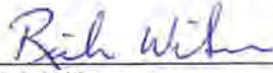


Approved: 
Rick Wilson
Minister of Indigenous Relations

BRIEFING NOTE FOR MINISTER'S APPROVAL

SUBJECT: Consultation with Non-Settlement Métis Organizations

ISSUE:

- The Métis Nation of Alberta (MNA) has communicated a strong interest in continuing the development of a Métis Consultation Policy (MCP) in Alberta, and requesting to meet with Minister Wilson regarding the draft MCP.

RECOMMENDATION:

- It is recommended Minister direct the department to continue utilizing the credible assertion process to assess consultation with Métis on a case-by-case basis and indicate to the MNA that Alberta may revisit policy development in the future.
- An email to President Poitras is attached for the Minister's signature.

BACKGROUND:

- Alberta currently does not have a consultation policy on land and resource management for Métis who are not part of the Metis Settlements.
- It is challenging to know the appropriate Métis community with which to consult. Non-Settlement Métis in Alberta do not have lands associated with them (like First Nations and Metis Settlements do); they are not governed by legislation or regulation; and organizations who seek to represent Métis in the province are incorporated under the *Societies Act*.
- In October 2015, Indigenous Relations (IR) began work to develop a Métis Consultation Policy that is consistent with the principles of the current Metis Settlements Consultation Policy.
- Between 2015-2018, IR engaged with the MNA to develop a draft MCP and provided funding to support discussions. The concept of the draft MCP focused on consultation with regional Métis communities. The policy, however, did not move forward for government decision.
- The MNA provincial office and five of its regional offices received a total of \$1.69M in 2019-2020 to support research and traditional land use studies in each region.

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- Jurisdictions across Canada have varied approaches to Métis consultation: some strictly adhere to case law requirements and base decisions on legal advice, while others have made a policy decision to consult with Métis communities without requiring a credible assertion or proof of rights.

Option 1 (Recommended): No public-facing policy for Métis consultation at this time; Métis organizations that seek to be consulted can put forward a claim through the credible assertion process.

- To determine which Métis may have potential Métis aboriginal rights, and may be owed consultation, Alberta uses a set of case law criteria to assess an assertion.
- The parameters are based on two legal cases: *R v. Powley* (2003, Supreme Court of Canada) and *R v. Fort Chipewyan Métis Local 125* (2016, Court of Queen's Bench).
 - The *Powley* case established a test, called the *Powley* test, which outlines characteristics a Métis community must demonstrate to establish Métis aboriginal rights.
 - The *Fort Chipewyan* decision stated that in addition to the *Powley* test, an organization that seeks to represent the Métis community for the purposes of consultation must be authorized by its members to do so. This point is important, as Alberta needs to know that the organization is legitimate and can speak for the members of the community when consultation is directed to it.
- Under this approach, Métis organizations bear the responsibility and onus for establishing the credibility of the assertion.
- Decisions on who to consult are guided by the "Interim Internal Guidance for Métis Credible Assertion." The credible assertion process includes a review and analysis by IR staff, [REDACTED], and a cross-ministry review. Following these series of reviews, a recommendation is forwarded to the decision maker, who is the Executive Director of Stewardship and Policy Integration in IR.

Rationale

- In pursuing this approach, the process is already established and would not cause further capacity or resourcing constraints within IR.
- The process is guided by case law and does not require Alberta to consider policy concessions.
- The credible assertion process is open to all Métis organizations that seek to be consulted.
- To date, no Métis organization has established a credible assertion. Within north-east Alberta, industry proponents have requested clarity on which Métis to consult. Alberta can be clear with proponents that Métis that wish to be consulted can put forward a claim in the assertion process.
- While some industry proponents have requested clarity, there has been limited pressure on Alberta to develop an MCP. During policy engagements, industry proponents sought to mitigate risk in the north-east, but most areas of the province saw the addition of the policy as a regulatory burden.

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- As the topics of consultation and harvesting are interconnected, it is important to review how the revised Métis Harvesting in Alberta policy is implemented. The policy comes into effect September 1, 2019 and the MNA is a key stakeholder in its rollout. Awaiting results of the policy implementation may allow a potential MCP to be better equipped to address consultation with Métis.
- First Nations would not be favourable to an MCP, seeing the policy as a potential infringement and/or leading to a reduction in their consultation rights.

Option 2: Minister brings forward the draft MCP for Cabinet consideration, including the Standards for Métis Consultation and the mechanism for regional consultation.

- The draft MCP includes a new set of criteria to use to demonstrate whether a Métis organization may be consulted, called the Standards. The Standards were developed in the spirit and intent of the *Powley* test and the *Fort Chipewyan* decision, while streamlining the information required to support an assertion.
- The draft MCP also considered a regional approach to consultation, reflecting the MNA governance structure and administrative boundaries.
- A challenge with the draft, however, was questions remained on how the MNA may be able to conduct consultation at a regional scale within regulatory timelines and procedures. The MNA proposed to use a single point of contact in each Region, who would receive direction from a consultation committee. With thousands of consultations each year, the MNA's processes would not keep pace with consultation needs.
- Implementation of the MCP would also demonstrate a significant cost pressure due to the limited availability of capacity funding.
- Implementation of the MCP would add costs to industry proponents as Alberta would direct consultation with more Indigenous communities. This could negatively impact the oil and gas sector as costs would increase and add further regulatory burden.
- Some Métis do not agree with a regional approach to consultation, creating internal conflict within the MNA. This is an issue of particular importance in Region 1 (northeast Alberta) and finding a solution would require significant time and resources.

Option 3: No public facing policy and develop a consultation agreement with the MNA.

- The MNA is the main body for non-Settlement Métis in the province and Alberta has worked closely with them on a variety of initiatives. Developing such an agreement would emphasize the relationship between the GoA and the MNA as the GoA would only work with the MNA with regard to consultation.
- It would leave room for flexibility in negotiations on how the agreement is developed and what it encompasses.
- However, it would favour the MNA over other Métis organizations. This approach would likely be seen as unfair by other groups and likely lead to litigation.
- Depending on the outcome of negotiations, it may require departures from Alberta's existing consultation processes. This would not meet proponents' need for procedural alignment in consultation.

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- It would create uncertainty and erode trust for Métis organizations that are not part of the MNA, as well as for project proponents who are seeking clarity and alignment regarding Métis consultation.

NEXT STEPS:

- The Government of Alberta will communicate that the MCP will not be moving forward at this time; however, this could be revisited depending on the needs and concerns of Métis and industry proponents.
- IR staff will continue to work closely with the MNA and other Métis organizations as they enter the credible assertion process.

ATTACHMENT:

- Email to President Poitras

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