Contracting Ltd.*, [2013] 2 SCR 227 at para. 30.

¹⁹ *Behn v. Moulton Contracting Ltd.*, [2013] 2 SCR 227 at para. 30; Métis Nation of Alberta, *Policy Guidelines Regarding the Duty to Consult and Accommodate Métis Aboriginal Rights and Interests in Alberta* (July 2009) at p. 3, point 2; Government of Alberta, *The Government of Alberta’s Guidelines on Consultation with Metis Settlements on Land and Natural Resource Management 2016* at p. 4, bullet 1.

²⁰ *Métis Nation of Alberta v. Boucher*, 2009 ABCA 5 at para. 7.

²¹ *Labrador Métis v. Newfoundland*, 2007 NLCA 75 at paras. 46 & 47.

²² Bylaws of the Métis Nation of Alberta Association (Updated – December 18, 2015) at art. 1.3; see also Métis Nation of Alberta, *Policy Guidelines Regarding the Duty to Consult and Accommodate Métis Aboriginal Rights and Interests in Alberta* (July 2009), p. 3.

²³ *Adams Lake Indian Band v. British Columbia*, 2011 BCSC 266 at paras. 40 & 41 rev’d 2012 BCCA 333 (but not on this point).



a decision internal to the MNA.²⁴ Since the MNA's current administrative boundaries may not necessarily align with the location and territories of regional rights-bearing Métis communities, Locals, Regions, and, where necessary, the Provincial Council, must work together to ensure the Crown's duty is meaningfully discharged. Alberta must respect these choices and recognize the legitimacy of all levels of the MNA government with respect to the distinct and inter-related roles they play in the consultation process and ensure that all levels of MNA government have access to the procedural means they need to protect Métis rights, claims, and interests (i.e., standing to raise concerns before relevant regulators).

- 7) **The Responsibilities of the MNA's Provincial, Regional, and Local Councils Must be Clearly Defined.** The respective jurisdictions of the Provincial Council, Regions, and Locals in relation to consultation and accommodation—including who will take the lead in any given consultation process—must be clearly defined and respected. Determinations regarding what level of the MNA structure ought to carry out consultations and associated negotiations with respect to accommodation in a given situation must be made pursuant to a well-defined, transparent, and efficient process and structure. This process needs to recognize regional variations and be sufficiently flexible to allow consultation to be conducted differently in different areas of the province. This can be achieved through agreements—such as **Regional Consultation Protocol Agreements**—that would outline in detail and in a manner consistent with these principles the roles and responsibilities to be assumed by each party in consultations and with respect to accommodations.²⁵ Within this framework, all levels of the MNA that wish to develop capacity to participate in consultations will be encouraged to do so in a manner consistent with the principles of coordination and cooperation as expressed in point 18 below.

- 8) **Fulfilment of the Crown's Obligations.** The consultation and accommodation process must ensure that the obligations incumbent on the Crown as a result of its contemplated conduct are fully discharged. The Crown may delegate the procedural aspects of consultation to industry proponents seeking a particular development, but the ultimate legal responsibility for consultation and accommodation rests at all times with the Crown.²⁶ The Crown's duty to consult

²⁴ Métis Nation of Alberta, *Policy Guidelines Regarding the Duty to Consult and Accommodate Métis Aboriginal Rights and Interests in Alberta* (July 2009) at p. 6; *Behn v. Moulton Contracting Ltd.*, [2013] 2 SCR 227 at para. 30.

²⁵ Métis Nation of Alberta, *Policy Guidelines Regarding the Duty to Consult and Accommodate Métis Aboriginal Rights and Interests in Alberta* (July 2009) at p. 8.

²⁶ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511 at para. 53.



also consists of a duty to accommodate, which is meant to avoid, minimize, mitigate, and/or compensate for adverse impacts and ensure the potentially affected rights-bearing community a role in decision-making regarding developments that will affect its territory.²⁷

- 9) **Meaningful Process.** All parties to consultations must demonstrate good faith, reasonableness, openness, and responsiveness with the intention of substantially addressing the concerns expressed by the MNA—whether at the provincial, regional, or local level—through a meaningful process.²⁸ The process must clearly define who the MNA ought to address as well as the role and responsibilities of these individuals.
- 10) **Flexibility.** The consultation process needs to be sufficiently flexible to accommodate various types of contemplated Crown conduct and project applications, as well as the differing preferred means of conducting consultations with regional, rights-bearing Métis communities in Alberta.
- 11) **Democratic Values.** Consultation processes must provide all Métis who are members of potentially affected rights-bearing communities an opportunity to be heard. Final decisions with respect to the MNA’s position in consultations and with respect to prospective accommodations must be made by the appropriate democratically elected decision-making body as defined in the applicable MNA policy, guidelines, and Regional Consultation Protocol Agreement, be that the elected leadership of the relevant level of the MNA or the membership of a given level of the MNA by means of a vote.
- 12) **Consensus Based.** To work effectively, the MNA’s internal consultation process must be consistent with the principles of consensus-based decision-making as elaborated in Regional Consultation Protocol Agreements, the MNA’s provincial level policy regarding the duty to consult and accommodate, and guidelines respecting consultation and accommodation that may be adopted by the MNA at the regional or local levels.²⁹ Respect for the principles of consensus-based

²⁷ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511 at paras 44, 47; Jack Woodward, *Native Law*, loose-leaf 2015-Rel. 7 (Toronto: Carswell, 1994) at 5§2281.

²⁸ Alberta Métis Settlements Consultation Policy, p. 4, bullet 3; Métis Nation of Alberta, *Policy Guidelines Regarding the Duty to Consult and Accommodate Métis Aboriginal Rights and Interests in Alberta* (July 2009) at p. 3, point 6; *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511 at para. 42.

²⁹ Note that the terms “policy” and “guidelines” are not used in this statement of principles in a manner that is consistent with their use in the MNA’s *Policy Guidelines Regarding the Duty to Consult and Accommodate Métis Aboriginal Rights and Interests in Alberta* (July 2009). As



decision making will ensure that Métis rights, claims, and interests are being advocated for to the satisfaction of all relevant parties at all relevant times.

- 13) **Transparency.** Consultation and accommodation must be based on full disclosure of all relevant information by all parties involved.³⁰ The Crown and industry must ensure that the level of the MNA conducting consultations as defined in the applicable Regional Consultation Protocol Agreement is provided with all necessary information in an appropriate format and in a timely way.³¹
- 14) **Entitlement to Benefits of Development.** The Métis are entitled to a fair share of the wealth generated by their territory. The Métis are not against development as a matter of principle, but they expect their rights to be respected and their concerns to be addressed in a way that strikes a balance between the need to maintain the vitality of their traditions and to provide access to the social and financial benefits that accompany resource development.
- 15) **Benefits Should Accrue where Impacts are Most Felt.** The benefits of development should be distributed in a manner proportionate to the impacts of development, with those Métis populations and individuals that are most impacted by development receiving most of the benefits of development. The exact roles and responsibilities of each level of the MNA in this regard will be defined in the applicable Regional Consultation Protocol Agreement.
- 16) **Accountability.** Accommodations need to be public and ratified through a fair, transparent process that respects the requirements of confidentiality as agreed to by the parties. In all cases sufficient information regarding accommodations must be made available to allow the level of the MNA conducting consultations as defined in the applicable Regional Consultation Protocol Agreement to provide its free, prior, and informed consent to prospective accommodations by the means determined to be appropriate in the circumstances and in keeping with this Statement of Principles, the applicable Regional Consultation Protocol Agreement, MNA policy, and regional or local level guidelines. Benefits arising through accommodations must be subject to the control and oversight of the MNA and must be administered in a transparent, fair, and unbiased manner.

work continues to develop and implement a process for meaningful consultation with Alberta's rights-bearing Métis communities, an effort will be made to arrive at a consistent use of these terms.

³⁰ Métis Nation of Alberta, *Policy Guidelines Regarding the Duty to Consult and Accommodate Métis Aboriginal Rights and Interests in Alberta* (July 2009), p. 4, point 8.

³¹ *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388 at para. 64.



- 17) **Capacity.** The Crown must ensure that the MNA—consisting as it does of a Provincial Council, Regions, and Locals—has the means to participate, in a meaningful way, in any consultation and accommodation process.³² This can be done by providing appropriate funding directly or by ensuring that industry does so.
- 18) **Coordination and Cooperation.** The MNA’s various levels acknowledge the benefits of coordinating their efforts and aggregating their resources, where appropriate, in order to develop the capacity and expertise necessary for meaningful, effective consultation within the MNA itself, rather than relying on outside support.
- 19) **Reasonable Timelines.** The Crown must give the level of the MNA conducting consultations as defined in the applicable Regional Consultation Protocol Agreement a reasonable amount of time to respond to a referral and to engage in consultation. Consultation timelines must be flexible to ensure that consultation is meaningful. The Crown may not conclude a consultation process in consideration of external timing pressures when there are outstanding issues to be discussed.³³ Moreover, consultations must continue on an ongoing basis whenever a decision is made that may affect Métis rights throughout the life of a project—from initial strategic planning through operations and to the reclamation stages, until traditional land use is fully re-established—to ensure that all potential impacts on Métis rights-bearing communities are taken into account as they become foreseeable and that accommodations, including measures to mitigate and off-set the effects of a project, are appropriately implemented and effective.

³² *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation*, [2007] 3 CNLR 221 at para 27; *Tsilhqot'in Nation v. British Columbia*, 2007 BCSC 1700 at para 1138; *Wabauskang First Nation v. Minister of Northern Development and Mines et al.*, 2014 ONSC 4424 at para 232; *Ka'A'Gee Tu First Nation v. Canada (Attorney General)*, 2012 FC 297 at para 112.

³³ Métis Nation of Alberta, *Policy Guidelines Regarding the Duty to Consult and Accommodate Métis Aboriginal Rights and Interests in Alberta* (July 2009) at p. 4, point 9; *Squamish Nation v. British Columbia (Community, Sport and Cultural Development)*, 2014 BCSC 991 at para. 214; *Dene Tha' First Nation v. Canada (Minister of Environment)*, 2006 FC 1354 at para. 116.



Glossary

Aboriginal right means a practice, tradition, or custom that is integral to the distinctive culture of one of the Aboriginal peoples of Canada and that is currently or may in the future be recognized and affirmed as a constitutional right pursuant to s. 35 of the *Constitution Act, 1982*.

Authorized representative means the MNA—consisting as it does of a Provincial Council, Regions, and Locals—in relation to the Crown’s duty to consult with regional, rights-bearing Métis communities throughout Alberta based on the Supreme Court of Canada’s recognition that “an Aboriginal group can authorize an individual or an organization to represent it for the purpose of asserting its s. 35 rights.”³⁴

Crown means the federal or provincial government, as the case may be.

Cumulative impacts means the effects on the environment, over a certain period of time and distance, resulting from effects of a project when combined with those of other past, existing, and imminent projects and activities.³⁵

Duty to consult means the Crown’s legal and constitutional duty to consult with Aboriginal groups on matters that may adversely affect their Aboriginal rights, claims, and interests and, where appropriate, to accommodate them in the spirit of reconciliation.³⁶ The duty to consult is triggered when the Crown has knowledge, real or constructive, of the potential existence of an Aboriginal right or title and contemplates conduct that might adversely affect it.³⁷ At a minimum, the Crown’s duty to consult imposes on it a positive obligation to ensure reasonably that Aboriginal peoples are provided with all necessary information in a timely way so that they have an opportunity to express their interests and concerns, and to ensure that their representations are seriously considered and, wherever possible, demonstrably integrated into the proposed plan of action.³⁸

³⁴ *Behn v. Moulton Contracting Ltd.*, [2013] 2 SCR 227 at para. 30; *Labrador Métis v. Newfoundland*, 2007 NLCA 75 at paras. 46 & 47.

³⁵ *Bow Valley Naturalists Society v. Canada (Minister of Canadian Heritage)*, [2001] 2 FCR 461 at para. 40.

³⁶ *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, [2010] 2 SCR 650 at para. 32.

³⁷ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511 at para. 35.

³⁸ *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388 at para. 64.



Environment means the land, water, air, climate, plants, animals, and people, as well as the interaction of all of these, including in particular by way of traditional practices and customs.

Local Council or **Local** means the body responsible for governing the affairs of a Métis Local affiliated with the MNA;³⁹ a Local Council consists of a Local President, Local Vice-President, Secretary, and Treasurer elected at the Annual General Meeting of the Local, as well as such other members as the Annual General Meeting of the Local may decide to elect.⁴⁰

Métis claim means an asserted Métis right that has not yet been recognized by either the courts as a result of litigation or the Crown as a result of negotiation.

Métis Nation of Alberta or **MNA** means the body, which consists of a Provincial Council, Regions, and Locals, that is authorized to represent the rights-bearing Métis communities in Alberta and through which the Métis in Alberta exercise their inherent right to self-government, as set out in the MNA's bylaws.

Métis right means an Aboriginal right of a rights-bearing Métis community.

Métis Settlements means the eight legislatively recognized Métis Settlements in Alberta as defined in the *Metis Settlements Act*.⁴¹

Modern day treaty means a “land claims agreement” within the meaning of s. 35(3) of the *Constitution Act, 1982*. The reference in the foregoing Statement of Principles to a “modern day treaty between the Crown and the Métis Nation of Alberta” is meant to highlight the aspiration of the MNA—at the provincial, regional, and local levels—that the rights, claims, and interests of the right-bearing Métis communities in Alberta will be determined, recognized, and respected pursuant to a just, negotiated treaty settlement⁴² between the MNA, the Crown in right of Canada, and the Crown in right of Alberta.

MNA citizen or **MNA member** means a person or persons who self-identify as Métis, are distinct from other Aboriginal peoples, are of historic Métis Nation ancestry, and are accepted by the Métis Nation.⁴³ Self-identification is established by the signed

³⁹ Bylaws of the Métis Nation of Alberta Association (Updated – December 18, 2015) at art. 14.1

⁴⁰ Bylaws of the Métis Nation of Alberta Association (Updated – December 18, 2015) at art. 12.3.

⁴¹ RSA 2000, c M-14.

⁴² *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511 at paras. 20, 25.

⁴³ Bylaws of the Métis Nation of Alberta Association (Updated – December 18, 2015) at arts. 4.8 & 15.1.



declaration of applicants for MNA citizenship, by which they swear that they identify as Métis. Historic Métis Nation ancestry is established by evidence of an ancestor who received a land grant or a scrip grant under the *Manitoba Act* or the *Dominion Lands Act*, or who was recognized as a Métis in other government, church, or community records.⁴⁴ Community acceptance is established by the MNA's approval of citizenship applications.

MNA consultation and accommodation guidelines means a document adopted by a MNA Region or Local that sets out the framework for consultations between the Crown and proponents and the rights-bearing Métis community that the relevant Region or Local is authorized to represent as clarified in a Regional Consultation Protocol Agreement. MNA consultation and accommodation guidelines must be consistent with the this Statement of Principles and the MNA consultation and accommodation policy.⁴⁵

MNA consultation and accommodation policy means the document adopted by the MNA Annual General Assembly that sets out the framework for consultations between the Crown and proponents and the rights-bearing Métis communities in Alberta as represented by the MNA.⁴⁶ The MNA consultation and accommodation must be consistent with this Statement of Principles.

Proponent means a person or organization, including a municipality, that proposes to undertake a project that has the potential to affect Métis rights, claims, or interests adversely. For greater certainty, the Crown may act as a proponent.⁴⁷

Provincial Council means the body responsible for governing the affairs of the Métis Nation in Alberta including but not limited to the cultural, economic, education, political,

⁴⁴ Bylaws of the Métis Nation of Alberta Association (Updated – December 18, 2015) at art. 3.2 (a).

⁴⁵ Note that the terms “policy” and “guidelines” are not used in this statement of principles in a manner that is consistent with their use in the MNA's *Policy Guidelines Regarding the Duty to Consult and Accommodate Métis Aboriginal Rights and Interests in Alberta* (July 2009). As work continues to develop and implement a process for meaningful consultation with Alberta's rights-bearing Métis communities, an effort will be made to arrive at a consistent use of these terms.

⁴⁶ Note that the terms “policy” and “guidelines” are not used in this statement of principles in a manner that is consistent with their use in the MNA's *Policy Guidelines Regarding the Duty to Consult and Accommodate Métis Aboriginal Rights and Interests in Alberta* (July 2009). As work continues to develop and implement a process for meaningful consultation with Alberta's rights-bearing Métis communities, an effort will be made to arrive at a consistent use of these terms.

⁴⁷ Government of Alberta, *The Government of Alberta's Guidelines on Consultation with Metis Settlements on Land and Natural Resource Management 2016* at pp. 2-3.



and social affairs of the Métis Nation in Alberta;⁴⁸ the Provincial Council consists of a President and Vice-President, who are elected in province-wide elections, and six Regional Presidents and six Regional Vice-Presidents, who are elected by their respective regions.⁴⁹

Regional Council or **Region** means the body responsible for governing the affairs of their Region;⁵⁰ the Regional Council consists of the Regional President and Regional Vice-President elected to the Provincial Council for the Region and the Presidents of each Local Council within the Region.⁵¹

Regional Consultation Protocol Agreement means an agreement by which the roles and responsibilities of the Provincial Council, Regions, and Locals in relation to consultation and the negotiation of accommodations—including who will take the lead in such processes in a given situation—are clearly defined in relation to a specific geographic area. The geographic areas covered by such agreements may not necessarily correspond to the MNA’s current Regional boundaries.

Rights-Bearing Métis Community or **Regional, Rights-Bearing Métis Community** means a group of Métis with a distinctive collective identity, living together in the same geographic area and sharing a common way of life.⁵² In Alberta, rights-bearing Métis communities are **regional** in nature, as opposed to settlement based.⁵³ This is to say, the Métis have created large, inter-related communities that include numerous settlements, villages, and towns.⁵⁴ One such rights-bearing Métis community has been found to have existed historically “in what is present day Edmonton and district,” which was defined as including “the settlements of Fort Edmonton, St. Albert, Lac St. Anne, Victoria, Lac La Biche, and Rocky Mountain House.”⁵⁵ Other such regional, rights-bearing communities—the boundaries of which may overlap—exist throughout the province of Alberta. These regional, rights-bearing Métis communities are inter-connected and indivisible parts of the Métis Nation as a whole, and in Métis Nation in Alberta in particular. These regional, rights-bearing communities do not necessarily correspond to the MNA’s current administrative boundaries.

⁴⁸ Bylaws of the Métis Nation of Alberta Association (Updated – December 18, 2015) at art. 13.1.

⁴⁹ Bylaws of the Métis Nation of Alberta Association (Updated – December 18, 2015) at art. 12.2.

⁵⁰ Bylaws of the Métis Nation of Alberta Association (Updated – December 18, 2015) at art. 14.1

⁵¹ Bylaws of the Métis Nation of Alberta Association (Updated – December 18, 2015) at art. 12.3.

⁵² *R. v. Powley*, [2003] 2 SCR 207 at para. 12.

⁵³ *R v. Hirsekorn*, 2013 ABCA 242 at para. 63.

⁵⁴ *R v. Hirsekorn*, 2013 ABCA 242 at para. 62; *R. v. Goodon*, 2008 MBPC 59 at para. 46.

⁵⁵ *R v. Hirsekorn*, 2010 ABPC 385 at para. 115.



Traditional practices and customs means those practices, customs, or traditions that made the culture of historical, rights-bearing Métis communities distinctive and that connect them both to their territories and the larger Métis Nation and its Homeland. These include, but are not limited to:

- hunting, trapping, fishing, and gathering plants and animals for food, domestic use, social and ceremonial purposes, and for the purposes of trade and commerce in a manner that reflects the Métis Nation’s respect for and understanding of the environment;
- engaging in the distinctive cultural activities of the Métis Nation, including but not limited to jigging, fiddling, cart-racing, beading, traditional dress, including wearing the sash, and otherwise participating in traditional gatherings and undertaking traditional crafts;
- speaking and transmitting the traditional language of a rights-bearing Métis community, be it English, French, Michif, or another aboriginal language;⁵⁶
- self-determination (*otipemisiwak*), including self-government;⁵⁷
- all activities reasonably incidental to engaging in any of the foregoing, including but not limited to possessing firearms⁵⁸ and maintaining hunting camps.⁵⁹

⁵⁶ *Mahe v. Alberta*, [1990] 1 S.C.R. 342 at 362.

⁵⁷ *R. v. Pamajewon*, [1996] 2 SCR 821 at para. 24; Peter W. Hogg, *Constitutional Law of Canada*, 5th ed. (Toronto: Carswell, 2007) (loose leaf updated 2015, release 1) at 28-25 [Hogg]; Canada, Department of Indian Affairs and Northern Development, *Federal Policy Guide, Aboriginal Self-Government: The Government of Canada’s Approach to the Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* (Minister of Indian Affairs and Northern Development: Ottawa, 1995), as cited in *Samson Indian Nation and Band v. Canada* 2005 FC 1622, para. 790; see also *Anishinabek (First Nation) Police Service (Re)* 2013 CIRB 701, para. 27.

⁵⁸ *Simon v. The Queen*, [1985] 2 SCR 387 at para. 31.

⁵⁹ *R. v. Sundown*, [1999] 1 SCR 393 at para. 27.