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## **Supplementary Information**

**Written submission from the  
Manitoba Metis Federation**

## **Renseignements supplémentaires**

**Mémoire de la Fédération des  
Métis du Manitoba**

**Regulatory Oversight Report for  
Canadian Nuclear Laboratories  
(CNL) sites: 2018**

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**Rapport de surveillance réglementaire  
des sites des Laboratoires Nucléaires  
Canadiens (LNC) : 2018**

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Commission Meeting

Réunion de la Commission

**November 7, 2019**

**Le 7 novembre 2019**

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# Manitoba Metis Federation Presentation

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Review of CNSC Regulatory  
Oversight Report

Canadian Nuclear Safety  
Commission Regulatory Oversight  
Report for the Whiteshell  
Laboratories



# Overview

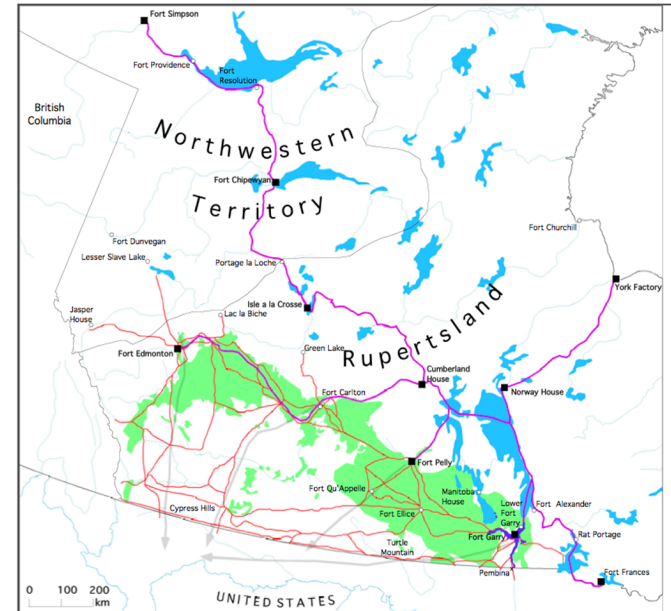
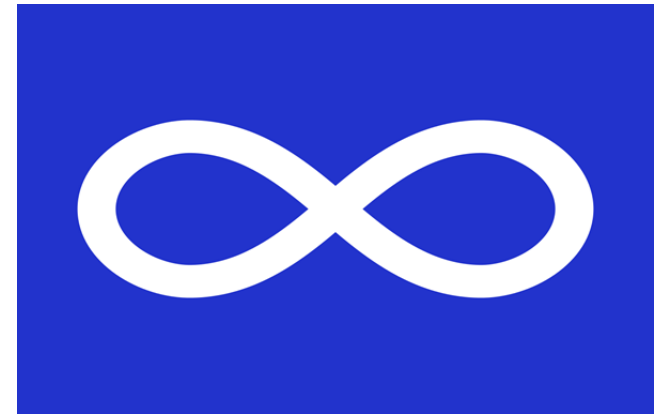
- 1) Background & Context: the Métis Nation, Manitoba Métis Community, Métis Rights, Claims and Interests
- 2) The Duty to Consult and Accommodate is Triggered by the Renewal Application
- 3) Outstanding Impacts and Concerns of the Manitoba Métis Community
- 4) Canada's International Obligations & Commitments to Reconciliation
- 5) Closing Comments & Recommendations

# Context & Background

- Métis Nation and Manitoba Métis Community
- The Manitoba Metis Federation
- Métis Rights, Claims and Interests

# The Métis Nation

- The Métis Nation is a distinct Indigenous people.
- Métis Nation in general, and in southern Manitoba, finds its earliest roots in the fur trade.
- The heart of the Métis Homeland is the Red River Valley.



*Métis Economic Activity During the Fur Trade of the Western Interior*

# The Métis Nation

“The Métis were originally the descendants of eighteenth-century unions between European men - explorers, fur traders and pioneers - and Indian women, mainly on the Canadian plains, which now form part of Manitoba, Saskatchewan and Alberta. Within a few generations the descendants of these unions developed a culture distinct from their European and Indian forebears. In early times, the Métis were mostly nomadic. Later, they established permanent settlements centered on hunting, trading and agriculture. The descendants of Francophone families developed their own Métis language derived from French. The descendants of Anglophone families spoke English. In modern times the two groups are known collectively as Métis.” (*Cunningham*, para 5)

# The Métis Nation's Struggle

“The history of the Métis is one of struggle for recognition of their unique identity as the mixed race descendants of Europeans and Indians. Caught between two larger identities and cultures, the Métis have struggled for more than two centuries for recognition of their own unique identity, culture and governance. The constitutional amendments of 1982 ... signal that the time has finally come for recognition of the Métis as a unique and distinct people.”

-Supreme Court of Canada, 2011

*(Cunningham, para 70)*



# Manitoba Métis Community

“When the Government of Canada presented itself at our doors it found us at peace. It found that the Métis people of the North-West could not only live well without it ... but that it had a government of its own, free, peaceful, well-functioning, contributing to the work of civilization in a way that the Company from England could never have done without thousands of soldiers. It was a government with an organized constitution whose jurisdiction was more legitimate and worthy of respect, because it was exercised over a country that belonged to it.”





# Manitoba Métis Community

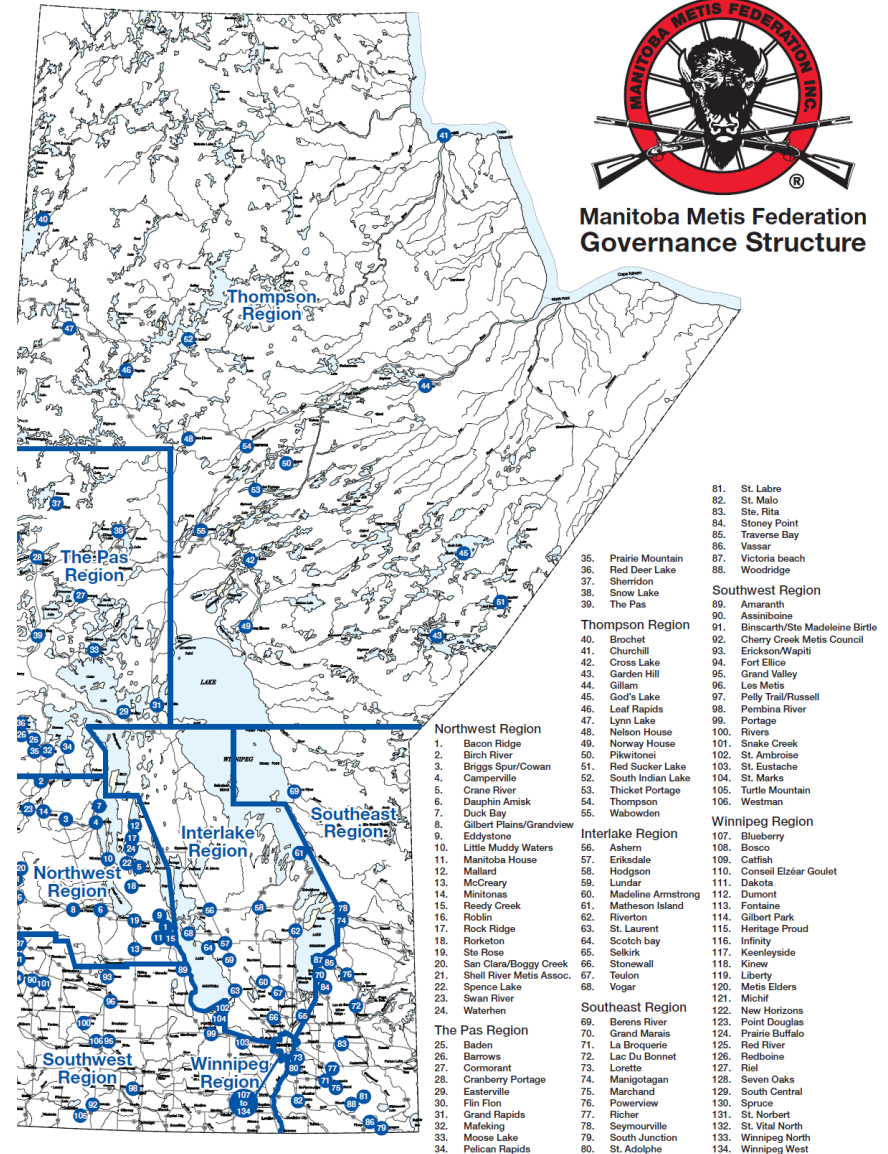
- In *Goodon*, the court described the Manitoba Métis Community as a proud independent Métis population that constituted a historic rights-bearing community in present day Manitoba and beyond, which encompassed “all of the area within the present boundaries of southern Manitoba from the present day City of Winnipeg and extending south to the United States.” (para 48)
- “The lands that they owned...belonged to them once by the Indian title, twice for having defended them with their blood, and thrice for having built and lived on them...” (Louis Riel)

# Manitoba Metis Federation

- The MMF is the official democratic self-government representative for the Métis Nation's Manitoba Métis Community.
- The MMF promotes the political, social, cultural and economic interests and rights of the Métis in Manitoba.
- The MMF is authorized to deal with the collective rights, interests and claims of the Manitoba Métis Community.
- The MMF is organized into 7 Regions, and 140 Locals throughout the Province.



Manitoba Metis Federation  
Governance Structure



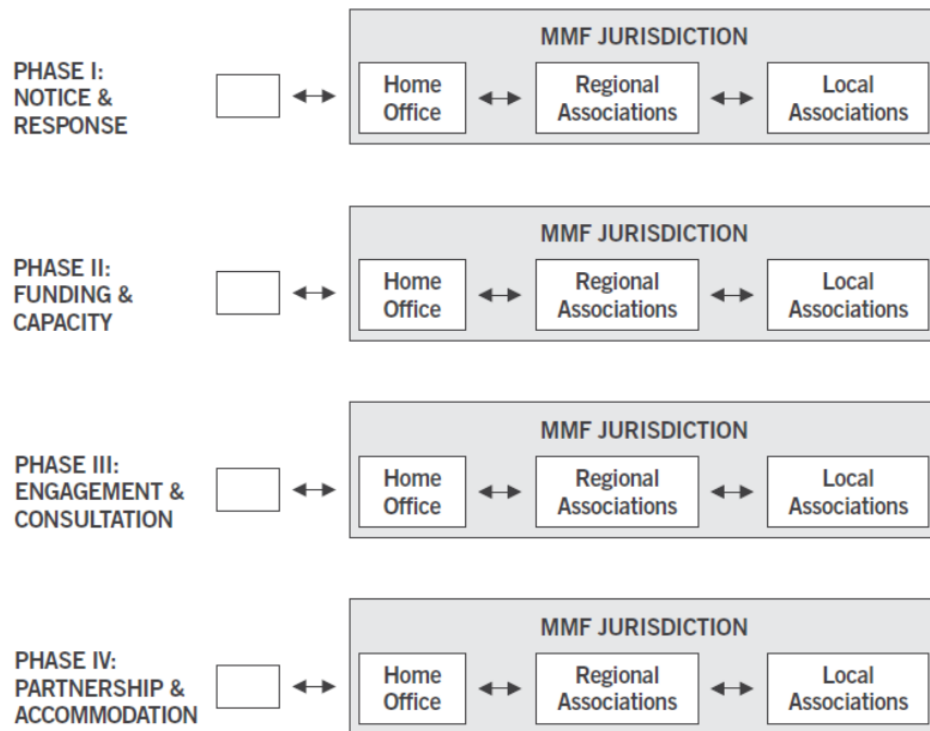
# MMF Resolution No. 8

- The Manitoba Métis Community has appointed the MMF Home Office as its authorized representative for the purposes of Crown consultation and accommodation.

- In 2007, the MMF Annual General Assembly unanimously adopted Resolution 8, which reads in part as follows:

“this assembly continue[s] to give the direction to the Provincial Home Office to take the lead and be the main contact on all consultations affecting the Métis community and to work closely with the Regions and Locals to ensure governments and industry abide by environmental and constitutional obligations to the Métis”

## Resolution No. 8 Framework



# Métis Rights, Claims and Interests

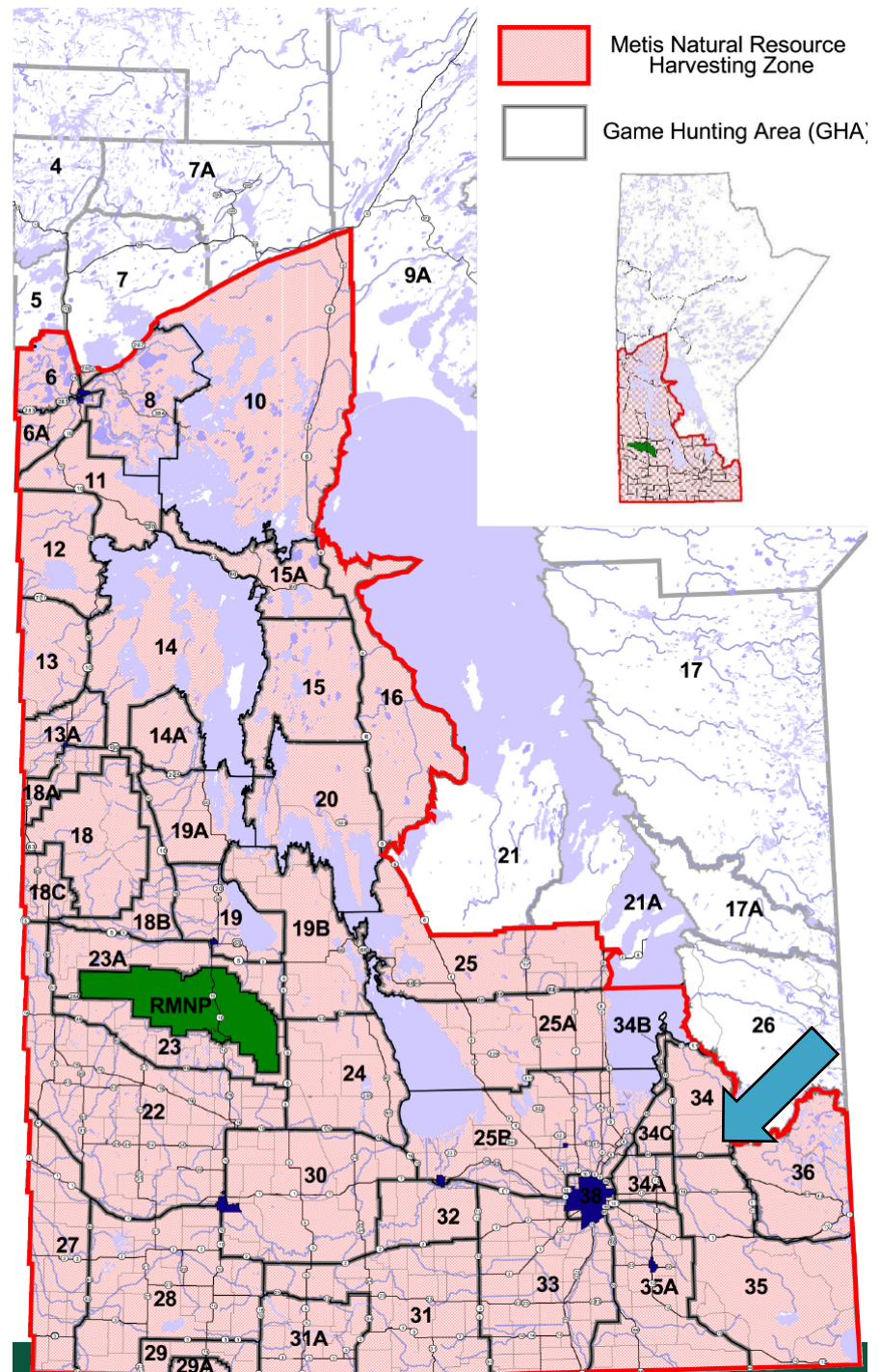
- The Manitoba Métis Community possess Aboriginal rights, including, pre-existing Aboriginal collective interests in lands protected by section 35 of the *Constitution Act, 1982*, throughout their homeland and traditional territory.
- In 2008, in *R. v. Goodon*, the Provincial Court of Manitoba affirmed the existence of constitutionally protected Métis harvesting rights in the province:

“The Métis community of Western Canada has its own distinctive identity. As the Métis of this region were a creature of the fur trade and as they were compelled to be mobile in order to maintain their collective livelihood, the Métis "community" was more extensive than, for instance, the Métis community described at Sault Ste. Marie in *Powley*. The Métis created a large inter-related community that included numerous settlements located in present-day southwestern Manitoba, into Saskatchewan and including the northern Midwest United States.” (para 46)



# Crown Recognized Métis Rights

- In 2012, the MMF and Manitoba government concluded the MMF-Manitoba Harvesting Agreement which recognizes Métis rights to “hunting, trapping, fishing and gathering for food and domestic use, including for social and ceremonial purposes and for greater certainty, the ability to harvest timber for domestic purposes” throughout an area spanning approximately 800,000 km<sup>2</sup> (the “Métis Recognized Harvesting Area”).
- MMF has strong assertions of harvesting rights beyond this recognized area.



# Métis Rights, Claims and Interests

- In 2013, in *Manitoba Métis Federation Inc. v. Canada*, the Supreme Court of Canada held that the federal government had “failed to implement the land grant provision set out in s. 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown.” The SCC wrote:

“What is at issue is a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in s. 35 of the *Charter* and underlying s. 31 of the *Manitoba Act*, remains unachieved. The ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Métis people with Canadian sovereignty is a matter of national and constitutional import.” (para 140)

- This constitutional breach continues to burden the federal Crown and gives rise to an outstanding claim regarding the 1.4 million acres of land promised to the Métis.

# Métis Rights, Claims and Interests

- Beyond those rights already established through litigation and recognized by the courts or in agreements with the Crown, the Manitoba Métis Community claims commercial and trade related rights.
- The Manitoba Métis Community's pre-existing customs, practices, and traditions—including as they relate to commerce and trade—were not affected by the *Natural Resources Transfer Act* and continue to exist and be protected as Aboriginal rights today.



# MMF Canada Negotiations

- On May 27, 2016, the Government of Canada, and the MMF executed a Memorandum of Understanding on Advancing Reconciliation.
- On November 15, 2016, Canada and the MMF executed a Framework Agreement for Advancing Reconciliation that formalized a negotiation process between Canada and the MMF to:
  - “jointly develop a renewed nation-to-nation, government-to-government relationship” and “to arrive at a shared solution that advances reconciliation between the Parties consistent with the purpose of section 35 of the *Constitution Act, 1982* and the Supreme Court of Canada’s decision in *Manitoba Métis Federation Inc. v. Canada (AG)*.”
- These negotiations are ongoing, including related to:
  - Quantum, selection and management of potential settlement lands;
  - Water and subsurface rights;
  - Wildlife, fishing and fisheries;
  - Environmental Assessment; and
  - Land management, among other topics.

# The Duty to Consult & Accommodate is Triggered by the Renewal Application

- The Duty to Consult and Accommodate
- The Duty to Consult and Accommodate is Triggered
  - Métis Rights, Interests, and Claims Affected by the Decision
- The Crown owes the Manitoba Métis Community a Deep Duty to Consult

# The Duty to Consult & Accommodate

- The Crown's duty to consult is grounded in the honour of the Crown and the reconciliation of Indigenous peoples' prior occupation and use of the land with the assertion of Crown sovereignty.
- The Supreme Court of Canada has said that:

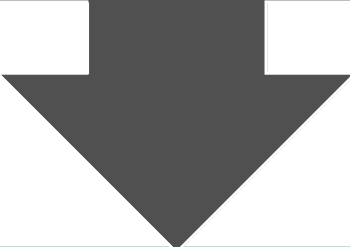
“The foundation of the duty in the Crown's honour and the goal of reconciliation suggest that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.”

*(Haida, para 35)*

- The test for whether the duty is triggered therefore has two parts:
  - i) Crown knowledge of potential Aboriginal or treaty rights; and
  - ii) A Crown action or decision that might adversely affect the Aboriginal or treaty right.

## Recommendation #1

The duty to consult and accommodate the Manitoba Métis Community is clearly triggered



In order to ensure that the duty to consult and accommodate is fulfilled the Commission must include a licencing condition for ongoing consultation with the MMF

# The Duty to Consult & Accommodate

- The courts have used the concept of a “spectrum” to describe the content, or what is required in order for the Crown to have fulfilled its duty:

“At the claims stage, prior to establishment of Aboriginal title, the Crown owes a good faith duty to consult with the group concerned and, if appropriate, accommodate its interests. As the claim strength increases, the required level of consultation and accommodation correspondingly increases. Where a claim is particularly strong — for example, shortly before a court declaration of title — appropriate care must be taken to preserve the Aboriginal interest pending final resolution of the claim.

Finally, once title is established, the Crown cannot proceed with development of title land not consented to by the title-holding group unless it has discharged its duty to consult and the development is justified pursuant to s. 35 of the *Constitution Act, 1982*.”

(*Tsilhqot'in*, para 91)

The Crown owes the  
Manitoba Métis  
Community a Deep  
Duty to Consult

- The following factors support a deep duty to consult and accommodate regarding the CNSC Regulatory Oversight Report:
  - Established and Crown-recognized s. 35 Métis harvesting rights
  - Judicial recognized outstanding Métis claim for land and ongoing MMF-Canada negotiations regarding land and environment
  - Evidence in the MMF Reports that demonstrate use of the regulatory area by MMF Citizens to exercise their harvesting rights
  - Background and context of dispossession of Métis from their traditional territory, including the Whiteshell site
  - Limited amount of Crown land available in the area for Métis to exercise their rights

## Recommendation #2

There are outstanding impacts and unaddressed concerns of the MMF regarding the regulatory oversight report.



In order to ensure that the duty to consult and accommodate is fulfilled a process for addressing the outstanding impacts and concerns of the MMF should be considered.

# Outstanding Impacts & Concerns of the Manitoba Métis Community

- Evidence and Information about the Outstanding Impacts and MMF's Concerns regarding the CNSC Regulatory Oversight Report



## Recommendation #3

Canada has made commitments to implement UNDRIP and advance reconciliation with the Métis that must be considered in the application of the regulatory oversight report.

The MMF review of the CNSC Regulatory Oversight Report states that any licensing must align with Canada's commitments

# Canada's International Obligations & Commitments to Reconciliation with the Métis

- The Commissions review and decisions specific to the regulatory oversight report must be implemented in accordance with Canada's commitments and International obligations:
  - The United Nations Declaration on the Rights of Indigenous Peoples
  - Canada's 10 Principles Respecting the Government of Canada's Relationship with Indigenous Peoples

# United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

- On May 10, 2016, Canada committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples.
- The Commission must exercise its discretion regarding the regulatory oversight report in light of Canada's commitment to implementing UNDRIP.

# United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

- Article 25 states: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.
- Article 26 (1) states: Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
- Article 29 states:
  - i) Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programs for indigenous peoples for such conservation and protection, without discrimination.
  - ii) States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
  - iii) States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

# Canada's 10 Principles

- Canada has adopted 10 Principles that are to apply to all its relationships and dealing with Indigenous communities, including the Manitoba Métis Community.
- The Commission must exercise its discretion regarding the regulatory oversight report in light of the Principles that Canada has committed to as part of its relationship with Indigenous peoples.
- Canada has said that:

“These Principles are a starting point to support efforts to end the denial of Indigenous rights that led to disempowerment and assimilationist policies and practices. They seek to turn the page in an often troubled relationship ...”

# Canada's 10 Principles

## Principle 1

The Government of Canada recognizes that all relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government.

It is the mutual responsibility of all governments to shift their relationships and arrangements with Indigenous peoples so that they are based on recognition and respect for the right to self-determination, including the inherent right of self-government for Indigenous nations. For the federal government, this responsibility includes changes in the operating practices and processes of the federal government.

# Canada's 10 Principles

## Principle 4

The Government of Canada recognizes that Indigenous self-government is part of Canada's evolving systems of cooperative federalism and distinct orders of government

As informed by the UN Declaration, Indigenous peoples have a unique connection to and constitutionally protected interest in their lands, including decision-making, governance, jurisdiction, legal traditions, and fiscal relations associated with those lands.

Nation-to-Nation, government-to-government relationships therefore include:

- i) Developing mechanisms and designing processes which recognize that Indigenous peoples are foundational to Canada's constitutional framework;
- ii) Involving Indigenous peoples in the effective decision-making and governance of our shared home;
- iii) Putting in place effective mechanisms to support the transition away from colonial systems of administration and governance; and
- iv) Ensuring, based on recognition of rights, the space for the operation of Indigenous jurisdiction and laws.

# Canada's 10 Principles

## Principle 6

The Government of Canada recognizes that meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources

This Principle acknowledges the Government of Canada's commitment to new nation-to-nation, government-to-government relationships that builds on and goes beyond the legal duty to consult.

The Government of Canada recognizes the right of Indigenous peoples to participate in decision-making in matters that affect their rights through their own representatives institutions and the need to consult and cooperate in good faith with the aim of securing their free, prior, and informed consent.

The Government of Canada will look for opportunities to build processes and approaches aimed at securing consent, as well as creative and innovative mechanisms that will help build deeper collaboration, consensus, and new ways of working together [and] ensure that Indigenous peoples and their governments have a role in public decision-making as part of Canada's constitutional framework.



# Canada's 10 Principles

## Principle 10

The Government of Canada recognizes that a distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of the First Nations, the Métis Nation and Inuit are acknowledged, affirmed, and implemented

The Government of Canada recognizes First Nations, the Métis Nation, and Inuit as the Indigenous peoples of Canada, consisting of distinct, rights-bearing communities with their own histories, including with the Crown.

The work of forming renewed relationship based on the recognition of rights, respect, cooperation, and partnership must reflect the unique interest, priorities and circumstances of each People.

## Summary of MMF Recommendations

In order to ensure that the duty to consult and accommodate is fulfilled the Commission must include a licencing condition for ongoing consultation with the MMF

In order to ensure that the duty to consult and accommodate is fulfilled a process for addressing the outstanding impacts and concerns of the MMF should be included as a consideration in the regulatory oversight report

The Commission's approval conditions and review of the regulatory oversight report must align with Canada's commitments to implement UNDRIP and advance reconciliation and a Nation-to-Nation, government-to-government relationship with the Métis

Meeqwetch  
Thank you

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