



Nisichawayasihk Cree Nation

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August 2, 2024

The Hon. Wab Kinew
Premier of Manitoba
Minister of Indigenous Reconciliation
204 Legislative Building
450 Broadway
Winnipeg, MB R3C 0V8

The Hon. Jamie Moses
Minister of Economic Development,
Investment, Trade and Natural Resources
358 Legislative Building
450 Broadway
Winnipeg, MB R3C 0V8

The Hon. Ian Bushie
Minister of Indigenous Economic Development
301 Legislative Building
450 Broadway
Winnipeg, MB R3C 0V8

The Hon. Matt Wiebe:
Minister of Justice and Attorney General
104 Legislative Building
450 Broadway
Winnipeg, MB R3C 0V8

RE: Call on Manitoba to Terminate Application of the September 29, 2012 "Manitoba Government-Manitoba Metis Federation Points of Agreement on Metis Harvesting in Manitoba" and Map of "Recognized Areas for Metis Natural Resource Harvesting" within the Traditional Territory of the Nisichawayasihk Cree Nation

Tansi Premier and Ministers:

The Nisichawayasihk Cree Nation says that there are no persons who can claim to hold rights as Metis persons to hunt, fish, trap or harvest with the Traditional Territory of the Nisichawayasihk Cree Nation in Manitoba. Accordingly, it is the firm expectation of the Nisichawayasihk Cree Nation that Manitoba will terminate the application of the September 29, 2012 "Manitoba Government-Manitoba Metis Federation Points of Agreement on Metis Harvesting in Manitoba" and any application of the map of co-called "Recognized Areas for Metis Natural Resource Harvesting" within the Traditional Territory of the Nisichawayasihk Cree Nation.

An assessment by the NCN Elders and other NCN Knowledge Keepers through the work of the Nisichawayasi Aski Kitche O'nanakachechikiwuk considered the Nehethowuk perspective of whether there was an historic Metis community within the traditional territory of NCN. The Nisichawayasi Aski Kitche O'nanakachechikiwuk confirmed that there was no historic Metis community at Nelson House. Any persons of mixed European and First Nation ancestry who were at the Hudson Bay Company's trading post at Nelson House were known by the Nehethowuk of NCN as "children of the Post". These "children of the Post" only hunted and fished within N'tuskenan - NCN ancestral lands - with the permission of the NCN family who brought them along when hunting or fishing or when "the children of the Post" married into our families. There has never been – and there is not now – an historic Metis community or a separate "Metis territory" within Nisichawayasi N'tuskenan.

As part of the Wuskwatim process, the respected anthropologist and archeologist working with the Nisichawayasihk Cree Nation, the late Dr. Virginia Petch, carried out a detailed assessment of the historic, anthropological and archeological records. Dr. Petch concluded that there was not then, and is not today, any historic Metis community at Nelson House that would meet the tests for a rights-holding historic Metis community set out by the Supreme Court of Canada in the 2003 decision in *R. v. Powley*.

There was absolutely no consultation whatsoever by Manitoba with NCN or with northern Manitoba First Nations before Manitoba announced on September 29, 2012 the "Manitoba Government-Manitoba Metis Federation Points of Agreement on Metis Harvesting in Manitoba" nor when Manitoba publicly published a map of so-called "Recognized Areas for Metis Natural Resource Harvesting". NCN and First Nations first learned of this agreement and map through a Manitoba government press release of the same date entitled, "PROVINCE PARTNERS WITH MANITOBA METIS FEDERATION TO UPHOLD MÉTIS HARVESTING RIGHTS, NATURAL RESOURCE CONSERVATION".

NCN categorically objects to any area of Nisichawayasi N'tuskenan – which area is today formally recognized by Manitoba as the Nelson House Resource Area and Nelson House Trapline Section - being included within the area of the map of so-called "Recognized Areas for Metis Natural Resource Harvesting" that was published by Manitoba on September 29, 2012 and without any consultation with NCN.

The Grand Chief of the Swampy Cree Tribal Council wrote on April 24, 2024 to Premier Kinew, Minister Moses, Minister Bushie and Minister Wiebe to specifically object to any area of the Treaty No. 4 First Nations being included in the map of so-called "Recognized Areas for Metis Natural Resource Harvesting" that Grand Chief Zastre also asserts was published by Manitoba on September 29, 2012 without first consulting with the Swampy Cree Tribal Council First Nations:

"The Swampy Cree Tribal Council disputes that there is any proven ancestral connection to a pre-1880 Metis community in a manner consistent with R. v. Powley and related case law within the entirety of Treaty No. 4 territory in Manitoba. At no time did Manitoba consult with the Swampy Cree Tribal Council while developing and before agreeing to the September 29, 2012 map of purported "Recognized Areas for Metis Natural Resource Harvesting."

The Nisichawayasihk Cree Nation says that the same is true for NCN. As NCN did during the Wuskwatim process, NCN continues to say that there is no proven ancestral connection to a pre-1880 Metis community in a manner consistent with *R. v. Powley* and related case law at Nelson House or within the entirety of NCN Traditional Territory in Manitoba.

The rights of First Nations and the rights of Metis in Manitoba are not the same and do not co-exist in areas of the province and are not of equal standing, so says the Supreme Court of Canada in *R. v. Powley* and *R. v. Blais*. Both of these foundational decisions were released on the same day, on September 19, 2003.

It is the firm expectation of the Nisichawayasihk Cree Nation that Manitoba will take immediate steps to ensure that any provincial "recognition" of the rights of persons who self-identify as Metis or any provincial recognition of an area in which such proven rights may be exercised must strictly apply the tests of the Supreme Court of Canada in *R. v. Powley*.

In this regard, the Nisichawayasihk Cree Nation notes that, importantly, there is no reference to the decision of the Supreme Court of Canada in *R. v. Powley* or to the tests in *Powley* in the September 29, 2012 "Manitoba Government-Manitoba Metis Federation Points of Agreement on Metis Harvesting in Manitoba."

It is significant there was no evidence of the perspectives of First Nations regarding the presence of persons of mixed European and First Nation ancestry within the traditional territories of First Nations presented to or considered by the Supreme Court of Canada or by the courts in Manitoba and Saskatchewan when the courts considered the claimed rights of Metis persons or the areas in which the proven rights of Metis persons may be exercised. In contrast, the court in the June 14, 2023 decision in *Attorney General of Quebec v. Séguin* considered the evidence of the intervenor Kitigan Zibi Anishinabeg and rejected a claim of an historic Metis community in the Maniwaki area of Quebec.

As I have already noted, the Nisichawayasi Aski Kitche O’nanakachechikiwuk and other Knowledge Keepers of the Nisichawayasihk Cree Nation have said and continue to say that there was no historic Metis community at, or around, Nelson House. The late Dr. Petch took the perspectives of NCN into account when also concluding that there was no historic Metis community at Nelson House or elsewhere within NCN Traditional Territory that would meet the tests in *R. v. Powley*.

Moreover, a careful review of the 1880 report of Treaty Commissioner and Lieutenant Governor Alexander Morris entitled, *The treaties of Canada with the Indians of Manitoba and the North-West Territories, including the negotiations on which they were based, and other information relating thereto*, confirms that the Crown made no promise whatsoever to persons of mixed European and First Nation ancestry – described as “half-breeds” by Lieutenant Governor Alexander Morris - regarding hunting, fishing, trapping or harvesting. Morris’s report of the Treaty-making process confirms that the Treaty Commissions consistently offered Indianized “half-breeds” the choice of taking the Treaty or taking the land promised by the *Manitoba Act, 1870* – not both – as reported in Morris’ recounting of the discussions during the making of Treaty No. 6 at Fort Carlton in 1876:

“GOVERNOR--The Queen has been kind to the Half-breeds of Red River and has given them much land; we did not come as messengers to the Half-breeds, but to the Indians. I have heard some Half-breeds want to take lands at Red River and join the Indians here, but they cannot take with both hands. The Half-breeds of the North-West cannot come into the Treaty. The small class of Half-breeds who live as Indians and with the Indians, can be regarded as Indians by the Commissioners, who will judge of each case on its own merits as it comes up, and will report their action to the Queen's Councillors for their approval.”

The September 19, 2003 decision of the Supreme Court of Canada in *R. v. Blais*, at paragraphs 33 and 34, is consistent with the Crown’s position as articulated by Lieutenant Governor Alexander Morris at Fort Carlton in 1876:

33 *The protection accorded by para. 13 was based on the special relationship between Indians and the Crown. Underlying this was the view that Indians required special protection and assistance. Rightly or wrongly, this view did not extend to the Métis. The Métis were considered more independent and less in need of Crown protection than their Indian neighbours, as Wright J. confirmed. Shared ancestry between the Métis and the colonizing population, and the Métis’ own claims to a different political status than the Indians in their Lists of Rights, contributed to this perception. The stark historic fact is that the Crown viewed its obligations to Indians, whom it considered its wards, as different from its obligations to the Métis, who were its negotiating partners in the entry of Manitoba into Confederation.*

34 *This perceived difference between the Crown’s obligations to Indians and its relationship with the Métis was reflected in separate arrangements for the distribution of land. Different legal and political regimes governed the conclusion of Indian treaties and the allocation of Métis scrip. Indian treaties were concluded on a collective basis and entailed collective rights, whereas scrip entitled recipients to individual grants of land.(...)”*

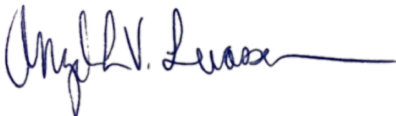
The Crown's promise to First Nations and our right as a Treaty Nation to hunt, fish, trap and harvest is confirmed in the terms of Treaty No. 5. The Treaty right of Treaty No. 5 First Nations is constitutionalized for the first time as an obligation imposed on Manitoba to "secure to the Indians of the province the continuance of the supply of game and fish" for our "support and subsistence" through paragraph 13 of the Schedule to the *Manitoba Natural Resources Act, 1930*, which forms part of the *Constitution Act, 1930*.

The Crown's express promise to First Nations during the Treaty-making process for First Nations to continue our Inherent right to harvest as a Treaty right to hunt, fish and trap was constitutionalized for a second time by s. 35 of the *Constitution Act, 1982*.

Any provincial engagement processes considering resource harvesting and involving "rights holders" must clearly recognize and take into account the different and distinctive constitutional nature and top priority of First Nation rights.

Please contact me at your very earliest opportunity today at 204-679-3781 and at angela.levasseur@nncree.com to confirm Manitoba's responses to these firm expectations of the Nisichawayasihk Cree Nation.

Ekosani,



Angela Levasseur
Chief

NISICHAWAYASIIHK CREE NATION

cc. Grand Chief Garrison Settee, Manitoba Keewatinowi Okimakanak, Inc.
Grand Chief Cathy Merrick, Assembly of Manitoba Chiefs
Grand Chief Elwood Zastre, Swampy Cree Tribal Council
Willie Moore, Assembly of First Nations Regional Chief for Manitoba
Manitoba Keewatinowi Okimakanak, Inc. First Nations
Byron Williams, Director, Public Interest Law Centre
Michael Anderson, MKO UNDRIP Implementation and Action Plan Advisor