



July 25, 2019

The Honourable Rick Wilson  
Minister of Indigenous Relations  
Office of the Minister - Indigenous Relations  
104 Legislature Building  
10800 - 97 Avenue  
Edmonton, AB T5K 2B6

**Re: Métis Consultation Policy**

Dear Minister Wilson: *Rick*

Albertans deserve prosperity. Métis in Alberta deserve the same. This means development of our energy resources in a manner that is efficient and responsible. Crucially, industry needs the Government of Alberta ("Alberta") to have a regulatory system that protects project approvals from being delayed or overturned by the courts. This will only be the case where the project approval process respects the rights of aboriginal people by allowing for timely and meaningful consultation and, where appropriate, accommodation.

Currently, Alberta's project approval process has a glaring omission: there is no policy framework for consultation with the vast majority of Métis in the province, those not living on the Metis Settlements. The Canadian constitution obligates Alberta to consult with Métis in the same way it obligates Alberta to consult with First Nations. Together, we must develop a Métis consultation policy that enables Alberta to discharge this obligation. The prosperity of all Albertans depends on it.

Thank you for taking the time to meet with me on June 19, 2019, and to discuss, among other things, the unresolved issue of Métis consultation in the province. As you familiarize yourself with this file over the summer, I want to ensure that you understand why it is so important to the MNA and Albertans at large. With this in mind, this letter first sets out why Alberta needs a Métis consultation policy. Then, it provides background on the Métis Nation of Alberta ("MNA") and Alberta's ongoing negotiations for a Métis consultation policy. Next, it comments on the draft Métis consultation policy released by Alberta in February 2019 ("Draft Policy"), highlighting how it fails to respond to Alberta's needs. The letter presents the MNA's approach to consultation and explains why federal and provincial consultation processes must align with it. Finally, we propose a new, simpler approach: a provincial policy directing consultation with the MNA's Regional Consultation Offices on behalf of the regional, rights-bearing communities that make up the Métis Nation within Alberta. The proposed approach would be efficient, legally sound, and coordinated with the federal consultation process. It is the best option available.

### The Need for a Métis Consultation Policy

Aboriginal consultation is not the obstacle standing in the way of responsible energy resource development. The absence of meaningful aboriginal consultation is the greatest obstacle the energy industry faces. Consultation with aboriginal people by the Crown regarding decisions that have the potential to impact our rights, claims, and interests is unavoidable. The Constitution requires it, as the Supreme Court of Canada has repeatedly affirmed.<sup>1</sup> The Crown owes the duty to consult to Métis just as it owes the duty to First Nations.<sup>2</sup> When consultation is conducted and rights are appropriately accommodated, projects can and do proceed. When consultation is wanting, however, project delays and even rejections are inevitable.

The Crown's past failures to appropriately consult indigenous people regarding energy projects are well documented. The fallout for industry and Albertans at large has been significant:

- In 1977, the Mackenzie Valley Pipeline was delayed for what turned out to be decades as a result of the Crown's failure to recognize aboriginal rights and settle claims in the Northwest Territories.
- In 2006, after the Mackenzie Valley Pipeline was revived as the Mackenzie Gas Project, it was again delayed after the Federal Court found that the Crown had conducted almost no consultation with the Dene Tha' First Nation, let alone any meaningful consultation.<sup>3</sup>
- In 2016, the Northern Gateway Pipeline was delayed after the Federal Court of Appeal found that "Canada offered only a brief, hurried and inadequate opportunity" for consultation at critical points during the process.<sup>4</sup> As a result, approval of the Northern Gateway Pipeline was ultimately denied.
- In 2018, the Trans Mountain Expansion Project was delayed after the Federal Court of Appeal found that "[o]n the whole, the record does not disclose responsive, considered and meaningful dialogue coming back from Canada in response to the concerns expressed by the Indigenous applicants."<sup>5</sup>

On the other hand, when consultation is sufficient, pipelines proceed without the courts' interference.<sup>6</sup>

The lesson is obvious: Crown consultation with indigenous people cannot be avoided, but inadequate consultation can. What Alberta needs is a regulatory regime that enables the Crown to fully discharge its duty to consult indigenous peoples so that projects can be approved with

<sup>1</sup> *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73; *Taku River Tlingit First Nation v British Columbia (Project Assessment Director)*, 2004 SCC 74; *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69; *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43; *Clyde River (Hamlet) v Petroleum Geo-Services Inc*, 2017 SCC 40.

<sup>2</sup> *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 at para 73(2); *Enge v Mandeville*, 2013 NWTSC 33.

<sup>3</sup> *Dene Tha' First Nation v Canada (Minister of Environment)*, 2006 FC 1354, aff'd in *Canada (Environment) v Imperial Oil Resources Ventures Ltd*, 2008 FCA 20.

<sup>4</sup> *Gitxaala Nation v Canada*, 2016 FCA 187 at para 325.

<sup>5</sup> *Tsleil-Waututh Nation v Canada (Attorney General)*, 2018 FCA 153 at para 559.

<sup>6</sup> *Chippewas of the Thames First Nation v Enbridge Pipelines Inc*, 2017 SCC 41.

certainty. This requires Alberta to adopt a Métis consultation policy, which will need to be efficient, consistent with the guiding law, and coordinated with the federal government's approach to consultation.

#### **Background to Current Negotiations**

Work on a Métis consultation policy is already underway. On February 1, 2017, Alberta and the MNA signed a 10-year Framework Agreement (the "Framework Agreement"). Among the key commitments in the Framework Agreement is that Alberta and the MNA will "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." This work began over 2 years ago.

In February 2019, Alberta released its Draft Policy on Métis consultation. Although some aspects of the Draft Policy represent progress, many others raise concerns. The Draft Policy includes two Appendices that are absent from the First Nations and Metis Settlement policies. These Appendices would impose complex and burdensome obligations on Métis entitled to be consulted by the Crown. The Draft Policy risks bogging down the consultation process, rather than ensuring much needed efficiency and certainty.

We propose a better, simpler way: a provincial policy directing consultation with the MNA's Regional Consultation Offices on behalf of the regional, rights-bearing communities that make up the Métis Nation within Alberta. Since July 2018, this is how Canada has directed that consultation be conducted with the Métis Nation within Alberta. Moreover, since the Draft Policy was released two important agreements have been signed that favour our proposed approach: the *MNA-Alberta Métis Harvesting Agreement* (the "MNA-Alberta Métis Harvesting Agreement"); and, the *MNA-Canada Métis Government Recognition and Self-Government Agreement* (the "MNA Self-Government Agreement").

On March 12, 2019, the MNA-Alberta Métis Harvesting Agreement was signed. The agreement is legally binding. It sets out how the MNA and Alberta will coordinate in implementing the *Métis Harvesting in Alberta Policy (2018)* (the "Métis Harvesting Policy"), and it acknowledges the MNA's role in identifying rights-bearing Métis harvesters. The Métis consultation policy will need to be consistent with both the MNA-Alberta Métis Harvesting Agreement and the Métis Harvesting Policy. In consulting with aboriginal people, Alberta focuses overwhelmingly on how projects might impact harvesting rights. As such, the MNA-Alberta Métis Harvesting Agreement will play a key role in determining how rights-bearing Métis communities are identified and engaged for the purposes of consultations.

On June 27, 2019, the MNA and Canada signed the MNA Self-Government Agreement. The significance of this event cannot be overstated. For over 90 years, the MNA has asserted that the Métis Nation within Alberta has a right to self-determination and self-government. Now, the federal government—the level of government with jurisdiction for the Métis; the level of

government "to whom [the Métis] can turn"<sup>7</sup>—has recognized this to be true. Specifically, with the signing of the MNA Self-Government Agreement, Canada has recognized that:

- a) the MNA is mandated to represent the Métis Nation within Alberta;

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<sup>7</sup> *Daniels v Canada (Indian Affairs and Northern Development)*, 2016 SCC 12 at para 50.

- b) the Métis Nation within Alberta has an inherent right to self-government over its internal governance that is protected by sections 25 and 35 of the *Constitution Act, 1982*; and
- c) the MNA has been mandated by the Métis Nation within Alberta to implement its inherent right to self-government that is protected by sections 25 and 35 of the *Constitution Act, 1982*.<sup>8</sup>

It is no longer possible to dismiss the MNA as a mere non-profit association. It has now been confirmed that the MNA is much more: the mandated representative of an aboriginal rights-bearing collective, the Métis Nation within Alberta. The Métis consultation policy must acknowledge this.

#### **The Draft Policy Fails to Achieve Regulatory Efficiency and Certainty**

Regulatory efficiency requires that the Métis consultation policy be consistent with other provincial policies and agreements regarding Métis rights. Regulatory certainty requires that the Métis consultation policy be consistent with the guiding law. In several respects, the Draft Policy fails on both counts.

#### *Consultation with Regional, Rights-Bearing Métis Communities*

The Draft Policy states that “Alberta will consider that a Métis community may be regional in nature.”<sup>9</sup> This is an error. Alberta has to accept that, for the purposes of its consultation policy, a recognized Métis community must be regional in nature.

Because aboriginal rights are held by rights-bearing collectives—or communities—the Crown must consult with the aboriginal group who holds the asserted or proven s. 35 right(s) that stand to be affected by the proposed decision or course of action.<sup>10</sup>

It is well established that rights-bearing Métis communities in the prairies “are best considered as regional in nature, as opposed to settlement-based.”<sup>11</sup> Historically and today, these regional communities are interconnected and interdependent, having “a highly mobile way of life and extensive family networks” across the Métis Nation homeland.<sup>12</sup> In fact, courts in Alberta have described at least one of the regional, rights-bearing Métis communities in the province. For example:

The evidence has shown that an historical Métis community existed in the region of what is present day Edmonton and district. This group of North Saskatchewan Métis included the settlements of Fort Edmonton, St. Albert, Lac St. Anne, Victoria, Lac La Biche, and Rocky Mountain House. The Métis people in this region had a distinctive

<sup>8</sup> Métis Government Recognition and Self-Government Agreement between the Métis Nation of Alberta and the Government of Canada, s. 3.01 (“MNA Self-Government Agreement”).

<sup>9</sup> Draft Métis Consultation Policy: The Government of Alberta’s Policy on Consultation with Métis on Land and Natural Resource Management, February 2, 2019, at 10 (“Draft Policy”) [emphasis added].

<sup>10</sup> *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53 at para 35; *Behn v. Moulton Contracting Ltd*, 2013 SCC 26 at para 30.

<sup>11</sup> *R v Hirsekorn*, 2013 ABCA 242 at para 63; see also *R v Laviolette*, 2005 SKPC 70 at paras 27 & 30; *R v Belhumeur*, 2007 SKPC 114 at para 152; *R v Goodan*, 2008 MBPC 59 at paras 46 & 47; *Enge v Mandeville*, 2013 NWTSC 33 at para 201.

<sup>12</sup> *Caron v Alberta*, 2015 SCC 56 at para 211.

collective identity, lived together in the same geographical area and shared a common way of life.<sup>13</sup>

Alberta, for its part, recently recognized the existence of regional, rights-bearing Métis communities in the province in the Métis Harvesting Policy and MNA-Alberta Métis Harvesting Agreement. The Métis Harvesting Policy recognizes four large, regional Métis harvesting areas that cover all of central and northern Alberta and that roughly overlap with the MNA's own administrative regions.

Recognition of these regional, rights-bearing Métis communities in the Policy and the MNA-Alberta Métis Harvesting Agreement is evidence, on a *prima facie* basis, that they constitute "rights-bearing communit[ies] for the purposes of consultation."<sup>14</sup> This makes sense, because the Draft Policy is clear that the focus of Crown consultation will be the potential affects of proposed projects on Métis harvesting rights.<sup>15</sup> Both law and logic dictate that those consultations must be conducted with the group that holds those rights: the relevant regional, rights-bearing Métis community.

#### *Contemporary Community Acceptance*

The Draft Policy stipulates that Métis groups seeking to be consulted must "[d]etail how members are accepted by the contemporary Métis community." For the purposes of determining contemporary community acceptance in order to establish Métis harvesting rights, however, the criteria for contemporary community acceptance have already been established. The MNA-Alberta Métis Harvesting Agreement provides that:

- 2.4.1 For the purposes of this Agreement, the MNA's policy governing contemporary community acceptance in a Métis Harvesting Area will be considered a sufficient description of acceptance by and involvement in the Métis Harvesting Area.<sup>16</sup>

Again, Métis harvesting rights will be the focus of Crown consultation under the Métis Harvesting Policy. It only makes sense that the criteria for contemporary community acceptance be the same for both the harvesting and consultation policies: the MNA's policy governing contemporary community acceptance should be determinative.

#### *Treaty 7 Territory*

- The Draft Policy includes a wholesale exclusion of all of Treaty 7 territory from any Métis consultation. "Geographic areas in the Treaty 7 area will (...) not be accepted."<sup>17</sup> This sweeping statement is inconsistent with the prevailing case law. In *Hirse Korn*, the Alberta Court of Appeal determined that there are no Métis harvesting rights "in the environs of the Cypress Hills."<sup>18</sup> The Cypress Hills are in Treaty 4, not Treaty 7 territory. *Hirse Korn* did not decide that the Métis have no harvesting rights throughout Treaty 7 territory, and nothing bars the MNA from asserting such rights.

<sup>13</sup> *R v Hirsekorn*, 2010 ABPC 385 at para 115.

<sup>14</sup> *Fort Chipewyan Métis Nation of Alberta Local #125 v Alberta*, 2016 ABQB 713 at paras 363 & 365.

<sup>15</sup> Draft Policy at 2.

<sup>16</sup> Métis Harvesting Agreement between the Government of Alberta and the Métis Nation of Alberta at s. 2.4.1 ("MNA-Alberta Métis Harvesting Agreement").

<sup>17</sup> Draft Policy at 10.

<sup>18</sup> *R v Hirsekorn*, 2013 ABCA 242 at paras 57 & 107.

The Crown owes the duty to consult not only with respect to proven rights, but also with respect to asserted rights.<sup>19</sup> The MNA continues to assert Métis harvesting rights throughout the province, including in southern Alberta. The MNA-Alberta Métis Harvesting Agreement commits Alberta to ongoing discussions regarding “[t]he recognition of Métis harvesting rights in southern Alberta.”<sup>20</sup> As long as the door remains open to the recognition Métis harvesting rights in Treaty 7 territory, Alberta cannot close the door to Métis consultation in Treaty 7 territory. No valid provincial Métis harvesting policy could include this sweeping prohibition.

#### *Demonstration of Authorization*

The Draft Policy proposes an onerous and never-ending process for confirming that the contact person for conducting consultations on behalf of a regional, rights-bearing Métis community is authorized to do so. Every year at least, and more often if requested, every level of the MNA’s governance structure (local, regional, and provincial) in a region would need to provide Alberta with written confirmation of their ongoing authorization for the contact person to act on their behalf. Neither the First Nations nor Metis Settlements Consultation Policies impose similar requirements. It is a unique burden with which the province would saddle the Métis Nation within Alberta. It is unnecessary, inefficient, and counterproductive:

- Requiring repeated written confirmation on an ongoing basis from multiple governance structures is unnecessary. To establish authorization, written consent only needs to be given once.
- Requiring repeated written confirmation on an ongoing basis from multiple governance structures would undermine certainty, which the Métis consultation policy is meant to create. Repeated requests for confirmation of authorization will have the effect of constantly calling the consultation process into question. The Draft Policy offers no indication of what the consequences of retracting authorization might be. The result would be confusion, if not conflict.
- The MNA has already provided written confirmation that its Regional Consultation Offices are authorized to conduct consultation on behalf of the regional, rights-bearing Métis communities that make up the Métis Nation within Alberta. This written authorization is set out in the MNA’s Regional Consultation Protocol Agreements, which are signed by the MNA’s Provincial, Regional, and Local Councils. The Regional Consultation Protocol Agreements are described in greater detail below.
- The approach to confirming authorization proposed in the Draft Policy ignores the inherent right to self-government of the Métis Nation within Alberta over our internal affairs, which the MNA Self-Government Agreement confirms. The MNA’s Regional Consultation Protocol Agreements are an expression of this right, and Alberta must respect them.

There is a better way for Alberta to conduct consultation with Métis than that proposed in the Draft Policy. Over several years and after extensive consultation with our citizens, the MNA has developed its own approach to consultation designed to answer the needs of the Crown,

<sup>19</sup> *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at para 35; *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43 at para 31.

<sup>20</sup> MNA-Alberta Métis Harvesting Agreement at s. 5.1.1.

industry, and the Métis Nation within Alberta. The MNA's approach to consultation is legally sound, efficient, and accepted by the federal government. It is what Albertans need in a provincial Métis consultation policy.

### **The MNA's Approach to Consultation**

*The MNA is Authorized to Conduct Consultations on Behalf of the Métis Nation within Alberta*

When consulting with a rights-bearing Métis community, the Crown must engage with the community's authorized representative. The authorized representative must be "a legal entity whose *source of authority and nature of its representation* are demonstrably determinable."<sup>21</sup> In the case of the Métis Nation within Alberta, that is the MNA.

The MNA's authorization to advance collectively-held s. 35 Métis rights, interests, and claims in Alberta comes from each individual MNA citizens voluntarily applying to the MNA's centralized registry for citizenship. Currently, the MNA has over 40,000 registered citizens. Through the MNA's centralized registration process, each MNA citizen agrees to the MNA Bylaws and expressly mandates the MNA to pursue the following on their behalf:

- 1.2 To stand as the political representative of all Métis in Alberta and to promote self-determination and self-government for Métis in Alberta and Canada;
- 1.3 To promote, pursue, and defend aboriginal, legal, constitutional, and other rights of Métis in Alberta and Canada;
- 1.4 Re-establish land and resources bases.<sup>22</sup>

The MNA is authorized to represent its members for the purposes set out in its Bylaws.<sup>23</sup>

In addition, the MNA Bylaws include an oath of membership, which all new members must sign.<sup>24</sup> The oath states explicitly that when a person joins the MNA they "voluntarily authorize the Métis Nation to assert and advance collectively-held Métis rights, interests and claims on behalf of myself, my community and the Métis in Alberta, including negotiating and arriving at agreements that advance, determine, recognize and respect Métis rights."<sup>25</sup>

The MNA's representative capacity is further underscored by the MNA Self-Government Agreement, by which Canada explicitly recognizes that the MNA "is mandated to represent the Métis Nation within Alberta."<sup>26</sup> For its part, Alberta "recognizes the MNA's representative role on behalf of its Citizens"<sup>27</sup> in the Framework Agreement.

Flowing from the express authorization the MNA receives from its citizens, the MNA Bylaws mandate democratically-elected Métis governance structures at the local (i.e., Local Councils),

<sup>21</sup> *Fort Chipewyan Métis Nation of Alberta Local #125 v Alberta*, 2016 ABQB 713 at para 397.

<sup>22</sup> Métis Nation of Alberta Association Bylaws, consolidated version, October 30, 2017, at art 1 ("MNA Bylaws").

<sup>23</sup> *Newfoundland and Labrador v Labrador Métis Nation*, 2007 NLCA 75 at para 47.

<sup>24</sup> MNA Bylaws at art 10.9.

<sup>25</sup> MNA Bylaws at Schedule A.

<sup>26</sup> MNA Self-Government Agreement, s. 3.01(a).

<sup>27</sup> Framework Agreement between the Government of Alberta and the Métis Nation of Alberta, executed on February 1, 2017, Preamble ("MNA-Alberta Framework Agreement").

regional (i.e., Regional Councils) and the provincial (i.e., Provincial Council) levels to work—together—to represent all MNA members and the Métis Nation within Alberta. Collectively, these structures constitute the “Government of the Métis Nation.”<sup>28</sup>

It is important to note that only the centralized registry can register MNA citizens. Individual Locals or Regions do not maintain their own objectively verifiable registration systems. They are not independently authorized to represent MNA citizens or anyone else. By virtue of being a part of the MNA’s overall governance structure, Locals and Regions are authorized to represent MNA members based on their defined roles and mandates as set out in the MNA’s Bylaws and policies. All policies, procedures, and standards adopted by Regions and Locals must be consistent with resolutions approved by the Provincial Council.<sup>29</sup> MNA Locals and Regions must adhere to contractual relationship set out in the MNA Bylaws or their delegated authorization to represent MNA citizens—including with respect to consultation—is negated.

*The MNA’s Approach to Crown Consultations: Regional Consultation Offices*

The MNA’s governing policy on consultation with the Crown is set out in the Statement of Principles on Crown Consultation and Accommodation with Métis in Alberta (“Statement of Principles”), which the MNA’s 2016 Annual General Assembly adopted unanimously. The Statement of Principles states unambiguously that “[t]he 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” and that “Locals, Regions, and, where necessary, the Provincial Council, must work together to ensure the Crown’s duty is meaningfully discharged.”<sup>30</sup>

The Statement of Principles provides for Regional Consultation Protocol Agreements to be concluded between the MNA’s Provincial, Regional, and Local Councils in different regions of the province in order to outline in detail the roles and responsibilities of each party regarding consultations and accommodations.<sup>31</sup> These Regional Consultation Protocol Agreements have been concluded in every MNA region.

Each Regional Consultation Protocol Agreement establishes a Regional Consultation Office to act as a single window for consulting with the regional, rights-bearing Métis community in the region in question and ensures that the representative of the MNA assigned to conduct consultation on behalf of a regional, rights-bearing Métis community is properly authorized by that community to do so.

The approach to consultation that the MNA has adopted in the Statement of Principles and pursued in concluding Regional Consultation Protocol Agreements between its Provincial, Regional, and Local Councils reflects the guidance provided by Alberta’s courts. In deciding that MNA Local #125 (Fort Chipewyan) was not, in and of itself, authorized to conduct consultations with the Crown, the Court of Queen’s Bench wrote:

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<sup>28</sup> MNA Bylaws at art 12.1.

<sup>29</sup> MNA Bylaws at arts 14.5 and 15.5.

<sup>30</sup> *Statement of Principles on Crown Consultation and Accommodation with Métis in Alberta*, MNA AGA 2016, Principles 5 and 6.

<sup>31</sup> *Statement of Principles on Crown Consultation and Accommodation with Métis in Alberta*, MNA AGA 2016, Principles 7.



In a situation where the MNA, MNA Region 1, and the FCM Local purport to represent the Aboriginal rights holding Métis of Fort Chipewyan with respect to consultation, it is obvious that ascertaining who speaks for the Métis in asserting Aboriginal rights and seeking Crown consultation becomes a critical issue to be resolved. As such, this Court agrees with the Alberta Crown's submission 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 the same project. It is efficient and justifiable for the Alberta Crown to seek some assurance that it is consulting with the authorized representative of an Aboriginal collective.<sup>32</sup>

The Regional Consultation Offices established by the Regional Consultation Protocol Agreements entered into by the MNA's Provincial Council and relevant Regional and Local Councils offer Alberta and industry the assurance to which the court refers. Any arrangement relating to how consultations will be conducted with regional, rights-bearing Métis communities in Alberta that would not pass through the Regional Consultation Offices and follow the Regional Consultation Protocol Agreements would fall short of the standard set by the courts and be open to legal challenge.

#### **The Need for Coordination between Provincial and Federal Processes**

The United Conservative Party's election platform included a promise to "[a]dvocate for a federal Aboriginal consultation process that provides clear timelines and legal certainty for project proponents, consistent with the federal government's constitutional obligations." With respect to consultation with Métis in Alberta, the federal government has adopted such a process, which is set out in the Consultation Agreement Canada and the MNA signed in July 2018 (the "MNA-Canada Consultation Agreement"). Since the federal government has jurisdiction for Métis under s. 91(24) of the *Constitution Act, 1867*, its approach to recognizing Métis rights-bearing communities and their authorized representatives for the purposes of consultation can serve as a guide for the province.

The MNA-Canada Consultation Agreement recognizes the consultation process established by the MNA's Regional Consultation Protocol Agreements as "the preferred choice for consultation by Canada with the MNA."<sup>33</sup> The agreement directs Canada to engage with the regional, rights-bearing Métis communities that make up the Métis Nation within Alberta through the MNA's Regional Consultation Offices. These single points of contact then coordinate the consultation process.

Regulatory efficiency calls on Alberta to adopt a consultation process that compliments the federal process. Having two different approaches to Métis consultation in Alberta—one provincial, one federal—would create confusion and delay. It could very easily result in court challenges. This is where the Draft Policy would lead. The solution is the MNA's proposed approach.

#### **The MNA's Proposed Approach to Métis Consultation in Alberta**

The MNA proposes that Alberta adopt a provincial policy directing consultation with the MNA's Regional Consultation Offices on behalf of the regional, rights-bearing communities that make

<sup>32</sup> *Fort Chipewyan Métis Nation of Alberta Local #125 v Alberta*, 2016 ABQB 713 at para 408.

<sup>33</sup> Consultation Agreement between the Métis Nation of Alberta and the Government of Canada, executed on July 19, 2018, s. 1.2.

up the Métis Nation within Alberta. This would mean dropping or rewriting the Appendices in the Draft Policy, but the core of the Draft Policy would not change significantly. Métis would be consulted through the MNA's Regional Consultation Offices, but otherwise the consultation process would be substantially similar to Alberta's approach to consultation with First Nations or the Metis Settlements. The MNA's proposed approach has several advantages:

- It is simple, which means that Albertans, industry, and Métis can get on with the project review and approval process without undue delay;
- It is efficient, as the MNA's Regional Consultation Offices are already in place and operating;
- It is legally sound, as it ensures that consultation will be conducted with a "legal entity whose *source of authority and nature of its representation* are demonstrably determinable"; and
- It is consistent with the MNA-Alberta Métis Harvesting Agreement, the Framework Agreement, the MNA Self-Government Agreement, and the MNA-Canada Consultation Agreement.

The MNA's proposal could be implemented quickly, as the basic infrastructure already exists to support the federal process. This would allow us to move beyond arguing about the process of consultation and begin focusing on the actual work of pursuing the prosperity all Albertan's deserve. I suggest that a meeting of our officials be scheduled in early September to discuss how we can make this happen as quickly as possible. It is in all of our best interests—those of Métis and Albertans at large alike.

Yours truly,



Audrey Poitras  
President  
Métis Nation of Alberta

cc: Riley Braun, Chief of Staff, Office of the Minister of Indigenous Relations  
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