Métis Nation of Ontario Secretariat Act, 2015
Bill 153 Backgrounder and Frequently Asked Questions

On December 1, 2015, the Ontario legislature introduced the Métis Nation of Ontario Secretariat Act, 2015 (the “Act”). This document, prepared for Métis Nation of Ontario (“MNO”) citizens and communities, provides background to and an overview of the Act and answers frequently asked questions.

Background on the Métis Nation of Ontario

In 1993, Ontario Métis raised the Métis Nation flag in this province and created a Métis-specific, province-wide governance structure—the MNO—to represent their collective rights, interests and claims as well as to provide economic, social, and cultural supports to Métis citizens and communities. This came after years of denial and neglect as well as ineffective representation of Métis interests in pan-Aboriginal organizations.

The foundation for the MNO’s mandate to represent Ontario Métis is its centralized, objectively verifiable registry of citizens. Based on the mandate provided to it by individual Métis citizens, the MNO has established democratic and nation-building governance structures at the local, regional and provincial levels, which are delegated authorities from the MNO’s overall mandate.

More specifically, Métis citizens are represented by the MNO at the local level through Métis Community Councils, at the regional level through Regional Councillors that sit on the Provisional Council of the Métis Nation of Ontario (“PCMNO”) and at the provincial level through the PCMNO (which includes provincial elected officials such as the MNO President). These governance structures, including other internal structures, work together to represent and serve Ontario Métis.

The MNO is a unique Indigenous government whose authority flows from the Métis Nation’s inherent right to self-government and self-determination. Métis governments like the MNO are in an ongoing process to be recognized by other levels of government as such. While that self-government recognition process is ongoing, the MNO established the Métis Nation of Ontario Secretariat (the “Secretariat”) to act as its corporate and administrative arm. The Secretariat also addressed necessary legal requirements for the MNO to receive funding from other governments and address legal liability issues.
The Secretariat is managed by the PCMNO as the provincial governing body for Ontario Métis, who serve as its board of directors. The MNO has also created chartered Metis Community Councils who are delegated responsibilities to represent MNO citizens at the local level. Using a Charter Agreement system to create Metis Community Councils helps to ensure:

- consistency of Métis citizenship across the province (i.e., the citizens of the MNO and the constituency of each Métis Community Council are the same),
- consistency in how the Métis Community Councils operate across the province based on the mutually agreeable terms set out in the Charter Agreements;
- fairness and transparency in the election of Métis representatives at the local level; and
- equitable sharing and use of resources to benefit all Ontario Métis, including, effective and accountable program and service delivery through the Secretariat.

**Why Does the MNO Need the Act?**

Unlike Ontario First Nations, whose governance structures are largely defined by the federal Indian Act, Ontario Métis had no legislation that recognized the governance structures and democratic institutions they had collectively developed and implemented. In the absence of Métis-specific legislation, the MNO used the Ontario Corporations Act (“OCA”) to create a legal entity to represent its citizens and communities.

Currently, the OCA is the legislation that applies to the MNO Secretariat. Once the Not-for-Profit Corporations Act (“ONCA”) comes into force, it will replace the OCA for not-for-profit corporations like the MNO Secretariat. The difficulty with both the OCA and the ONCA is that they simply were not designed to apply to governance structures and therefore do not reflect the MNO’s unique reality.

For example, under the OCA, the board of directors of a corporation is generally elected once a year at the corporation’s general meeting. In contrast, the councillors that sit on the PCMNO—which serves as the board of directors for the Secretariat—are elected through a province-wide ballot box election held once every four years pursuant to the MNO’s Electoral Code, and separate from the MNO’s Annual General Assembly. Similarly, under the ONCA, a director of the corporation is not required to be a member of the corporation, whereas the MNO requires that PCMNO councillors be MNO citizens.

**What Will the Act Do?**

The Act will recognize the democratically elected governance structures created by the MNO to:

- represent and advocate on behalf of its citizens and their communities with respect to their collective rights, interests and aspirations; and
• provide social, economic and cultural supports to Métis individuals, families and communities through a province-wide service delivery system.

More specifically, the Act will exempt the MNO from certain provisions of the OCA—and, once it is in force, certain provisions of the ONCA—that are inconsistent with how Ontario Métis have chosen to govern themselves, and will establish special provisions for the MNO to reflect its unique status and objectives.

How Did the Act Come About?

The Act is the result of years of strong advocacy and effort on the part of the MNO to secure provincial legislation recognizing the MNO’s unique governance structure. Both the 2008 and 2014 MNO-Ontario Framework Agreements committed to discussing “options for the legislative recognition of the MNO and its Chartered Community Councils”. Further, MNO citizens have repeatedly called for the Act to be developed. Specifically, multiple MNO Annual General Assemblies—as the highest governing authority within the MNO where all MNO citizens have a voice—directed the MNO’s leadership to work with the Ontario government to pursue legislation to recognize the MNO’s unique governance structure.

Most recently, following a presentation on MNO’s discussions with the Ontario government about the legislation, the 2015 MNO Annual General Assembly unanimously passed the following resolution, which provides direction to the MNO’s governance structures at the provincial, regional and local levels:

RESOLUTION ON PROVINCIAL LEGISLATION RECOGNIZING THE MNO

WHEREAS past MNO AGAs have called for the MNO’s leadership to work with the Ontario Government to secure legislation that recognizes and respects the MNO’s unique governance structure;

AND WHEREAS the MNO’s leadership and legal counsel have presented the MNO AGA on the progress that has been made on this issue as well as the proposals being considered;

THEREFORE BE IT RESOLVED:

1. That the 2015 MNO AGA fully endorses the MNO moving forward on securing provincial legislation that recognizes and respects the MNO’s unique governance structure;
2. That, when it is strategic, all of the MNO’s governance structures at the local, regional and provincial levels will provide letters of support to the provincial government and opposition parties in an attempt to secure unanimous support within the legislature for this historic legislation.

CARRIED BY CONSENSUS

The MNO and the Ontario government have been working closely together over the past number of months to ensure that the Act fully respects the MNO’s structures and processes, and achieves the MNO’s interest in securing this legislation. Prior to being tabled with the Ontario legislature, the MNO Act could not be publicly shared, however, the MNO’s leadership was briefed and the MNO’s staff and legal counsel worked with representatives from the Ontario government. Final drafting of the legislation, however, rested with the Ontario government based on legislature procedures that needed to be respected.

What Does the Act Say?

Preamble

In general, a preamble explains why an Act was adopted and serves as a guide for interpreting its provisions. The preamble to this Act makes a number of important statements about the nature and structure of the MNO, and why the MNO requires special recognition. It says that:

- The MNO was created to represent and advocate on behalf of its registered citizens, and the Métis communities comprised of those citizens, with respect to their collective rights, interests and aspirations, as well as to provide social, economic and cultural supports to Métis individuals, families and communities through a province-wide service delivery system.

- The MNO maintains a centralized registry of its citizens. The MNO’s citizens are the members of the MNO Secretariat, and have defined rights and responsibilities as set out in the Secretariat’s constituting documents and by-laws.

- The citizens of the MNO identify as descendants of the Métis people that emerged in west central North America with their own language, culture, traditions and way of life. These Métis people collectively refer to themselves as the Métis Nation, which includes Métis communities within Ontario.

- Through the Secretariat, the MNO has established various democratically elected governance structures at the local, regional and provincial levels to represent its citizens.

- The Government of Ontario recognizes that the Secretariat’s status as a governance structure that represents its citizens at the local, regional and provincial levels creates operational realities that are distinct from other Ontario not-for-profit corporations.
Definitions

The Act defines various terms to reflect the MNO’s status as a governance structure. For example, whereas the OCA and ONCA refer to “members” of a corporation, the Act uses the term “citizen” to refer to members of the MNO Secretariat.

Secretariat

Corporations Act and Name

The OCA applies to the Secretariat except as provided for in the Act. This means that the Secretariat is still generally governed by the OCA, except where the OCA is either inconsistent with or simply fails to recognize the processes and institutions Ontario Métis have developed to govern themselves.

The Secretariat is formally named “Métis Nation of Ontario Secretariat” in English and “Secrétariat de la nation métisse de l’Ontario” in French.

Notice to Minister

The Secretariat has to notify the Minister of Aboriginal Affairs when documents (“letters patent” or “supplementary letters patent”) are filed to create or modify a corporation under the Act. Corporations under the Act include the Secretariat, Métis Community Councils, and any body that the Secretariat agrees can include the phrase “Métis Community Council” in its name.

Election of Councillors

In accordance with the MNO’s existing practice, councillors are to be elected by citizens every four years by province-wide ballot, and these elections do not have to take place at the Annual General Assembly.

Removal of Councillors

Citizens can call a special meeting and pass an ordinary resolution to remove any councillor from office. A councillor who is elected by a specific group of citizens—for example, a Regional Councillor elected by the citizens of that region—can only be removed by an ordinary resolution from the members of that group.

An “ordinary resolution” is a resolution that is submitted at a meeting and either passed by majority vote or approved by consensus of the citizens at that meeting. It does not have to be publicized in advance, and can be amended at the meeting.

The quorum—the minimum number of citizens required—for a special meeting to remove a councillor is a majority of the citizens entitled to vote to remove that councillor. For example, if 2000 MNO citizens are entitled to vote for a regional councillor, the quorum for a special meeting to remove that councillor would be 1001 of those MNO citizens.
Youth Representatives

Youth representatives play a vital role in the governance of the MNO, but under corporate law, individuals under 18 years of age cannot take on the liabilities and responsibilities of a corporate director. The MNO has long recognized the need to protect the interests of youth representatives while also ensuring that youth have a voice in MNO affairs. The Act confirms the approach the MNO has adopted. A youth councillor who is elected while under the age of 18 can be part of the PCMNO, express his or her views, and represent the interests of young people but does not hold any of the powers, duties or liabilities of a councillor and is not entitled to exercise a binding vote.

Requisition for Meeting

MNO citizens can call on the PCMNO to hold a meeting under two conditions: first, the request has to be made by at least 20 per cent of the MNO citizens who would be eligible to vote at the meeting; and second, the purpose of the meeting must not be inconsistent with the OCA or the Act. For example, at the time of the requisition, if there are 10,000 registered MNO citizens, the requisition will need the support of 2,000 MNO citizens.

If the PCMNO does not call a meeting within 21 days after receiving a valid request, any MNO citizen who signed the request may call the meeting.

List of Citizens

Although MNO citizens are members of the Secretariat, they are quite different from members of other corporations. For many not-for-profit corporations, becoming a member requires nothing more than signing up to join. In order to become MNO citizens, in contrast, individuals have to:

- provide documentation to establish that they are Métis (they self-identify as Métis, are of historic Métis Nation ancestry, and are accepted by the Métis Nation);
- not be enrolled on any other Aboriginal registry;
- apply to and be approved by the MNO’s Registry; and
- commit to upholding and advancing the MNO’s Statement of Prime Purpose—the MNO’s foundational document that sets out its objects, principles, and aspirations.

The Act will create special rules that reflect the significance of MNO citizenship and impose strict controls on access to the list of MNO citizens.

The list of citizens will only available to MNO citizens or their legal representatives. In order to obtain the list, the applicant will have to provide a statutory declaration promising that the list will not be used for any purpose not connected with the Secretariat, including
(a) forming another body with objects similar to those of the Secretariat (e.g. a different organization that claims to represent Ontario Métis) or establishing a registry of Aboriginal persons;
(b) challenging the eligibility of anyone to be a citizen;
(c) soliciting citizens on behalf of another body.

Anyone who uses the list for an improper purpose—including any of the purposes set out above—will be guilty of an offence.

Community Councils

Corporations Act

Like the Secretariat, the Métis Community Councils (“Community Councils”) are governed by the OCA, except where the Act creates exemptions or new rules to recognize and reflect the MNO’s governance structure.

Incorporation of Metis Community Councils

At the moment, despite the important role they play in governance at the local level, Community Councils are not separate legal entities from the Secretariat. There was previously no legal mechanism through which to give the Community Councils more authority and independence while also providing for consistency in their operations. Now, under the Act, Community Councils will be able to be incorporated as separate corporations, with the Secretariat as the sole “member” of the corporation.

This new approach—Community Councils as individual corporations with the Secretariat as their sole member—accomplishes and balances several goals:

- Making Community Councils separate corporations means that they will have greater autonomy and decision-making power, and be responsible for their own debts and liabilities. This helps to prevent a situation in which a decision made by a single Community Council ends up having significant financial or liability consequences for all MNO citizens and the MNO as a whole.
- Making the Secretariat the sole “member”\(^1\) of each Community Council corporation means that the Secretariat will still have the power to ensure consistency across the province (i.e., same citizenship, policies, etc.), just as it does under the current MNO Charter system. As the sole member of each Community Council, the Secretariat

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\(^1\) Note that “member” is used here only in relation to Community Councils as corporations. As described elsewhere in this memo, Community Councils will continue to be governed by councillors, and will continue to represent local MNO citizens.
can issue a “written declaration” that directs how a particular activity is to be
managed by the Community Council. This effectively gives the Secretariat the
power to create province-wide policies that apply equally to all Community
Councils. If a Community Council runs into difficulty or needs to close, the
Secretariat can also use written declarations to take over or wind up the Community
Council.

- This approach advances the MNO’s fundamental objective of nation-building and is
an interim step toward the full recognition of Metis self-government in the future.
Instead of a separately incorporated Community Councils being accountable to the
Ontario government through the OCA or ONCA, they remain as a part of the MNO’s
overall governance structure and accountable to MNO’s citizens and communities.
This allows the MNO governance structures at the local, regional and provincial
levels to continue to work together—as one Metis government.

The Act will make this new approach possible by exempting Community Councils from
section 311 of the OCA, which otherwise applies to corporations with fewer than three
members.

Councillors

Like PCMNO councillors, Community Council councillors must be MNO citizens. Youth
representatives can be part of Community Councils under the Act but if they are elected
while under the age of 18 they do not have the rights, powers, duties or liabilities of a
councillor and cannot exercise a binding vote.

Prohibition

Once the Act comes into force, other corporations will be prohibited from using the following
phrases in their corporate names without the Secretariat’s written consent: Métis Nation of
Ontario, Métis Community Council, nation métisse de l’Ontario, conseil communautaire métis.

Regulations

On the joint recommendation of the Minister of Aboriginal Affairs and the Minister of
Government and Consumer Services, the Lieutenant Governor in Council will be able to make
regulations that create further exceptions or modifications to the OCA for the MNO, or deal with
anything else that is necessary or advisable for the purposes of the Act.

This means that if future changes are needed to reflect the MNO’s structure and purpose—for
example, because the OCA is amended and the amendment is inconsistent with the processes the
MNO has adopted—those changes can be made through regulation. Making regulations is a far
simpler procedure than making amendments to the Act itself. This section therefore provides
flexibility and helps to ensure that provincial legislation will continue to recognize the MNO’s unique status.

The Act will also give the Minister of Aboriginal Affairs the power to pass regulations so that when Community Councils are incorporated, they become subject to the Act.

**Amendments to the Act**

As noted above, once the *ONCA* comes into force it will replace the *OCA* for not-for-profit corporations. This means that instead of being exempted from or having additional rules added to certain provisions of the *OCA*, the MNO will have to be exempted from and additional rules will have to be added to certain provisions of the *ONCA*. The Act sets out the amendments that will be required to make that change.

**Commencement**

Once passed, most of the Act will come into force either on January 1, 2016 or when it receives Royal Assent, whichever comes later.

If the *ONCA* is not yet in force when the rest of the Act comes into force, then the amendments that reflect the shift from the *OCA* to the *ONCA* will come into force at the same time as the *ONCA*.

**Are All Métis Community Councils Incorporated Once the Act Passed?**

No, Métis Community Councils will not be automatically incorporated. In order for a Community Council to become incorporated, “letters patent” will have to be filed by the MNO. Once the letters patent are filed and the Secretariat has notified the Minister of Aboriginal Affairs, the Minister can then make regulations that effectively declare the new corporation to be a “Métis Community Council” within the meaning of the Act. This process will need to be developed and overseen by the Secretariat based on mutually agreeable processes agreed to by MNO citizens and Community Councils.

**What Happens Next?**

Nothing immediately changes. The MNO will be starting consultations in 2016 to review the Act with communities and determine whether and how Community Councils wish to proceed with incorporation. Incorporation does not need to occur at the same time for all Community Councils, so each Community Council is free to make its own decision about whether and when to incorporate. Once a Community Council is ready to move forward, the MNO will be there to assist with the incorporation process.