MEMORANDUM

To: Mitch Case, PCMNO Youth Representative

C.C.: PCMNO, Community Councils and MNO Citizens

From: Gary Lipinski, MNO President

Date: December 5, 2015

Subject: Métis Nation of Ontario Secretariat Act

I am writing in response to your email dated December 3, 2015 with respect to the proposed Métis Nation of Ontario Secretariat Act ("MNOSA") as well as the issues you raised on the PCMNO’s recent conference call.

To begin, I want to confirm my commitment, along with the commitment of all of the PCMNO, to ensure Métis youth are meaningfully engaged in our self-government structures at the local, regional and provincial levels. This includes youth participation in our various governance structures as well as the ongoing ability of Métis citizens who are at least 16 years of age to have their votes recognized under our Métis traditional ways and self-government, while not exposing those young people to corporate and legal liabilities that may affect their futures.

In order to respond to your youth related concerns with the proposed MNOSA, I want to highlight the current realities that exist within the MNO and Ontario law. As you already know, the current MNO Bylaws state:

51. At all meetings of General Assembly, citizens shall make decisions consistent with upholding and advancing the MNO Statement of Prime Purpose and shall strive to make decisions by consensus. In the event that consensus cannot be achieved, questions shall be determined by a simple majority of votes unless otherwise specifically provided by statute or by these Bylaws.

(a) Subject to any limitations on a citizens rights and privileges that have been imposed pursuant to clause 10, each citizen who is at least sixteen (16) years old and is present at a meeting of the General Assembly shall have the right to exercise one vote.
With respect to the youth and post-secondary representatives sitting on the PCMNO as councillors, the MNO Bylaws state:

20. **Voting councilors must be individuals who are bondable, at least eighteen (18) years of age and with power under law to contract.**

This same principle applies throughout the MNO, including, Community Councils and how they conduct their business as a part of the MNO. This flows from well-established and unavoidable law in Ontario and across Canada that protects minors (i.e., those under 18 years) from assuming corporate and/or legal liabilities. As demonstrated by section 20 of the MNO Bylaws (which has been in place since the creation of the MNO), our people agree that those under 18 should not have to worry or be exposed to potential legal liabilities flowing from their participation in our nation's governance structures.

This is not an abstract concern within the MNO. For example, when the new PCMNO elected in 2008 found out that the MNO’s past administrations had accumulated a $4.2M deficit and the MNO was near bankruptcy, each individual PCMNO councillor became personally liable for the MNO’s unpaid source deductions as well as potentially liable for other MNO liabilities (if the MNO’s corporate veil was pierced by a creditor). It would have been shameful for the Metis Nation to expose a 16 to 18 year old elected to the PCMNO to that liability as well.

In order to deal with these realities, the MNO has developed a practical “work around”. While the MNO’s governance structures—grounded on our customs, practices and traditions as a Metis people—respects and accepts the votes of those over 16 years, we do not and will not expose those under 18 to potential corporate and legal liabilities by making them hold any of the legal “rights, powers, duties or liabilities of a councillor.” This finds a balance until such time as we are able to fully negotiate and have our Metis self-government recognized by other levels of government.

The following sections of the MNOSA simply reaffirm the corporate and legal reality that already exists within the MNO Bylaws, however, it will not change how the MNO conducts itself under Metis customs, practices and traditions as set out in the MNO Bylaws and Charters.

6. (1) A person who, while under the age of 18, is elected by the citizens in accordance with the by-laws to represent, on the Provisional Council, the interests of young people for a specified term is not a councillor, does not hold any of the rights, powers, duties or liabilities of a councillor, and is not entitled to exercise a binding vote on any matter before the Provisional Council or any of its committees.

14. (1) A person who, while under the age of 18, is appointed by the Secretariat, in its capacity as the sole member of a Métis Community Council, in accordance with the by-laws of the Métis Community Council to represent, on the Métis Community Council’s board, the interests of young people for a specified term is not a councillor, does not hold any of the rights, powers, duties or liabilities of a councillor, and is not entitled to exercise a binding vote on any matter before the board or any of its committees.
With respect to the concerns raised by sections of the MNOSA that indicate that even after an youth or post-secondary representative turns 18 years old during their elected term, they still cannot assume the full “rights, powers, duties or liabilities of a councillor” will require another MNO “workaround.” Specifically, the MNOSA states,

6. (2) Subsection (1) applies for the duration of the person’s term, even if he or she reaches the age of 18 years during the term.

14. (2) Subsection (1) applies for the duration of the person’s term, even if he or she reaches the age of 18 years during the term.

The policy and legal principles that underlie these requirements are also well-founded. Simply put, you cannot expect a 16 year old to make a decision that when they turn 18 they will assume full corporate and legal liabilities that come with their position. Put another way, the 16 year old cannot legally bind the 18 year old. You need to make sure that the 18 year old person fully understands and willing decides to assume these responsibilities at 18 years.

As we discussed on our call, the MNO will need to develop an internal policy that deals with this because we have not dealt with it in the past. One suggestion is that when the youth or post-secondary representative turns 18 they can officially resign their position. As set out in the MNO Bylaws and Charters, once a position becomes vacant within an elected term, the PCMNO or a Community Council may appoint someone to that position for the duration of the term. The MNO could build into the MNO Bylaws and Charters that the youth or post-secondary representative who resigns will then be reappointed in that position (if they so choose at 18 years) and thus be able to assume the full “rights, powers, duties or liabilities of a councillor” for the duration of the PCMNO or Council’s term. This sort of approach would address the concerns raised. The MNO has the full authority to do this under its Bylaws and Charters, if the PCMNO and MNO AGA agrees.

Finally, I want to address the concern you raised about the Secretariat unilaterally appointing youth representatives under the new legislation. Your concern comes from the MNOSA section already noted above, which states:

14. (1) A person who, while under the age of 18, is appointed by the Secretariat, in its capacity as the sole member of a Métis Community Council, in accordance with the by-laws of the Métis Community Council to represent, on the Métis Community Council’s board, the interests of young people for a specified term is not a councillor, does not hold any of the rights, powers, duties or liabilities of a councillor, and is not entitled to exercise a binding vote on any matter before the board or any of its committees. [Emphasis added.]

I would note that under the MNO’s current Charter system all Community Councils must conduct their elections in accordance with the MNO Electoral Code: Part B to ensure fair, open and democratic elections are held. The MNO Electoral Code, which has been in place since 2001, states the following at Article B4.3,
The PCMNO is responsible to ensure that each community council election throughout the province is conducted fairly and impartially and is operated in a manner consistent with the *MNO Electoral Code*, the *MNO Community Charter Agreement*, and the *MNO's By-Laws*. The PCMNO may take any steps necessary to ensure these responsibilities are met.

In order to fulfill this oversight role, an independent electoral officer from the Secretariat (i.e., usually a representative from the MNO’s Community Relations Branch) is appointed to make sure the *MNO Electoral Code* is followed for each Community Council election. This includes making sure all citizens living in a Council’s geographic territory receive notice of an upcoming election and that the requirements for a Community Council election, as set out in the *MNO Electoral Code*, are followed.

Following an election, the independent electoral officer from the Secretariat “declares” the results of the vote (Article B33.1), subject to any appeals. These councillors then assume their roles as the elected leadership of a given Community Council. This role of the Secretariat to ensure fairness and consistency has been in place for over 15 years now. For those Metis Community Councils that choose to incorporate through the MNOSA process, a similar open, fair and democratic electoral process will need to be put in to their by-laws.

Importantly, section 14(1) states that the appointed of the representatives to a Metis Community Council’s board will need to be “in accordance with the by-laws of the Métis Community Council.” Similar to what is currently in place within the MNO, the Secretariat will declare/appoint the representatives to a Metis Community Council based on the results of an election, which reflects the democratic will of the citizens who live in that Council’s geographic territory. As I have indicated in my other memos, once the legislation is passed, the MNO will begin consultations with Community Councils who want to incorporate in order to arrive at mutually agreeable by-laws, which will include provisions for elections.

**Again, the MNO’s current Charter system will not change in any way following the passage of MNOSA.** The legislation simply provides a legal mechanism to incorporate for those Community Councils who are interested. All MNO Community Councils can stay under the current Charter system forever, if they so choose. The legislation addresses an interest that some Community Councils have repeated raised with the MNO (i.e., the ability to incorporate as a separate legal entity while still being a part of the MNO’s overall governance structure).

I hope this memo is informative and addresses your concerns. In order to deal with the youth specific issues outlined above as well as others that you raised (i.e., following up on a previous MNO AGA resolution to create a MNO Youth Council Charter, looking into the challenge of youth under the age of 18 years not being covered by the MNO’s insurance to attend AGAs without a chaperone, concerns with respect to some Community Councils not wanting you have youth representatives on Councils), I have asked Margaret Froh, MNO’s Associate Chief Operating Officer, to take the lead in working with you and the MNO Youth Council on these issues in order to scope out a workplan on how these issues can be addressed.
As we discussed on our call, I think it would be helpful for MNO to develop a policy that addresses these youth participation issues in one concise and clear document. This policy could then be brought to the PCMNO and then to the MNO AGA for ratification, along with proposed changes to the MNO Bylaws (if required). It will require effort on the part of Metis youth to make this happen, but by way of this memo I am committing the necessary MNO staff resources to achieve that.

If you would like to discuss this further, please feel free to contact me.