

the Métis Nation *of* Ontario

Towards a Consultation Framework for Ontario Métis – 2007/08 Community Consultations What We Heard Report

July 2008

*This document has been formatted for double sided printing
to help save paper, money and the environment.*

*Towards a Consultation Framework for Ontario Métis -- 2007/08 Community
Consultations What We Heard Report*

Please note that the input, suggestions and ideas put forward in this paper are without prejudice to legal positions the MNO and rights-bearing Métis communities in Ontario may take in relation to the Crown's duty to consult and accommodate. This document identifies potential on-the-ground actions and policy initiatives that could assist in ensuring the Crown's duty to the Métis is fulfilled, rather than a legal analysis of what is required based on existing and future case law.

© Métis Nation of Ontario, 2008

500 Old St. Patrick Street
Ottawa, ON K1N 9G4
Tel. (613) 798-1488

Towards a Consultation Framework for Ontario Métis – 2007/08 Community Consultations What We Heard Report

Table of Contents

I	The Métis Nation of Ontario	1
II	Background and Context for Consultations	3
	A. The Crown’s Duty to Consult and Accommodate	3
	B. The Duty and Ontario Métis	4
	C. The Duty in Action	4
III	Overview of Consultation Process.....	7
	A. A Phased Approach.....	7
	B. The Community Consultation Process.....	8
IV	What We Heard.....	10
	A. Overview of Section	10
	B. Principles for a Consultation Framework	11
	C. Input and Feedback on Consultation Questions.....	17
	D. Other Issues Raised in Consultations.....	38
V	Summary of Recommendations	42
	Appendix A: Métis Traditional Harvesting Territories	
	Appendix B: Press Release Regarding Community Consultations, January 24, 2008	

Towards a Consultation Framework for Ontario Métis – 2007/08 Community Consultations What We Heard Report

I The Métis Nation of Ontario

Prior to Canada's crystallization as a nation in west central North America, the Métis people emerged out of the relations of Indian women and European men. The initial offspring of these Indian and European unions were individuals who possessed mixed ancestry. Subsequent intermarriage between Métis women and Métis men resulted in the genesis of a new Aboriginal people with a distinct identity, culture and consciousness – the Métis.

Distinct Métis settlements emerged, as an outgrowth of the fur trade, along parts of the freighting waterways of Ontario, around the Great Lakes and throughout the Northwest. These Métis people and their settlements were connected through the highly mobile fur trade network, seasonal rounds, extensive kinship connections and a collective identity (i.e., common culture, language, way of life, etc.). In Ontario, these historic Métis settlements continue to exist along the rivers and watersheds of the province, surrounding the Great Lakes and throughout to the northwest of the province.

In 1993, the Métis Nation of Ontario ("MNO") was established through the will of Métis people and historic Métis communities coming together to create a Métis-specific governance structure. At a founding meeting, Métis representatives from communities throughout the province set the foundational principles, which would guide and today continue to guide the evolution of the MNO. These foundational principles focused on:

- Creating a Métis-specific governance structure for the implementation of the nation's inherent right to self-government in the province;
- Establishing a credible and recognized identification system for Métis people within the province;
- Focusing on 'nation building' through working together as a collective in order to support Métis citizens and communities;
- Pursuing a rights-based agenda and proudly asserting the Métis existence as a distinct Aboriginal people within Ontario;
- Protecting and preserving the distinct culture and heritage of the Métis Nation in the province; and,
- Improving the social and economic well-being of Métis children, families and communities throughout the province.

Today, based on the pursuit of these principles, MNO has built an impressive province-wide governance structure which includes: an objectively verifiable, centralized registry of over 13,500 Métis citizens;¹ approximately 30 Chartered Community Councils across the province which represent Métis citizens at the local level; a provincial governing body that is elected by ballot box every four years; an Annual General Assembly where regional and provincial Métis leaders are required to report back to Métis citizens yearly between elections; a charitable foundation which promotes and support Métis culture and heritage; and, an economic development arm.

In addition, the MNO has built an accountable, results-based provincial delivery structure to meet the socio-economic needs of its citizens and communities. Currently, the MNO delivers programs and services to its citizens through these branches: Health Services, Training Initiatives, Housing, and Economic Development. Through these various branches, the MNO maintains 30+ service delivery access points across the province, administers over \$13.5 million annually, and, employs over 175 employees across the province.

The MNO has also built a notable communications network to reach its citizens and partners throughout the province. The *Métis Voyageur*, the MNO's bi-monthly newspaper, reaches over 12,000 Métis households as well as governmental and non-governmental partners. The MNO also maintains two interactive websites at www.metisnation.org and www.metisradio.fm to keep Métis citizens connected and informed. Further, the MNO undertakes a robust public affairs and media relations program.

Over the last decade, on the Métis rights front, the MNO has achieved many successes and is a recognized leader in advancing rights and self-government issues for the Métis Nation. It is responsible for initiating and supporting the historic *Powley* case – the first Supreme Court of Canada case to affirm the constitutionally protected harvesting rights of the Métis. It is the only Métis government in Canada to negotiate and have in place a province-wide harvesting accommodation agreement with a provincial government, based on its own Métis-made harvesting policy. More recently, the MNO jointly announced with the Ontario Government that it would engage in negotiations with the Ministry of Aboriginal Affairs to arrive at a MNO-Ontario framework agreement, which will support its ongoing and evolving relationship with the provincial government.

¹ Currently, the MNO only registers Métis citizens over the age of 16 years. If children were registered, the MNO's registry would include approximately 44,000 individuals. As well, the MNO's registry has approximately 5,000 'pending' applications, which require additional documentation in order to meet the MNO's application requirements. On average, the MNO has historically and continues to receive approximately 1,500 new citizenship applications each fiscal year.

II Background and Context for Consultations

A. The Crown's Duty to Consult and Accommodate

In September 2004, in the *Haida Nation*² and *Taku River*³ decisions, the Supreme Court of Canada set out a new legal framework – the Crown's duty to consult and accommodate. The duty is grounded in the honour of the Crown and section 35 of the *Constitution Act, 1982*. It requires governments to consult Aboriginal peoples and accommodate their rights (proven or asserted) whenever a Crown actor considers conduct that might adversely affect Aboriginal rights or interests. If there is a potential for an impact, the Crown has an obligation to protect the Aboriginal right or interest by not proceeding or by attempting to minimize the impact through arriving at accommodations with the affected Aboriginal group.

The new duty requires 'a new way of doing business' by governments. Prior to the *Haida Nation* and *Taku River* court decisions, governments took the position that the Crown had no special consultation obligations to Aboriginal peoples until either the government recognized the existence of the asserted right or the Aboriginal community had gone to court and proved an Aboriginal or Treaty right. If consultation did occur with Aboriginal groups, it was on a 'policy development' or 'public engagement' basis, rather than being based on the recognition and protection of Aboriginal peoples' rights. In addition, what typically happened was that even when an Aboriginal or Treaty right was established through litigation, governments interpreted it narrowly (for *e.g.*, limited to a site-specific location, an identified land base, a specific species, etc.), instead of recognizing that the right was part of the Aboriginal community's overall social, economic, spiritual, environmental and legal interests in the traditional territory it lives in and relies on. In the *Haida Nation* and *Taku River* decisions, the Supreme Court rejected these past government positions and policies.

Most notably, the Supreme Court affirmed that section 35 of the *Constitution Act, 1982* protects proven as well as asserted Aboriginal rights and claims. More simply put, section 35 is not an 'empty box' until an Aboriginal group goes to court and establishes a right protected within the meaning of section 35. Section 35 is about rights recognition: not rights denial. The constitutional promise of section 35 demands that governments work with Aboriginal groups in order to fully understand the potential effects of Crown actions on Aboriginal rights, interests and way of life. Further, once these potential effects are identified, the Crown must work with Aboriginal groups to eliminate or minimize the negative impacts of the proposed Crown actions on the affected Aboriginal groups.

² *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511 [hereinafter referred to as "*Haida Nation*"].

³ *Taku River Tlingit First Nation v. British Columbia (Minister of the Environment)*, [2004] 3 S.C.R. 550 [hereinafter referred to as "*Taku River*"].

The Supreme Court also confirmed that the Crown's 'duty' is constitutional in character and has both legal and procedural aspects, which will often demand unique consultation processes with the potentially affected Aboriginal groups, and require the government(s) involved to provide capacity support and/or funding for the Aboriginal group to effectively participate in consultation and accommodation processes. Moreover, unilateral government decision-making or an invitation to participate in a general 'stakeholder' or the 'public-at-large' consultation process will not be sufficient to fulfill the duty owed to Aboriginal peoples, where substantial constitutional rights and interests are at stake.

Without question, with the *Haida Nation* and *Taku River* decisions the message from the Supreme Court was clear: Aboriginal rights, interests and way of life can no longer be an afterthought in relation to strategic planning, policy development or land and resource use that is authorized and/or undertaken by governments.

B. The Duty and Ontario Métis

In September 2003, in *R. v. Powley*,⁴ the Supreme Court of Canada affirmed that the Métis are a full fledged rights-bearing Aboriginal people and that the Métis community in the Sault Ste Marie region have existing Aboriginal harvesting rights that are protected by section 35 of the *Constitution Act, 1982* and equal to the harvesting rights of First Nations.

In July 2004, the MNO and the Ontario Government, as represented by the Ontario Minister for Natural Resources, entered into an interim Métis harvesting accommodation agreement based on credible Métis rights harvesting claims throughout the province in the MNO's identified traditional territories. A map outlining the Métis traditional harvesting territories recognized and accommodated by the MNO-Ontario agreement is attached as Appendix A. In July 2007, in *R. v. Laurin*,⁵ the Ontario Court of Justice upheld the MNO-Ontario harvesting agreement as legally defensible and highly principled in light of the *Haida Nation* and *Taku River* decisions.

Based on the above, the duty is owed to the rights-bearing Métis communities who live in, use and rely on the traditional Métis harvesting territories that have been recognized and accommodated by the Crown throughout the province.

C. The Duty in Action

Since 2004, governments which have continued to ignore the duty or have continued to operate like it is 'business as usual' have done so at their peril. Courts across the country have been willing to enforce this new duty by providing substantive remedies to Aboriginal groups, if governments dismiss the duty or ignore its legal and procedural requirements. Overturning ministerial decisions and authorizations, granting injunctions

⁴ *R. v. Powley*, [2003] 2 S.C.R. 207 [hereinafter referred to as "*Powley*"].

⁵ *R. v. Laurin, Lemieux and Lemieux*, [2007] O.J. No. 2344 (O.C.J.) [hereinafter referred to as "*Laurin*"].

against government and proponents, and, ordering consultations and negotiations to take place are just some of the remedies Aboriginal peoples have obtained to date.

With the growing number of court decisions enforcing the duty, and the uncertainty, regulatory delays and economic costs that ignoring the duty can have on natural resources development, all levels of government in Canada have increasingly been trying to come to grips with this new duty, including, its constitutional, legal, procedural and on-the-ground implications. Some of this work has been done in collaboration with Aboriginal peoples. However, in many situations, this work has been done in isolation by governments – with abysmal results. Governments that have chosen the latter approach, have often responded to Aboriginal peoples’ objections with the justification that, since it is the Crown which has the duty, it is the Crown’s responsibility to decide how it will discharge its duty. This type of government response flies in the face of the very purpose of the duty as a means to promote negotiations, settlements, accommodations and reconciliation.

In Ontario, a unilateral approach was initially adopted, with the Ministry of Aboriginal Affairs (“MAA”) releasing *Draft Guidelines for Ministries on Consultation with Aboriginal Peoples Related to Aboriginal and Treaty Rights* (“*Ontario Guidelines*”) in June 2006. The Métis Nation and First Nations had not been consulted on the *Ontario Guidelines* prior to their release. Consequently, Métis and First Nation groups rejected the *Ontario Guidelines* largely based on the absolute discretion they put into the hands of individual ministries to determine the Crown’s obligations owing to Aboriginal groups.

In May 2007, in the Ipperwash Inquiry Report, Justice Sidney B. Linden echoed similar concerns with respect to the *Ontario Guidelines*:

My concern is that the draft guidelines appear to direct government ministries to decide, unilaterally, whether a particular project might have an impact on Aboriginal or treaty rights and thus trigger the duty to consult. The guidelines begin with the title, “A New Relationship with Aboriginal Peoples,”, but unilateral decisions by the government seem to be a part of the old way of relating to Aboriginal peoples.⁶

Since the release of the Ipperwash Inquiry Report, the Ontario Government has considerably changed its approach to implementing the duty. It has committed to strengthening its relationships with Aboriginal groups, while also working in collaboration with Aboriginal groups on the implementation of the duty.

Some of the results from this new approach include:

- The creation of a new stand-alone Ministry of Aboriginal Affairs, with a full-time minister dedicated to Aboriginal issues;
- The *Ontario Guidelines* have been withdrawn and collaborative work has been initiated with Métis communities and First Nations, through the Métis Nation of Ontario and Chiefs of Ontario respectively;

⁶ *Report of the Ipperwash Inquiry*, Vol. 2, Policy Analysis, pp. 109-113.

- The Minister of Aboriginal Affairs has established an Ipperwash Inquiry Priorities and Action Committee (“IIPAC”) with Métis and First Nations leadership in order to move forward on the collaborative implementation of the recommendations in the Ipperwash Inquiry Report;
- The announcement of a two-year ‘New Relationship Fund’, which will assist Métis and First Nation communities in enhancing their ability to participate in a meaningful way in consultations with the government and the private sector regarding important land, resources and other developments in the province.

In addition, specific to the Métis people in the province, the Ontario Government has announced its commitment to arrive at a Government of Ontario – Métis Nation of Ontario framework agreement, in order to strengthen the relationship between the Métis Nation and the Ontario Government, as well as improve the efficiency and results of the existing Ontario-Métis Nation bilateral process.

This report is based on the province-wide consultations that the MNO undertook in the 2007/08 fiscal year on the Crown’s duty to consult and the development of an Ontario Métis consultation framework, as a part of the Ontario Government’s collaborative work with Aboriginal groups on the Crown’s duty to consult. This consultation work was also partially funded by the Government of Canada, through the Office of the Federal Interlocutor for Métis and Non-Status Indians (“OFI”).

III Overview of Consultation Process

A. A Phased Approach

In April 2007, the MNO submitted a proposal to MAA to develop an Ontario Métis Consultation Framework, in relation to the fulfillment of the Crown's duty to consult and accommodate Métis rights, interests and way of life in the province.

The proposal was submitted based on the *Haida Nation* and *Taku River* decisions, combined with the reality that three levels of court in Ontario (in 1998, 2000, 2001) and the Supreme Court of Canada in the landmark *Powley* decision (in 2003) had recognized the existence of Métis rights in Ontario, as protected rights within the meaning of section 35(1) of the *Constitution Act, 1982*. Moreover, in July 2004, based on the *Powley* decision and credible Métis rights claims throughout the province, the MNO President and the Ontario Minister for Natural Resources entered into an interim Métis harvesting accommodation agreement, which recognized the MNO Harvesting Policy, the Harvester Cards issued by the MNO, and the MNO's identified Métis traditional harvesting territories throughout the province.

In the proposal the MNO wrote,

Both the MNO and Ontario have signalled their desire to work together on this issue [the Crown's duty to consult]. Specifically, the MNO desires to establish an effective means for Métis consultations to take place in Ontario. Currently, either non-existent or ad hoc consultation approaches in relation to Métis are being used by the Government of Ontario. This has led to frustration within Métis communities. It also leads to many of projects, plans and developments being pursued by Ontario being open to legal challenge due to a complete lack of consultation with the Métis people. The MNO believes that through the development of a collaborative consultation model some of these challenges may be able to be avoided in the future.

The MNO believes that consultations with Métis often never get off the ground or fail because of a lack of understanding within the Métis community on what 'consultation' means, a lack of capacity for the local or regional Métis community to effectively respond to or engage in consultations, a lack of knowledge on the part of government and industry on how to best engage Métis communities and an apprehension to engage Métis communities because of this lack of understanding.

The MNO believes that many of these challenges outlined above can be overcome through the development of a mutually agreeable Ontario Métis consultation framework that can be used by the provincial government to fulfill its obligations and duties to the Métis. It could also be used by proponents who have procedural aspects of the duty delegated to them. Further, through the development of this proposed framework, in partnership with MNO Chartered Community Councils, Métis at the local and regional levels will gain a greater appreciation of Ontario's consultation obligations as well as their own duties and responsibilities.

In order to achieve the abovementioned goals, the MNO proposed three phases for its work,

PHASE I: Consultations with the Ontario Métis Community – Consulting with Métis citizens and communities from throughout the province in order to increase Métis understanding of the Crown’s duty to consult and accommodate as well as soliciting input and views on Métis consultation priorities, what should be included in a framework, how a framework should operate, capacity needs, etc.

PHASE II: Increasing Awareness with the Private Sector – Engaging the private sector in order to increase awareness on the Métis Nation as well as develop information materials that can assist industry in knowing how to engage Métis communities throughout Ontario.

PHASE III: Development of an Ontario Métis Consultation Model – Based on its consultations with the Métis community as well as engagement with industry and the Ontario Government, the MNO will develop an Ontario Métis consultation framework to be reviewed and approved by MNO citizens and communities.

Based on bilateral discussions between MNO and MAA, it was agreed that funding would be provided to the MNO in 2007/08 to undertake Phase I. The MAA contribution agreement for Phase I related work was finalized in the Fall of 2007. As well, through trilateral discussions with the Government of Canada, OFI also agreed to provide funding for this Phase I related work in 2007/08.

B. The Community Consultation Process

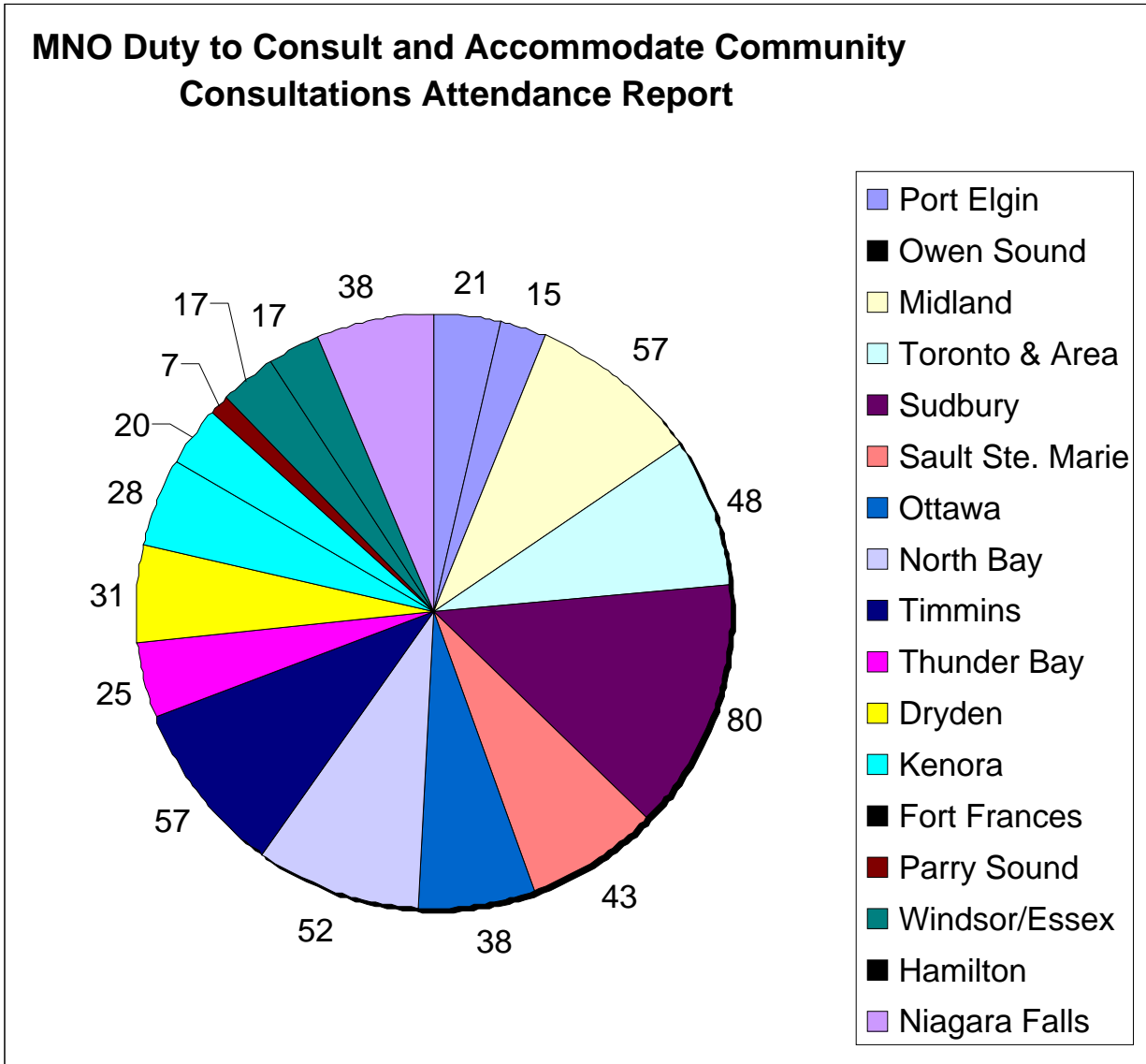
In January 2008, the MNO announced province-wide community consultations on the Crown’s duty to consult and accommodate, along with the creation of a MNO webpage providing information about the consultation meetings as well as copies of documents and materials for the consultations. A copy of the press release is attached as Appendix B. The consultation materials are available online at www.metisnation.org/consultations.

During February and March 2008, 17 community consultation meetings were held across the province, with the assistance of the MNO’s Chartered Community Councils. Meetings were held in Port Elgin (February 9), Owen Sound (February 9), Midland (February 10), Toronto (February 11), Sudbury (February 12), Sault Ste. Marie (February 14), Ottawa (February 24), North Bay (March 3), Timmins (March 5), Thunder Bay (March 17), Dryden (March 18), Kenora (March 19), Fort Frances (March 20), Parry Sound (March 25), Windsor (March 28), Hamilton (March 29), Niagara Falls (March 29).

At each community consultation meeting, the MNO’s leadership began the meeting with an update on topics and initiatives of interest to Métis citizens as well as an update on the relationships with the Ontario Government and the Government of Canada. A facilitator would then follow a standard presentation, as set out in the PowerPoint presentation entitled, *Developing a Framework for Consultations with Métis in Ontario, Winter 2008*. A copy of this presentation is available at www.metisnation.org/consultations.

In total, close to 700 Métis people attended these community consultation meetings. As well, the MNO held a workshop on this issue at a meeting of the Provisional Council of the Métis Nation of Ontario (“PCMNO”), which included 22 participants. Further, the MNO received 45 comments from Métis people via the MNO’s website or through direct emails and/or communications with the MNO’s leadership, staff or consultants working on this initiative.

The following chart provides a breakdown of the attendees at the various consultation sessions:



IV What We Heard

A. Overview of Section

This section provides an overview of what the MNO heard from its consultations with Métis citizens. It should be noted that the input, suggestions and ideas put forward are without prejudice to legal positions the MNO and rights-bearing Métis communities in Ontario may take in relation to the Crown's duty to consult and accommodate. This document identifies potential on-the-ground actions and policy initiatives that could assist in ensuring the Crown's duty to the Métis is fulfilled, rather than a legal analysis of what is required based on existing and future case law.

The input received from the consultations should be viewed as a resource to guide and assist the MNO in its development of an Ontario Métis consultation framework, but it does not provide a prescriptive 'road map' on what form a framework should take. Without question, further consultation on this important topic is required. On some consultation topics there was overwhelming consensus and clarity from MNO citizens on future directions and concrete actions items. On other consultation topics there were varying opinions and options put forth, which need to be further explored. As well, the consultations identified additional questions that were not originally considered by the MNO in developing its consultation materials, which require further consideration.

Specifically, this part of the report is divided into three sections:

1. Section B provides a summary of the key principles that were repeatedly heard throughout the consultations.
2. Section C provides a further elaboration of some of these principles as well as the responses received to the specific questions posed by the MNO within the consultations, along with recommendations and suggested action items related to these principles and topics.
3. Section D includes additional issues and topics that were raised by MNO citizens throughout the consultations, which will require further consultation, policy development work and consideration.

B. Principles for a Consultation Framework

The points below outline the reoccurring principles and themes heard repeatedly throughout the consultations. They are not in any particular order of importance. However, throughout the entire consultations there were two interrelated principles that were consistently reinforced by participants: *the need to recognize and respect the distinctiveness of the Métis in Ontario.*

While these two points were articulated in many different ways by Métis citizens, it was abundantly clear that recognition and respect will be essential for the MNO and its citizens to move forward in partnership with governments in relation to the Crown's duty to consult and accommodate. Participants stressed that they believe this direction has already been provided to governments by the Supreme Court in *Powley*. Moreover, participants made it clear that these two principles must form the basis for any MNO consultation framework that is developed.

“The overarching interpretive principle for our legal analysis is a purposive reading of s. 35. The inclusion of the Métis in s. 35 is based on a commitment to recognizing the

Métis and enhancing their survival as distinctive communities. The 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. ...

“The inclusion of the Métis in s. 35 represents Canada's commitment to recognize and value the distinctive Métis cultures, which grew up in areas not yet open to colonization, and which the framers of the Constitution Act, 1982 recognized can only survive if the Métis are protected along with other aboriginal communities.”

Powley at paras. 13 and 17

Clearly, Métis citizens and communities are no longer willing to accept being treated as ‘second class Ontarians’ and ‘third class Aboriginal people’ in the eyes of government and others. Participants expressed frustration that even after *Powley*, governments continue to use ‘not knowing who the Métis are’ or ‘uncertainty as to the locations of Métis communities’ as justifiable reasons to ignore Métis communities and Métis rights altogether.

Many participants highlighted that this lack of knowledge about the Métis in Ontario is only amplified in the private sector, with the government providing absolutely no support to MNO Community Councils or the MNO to educate government officials or industry about the Métis. Further, to date, governments have been largely taking a ‘hands-off’ approach on providing clear direction to industry in relation to engaging Métis communities.

Participants also stressed that government initiatives and actions do not help the situation, and, in many situations, perpetuate misunderstandings or ignorance about the Métis people in the province. At the time of the consultations, a few examples were mentioned:

- Participants in the northern Ontario meetings were critical of the Ministry of Northern Development and Mines (“MNDM”) with respect to the complete exclusion of any reference to Métis in that Ministry’s public documents. Specifically, participants noted MNDM’s Northern Prosperity Plan Progress Report, which made many references to First Nations, did not include even one example of the Ministry working with Métis communities.
- Participants pointed out that the 2008 Ontario Budget included several references to ‘Aboriginal’ initiatives, but then went on to discuss First Nations only, with no mention of Métis communities.
- Recently released draft environmental assessment guidelines from the federal government (Canadian Environmental Assessment Agency and the Canadian Nuclear Safety Commission) on projects planned for the Bruce region (i.e. a New Build at Bruce Power and Ontario Power Generation’s Deep Level Nuclear Waste Repository) rightly included specific reference to the potentially affected First Nations in the region, but made no specific acknowledgement nor any reference to the potentially affected Métis community.

These timely examples, along with others, were noted as a part of a larger systemic pattern where the inclusive language of ‘Aboriginal’ is used, but then Métis are excluded or ignored. Métis echoed support for urging government to adopt language like “First Nations and Métis communities,” rather than more ambiguous language like “Aboriginal,” which often creates misunderstandings and the opportunity for Métis to be overlooked or not considered.

Métis citizens stressed that since Ontario is the home of the landmark *Powley* decision, the province should be going out of its way to ensure that its initiatives are inclusive of Métis vis-à-vis public documents and policy development. Métis citizens noted that many western provinces seem more willing to ensure Métis are included. Métis citizens echoed frustration over this reality. However, some positive signs and developments were noted which made Métis citizens optimistic that this reality was changing in Ontario (*e.g.*, Ontario’s commitment to sign a MNO-Ontario Framework Agreement, discussions around core funding for MNO Community Councils, funding for MNO to begin work on the duty to consult, etc.).

Métis citizens also echoed frustration about the reality that governments were a part of creating the capacity and identification challenges Métis communities now face (*e.g.*, Métis communities being invisible entities in larger communities, a lack of capacity for Métis governance structures, no support for an objectively verifiable Métis identification system for generations, etc.), but they take no responsibility to assist Métis in addressing these challenges.

Participants noted that governments often use the modern day challenges that they had a role in creating for Métis communities, as an excuse to:

- Not engage the Métis (i.e., using the common excuse that “we don’t know where your communities are”),
- To move forward only with First Nations because First Nation rights “have been recognized longer” (even though it has been the government’s longstanding denials of Métis rights that has created this reality) and that Bands “have more capacity” (i.e., full-time Band staff and paid Chiefs), along with identifiable land bases, and
- To support unaccountable pan-Aboriginal groups that claim to represent “Métis” (i.e., since Métis communities are not recognized in law like Band Councils are, it is acceptable to allow groups with no defined membership or legitimacy “represent” or “speak on behalf” of Métis).

Some participants also expressed disappointment that Aboriginal groups who threaten political embarrassment to the government or civil disobedience appear to get more attention and concessions than those who ‘play by the rules’ and who participate in collaborative processes.

There was a common denominator for moving forward: governments must begin to appreciate, respect, recognize and support Métis communities in words and actions across all government departments. It is coming up to five years after the *Powley* decision and ignorance about the Métis is no longer an acceptable excuse. The law is clear. Métis are not ‘non-status Indians,’ a mixed bag of ‘urban Aboriginals’ or ‘other Aboriginal peoples.’ Government policies must begin to reflect this reality. Section 35’s honourable purpose cannot be achieved when governments continue to neglect Métis communities, undermine Métis governance structures by giving credence to any group that claims to represent “Métis,” or, by diluting Métis identity through pan-Aboriginal policy development and initiatives.

Moreover, it was clear that any MNO consultation framework with government must be based on *rights recognition, not rights denial*. Métis do not want to get bogged down in legal issues or litigation, but they will also not accept rights being “ignored,” “swept under the table,” or having rights issues “put off to another day.” From the Métis perspective, *reconciliation requires recognizing and respecting Métis rights*. Any consultation framework must acknowledge that Métis communities and Métis rights exist in the province of Ontario and that it is on this basis that governments and proponents have been delegated procedural aspects of the Crown’s duty to engage and consult with the Métis Nation and its communities.

The following are some of the other positions and principles that were repeatedly emphasized by participants throughout the consultations:

- *Métis Won’t Go Back To Being The ‘Invisible’ Aboriginal People*: For far too long in Ontario, Métis communities and their rights have been either overlooked, ignored or dismissed. Métis want to ensure that this Métis ‘invisibility’ in the eyes of governments and others changes. Many Métis are willing to aggressively pursue this recognition and respect. *Powley* and other successive Métis rights wins across the

country have emboldened Métis citizens and they are willing to take action, since it seems to work for other Aboriginal peoples in getting attention.

- *Métis Rights Are Equal To And Co-Exist With The Rights of Other Aboriginal Peoples in Ontario:* Métis rights must be respected, consistent with Canada's Constitution (i.e., section 35, the honour of the Crown, Crown's fiduciary duty, etc.). Métis rights co-exist with the rights and interests of other Aboriginal peoples throughout the province and there is no hierarchy of Aboriginal rights within section 35. The Crown must show the same level of respect to Métis rights, as should be shown to the rights of other Aboriginal peoples in Ontario.
- *Respecting The Rights Of Other Aboriginal Peoples:* Métis want to ensure that the rights of other Aboriginal peoples, with whom they share traditional territories, are respected. Where possible, Métis should respectfully engage and potentially share information and/or collaborate with First Nations. Of course, respect is a two-way street and it requires other Aboriginal peoples to show the same consideration and appreciation for Métis rights and interests.
- *Métis Want To Know What's Happening Around Them And Have A Say:* Métis citizens and communities in Ontario want to know what is happening and going on around them and their community in areas that affect Métis rights, culture, way of life and their ongoing existence (i.e., natural resources developments, land use planning, etc.). Métis communities want to have the capacity and relationships with government and industry to know what is happening and/or being planned for their traditional territories, which they have relied on for generations.
- *Rights-Bearing Métis Communities Are Regional In Size and Scope:* Métis in Ontario do not see themselves as discrete little physical "settlements" or "communities." For better or worse, Métis citizens and communities in Ontario have not evolved or developed with the border of a reserve playing a role in defining who they are or what their community looks like. Métis do not see where they live as defining them as distinct from other Métis citizens who may live in another town or settlement down the road. Métis citizens have a sense of 'community' that spans specific settlements, villages, towns or cities. This Métis view of the world must be respected. Métis will not be put into small community 'boxes' for the ease or convenience of government and industry. Flowing from this, consultation demands that all members of the regional rights-bearing community have the opportunity to be engaged and consulted on developments and policies that have the potential to affect their rights.
- *Métis Have Unique Consultation Capacity Needs:* Governments must recognize and appreciate that Métis governance structures do not receive the same levels of financial support that other Aboriginal peoples receive (i.e., no core funding for MNO Community Councils, Métis community leaders are all volunteers, no access to a majority of Indian and Northern Affairs Canada ("INAC") funding, etc.). This inequity requires governments to provide capacity support which addresses this disparity in order to enable the Métis to participate in consultation processes, similar to other Aboriginal peoples whose rights and land use will be affected by projects, developments and policies.

- *Government Must Respect Métis Governance Structures And Institutions:* Unlike other Aboriginal peoples in Ontario, governments have not created governance structures (for e.g., Band Councils under the *Indian Act*) and institutions (such as the INAC registry for status Indians) for the Métis. Instead of having governance structures imposed on them, Métis have developed and evolved their own governance structures and institutions to meet their needs. Just because governments have not created and do not have complete control over these Métis governance structures and institutions, does not mean that they should be ignored, disrespected or circumvented. In fact, governments should work with Métis to enhance and strengthen these structures and institutions for their benefit as well as for the benefit of the Métis.
- *Consultation Must Be With The Democratically Elected Representatives of The Métis:* Consultation must occur with the democratically elected representative and governing bodies of the rights-bearing Métis communities. Whether some parts or all of the MNO's governance structure needs to be consulted depends on the type of decision, development or policy that is being considered. The Crown cannot discharge its duty to Métis through public consultation processes, using Aboriginal service delivery organizations, such as the Friendship Centres), or by hand-picking Métis representatives. The MNO must defend this position in the courts (if required).
- *Government Program And Service Delivery Decisions Require Consultation:* Powley commits governments to enhancing the survival of Métis communities. Delivering culturally-appropriate programs and services to Métis citizens by the Métis Nation is an essential part of this survival. Métis history, identity and culture is often lost or ignored in pan-Aboriginal service delivery. Governments cannot continue to support these pan-Aboriginal structures which continually limit Métis access to the tools they need to survive and thrive for generations to come.
- *Coordination And Collaboration Within The MNO Is Essential:* Métis citizens support working together to coordinate and collaborate on consultation. There are some areas where MNO Community Councils should take the lead, with the support of the MNO as a whole. There are also some areas where the MNO as whole should take the lead, with the support and direction from MNO Community Councils. Métis citizens feel it is essential that there be agreement on, and a clear understanding of who is doing what, in order for a consultation framework to be successful.
- *A One-Size-Fits-All Consultation Framework Will Not Work:* While Métis citizens were supportive of the MNO developing a consultation framework, they also cautioned against developing a one-size-fits-all approach. Participants stressed the need for community-driven approaches to be developed, which meet the unique needs of the various regional communities throughout the province. Any consultation framework needed to be flexible enough to allow consultation processes to develop and evolve organically, based on local and regional priorities and interests, while also ensuring that all members of the potentially affected rights-bearing Métis community have the opportunity to be engaged and consulted.
- *Métis Are Not Averse To Economic Development:* Métis are not opposed to economic development on their traditional lands, but development must be done in a sustainable

way, which respects, and minimizes the negative effects on, Métis rights, land use and way of life. However, an essential reciprocal component of this development must be that affected Métis communities share in the benefits that flow from the use and development of their traditional territories on which they continue to rely. While negotiations on jobs for Métis and contracts for Métis businesses are important, Métis ownership, partnership arrangements and a role in ongoing stewardship must also be on the table. Métis are very aware that when the ‘boom’ of development is gone, it is the Aboriginal peoples who remain in the area, so Métis want to plan, invest and prepare for the ‘bust,’ as partners, not just outside observers.

C. Input and Feedback on Consultation Questions

What Is The Purpose of the Duty to Consult and Accommodate?

Within the presentation prepared for the community consultations, the MNO provided background and information on the evolution of the Crown's duty to consult and accommodate as well as general definitions for the terms 'consultation' and 'accommodation,' as they relate to the Crown's duty. A copy of this presentation is available at www.metisnation.org/consultations.

Overall, there was support for the definitions provided by the MNO. However, many participants (in particular the elected representatives of MNO Community Councils in attendance) indicated that there was too much information being provided in one meeting and that additional education and training sessions would be needed, if Métis citizens and community leaders were to become well-versed on these topics and effectively engage with government and industry. Métis community leaders requested training sessions during which they would have the opportunity to go through these issues in detail and ask questions of technical and legal experts in a less hurried environment.

In particular, many Métis community leaders in attendance expressed concerns that they have little to no technical or legal support at the local level to actively pursue or follow up on consultation-related activities happening in their respective areas. It was stressed that these consultation meetings must be just the beginning of ongoing and sustained engagement on this topic within the MNO, so the definitions provided for 'consultation' and 'accommodation' are truly appreciated and understood at the local and regional levels.

Participants provided the following suggestions with respect to future work in this area:

- The MNO, in collaboration with MNO citizens and Community Councils, should develop a collective 'vision statement' or 'statement of principles', which encapsulates the Métis Nation's perspectives and goals in relation to consultation and accommodation. This document could then be shared with the Crown and proponents as a starting point for discussions vis-à-vis consultation and accommodation processes at the local, regional and provincial levels.
- The MNO, in collaboration with MNO Community Councils, should hold regular two- to three-day training sessions or 'boot camps' for elected Métis leadership at the Community Council level. These training sessions would provide Métis leadership with a better understanding of Métis rights, MNO governance structures, as well as the Crown's duty to consult and accommodate.
- The MNO should undertake policy work in order to better explain what is included in the term 'interests', as it relates to the Crown's duty to consult and accommodate Métis "rights, interests and way of life."
- The MNO should develop practical examples of 'consultation' and 'accommodation' in the Métis context. A Métis consultation and accommodation

‘best practices’ document would provide MNO Community Councils with concrete examples of what consultation and accommodation processes look like, in order for these terms to be thoroughly understood, rather than just having abstract discussions on definitions.

Who Needs To Be Consulted?

(i) Consultation with the Rights-Bearing Collective

There was clear support for the principle that the Crown’s duty to consult and accommodate is owed to the Métis collective, not to individual Métis. As the MNO argued in *Powley* and the Supreme Court affirmed, Métis rights are collective rights. By virtue of being a member of the community, individuals have the right to exercise or benefit from the collective’s right, but the right is protected and regulated by the collective, not by specific individuals.

Participants used the analogy that similarly to how not all Métis exercise their harvesting rights, it is likely that not all Métis will be interested in engaging or participating in every consultation or accommodation process pursued by their community. Even so, participants strongly echoed the sentiment that all members of a rights-bearing Métis community should have the *opportunity* to be engaged and consulted. It is then the choice of the individual whether they want to participate in that *opportunity* provided to them by virtue of their membership in the rights-bearing community.

Participants provided the following suggestions with respect to future work in this area:

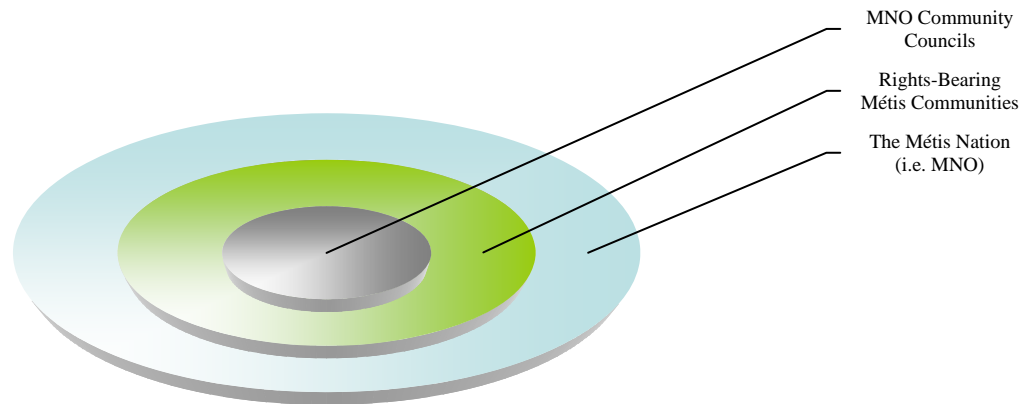
- The MNO, in collaboration with MNO Community Councils, should develop an effective and transparent communications strategy that will ensure all potentially affected members of the rights-bearing community are aware of consultation and accommodation opportunities.
- The MNO, in collaboration with MNO Community Councils, should continue to undertake opportunities to educate MNO citizens on the basis for Métis rights, as well as the law related to Aboriginal rights generally, and to Métis specifically.

(ii) Consultation with Regional Rights-Bearing Métis Communities

Overwhelmingly, Métis participants agreed with the proposition that rights-bearing Métis communities are not limited to “dots on a map,” individual villages, towns or cities, discrete physical settlements with circles drawn around them, etc. Clearly, Métis rights-holders see themselves as a part of larger regional communities that are connected through a common history, identity, culture, kinship connections, mobility and shared traditional territories.

It was stressed that MNO’s administrative governance structures do not define, limit or constrain the rights-bearing community. These Métis-made, internal governance structures just represent various component parts of the rights-bearing community and may be required to work together to ensure the entire community is effectively consulted.

Participants recognized that regional Métis communities may be represented by more than one MNO Chartered Community Council, since Councils are created to ensure MNO citizens are represented at a local level as well as receive MNO programs and services. Moreover, these regional communities are a part of the larger nation, as represented by the MNO. The following diagram provides a visual of how there may be various parts of the collective, and they all are key parts of the nation as a whole.



It was stressed that a collective and united approach is needed in order to ensure Métis rights are respected and protected. The development of the MNO Harvesting Policy and negotiating with the government to have Métis-made laws and policies recognized was noted as a best practice. Specifically, it was noted that MNO citizens are not solely members of specific MNO Community Council, but are citizens of the Métis Nation. MNO Community Councils are mandated to represent MNO citizens based on the terms and conditions set out in negotiated Charter Agreements. As such, MNO citizens demand that the MNO ensures their interests and rights are considered and protected, while respecting the important and defined roles of MNO Community Councils, Regional Councillors, Captains of the Hunt, etc.

Participants expressed concerns about what they see as government attempts to force Métis communities into ‘little boxes’ for their own convenience and ease, rather than actually dealing with Métis communities as they have historically operated and how they continue to operate today. It was emphasized that Métis communities have never had walls around them and that mobility between Métis settlements within a region or throughout the Métis Nation should not negate or limit someone’s identity or rights.

For example, in the North Bay consultation meeting, one participant emphasized that just because he may move to Sudbury it would not change the Métis community he belonged to. In his mind, these two locations are the same Métis community.

“We are extended families. We have always moved for work or even health reasons, but it doesn’t change the fact that we are still a part of the same Métis Nation in North Bay, Mattawa or Sudbury.”

MNO Citizen, North Bay Consultation

Similarly, historic and modern day kinship connections exist between other locations in Ontario: Owen Sound and Port Elgin; Kenora, Dryden and Fort Frances; Timmins, Temiskaming and Cochrane were noted by participants. There was strong support for strengthening the ties between MNO Community Councils. It was also noted that in the MNO’s *Statement of Prime Purpose* bringing Métis communities and people together to build a stronger nation is a stated priority.

Participants also noted that many of the challenges that other Aboriginal peoples face today flow from the reality that foreign governance systems and structures were imposed on them. Métis emphasized the need to stand firm on maintaining Métis governance structures that meet Métis needs. Métis also stressed that they did not want to see the recognition of their rights start to build up artificial lines and divisions between families, communities and the nation, so Métis must be vigilant in ensuring Métis communities are recognized for what they are, not what others would like them to be.

One Métis citizen noted the differences between how Métis and First Nations people describe where they come from as evidence that Métis communities are not limited by defined geographic boundaries. She stressed that Métis should not be forced into defining themselves as small little pieces of a much a larger community and nation.

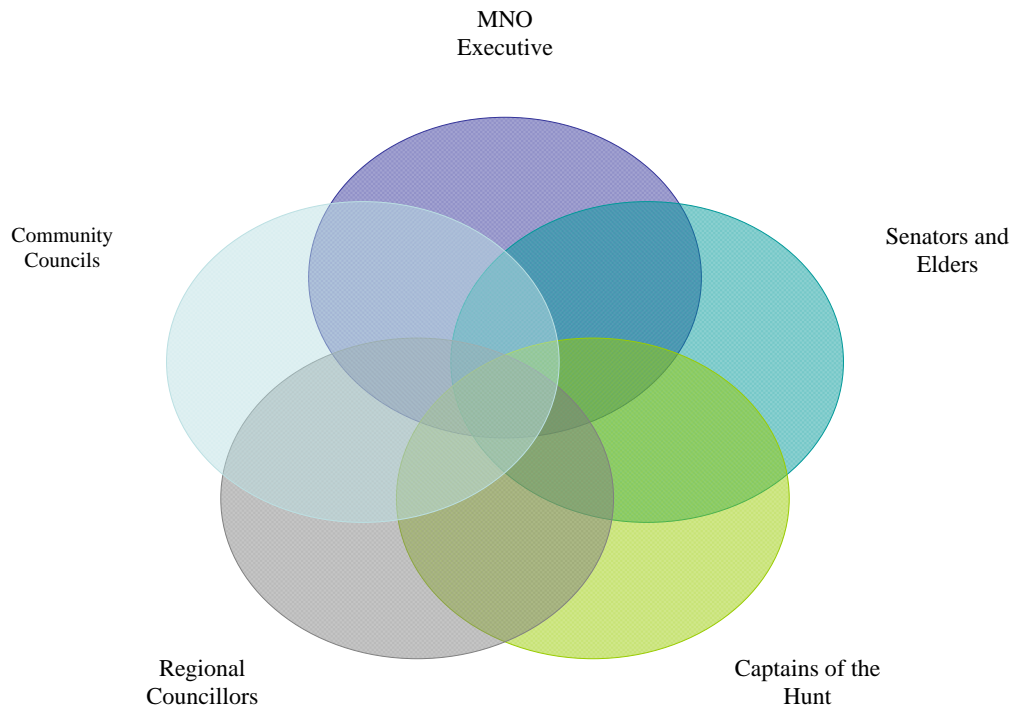
“... [they] introduce themselves by saying that they are a member of a certain First Nation and that is how they identify. We identify as citizens of the Métis Nation and that we live in a specific location. I have never called myself just a Sault Ste. Marie Métis. Locations don’t stop or limit our identity. It’s just where we live. My family comes from all over the west and this area. We are the same families and we are stronger together than apart.”

MNO Citizen, Sault Ste. Marie Consultation

In several consultation meetings it was suggested that one of the reasons the MNO and Métis communities have been so united over the last decade has been because there has been limited resources available to the Métis and essentially “no funding to fight over.” Participants expressed a desire to not see this new era of ‘Métis rights recognition’ cause divisions or splinter the Métis people. Also, it was emphasized that since there will now be new opportunities for Métis communities as well as Métis individuals to benefit from

economic development opportunities, it will be essential to ensure that any derived benefits accrue to the rights-bearing Métis community, as a whole. Further, it was stressed that if individual benefits, such as job set asides, contracts, etc., are negotiated, there must be transparent, fair and equitable processes in place to ensure all Métis citizens have the opportunity to access these benefits.

Since many developments and policies have potential regional land use and rights impacts, MNO Community Councils signalled their willingness to work with regional and provincial Métis leadership as well as other MNO Community Councils, to ensure the entire rights-bearing Métis community would be engaged and consulted. It was clear that there are overlapping areas of consultation roles and responsibilities within the Métis Nation that have not yet been elaborated on. The diagram below illustrates some of the overlapping structures and institutions that must work together.



Participants also raised questions about what type of developments and policies would require the engagement of the entire rights-bearing community (i.e., projects with potential regional impacts), and what type of initiative could simply be handled by individual MNO Community Councils because it did not pose potential regional impacts. This topic was identified as an area where more work needs to be done because there should be some connection between the size and scope of the proposed Crown action or development, and whether a local or regional consultation approach is required.

It was clear that many MNO Community Councils felt that they should be responsible for consultation processes for developments and policies that fall within their geographic bounds, if there were no potential regional impacts on the larger rights-bearing community. However, it was also pointed out and recognized that most medium- to large-scale projects and developments would have potential regional impacts, which would require a coordinated approach to ensure the entire regional rights-bearing community is engaged. Therefore, this would require coordination between Community Councils, with the support of the MNO Regional Councillor, head office, etc., to ensure a regional consultation plan was in place. Further, it was noted that there should be a way to ensure regional interests are balanced with local interests. This was another topic which was identified as an area for additional work to be undertaken.

Métis participants also stressed that consultation and accommodation processes should be community-driven and be allowed to develop on a case-by-case basis, since the duty and its implications are new and evolving. For example, some MNO Community Council members discussed the potential of establishing permanent coordinating committees to deal with potential developments and policies that could affect the citizens in their region. Others identified the option of one MNO Community Council taking the lead on a consultation process (for e.g., participation in an environmental assessment), and negotiating with the MNO and other MNO Community Councils a way to ensure the entire regional community would be engaged, as required.

Based on these differing perspectives, any consultation framework needs to be flexible enough in order to ensure local and regional Métis leadership can develop case-by-case approaches that work best for their respective local and regional communities. The framework also needs to recognize the MNO's overall role of ensuring all MNO citizens are treated fairly and that processes are transparent and consistent with Métis rights law as well as the Métis Nation's overall goals. It was also noted that these different approaches could then be assessed on their overall effectiveness. This assessment and evaluation of what works in various situations would be invaluable to the MNO and Community Councils in making decision about how to best engaged and consult citizens in the future.

All participants stressed the need for the MNO to assist MNO Community Councils in developing these regional processes, as well as providing opportunities for MNO Community Councils to learn from one another and share best practices. Participants also stressed the need for the MNO and its Community Councils to be supported by governments in developing this capacity.

Participants provided the following suggestions with respect to future work in this area:

- Any consultation framework must be based on the reality that Métis communities are regional in size and scope and not limited to specific settlements, villages, towns, cities, etc.
- The MNO should secure support from government to assist MNO Community Councils in undertaking historical research as well as traditional land use studies

to support and assist regional rights-bearing Métis communities in asserting their rights, interest and claims in consultation and accommodation processes.

- The MNO should undertake policy work which provides greater clarity between regional rights-bearing communities, traditional harvesting areas and traditional territories.
- In future consultations on this topic, the MNO should attempt to hold regional meetings which would bring together Métis citizens from the larger community, not just those living in the location where the meeting is held.
- While developing a consultation framework, the MNO should work with MNO Community Councils to develop regional consultation approaches on a case-by-case basis, which meet the needs of local and regional interests. These various approaches could be reviewed and evaluated to determine what type of model/approach has been the most effective for a future consultation framework.
- The MNO should hold annual conferences on consultation and accommodation, which bring together provincial and regional Métis leadership as well as MNO Community Councils in order to share best practices, update each other on consultation and accommodation processes, etc.
- The MNO should provide MNO Community Councils with examples of how other rights-bearing communities throughout the Métis Nation have participated in consultation and accommodation processes (for e.g., Métis living near Alberta Oil Sands).
- In the future, an evaluation of the different consultation processes developed by various MNO Regions and Community Councils should be undertaken in order to identify and strengthen any weaknesses in the various models.

(iii) Legitimate and Accountable Métis Governance Structures Must Be Consulted

Participants stressed the need for governments to ensure that they engage with the democratically elected and mandated representatives of the Métis people in Ontario. Participants noted that over the last 15 years, the bona fides of the MNO's citizenship and the legitimacy and credibility of the MNO's governance structures and institutions have been scrutinized by Métis people as well as provincial and federal governments. It would be unacceptable for governments or industry to ignore or circumvent these democratic institutions that were created and are supported by the Métis people.

In Ontario, only the MNO has a centralized Métis registry, which includes over 13,500 Métis citizens.⁷ Based on this objectively verifiable Métis identification system, which is recognized by both Ontario and the federal government through harvesting

⁷ This number does not include Métis applicants who have not yet completed the MNO's registration process (5,000+ applications pending) or children under the age of 16 years. Based on conservative estimates, if children were registered, the registry would include over 44,000 Métis citizens.

accommodation arrangements, Métis elect Métis to represent them through ballot box elections held at the provincial, regional and local levels.⁸ Métis stressed that these are the only governance structures and elected representatives that can speak on behalf of and represent the Métis people in Ontario.

MNO members stressed that since the release of the *Powley* decision, there has been an increase in the number of organizations using the word “Métis,” and self-appointed “Métis” representatives and groups making unverified claims of “Métis” membership lists. Métis citizens believe these individuals and groups must be “taken to task” and aggressively challenged by the MNO, should they claim to be representing rights-bearing Métis in consultation and accommodation processes. In several communities, Métis urged the MNO to take these groups to court in order to shed light on the illegitimate claims of these individual and groups, since it is likely that governments will shy away from testing the bona fides and credibility of the claims of these individuals and groups.

Unlike other government initiatives, consultation and accommodation decisions go to the heart of Métis rights. It would be absolutely unacceptable for unaccountable individuals and groups to make claims on behalf of the rights-bearing Métis community in consultation and accommodation processes. It was noted by many that this point should be stressed to governments, and the MNO should be prepared to protect the interests of Métis rights-holders and rights-bearing communities in court, if required.

In order to combat illegitimate claims, participants encouraged the MNO to undertake an aggressive public awareness campaign with government as well as industry. This should include mainstream media as well as engaging directly with industry associations and groups. It was noted that government provides little to no information about Métis communities to industry because they shy away from taking positions about who represents the Métis.

It was suggested that the MNO’s awareness campaign should not only focus on providing information on the MNO, but it needs to make it very clear to government and industry why they should not be consulting with self-appointed individuals and groups (*Powley* states that Métis communities are not confused non-status Indian groups, and the court urged Métis to put an objectively verifiable identification systems in place, etc.).

Some Métis participants noted that there are Métis rights-holders who have the right to be consulted as a part of the collective, but are not currently MNO citizens. For example, some Métis rights-holders have applied to the MNO, but are in the registry’s large backlog. As well, there are some Métis rights-holders that do not want to join the MNO. It was identified that this issue needs to be addressed in order to ensure all members of the rights-bearing community are provided the opportunity to participate in consultation and accommodation processes. It was also noted that while the MNO wants to ensure that all rights-holders are consulted, it also needs to ensure that individuals who have not gone through the MNO’s registration system are actually Métis. This topic was an area that was flagged for additional policy development work.

⁸ This includes MNO Chartered Community Councils as well as the PCMNO, which is elected through province-wide ballot box elections every 4 years.

Participants provided the following suggestions with respect to future work in this area:

- The MNO should write to government as well as industry, stressing the need for consultations to occur with the democratically elected representatives of the Métis people in Ontario, not individuals or groups which have no defined membership or accountability to the rights-bearing Métis community whose rights and interests are at issue.
- The MNO should pursue discussions with government to develop a *Métis Act*, similar to the Saskatchewan legislation, which would legally recognize the MNO and its governance structures as the representative of the Métis people in the province.
- The MNO should develop a litigation strategy (to be implemented if needed) that would ensure that the Crown and industry engage and consult with the democratically elected representatives of rights-bearing Métis communities that have objectively verifiable identification systems for Métis rights-holders (i.e., the MNO registry).
- The MNO should identify ways that enable members of the rights-bearing Métis community who may not have MNO membership to participate in consultation and accommodation processes provided they are legitimate Métis rights-holders.

(iv) *Consultation with Métis in Central Metropolitan Areas and Métis Living Out of the Traditional Territories*

Consultation meetings in Toronto, Windsor, Hamilton, Niagara Falls and Ottawa included many Métis citizens who stressed that even though they live in major urban areas and are currently outside of the traditional territories of their respective rights-bearing communities, they should still have the opportunity to be consulted on developments and issues that could potentially affect their home communities.

Several post-secondary students participating in the consultations noted that they would be returning to their home communities after completing their education. Other citizens noted that they are still strongly connected to their home communities (many returning home often to visit family, harvest, etc.) and deserve the opportunity to be aware of and participate in consultations.

Further, it was noted by one participant that the Supreme Court of Canada's decision in the *Corbiere* case allowed First Nation band members, who were living off the reserve, an opportunity to vote in reserve elections, so Métis living outside their home communities should be provided similar opportunities vis-à-vis consultation.

Overall, it was clear that Métis living in major urban areas and Métis currently living outside of their home community's traditional territory have keen interest and concern about their home communities. These Métis community members want to be made aware and given the opportunity to be involved in consultations that have the potential to affect their communities.

Participants noted that the MNO's communications tools could be used as effective means of letting them know what is going on in their home communities. One participant pointed out that most people in urban centres have easy access to the Internet, so the MNO's website could be used more effectively to update Métis on what is going on across the province vis-à-vis consultation processes. As well, the *Métis Voyageur* was highlighted as a way to keep Métis citizens and communities connected.

In the Hamilton and Windsor meetings, participants raised the desire for historic research to be undertaken in their area in order to better understand the history of Métis in this region of the province and whether there is a basis for Métis rights claims in the area.

Participants provided the following suggestions with respect to future work in this area:

- As a part of any consultation framework, the MNO should include elements that ensure that Métis living in major urban areas or outside of their respective rights-bearing community have the opportunity to be aware of, and engaged in, consultation and accommodation processes.
- The MNO should include a "consultation update" on the MNO's website and in the *Métis Voyageur*, which would provide all Métis citizens with current information on the Métis consultation and accommodation processes which are taking place in Ontario.
- The MNO should establish a mechanism so MNO citizens living outside of their home community or traditional territory have access to information about consultations, upcoming elections, regional initiatives, etc.
- The MNO, in collaboration with MNO Community Councils in the region, should work to secure funding for historical research on Métis in south-western Ontario.

What Does An Effective Métis Consultation Process Look Like?

(i) Five Steps for Consultation

In the MNO's consultation materials, five steps for effective consultation and accommodation were suggested:

1. **Notice** – There must be adequate and bilateral notice to the Métis community by the Crown and/or the developer about a proposed Project. This bilateral notice requirement is based on Métis having Aboriginal rights (which may be proven, accommodated or asserted rights) in the area.
2. **Funding** – The Crown and/or the developer must fully fund the Métis community's participation in the consultation process. Funded participation includes, but is not limited to, research, analysis and the preparation of materials needed to determine the potential effects of the Project. It may also involve participation in environmental hearings, information meetings and consultation with our communities.

3. **Information Gathering, Analysis and Exchange** - The Crown and/or the developer must fully inform the Métis community about the Project. Only upon receipt of adequate funding and Project information, will the Métis community provide information to the Crown and/or the developer about our various spiritual, cultural and resource uses in the Project area.
4. **Understanding Effects** – The government and the developer must work together with the Métis community to understand how the proposed Project might affect Métis rights, culture, way of life and economy.
 - a. If the Project is determined to have significant effects on Métis rights and interests that cannot be mitigated, it may not proceed.
 - b. If the Project’s effects can be mitigated so that they minimally affect Métis rights and interests, it moves to the accommodation stage.
5. **Accommodation** – As the Project proceeds, there is an ongoing duty on the Crown and the developer to work together with the Métis Nation to ensure that the Project accommodates our rights, title, culture, way of life and economy.

Overall, participants endorsed using these five steps as an interim framework for consultation and accommodation processes, while the MNO developed a comprehensive consultation framework building on these steps. However, some Métis participants cautioned that while these steps are helpful, they were largely geared towards natural resources development and larger scale projects. These participants noted that there is a multitude of ‘strategic planning’ and ‘government policy decisions’ that dramatically affect Métis rights, interest and way of life in Ontario, which also need to be considered and addressed by the MNO in the development of a consultation framework.

Participants encouraged the MNO to develop similar steps for ensuring rights-bearing Métis communities are consulted on government policy decisions that have the potential to significantly impact Métis rights, interests and way of life. Métis involvement in regional planning and land use initiatives was also highlighted.

In particular, it was highlighted that government policy choices made in relation to the delivery of mainstream and Aboriginal programs and services have dramatic effects on Métis identity and cultural well-being. Participants noted that pan-Aboriginal approaches to program and service delivery can have just as negative effects on Métis survival and well-being, as many developments on Métis traditional lands. For example, some MNO Community Councils noted that they were not able to deliver health and wellness programs because other service delivery organizations, such as the Friendship Centres, were already delivering these services in their area; however, this delivery is largely to non-status Indians or designed on the ideology that people are “Aboriginal,” rather than distinctly First Nations, Inuit and Métis. Instead, these pan-Aboriginal approaches reduce and de-emphasize the importance of Métis culture and Métis distinctiveness. Similarly, participants noted that government pan-Aboriginal policy choices in the areas of child

and family services, justice and education have detrimental impacts on Métis communities.

It was noted that the Ontario-MNO framework agreement should emphasize the need for Métis-specific program delivery as a means of enhancing the health and cultural well-being of Métis communities in Ontario. Through the framework, the MNO should demand increased Métis input into government policy development and design across Ontario ministries and related agencies. Specific Memorandums of Understanding (“MOU”) should be pursued with Ontario ministries responsible for education, training, justice, child and family services, etc. Education, tourism, child and family services and restorative justice were just some of the areas identified by participants.

It was also noted that government should be put on notice that the Métis Nation does not believe the Crown’s duty is limited to resource development projects, but that it includes program and service delivery choices, strategic planning, land use initiatives, etc.

Participants provided the following suggestions with respect to future work in this area:

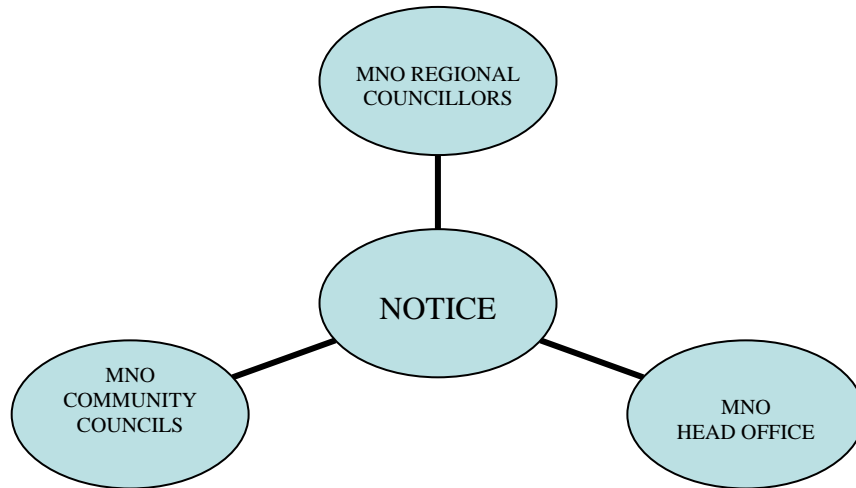
- The MNO should build upon the five steps to effective consultation in order to develop an Ontario Métis consultation framework;
- The MNO should develop additional steps in the consultation framework to ensure that Métis are engaged in strategic planning and policy development choices related to the delivery of programs and services to Métis, for those programs and services which have the potential to affect Métis rights, interests and way of life;
- The MNO should write to government to make it clear that Métis believe the Crown’s duty extends to strategic planning and policy decisions that have the potential to affect Métis rights interests and way of life;
- The MNO should incorporate the need for Métis involvement in government strategic planning and policy development in the MNO-Ontario framework agreement and pursue bilateral MOUs with relevant ministry authorities (regarding child and family services, education, training, etc.);
- The MNO should undertake policy work to demonstrate how pan-Aboriginal approaches negatively affect Métis rights, interests and way of life in Ontario; and
- The MNO should develop a detailed case study (with practical examples of each of the five steps in action) as a resource tool for MNO Community Councils.
- The MNO, in conjunction with other Métis governments, should hold a conference where Métis communities from throughout the Métis Nation share best practices on consultation and accommodation processes (for e.g., Métis in Alberta Oil Sands area, Métis in Northwest Territories, etc.).

(ii) *Notice*

The feedback from consultations supported the principle that direct and bilateral notice must be given to the rights-bearing Métis community, as represented through democratically-elected Métis governance structures and institutions (i.e., MNO Community Councils, Regional Councillors, MNO Executive, etc.). A clear process to effect this notice must be set out in any consultation framework.

Ideally, notice should be to all potentially affected MNO Community Councils in the region (if the project has potential regional impacts) as well as the MNO Regional Councillor, since these individuals are elected to represent all Métis citizens within the MNO’s defined regions. While capacity is being developed at the local and regional levels, there was also support that notice be provided to the MNO head office in Ottawa in order to ensure things “don’t fall through the cracks” and that a repository of notice letters is created and maintained by head office.

The diagram below outlines the recommended Métis governance structures and Métis elected officials who should receive notice from governments and industry.



It was agreed that until governments and industry adopt the practice of making sure all of these Métis governance structures and Métis elected officials receive notice, these MNO structures and elected Métis representatives will ensure notices are shared between them.

Participants also urged that all consultation letters be logged in a central database, which would include an interactive map, with the name or company, date, description of project, and so on. This database would be accessible to MNO Regional Councillors and Community Councils through the MNO’s website. Further, it was suggested that the MNO develop a standard letter that MNO Community Councils could use to respond to these notices.

Participants supported the idea that receiving a notice would trigger a series of events within the MNO. However, as discussed above, how consultation would be undertaken would need to be community-driven and be developed on a case-by-case basis depending on the size of the project, potential regional impacts, location of the project, number and location of Métis citizens potentially impacted, etc.

There was support for the idea that upon receipt of each notice, a ‘consultation action plan’ for follow up would be developed. For example, if a regional consultation committee had been established it would go to that body for their action and follow up. If the project was in a MNO Community Council’s geographic territory, but the project had potential impacts on the entire regional rights-bearing Métis community, a mutually agreeable regional consultation process would be arrived at in order to ensure all Métis rights-holders were engaged and consulted.

It was also suggested that a dedicated intranet site, as a part of the MNO’s website, could be used as a resource tool by MNO Community Councils and MNO Regional Councillors to keep track of what step consultation and accommodation processes were at (i.e. stage of consultations, who is doing what, workplan status, etc.).

Participants provided the following suggestions with respect to future work in this area:

- The MNO’s consultation framework should require notice to the potentially affected MNO Community Councils, MNO Regional Councillors and copied to the MNO head office.
- The MNO should look to developing an interactive notice database and map as a resource for MNO Community Councils to monitor and assess consultation and accommodation processes.
- While the MNO develops a consultation framework, it should develop and distribute promotional materials for industry which set out information on the MNO’s governance structures and who notice should be sent to.

(iii) Capacity and Funding

Of the five steps discussed, the need for capacity and funding was identified as the most important. Clearly, if the complete lack of capacity and funding in this area within Community Councils and the MNO overall is not addressed, consultation and accommodation processes will not get off the ground.

It was clear that Métis participants want the MNO to ensure Community Councils are supported as they take on this new and important role in the Métis Nation’s rights agenda. It was also recognized that as MNO Community Councils develop capacity and experience in this area, the need for the MNO’s support and assistance would be lessened, but it would still need to play an oversight role in order to ensure all potentially affected MNO citizens are engaged and consulted. It was stressed that while the MNO can play a coordinating and facilitating role, MNO Community Councils as well as the MNO head office need to be directly provided with financial support from

government in order to develop the capacity to work together on consultation initiatives as partners.

All participants recognized that in order for the MNO and its Community Councils to implement reliable and structured processes, sustained and long-term funding is required at the local, regional and provincial levels. Participants stressed that project-based funding favours those who already have capacity, rather than those who have the most need. As well, project-based funding does not allow sustained capacity to be built (i.e., MNO and its Community Councils cannot offer job security to qualified candidates or compete with government and industry compensation packages).

It was also noted that governments are notorious for extensive funding delays. It often takes months to get contribution agreements finalized, and longer still until the first cheque is received. Unlike other Aboriginal peoples, Métis do not have the luxury of being able to cash flow government initiatives, since Community Councils receive no core operating funding and rely almost entirely on administration allocations from the delivery of programs and services (which have limited flexibility).

It was suggested that a Consultation Branch needs to be created within the MNO. Similar to other MNO branches, capacity and support needs to be provided directly to MNO Community Councils, MNO Regions and the MNO head office. It was stressed that if the government is serious about ensuring consultation takes place, it must provide predictable and ongoing funding to this branch. It was noted that this type of approach is consistent with enabling the Métis people to engage government at the strategic planning and policy level, rather than just at the operational (i.e., specific project or development) level. Further, funding from proponents would supplement the MNO branch in relation to specific projects on the ground, and a core capacity would be developed throughout the MNO at the provincial, regional and local levels.

An important point that was raised by many participants is the reality that unlike other Aboriginal peoples, Métis elected officials at the regional and local levels are almost all volunteers. Therefore, the additional time required for individuals to take on this work should be compensated at fair and reasonable levels. Further, staff within MNO Community Council offices are mostly responsible for the delivery of MNO programs and services, and do not have the time or qualifications and experience to deal with consultation-related engagement. It was stressed that health or training staff should not be expected to take time away from their important work for matters related to consultation. Clearly, sustained capacity in this specific area is required.

Participants also noted that a consultation framework and its related processes needs to ensure there is a role within consultation and accommodation processes for the MNO Captains of the Hunt, Métis Women, and Senators.

Participants provided the following suggestions with respect to future work in this area:

- The MNO should enter into negotiations with the Ontario Government and the federal government to secure sustained, core funding to MNO Community Councils from both levels of governments;

- The MNO should undertake a comparison of funding received by First Nations in Ontario versus funding received by Métis communities in Ontario.
- The MNO should develop a multi-year MNO Consultation Branch workplan, which would include funding and capacity at the local, regional and provincial levels in order for Métis communities to effectively engage in consultation and accommodation processes;
- The MNO should develop a consultation and accommodation resource ‘toolkit’ that would include sample funding and capacity documents such as funding agreements with industry and government for Métis to participate in regulatory processes, impacts and benefits agreements (“IBAs”), etc.;
- The MNO should develop a transparent standard policy to compensate Métis community leaders and citizens who participate in consultation initiatives (i.e., standard per diems, wage replacement, etc.);
- The MNO should focus on obtaining ongoing multi-year consultation and accommodation processes funding, rather than MNO Community Councils having to develop proposals and apply for government funding on a project-by-project basis.

(iv) Information Gathering, Analysis and Exchange

There was significant confusion among participants over the type of information that needs to be exchanged with government and/or industry; for example, questions included whether historical research needs to be contracted in areas where the Crown has already acknowledged the existence of Métis rights. As well, participants noted that a majority of the research completed to date in Ontario has not included the perspective or voice of the Métis people themselves — which by definition means it is seriously methodologically flawed and thus unreliable (for e.g., Ontario Government’s Praxis reports, the federal Department of Justice’s “Métis community” research reports covering Ontario).

It was clear that there is a shortage of information and research on the Métis in Ontario. Unlike other Aboriginal peoples, research efforts on Ontario Métis have been minimal. This includes historic and contemporary data. Participants stated that they were encouraged that consultation and accommodation processes may provide an opportunity for Métis communities to record the unwritten chapters of the Métis Nation’s history. However, they were also concerned that this research must be undertaken in a credible and inclusive manner, which respects that there is a role for the Métis community in such research, and in order to ensure the full story is told.

Participants were also concerned that misleading information should not be relied on and that they do not want to incur costs for research or information that is ultimately unreliable or unhelpful to consultation and accommodation processes. Once again, participants pointed to the proposed MNO Consultation Branch as being of assistance. Within the Branch, full-time experts could be available to support the work of the MNO’s Community Councils. As well, the MNO could develop a roster of recommended

individuals with whom Métis communities could contract for an appropriate research study, rather than having to start from scratch, sourcing and working with a researcher who quite likely might have little or no experience with working with Aboriginal peoples generally, and Métis people specifically.

Participants identified undertaking more comprehensive work on Métis Traditional Land Use Studies (TLUS) as an urgent priority. There was strong support that the MNO head office taking a coordinating role in this work, since it is unrealistic for each MNO Community Council to establish its own mapping unit. Additionally, it was noted that Métis land use has overlap between MNO Community Councils, so a provincial mapping initiative makes sense.

Additional points were made on the desire for the MNO to develop a TLUS initiative within the MNO head office:

1. Many Métis do not want their private information available to outsiders without some level of aggregation of the data. Similar to how the MNO Registry has privacy protections and controls on sharing genealogical data, the same level of respect should be shown to traditional knowledge that is shared by Elders, traditional resource users, etc. Participants said they are comfortable with this data being shared in aggregate (i.e., in a rolled up, cumulative manner), but want to ensure that their specific personally identifiable information is shared and known only to the Métis Nation.
2. Traditional knowledge goes to the heart of Métis culture and identity; therefore, it should be protected and held by the collective. Métis should own and control their traditional knowledge: the principles of OCAP – Métis ownership, control, access and possession – should apply. Participants noted that typically when outside contractors are used, the Métis community loses control of its data. As well, some participants raised concerns about how information can be manipulated and distorted by outsiders to assist them in arriving at a specific conclusion or hypothesis about the Métis people. If Métis maintain control over this information, the data cannot be misinterpreted as easily.
3. A provincial mapping initiative is consistent with the MNO's approach that we are one people, one nation. While the MNO recognizes there are natural regional groupings across the province, these regional communities are by no means unconnected to others. A comprehensive TLUS initiative would allow the MNO to explore the historic and contemporary connections between Métis throughout the province.
4. Métis land use is not static, but one of the failings of maps is that they can only render a moment in or a period of time. The Métis have been and continue to be mobile, therefore, their territories are expansive and the land use within those territories shifts over time. For example, a map today may show that Métis in a region largely hunt moose in one area, but if the moose population reacts to other environmental factors and moves elsewhere, Métis harvesters will adapt too and follow where the moose go. As a result, maps identifying specific Métis

harvesting patterns of today, cannot be used to limit Métis harvesting practices of tomorrow because the community will continue to adapt to external factors.

Participants wanted to ensure that MNO Community Councils could get maps generated as required. There were also suggestions that some maps be available online. Part and parcel to this, participants recognized that Métis community leaders need assistance on how to interpret the map. Again, in-house expertise or a roster of recommended experts were identified as important supports for MNO Community Councils.

While there was strong support for the MNO working together, it was also stressed that the MNO needs to strike the right balance of centralizing certain functions and providing in-house supports, while also empowering MNO Community Councils and MNO Regions to build their own consultation and accommodation capacity.

Participants provided the following suggestions with respect to future work in this area:

- The MNO should undertake regular training sessions with MNO Community Councils on what type of work needs to be contracted for the information exchange step;
- The MNO should work with MNO Community Councils, through the proposed MNO Consultation Branch, to develop ‘consultation action plans’ based on notices received. These ‘action plans’ would provide a road map for Councils to follow as they embark on specific consultation and accommodation processes;
- The MNO should establish a web-based clearinghouse of all of the research that has been done on Métis communities in Ontario and make that available to MNO Community Councils as a resource;
- The MNO should develop an internal confidentiality, privacy and access to information policy in relation to what type of information obtained from MNO citizens that is shared with government and industry by Community Councils, Captains of the Hunt, PCMNO, MNO staff, etc.;
- The MNO should develop fee-for-service policies and procedures for aggregate data and information requests from government and industry;
- The MNO should develop a roster of experts (biologists, researchers, engineers, etc.) who are familiar with or have experience working with Métis communities;
- The MNO, through the proposed MNO Consultation Branch, should develop an in-house team of experts or skilled staff with experience in natural resources, biology, science, law, etc., that can assist MNO Community Councils (as required) with their local or regional consultation processes; and
- The MNO should develop an in-house TLUS unit to undertake mapping throughout the province that can be used as a resource by MNO Community Councils in their discussions with industry and government.

(v) *Understanding Effects*

With respect to this step, it was clear that ensuring Métis communities have access to the required expertise of archaeologists, water specialists, biologists, etc. is going to be essential. Once again, participants highlighted the need for MNO to develop in-house expertise which Métis communities could access and/or develop a roster of recommended experts MNO Community Councils could retain to assist them.

Participants stressed the need for MNO Community Councils to hold public meetings in order for all MNO citizens to fully understand and appreciate the potential effects of a project or development on the Métis community. Communicating with the Métis community as a whole is essential. Many participants stressed that something as important as understanding the effects of a development or project cannot be left to a Council in a behind-closed-doors meeting. The community needs to have the opportunity to review, discuss, debate and provide direction to its local leadership.

In order to be as open and transparent as possible, Métis participants encouraged the use of the MNO communications tools and network to ensure as many Métis citizens as possible receive information. It was also noted that the use of the Métis Voyageur would allow Métis citizens from across the province to see the work and successes being achieved in the various regions. Some participants noted that seeing what other areas of the province were doing and achieving would be helpful in comparing the results being achieved by their local and regional leaders in comparison to others from across the province.

Participants also noted that Métis elected representatives at the local, regional and provincial levels should have opportunities to receive training in negotiations in order to effectively represent their constituents.

Participants provided the following suggestions with respect to future work in this area:

- The MNO consultation framework should include the need for public meetings to be held at the various stages of consultation and accommodation processes, in order to ensure MNO citizens are effectively engaged.
- The MNO should develop a roster of experts (biologists, researchers, engineers, etc.) who are familiar with or have experience working with Métis communities;
- The MNO, through the proposed MNO Consultation Branch, should develop an in-house team of experts or skilled staff with experience in natural resources, biology, science, law, etc. that can assist MNO Community Councils (as required) with their local or regional consultation processes; and
- The MNO should develop and hold negotiation training workshops for Métis elected leaders at the local, regional, and provincial levels.

(vi) *Accommodation*

There were many questions about this step, for example:

- What is an adequate accommodation?
- Is there a difference between a mitigation measure and an accommodation?
- Can proponents negotiate accommodations?
- Does accepting funding from a proponent equate to an accommodation?
- How do you accommodate past actions by government?
- How do you quantify damages to culture?
- How do you ensure an accommodation benefits the entire community and not just specific individuals?

Clearly, the MNO needs to undertake more policy development work in this area in order to assist Métis citizens and communities with these questions.

While there were many questions about this step, several key points were also made:

- Accommodations need to be public and ratified through a fair and transparent process, such as a community meeting, ballot box vote, etc.
- Accommodations need to be for the benefit of the entire community, not select individuals.
- Benefits flowing to the community must stay in the community. They cannot be transferred to private corporations that are not owned or controlled by the community.
- Benefits arising through accommodations must be administered in a transparent, fair and unbiased manner.
- Accommodations should focus on building the capacity and sustainability of MNO Community Councils, not on providing distributions to specific MNO citizens.
- The goal of accommodations must be protecting and preserving Métis rights, interests and way of life.

Similar to suggestions raised in other steps, participants noted that the proposed MNO Consultation Branch would be of immense assistance to MNO Community Councils negotiating accommodations. It was noted that legal counsel could also be of assistance in identifying what other similarly situated Aboriginal communities were able to negotiate with government and industry.

There were several questions related to what type of accommodations could be negotiated based on the mandate Community Councils have and what type of accommodations would require a community ratification meeting and/or a community vote by ballot box. It was clear that additional policy work needs to take place on the topic of community

ratification processes, since unlike other Aboriginal peoples, Métis have been largely excluded from government compensation initiatives or benefits sharing in the past.

Participants also requested that the MNO's overall resource tool kit include information and sample documents dealing with accommodations. In particular, some Métis participants requested information on what other Métis groups across the country had been able to negotiate (for e.g., Métis Nation of Alberta's oil rig, Manitoba Métis Federation's arrangement with Manitoba Hydro, etc.).

It was also stressed that Métis communities should be sharing in the benefits flowing from development occurring on their traditional territories. For example, revenue resource sharing or part ownership in projects occurring on Métis traditional territories were identified as important next steps which the MNO should aggressively pursue.

Participants provided the following suggestions with respect to future work in this area:

- The MNO consultation framework should set out a ratification process for potential accommodations negotiated by Métis leadership on behalf of the Métis community.
- The MNO should develop a 'resource tool kit' for MNO Community Councils which includes sample accommodation agreements, IBAs, ongoing monitoring arrangements, etc.
- The MNO should undertake additional legal and policy work providing clarifications on issues relating to accommodation, mitigation, ongoing evaluation, etc.
- The MNO should negotiate a revenue resource sharing arrangement with both levels of government, from which Métis communities would share in the financial benefits flowing from development occurring on Métis traditional territories.

D. Other Issues Raised in Consultations

There were several other important issues and topics raised throughout the consultations, which did not fit squarely in the sections outlined above. The following sections provide an overview of some of these points (in no particular order) that were raised by Métis participants.

(i) Increasing the MNO's Profile with Industry

It was stressed that the MNO's leadership needs to be more pro-active than First Nation leaders in increasing the Métis Nation's profile with industry. While industry will almost always look on a map to identify the closest First Nation reserve they should talk to, the exercise of figuring out who they should talk to in the Métis community requires additional effort. The MNO is not going to change this reality any time soon, but it is not good enough to just complain about it.

Participants directed the MNO and its leadership to increase government, industry and public awareness on who the Métis are and where Métis communities are located. The MNO President has the important role of increasing the Métis Nation's presence in the various industry sectors in Ontario (such as forestry, energy, mining, etc.) as well as explaining to industry who the Métis in Ontario are. It was recognized that having industry know about the MNO and its consultation framework is just as important as developing one.

(ii) Employment, Training and Economic Opportunities

While Métis want to ensure the Crown's duty to consult and accommodate Métis communities is fulfilled, participants also noted that the duty provides the opportunity to engage in discussions and create partnerships that are not based on legal obligations, but win-win scenarios. For example, exploring partnerships to increase the number of Métis students pursuing careers in the energy and mining sectors may not be directly tied to the discharge of the duty, but may be something industry would be willing to pursue with the MNO based on labour market needs, corporate responsibility, etc. Participants stressed that the MNO should engage industry to identify where these areas of mutual interest lie.

Participants provided the following suggestions with respect to future work in this area:

- The MNO should pursue establishing relationships and protocols with industry to increase Métis access to employment and contracts.
- The MNO should develop a strategy to increase Métis employment opportunities in 'boom' sectors such as mining and energy development.
- The MNO should negotiate set-aside and preferred procurement arrangements for Métis with government and industry.
- The MNO should develop a database of Métis businesses across the province and provide information to these businesses about the potential contracts and work.

(iii) Mobility of Métis People

Throughout the consultations, the issues around the mobility of Métis rights and how community acceptance relates to mobility were raised. This issue has impacts on consultation and accommodation issues. For example, if an accommodation is negotiated, will all MNO citizens living in the region be eligible for it or just those that are ancestrally connected to the regional community.

It was stressed by many that since Métis are mobile, Métis rights should not be limited or negated by Métis continuing to move as they always have. This was clearly a pressing issue for many MNO citizens that requires additional legal and policy work.

(iv) First Nations

Participants echoed a general sentiment that they would like to work with and support First Nations on consultation and accommodation issues, while acknowledging that the on-the-ground relationships with specific First Nations across the province vary widely (i.e., some Métis communities have extremely positive relationships, others have situations where First Nations deny the existence of the Métis community). Clearly, if opportunities present themselves for First Nations and Métis communities to work together, they will be pursued. Métis also stressed that they want to be respectful of bilateral processes First Nations may have with government and industry and do not want to involve themselves in or hinder those processes.

As discussed above in the principles section, Métis rights co-exist with First Nation rights in shared traditional territories. Similarly, the rights of some First Nations co-exist with the rights of other First Nations in shared territories. This requires all parties to be respectful of others.

From the Métis Nation's perspective, it is not respectful to insult or deny the rights of other Aboriginal peoples and the Métis will not engage in such behaviour. Métis see rights recognition and successes achieved by First Nations as beneficial to all Aboriginal peoples and a common rights agenda. Métis are optimistic that First Nations will see any gains or successes achieved by the Métis Nation in a similar manner.

Participants in some areas did encourage the MNO's leadership to engage in similar nation-to-nation engagement, as has been developed with the Union of Ontario Indians. In particular, participants identified building relationships with the Grand Council of Treaty #3 and Nishnawbe Aski Nation as important. As well, unique issues with First Nations in the Algonquin claim area and in the Bruce region were identified.

Similar to the lack of information industry has about the Métis, participants indicated that many First Nations have incorrect impressions or ideas about the MNO and who the Métis people are. The MNO's leadership was encouraged to once again write to the Chiefs to let them know about the Métis Nation, who the MNO represents and how the Métis respect the jurisdiction of the Chiefs both on- and off-reserve.

(v) *Conflict of Interest Issues*

At some consultation meetings, the issue of conflict of interests with respect to Métis elected representatives being employed or having family employed by proponents was raised. As well, some participants raised the issue of what an elected representative should do if they are interested in securing a job or contract from a proponent. It was identified that a clear conflict of interest policy needs to be developed by the MNO in order to deal with these sorts of emerging issues.

(vi) *Métis Cemeteries*

Throughout the consultations, several Métis cemeteries were identified across the province. Many of these cemeteries have unmarked graves and have not been reclaimed or protected. Métis Elders participating in the sessions stressed the importance of MNO Community Councils and the MNO making it a priority to begin work to reclaim these cemeteries and show respect to our ancestors who have passed on.

(vii) *Métis Medicines*

Throughout the consultation, it became clear that there were many traditional medicines used by the Métis that need to be catalogued and protected for future generations. It was identified that this should be a priority for the MNO's work, since many Elders are passing on and this information could be lost forever if it is not recorded now.

(viii) *Past Actions by Governments and Industry*

While most of the consultation discussions focused on future development and projects, many participants raised concerns about addressing past actions that have had a dramatic effect on the Métis community. For example, in the Owen Sound community meeting, Métis participants identified a location which was previously known as 'French Village' (a place where Métis squatted in the area) being converted into a park and Métis families now having to pay to gain access to the area. Other consultation meetings raised similar concerns over previous government actions that had had, and continue to have, impacts on the health and welfare of the Métis community.

It was stressed that any consultation framework must include provision to look backwards and not just focus on future developments. As well, it was stressed that MNO Community Councils need assistance on how to address previous Crown actions and their ongoing impacts on Métis communities.

(ix) *Privately Owned Lands*

At several community meetings, the question arose whether there is any duty to consult in relation to developments and projects on private lands, which will have a significant impact on Métis rights, interests, and way of life. It was identified that this is an area of the law that is not completely clear, but on which the MNO should do additional legal and policy work.

(x) *Municipalities*

There were many questions asked in relation to the role of municipalities in consultation and accommodation processes. For example, several participants asked whether Métis communities should even engage with municipalities with respect to the duty to whether efforts should be focussed on engaging government ministries, departments or agencies. Again, this was an area where the law that is not completely clear, but that the MNO should do additional legal and policy work on.

(xi) *Water Source Protection*

Ontario's Drinking Water Source Protection Program was identified as an important regional planning initiative that potentially affected Métis communities should be aware of and participating in.

(xii) *Forestry Management Plans*

In many regions, participants stressed the importance of Métis becoming involved in the development and implementation of the Ministry of Natural Resources' forest management plans.

(xiii) *Wind Power*

In several community meetings, concerns were raised with respect to proliferation of wind turbines across the province and not knowing whether these projects have impacts on the Métis community. Métis participants were interested in knowing about what studies have been done on wind power. Many had heard conflicting stories on wind power – from reports that say there are no impacts whatsoever to reports that say turbines have genuine negative impacts on wildlife migration patterns. A few participants raised concerns that turbines are disturbing to the solitude of being out on the land.

(xiv) *Mining Act*

At several of the community consultation meetings, the issue of ensuring Métis inclusion in any proposed changes to Ontario's *Mining Act* was raised.

V Summary of Recommendations

A. *Principles for a Consultation Framework*

- The MNO, in collaboration with MNO citizens and Community Councils, should develop a collective ‘vision statement’ or ‘statement of principles’, which encapsulates the Métis Nation’s perspectives and goals in relation to consultation and accommodation. This document could then be shared with the Crown and proponents as a starting point for discussions vis-à-vis consultation and accommodation processes at the local, regional and provincial levels.

B. *Developing A Consultation Framework*

- The MNO should build upon the five steps to effective consultation suggested in the consultations in order to develop a consultation framework.
- A consultation framework must be based on the reality that Métis communities are regional in size and scope and not limited to specific settlements, villages, towns, cities, etc.
- While developing a consultation framework, the MNO should work with MNO Community Councils to develop regional consultation approaches on a case-by-case basis, which meet the needs of local and regional interests. These various approaches could be reviewed and evaluated to determine what type of model/approach has been the most effective for a future consultation framework.
- The MNO’s consultation framework should require notice to the potentially affected MNO Community Councils, MNO Regional Councillors and copied to the MNO head office.
- The MNO consultation framework should include the need for public meetings to be held at the various stages of consultation and accommodation processes, in order to ensure MNO citizens are effectively engaged.
- The MNO consultation framework should include conflict of interest provisions (i.e. what is a conflict, what to do if Métis elected leadership work for a proponent, etc.)
- The MNO consultation framework should set out a ratification process for potential accommodations negotiated by Métis leadership on behalf of the Métis community.
- The MNO should look to developing an interactive notice database and map as a resource for MNO Community Councils to monitor and assess consultation and accommodation processes.
- A consultation framework should address past actions by government and industry, where the Métis community were never consulted or accommodated.

- In the future, an evaluation of the different consultation processes developed by various MNO Regions and Community Councils should be undertaken in order to identify and strengthen any weaknesses in the various models.

C. Education, Training and Communications on the Duty (Internal)

- The MNO, in collaboration with MNO Community Councils, should hold regular two- to three-day training sessions or ‘boot camps’ for elected Métis leadership at the Community Council level. These training sessions would provide Métis leadership with a better understanding of Métis rights, MNO governance structures, as well as the Crown’s duty to consult and accommodate.
- The MNO, in collaboration with MNO Community Councils, should continue to undertake opportunities to educate MNO citizens on the basis for Métis rights, as well as the law related to Aboriginal rights generally, and to Métis specifically.
- The MNO should develop practical examples of ‘consultation’ and ‘accommodation’ in the Métis context (i.e. cases studies). A Métis consultation and accommodation ‘best practices’ document would provide MNO Community Councils with concrete examples of what consultation and accommodation processes look like, in order for these terms to be thoroughly understood, rather than just having abstract discussions on definitions.
- The MNO should develop a consultation and accommodation resource ‘toolkit’ that would include sample funding and capacity documents such as funding agreements with industry and government for Métis to participate in regulatory processes, impacts and benefits agreements (“IBAs”), ongoing evaluation and monitoring agreements, etc.
- The MNO should undertake regular training sessions with MNO Regional Councillors and Community Councils on how to participate in negotiations, what type of work needs to be contracted for the information exchange step, etc.
- The MNO should hold annual conferences on consultation and accommodation, which bring together provincial and regional Métis leadership as well as MNO Community Councils in order to share best practices, update each other on consultation and accommodation processes, etc.
- The MNO should provide MNO Community Councils with examples of how other rights-bearing communities throughout the Métis Nation have participated in consultation and accommodation processes (for e.g., Métis living near Alberta Oil Sands).

D. Education, Training and Communications on the Duty (External)

- While the MNO develops a consultation framework, it should produce and distribute promotional materials for government and industry on the MNO and its governance structures and how to consult with Métis communities in Ontario.

- The MNO should develop and implement a public awareness campaign, which would include speaking engagements at industry gatherings and functions, advertisements in local, regional, provincial and industry newspapers, etc., to increase the profile of the MNO and Métis communities in Ontario as well as highlight the need for government and industry to consult with Métis communities.
- The MNO should develop a dedicated webpage for government officials and industry representatives, as a part of the MNO's website, which provides information on how to consult with Métis communities in the province.

E. Consulting with Ontario Métis

- In future consultations on this topic, the MNO should attempt to hold regional meetings which would bring together Métis citizens from the larger community, not just those living in the location where the meeting is held.
- The MNO, in collaboration with MNO Community Councils, should develop an effective and transparent communications strategy that will ensure all potentially affected members of the rights-bearing community are aware of consultation and accommodation opportunities.
- As a part of any consultation framework, the MNO should include elements that ensure that Métis living in major urban areas or outside of their respective rights-bearing community have the opportunity to be aware of, and engaged in, consultation and accommodation processes.
- The MNO should include a “consultation update” on the MNO's website and in the *Métis Voyageur*, which would provide all Métis citizens with current information on the Métis consultation and accommodation processes which are taking place in Ontario.
- The MNO should establish a mechanism so MNO citizens living outside of their home community or traditional territory have access to information about consultations, upcoming elections, regional initiatives, etc.
- The MNO should identify ways that enable members of the rights-bearing Métis community who may not have MNO membership to participate in consultation and accommodation processes provided they are legitimate Métis rights-holders.

F. Research, Mapping and Data Collection

- The MNO should secure support from government to assist MNO Community Councils in undertaking historical research as well as traditional land use studies to support and assist regional rights-bearing Métis communities in asserting their rights, interest and claims in consultation and accommodation processes.
- The MNO should develop an in-house TLUS unit to undertake mapping throughout the province that can be used as a resource by MNO Community Councils in their discussions with industry and government.

- The MNO should make it a priority to identify and catalogue the locations of Métis cemeteries throughout the province as well as traditional medicines gathered and used by Métis.
- The MNO should establish a web-based clearinghouse of all of the research that has been done on Métis communities in Ontario and make that available to MNO Community Councils as a resource.
- The MNO should develop an internal confidentiality, privacy and access to information policy in relation to what type of information obtained from MNO citizens that is shared with government and industry by Community Councils, Captains of the Hunt, PCMNO, MNO staff, etc.
- The MNO should develop fee-for-service policies and procedures for aggregate data and information requests from government and industry.
- The MNO should develop a roster of experts (biologists, researchers, engineers, etc.) who are familiar with or have experience working with Métis communities.
- The MNO, in collaboration with MNO Community Councils in the region, should work to secure funding for historical research on Métis in south-western Ontario.

G. Representation Issues

- The MNO should write to government as well as industry, stressing the need for consultations to occur with the democratically elected representatives of the Métis people in Ontario, not individuals or groups which have no defined membership or accountability to the rights-bearing Métis community whose rights and interests are at issue.
- The MNO should pursue discussions with government to develop a *Métis Act*, similar to the Saskatchewan legislation, which would legally recognize the MNO and its governance structures as the representative of the Métis people in the province.
- The MNO should undertake policy work to demonstrate how pan-Aboriginal approaches negatively affect Métis rights, interests and way of life in Ontario.
- The MNO should develop a litigation strategy (to be implemented if needed) that would ensure that the Crown and industry engage and consult with the democratically elected representatives of rights-bearing Métis communities that have objectively verifiable identification systems for Métis rights-holders (i.e., the MNO registry).

H. Strategic Planning and Policy Development

- The MNO should develop additional steps in the consultation framework to ensure that Métis are engaged in strategic planning and policy development choices related to the delivery of programs and services to Métis, for those

programs and services which have the potential to affect Métis rights, interests and way of life;

- The MNO should write to government to make it clear that Métis believe the Crown's duty extends to strategic planning and policy decisions that have the potential to affect Métis rights interests and way of life;
- The MNO should incorporate the need for Métis involvement in government strategic planning and policy development in the MNO-Ontario framework agreement and pursue bilateral MOUs with relevant ministry authorities (regarding child and family services, education, training, etc.);

I. Capacity and Funding Issues

- The MNO should enter into negotiations with the Ontario Government and the federal government to secure sustained, core funding to MNO Community Councils from both levels of governments.
- The MNO should undertake a comparison of funding received by First Nations in Ontario versus funding received by Métis communities in Ontario.
- The MNO should develop a transparent standard policy to compensate Métis community leaders and citizens who participate in consultation initiatives (i.e. standard per diems, wage replacement, etc.).
- The MNO should focus on obtaining ongoing multi-year consultation and accommodation processes funding, rather than MNO Community Councils having to develop proposals and apply for government funding on a project-by-project basis.

J. Creating a MNO Consultation Branch

- The MNO should develop a multi-year MNO Consultation Branch workplan, which would include funding and capacity at the local, regional and provincial levels in order for Métis communities to effectively engage in consultation and accommodation processes;
- The MNO should work with MNO Community Councils, through the proposed MNO Consultation Branch, to develop 'consultation action plans' based on notices received. These 'action plans' would provide a road map for Councils to follow as they embark on specific consultation and accommodation processes;
- The MNO, through the proposed MNO Consultation Branch, should develop an in-house team of experts or skilled staff with experience in natural resources, biology, science, law, etc., that can assist MNO Community Councils (as required) with their local or regional consultation processes.

K. Creating Partnerships with Industry

- The MNO should pursue establishing relationships and protocols with industry to increase Métis access to employment and contracts.
- The MNO should develop a strategy to increase Métis employment opportunities in ‘boom’ sectors such as mining and energy development.
- The MNO should negotiate set aside and preferred procurement arrangements for Métis with government and industry.
- The MNO should develop a database of Métis businesses across the province and provide information to these businesses about the potential contracts and work.

L. Areas Requiring Additional Policy Development Work

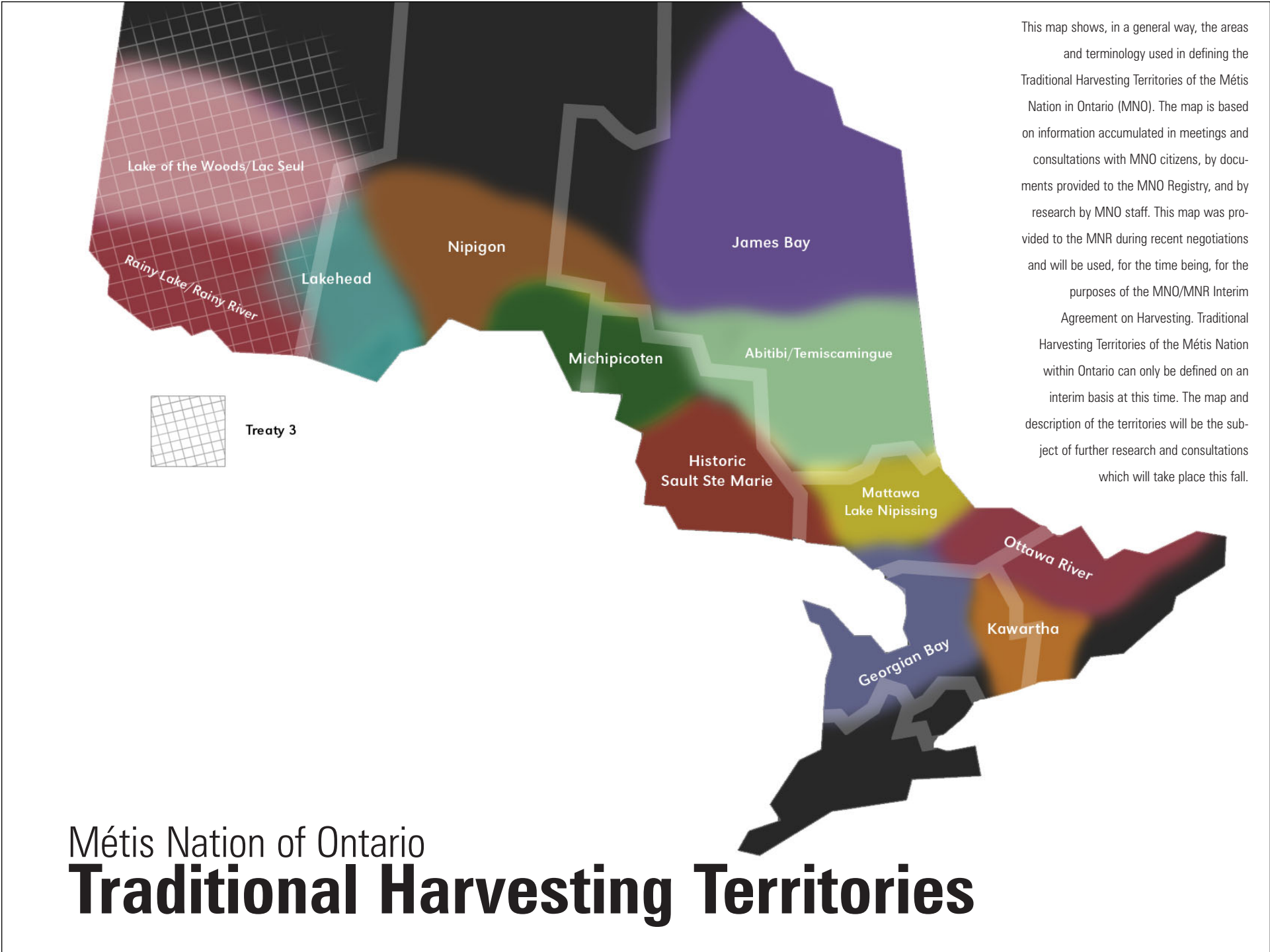
- The MNO should undertake additional legal and policy work providing clarifications on issues relating to accommodation, mitigation, ongoing evaluation, etc.
- The MNO should undertake policy work in order to better explain what is included in the term ‘interests’, as it relates to the Crown’s duty to consult and accommodate Métis “rights, interests and way of life”.
- The MNO should undertake policy work which provides greater clarity between regional rights-bearing communities, traditional harvesting areas and traditional territories.
- The MNO should undertake policy work in relation to duty in relation to its application to private lands and the role of municipalities.
- The MNO should move forward on dealing with mobility and community acceptance issues relating to Métis rights.

M. Additional Recommendations

- The MNO should negotiate a revenue resource sharing arrangement with both levels of government, from which Métis communities would share in the financial benefits flowing from development occurring on Métis traditional territories.
- The MNO should pursue discussions with government to make IBAs with First Nations and Métis communities a legal requirement for industries undertaking projects and developments in the traditional territories of Aboriginal peoples.
- The MNO should develop and implement a strategy to respectfully engage First Nations on Métis consultation and accommodation related issues.
- The MNO must ensure Métis communities are equitably engaged in any amendments to the *Mining Act* related to consultation and accommodation with Aboriginal peoples in the province.

- The MNO should ensure that Métis communities are be engaged in the implementation of Ontario's Drinking Water Source Protection Program as well as Ontario's Forest Management Plans.

Appendix A: Métis Traditional Harvesting Territories



Métis Nation of Ontario
Traditional Harvesting Territories

Appendix B: Press Release Regarding Community Consultations, January 24, 2008

PRESS RELEASE

Métis Nation and Ontario Government Move Forward On Implementing Ipperwash Inquiry's Recommendations

Province-Wide Consultations on Government's Duty to Consult and Accommodate Métis Rights in Ontario Announced

OTTAWA (January 24, 2008) --- Today, the leadership of the Métis Nation of Ontario (MNO) announced upcoming province-wide community consultations on the government's duty to consult and accommodate Métis rights with a view to increasing Métis input and involvement in Ontario's forestry, energy and mining sectors as well as developing an Ontario Métis Consultation Framework.

The consultations are a response to a series of Supreme Court of Canada and Ontario court decisions on Aboriginal rights as well as Justice Linden's recommendations in the recently released Ipperwash Inquiry report. A backgrounder on some of these cases is provided.

The main focus of the consultations will be to provide information to Métis citizens on the Supreme Court of Canada's new legal framework – the duty to consult and accommodate – which requires governments to consult and accommodate Métis communities when the Crown contemplates actions that may affect Métis rights, interest and way of life. Specifically, the MNO will be consulting its communities on the development of an Ontario Métis Consultation Framework, as a means to ensure Métis rights and interests are protected, while also increasing Métis involvement in the forestry, mining and energy sectors.

Tony Belcourt, MNO President stated, "For the first time in over a decade, the Métis people are not in court with the Ontario Government. As a result, we now have the opportunity to work with the province on ensuring Métis rights and interests are respected and accommodated in natural resources development in Ontario."

"These consultations are an example of the Ontario Government putting Justice Linden's recommendations from the Ipperwash Inquiry into action. Instead of confrontation and litigation when it comes to natural resource development in this province, the MNO and the Ontario Government are working together to ensure Métis rights and interests are recognized and respected," added Belcourt.

Gary Lipinski, MNO Chair, and, MNO Portfolio Holder for Natural Resources said, “For years our people have been wanting to increase Métis involvement in the forestry, energy and mining sectors in this province. These consultations will be a catalyst to make sure that happens.” Lipinski concluded, “The support for these consultations, by both the Ontario Government and the Government of Canada, reflects a new era in Métis rights in this province. An era based on recognition and respect for Métis rights. We are encouraging all Métis citizens to come out to these meetings so we can hear their thoughts and priorities as we set out a new and ambitious rights-based agenda.”

The consultations are set to begin on February 9th in Port Elgin with the Grey Owen Sound Métis Council and the Saguingue Métis Council hosting the first meeting. The consultations will continue through until the end of March and include meetings in Midland, Toronto, Sudbury, North Bay, Sault Ste. Marie, Ottawa, Kirkland Lake, Timmins, Thunder Bay, Dryden, Kenora, Fort Frances, Parry Sound, Windsor, Hamilton and Welland. Additional information on the consultations and the meeting locations are available at www.metisnation.org/consultations or by contacting the MNO Head Office in Ottawa.

The Métis are a distinct Aboriginal people with a unique culture, language and heritage, with an ancestral Homeland that centres around Ontario, Manitoba, Saskatchewan, Alberta, British Columbia and extends into the Northwest Territories and the northwestern United States. The Métis played an instrumental role in the shaping of Canada, and work tirelessly to share their culture, traditions and knowledge of the environment with their fellow Canadians. Today, the Métis live, work, raise their families and pay taxes in communities all across Canada.

For further information or interviews contact:

Katelin Peltier
MNO Communications Branch
T: 613.798.1488 ext. 108
C: 613.859.7130
TF: 800.263.4889
E: Tkatelinp@metisnation.org

BACKGROUND ON MNO PRESS RELEASE

In 2003, in *R. v. Powley*, the Supreme Court of Canada recognized that Métis communities hold constitutionally protected Aboriginal rights that must be respected by governments.

In 2004, in the *Haida Nation v. British Columbia* and *Taku River Tlingit v. British Columbia* cases, the Supreme Court set out a new legal framework – the duty to consult and accommodate – which directs the Crown to consult with Aboriginal peoples and accommodate proven and asserted Aboriginal rights when governments contemplate developments that may affect Aboriginal rights and way of life.

In July 2004, based on the *Powley*, *Haida* and *Taku* decisions, the MNO and the Ontario Ministry for Natural Resources (MNR) entered into a province-wide accommodation agreement on Métis harvesting based on credible Métis harvesting rights claims throughout the province. In June 2007, the MNO-MNR agreement was upheld by the Ontario Court of Justice in *R. v. Laurin* as “legally defensible” and “highly principled” based on *Haida* and *Taku*. In July 2007, the Ontario Government decided not to appeal the *Laurin* case and renewed discussions with the MNO in order to fully implement the MNO-MNR agreement.

In May 2007, the Ipperwash Inquiry report recommended that the Ontario Government work with Aboriginal peoples on implementing the duty to consult and accommodate in legislation, regulations, and other applicable government policies in order to promote respect and understanding for this duty throughout the provincial government and increase Aboriginal engagement in and benefit from the development of natural resources in the province.

In January 2008, both the Ministry of Aboriginal Affairs, on behalf of the Ontario Government, and the Office of the Federal Interlocutor for Métis and Non-Status Indians, on behalf of the Government of Canada, agreed to provide resources to the MNO to undertake consultation on the duty to consult and accommodate with its citizens with a view to increasing Métis input and involvement in Ontario’s forestry, energy and mining sectors as well as developing an Ontario Métis Consultation Framework.