A TALE OF TWO NATIONS
Highlighting the Inequities of the Treatment of the Métis in BC
British Columbia’s most recent government made the goal of advancing reconciliation with Indigenous peoples a top priority upon election in 2017. This is highlighted by committing to reconciliation in each of their throne speeches during their term. However, the only specific mention made of the Métis in BC was in 2018’s throne speech, during which [the speaker] stated, “Indigenous Peoples, be they title-holding First Nations, Métis, Inuit, or those living on- or off-reserve, **must be involved in the decisions, programs, and policies that affect them.**”

Ignoring the Métis Nation has been a consistent and long-standing policy of successive governments in the province. This document demonstrates where the historic and current imbalances in provincial funding between the Métis Nation and First Nations exist, the lack of recognition for the Métis Nation, and examines the rationale provided by the provincial government for this current reality. It further highlights why the rationale is legally invalid and politically harmful.

Currently, the BC Government funds the First Nations Health Authority a thousand times more than the amount provided in health funding to the Métis Nation. This is not an exaggeration or a misprint - $60M in funding compared to $200,000 annually. The recently announced First Nations Gaming Revenue Sharing agreement will deliver an estimated $120M annually - $3B over 25 years. The Métis Nation was excluded from this agreement and will receive no funding from gaming revenues. These are but two of the most egregious examples that will be examined in greater detail.

Provincial and federal governments have a well documented history in marginalizing Indigenous peoples across Canada, and suppressing our cultures and way of life through assimilative tactics. We are not operating under a false assumption that First Nations have ever been sufficiently funded; their struggles are very similar to our own. What we are underlining is how BC has unfairly excluded the Métis Nation in their reconciliation efforts.

In his 2016 report to the Government of Canada, *A Matter of National and Constitutional Import: Report of the Minister’s Special Representative on Reconciliation with Métis: Section 35 Métis Rights and the Manitoba Métis Federation Decision*, Tom Isaac states:

> “Reconciliation is more than platitudes and recognition. Reconciliation flows from the constitutionally protected rights of Métis protected by Section 35 and is inextricably tied to the honour of the Crown, and must be grounded in practical actions.”

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I trust that the message will be well received and will lead to a renewed, enhanced relationship with Métis Nation and the BC Government.

Sincerely,

Daniel Fontaine
Deputy Minister – Métis Nation BC
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INTRODUCTION

The Speech from the Throne sets the aspirations of the government of the day for the upcoming legislative session. As the speech is written by the governing party, it sets out key goals and agenda-setting items they wish to accomplish in the years ahead. In broad terms, it offers a roadmap for what the government hopes to achieve, and their aspirations in policy moving forward.

Since the 2016 Speech from the Throne, the government has made specific references in regards to reconciliation with the Indigenous peoples of British Columbia:

“But we have too often failed to ensure First Nations received their share of the benefits of a modern economy. We are now moving in the right direction.”

2016 Speech from the Throne

“Together with First Nations and all Indigenous peoples, your government will seek to bring these principles [United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)] to life. We must build a true partnership, based on rights, respect, and reconciliation. We can only move forward together.”

2017 Speech from the Throne

“Indigenous Peoples, be they title-holding First Nations, Métis, Inuit, or those living on- or off-reserve, must be involved in the decisions, programs, and polices that affect them … We must close the socio-economic gap between Indigenous and non-Indigenous communities, and invest in the capacity building that is critical for self-determination.”

2018 Speech from the Throne

“This government is committed to true and lasting reconciliation with Indigenous Peoples … This legislation [UNDRIP] will form the foundation for the Province’s work on reconciliation, mandating government to bring provincial laws and policies into harmony with the Declaration.”

2019 Speech from the Throne

“For two and a half years, this government has worked in partnership with Indigenous peoples to make progress on reconciliation … Reconciliation is rooted in the recognition of Indigenous rights as human rights.”

2020 Speech from the Throne

The BC Government has made repeated commitments in these Speeches from the Throne towards enacting legislation and policies to achieve reconciliation with Indigenous peoples. In fulfilment of these commitments, the BC Government has made significant steps in advancing reconciliation with the First Nations of BC, and should be applauded for this progress. However, the Speech from the Throne commitments shown above are not exclusively for the First Nations, but rather all Indigenous peoples in the province. The Métis of BC have not seen nearly as many tangible efforts towards reconciliation, despite these commitments.
The plight of the Métis as the marginalized, or “forgotten” Aboriginal people is not unique. While it would be far from reality to suggest that the First Nations of Canada have received proper and equitable funding from the Government of Canada or provincial governments, insufficient funding has had a significant impact on the Métis Nation. Historically, the biggest distinction between First Nations and Métis funding is the jurisdictional clarity of First Nations, in that “Indians” have, since 1867, been clearly defined to be under federal jurisdiction. As Métis are not considered to be “Indians” under the definitions provided through the Indian Act, and were finally explicitly mentioned as an Aboriginal people in Canada with the Constitution Act, 1982, with the addition of Section 35, both the federal and provincial governments claimed the Métis did not fall under their jurisdiction. The Métis existed in a “jurisdictional wasteland,” with no government willing to accept any responsibility of their concerns until it was clarified by the Supreme Court of Canada in 2016 with the Daniels decision. Daniels confirmed and clarified that the federal government has a fiduciary duty to the Métis.

The Government of Canada, as the main agent of the Crown of Canada, has always been recognized as the main jurisdictional power in regards to First Nations. This has not prevented provincial governments, including the BC Government, from negotiating bilateral agreements with BC First Nations and committing to increased funding. Whether it is the modern treaty process, the First Citizen’s Fund, or the recently implemented First Nations Gaming Revenue Sharing, the BC Government is making a concerted effort towards reconciliation with the First Nations, and committing significant financial resources towards these efforts.

If Indigenous funding was allocated in proportion to the Indigenous population of BC, the amount of funding that would be allocated solely to the Métis should be close to 30%. Not only does the funding provided by the province to the Métis Nation fall woefully short of the 30% benchmark, the provincial government seems to focus solely on First Nations. This has culminated in the term “Indigenous” in the context of the provincial government, to actually mean “First Nations.” The funding chasm between the Métis Nation and First Nations is so large that there are many instances where First Nations are funded through various governmental projects, and there is no Métis equivalent. Additionally, when funding is allocated to the Métis, it is often done through funding streams that are intended for “off-reserve” Indigenous peoples.

3 The BC Government uses the term “Indigenous” to refer to the Aboriginal peoples listed under Section 35 of the Constitution Act, 1982. The term “Aboriginal” is still used in Canadian Case law. The term “Aboriginal” will be used in this paper when referring directly to the Constitution Act or case law.
4 Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 35
5 Daniels v. Canada (Indian Affairs and Northern Development), 2016 SCC 12, at 53
6 Ibid at 51, see also NIL/TU,O Child and Family Services Society v. BC Government and Service Employees Union, 2010 SCC 45, at 3 confirms that the province is free to enter in an agreement with Indigenous groups, and this is not an “overreach” of provincial jurisdiction.
In 2019 the BC Government enshrined into provincial law the articles and principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Article 39 states:

“Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.”

If the BC Government is committed to reconciliation with the Métis Nation and on implementing the principles of UNDRIP in BC, greater capacity funding is required to ensure that the Métis Nation can sustain self-determination and self-government.
STRUCTURE OF THE MNBC

Based on the 2016 Census, there are 89,395 self-identified Métis people in BC. In total, there are just over 300,000 people in British Columbia with self-identified “Aboriginal” ancestry. Throughout this paper we will be contextualizing the Métis population of BC as 30% of the total Aboriginal population.

The Métis Nation British Columbia (MNBC) was founded in 1996 as the Métis Provincial Council of British Columbia. The MNBC is a member of the Métis National Council, and is recognized by the Government of Canada and the BC Government as the governing body for Métis in BC. As of 2020, there are over 20,500 registered Citizens of the MNBC.

Registered Citizens of the MNBC must meet the definition of “Métis” adopted by the Métis National Council in 2002:

“‘Métis’ means a person who self-identifies as Métis, is distinct from other Aboriginal peoples, is of historic Métis Nation Ancestry and who is accepted by the Métis Nation.”

This definition of “Métis” was then confirmed in Canadian law through the Powley decision of the Supreme Court of Canada. The MNBC has enshrined this definition of citizenship in the MNBC Constitution and the MNBC Citizenship Act, laying out clear, objective requirements to be recognized as a Citizen of the Métis Nation. The MNBC represents 38 Métis Chartered Communities, local communities that have met the community recognition criteria stated in the MNBC Constitution and have signed a Community Governance Charter with the MNBC.

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Overarching Themes of the BC Government’s Approach to Métis Funding:

**Theme One:** Funding provided by the BC Government to BC Métis is disproportionately low compared to BC First Nations funding. Through self-identification, 30% of “Aboriginal” residents of BC identify as Métis. The amount of funding allocated for Métis, either through specific funding or pan-Indigenous funding, is not close to 30% of the BC Government’s funding for “Indigenous” peoples. The BC Government has created a “hierarchy” of Indigenous peoples in BC by way of their funding formula continuously ignoring the Métis within the province.

**Theme Two:** Métis specific funding from the BC Government is insufficient for tangible results. When the comparable funding from the BC Government for both First Nations and Métis Nation programs is analyzed side by side, the funding provided to Métis is not sufficient to deliver the same level of results First Nations are able to achieve with greater funding.

**Theme Three:** Funding for Métis is too often put into a “pan-Indigenous” pot, creating competition between Métis and Indigenous entities. When Métis are eligible to access funding from the BC Government, the funding is administrated through either the BC First Nations or pan-Indigenous organizations. This results in Métis competing against other Indigenous groups who also qualify for funding. Also, funding through a pan-Indigenous approach, in most cases, has an eligibility criteria so broad that any self-identifying Indigenous person qualifies for the funding. This undermines the definition of “Métis” that has been accepted in case law and the Métis National Council (MNC), in which self-identification is only one of the criteria mentioned. Merely making Métis eligible for the funding does not result in funding being given to the Métis. Funding for BC Métis must be administrated by the Métis Nation to ensure that the funding is delivered to verified Métis.

**Theme Four:** The BC Government does not recognize Métis Section 35 rights in British Columbia. The official government policy is that the Métis do not hold any Aboriginal rights in the province, and therefore do not need to be consulted or afforded the similar rights, privileges, and respect as the First Nations in British Columbia.9

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THEME ONE: FUNDING PROVIDED BY THE BC GOVERNMENT TO THE MÉTIS NATION IS DISPROPORTIONATELY LOW COMPARED TO FIRST NATIONS FUNDING:

First Nations Gaming Revenue Sharing

In 2019, an interim agreement was signed between the BC Government and the BC First Nations to transfer provincial gaming revenue to First Nations. While the revenue sharing agreement did result in an initial payment of $194M, the purpose of this agreement is to provide, “a stable, long-term source of revenue for BC First Nations.” The agreement will guarantee 7% of BC Lottery Corporation’s net income until 2045. The estimated value of this agreement is $3B, and was finalized in September 2020.

The Métis Nation receives no gaming revenues.

The revenue from this agreement will ultimately be given to First Nations governments through the BC First Nations Gaming Revenue Sharing Limited Partnership, and will be allocated to all First Nations communities regardless of if they have signed a modern treaty with the BC Government. Additionally, this funding is provided on top of any agreements or any other funding the BC Government already provides First Nations – it does not replace any provincial funding.

Clearly, this is a transformative agreement for the First Nations of British Columbia, as it is a new, unique funding stream. With the funding being managed by a First Nations limited partnership, it guarantees First Nations themselves will set the funding formulas and the priorities that will be funded. The Métis Nation receives no gaming revenues.

First Nations Clean Energy Business Fund Special Account

This fund was created in 2010 as part of the Clean Energy Act legislation. The fund, “provides for increased First Nations participation in clean energy power projects through sharing of revenue government receives from those projects or through facilitation the participation of First Nations in the clean energy sector, including supporting First Nations equity positions in those projects.” This special account, which is roughly $7.6M per year, is only open to First Nations applications for funding. The Métis Nation is not eligible for this funding.

First Citizen’s Fund

The First Citizen’s Fund was created as a perpetual fund in 1969 to, “promote the economic, educational, and cultural well-being of Aboriginal people who are normally residents of BC by providing financial assistance through loan guarantees and government transfers.” Annual estimates tabulated by the BC Government as part of the budget show that this fund consistently provides

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11 Ibid.
between $1.6-2M per year. One of the uses of fund revenue is to provide business loans for Indigenous entrepreneurs. Funding from the First Citizen’s Fund is provided through four lenders and/or capital corporations all which are First Nations focused. While the aforementioned capital corporations do specify that Métis residents of British Columbia are eligible to apply for funding, Métis applicants will again be competing with First Nations applicants for funding through these organizations. These organizations may also be able to give preferential treatment to their own Nation members when it comes to approving proposals. The Métis portion of this funding should be directed to the Métis Financial Corporation of BC, to ensure that a fair allotment of Métis dollars is guaranteed to be delivered to Métis people. The BC Government has provided no funding to the Métis Financial Corporation of BC to date.

**New Relationship Trust**

Imagine where the Métis of BC would be currently if a proportionally equivalent Trust was given by the BC Government fifteen years ago – or if a Gaming Revenue Sharing Fund was established for the Métis in BC.

The New Relationship Trust was created in 2006 in collaboration with the First Nations Summit, the BC Assembly of First Nations, the Union of BC Indian Chiefs, and the BC Government, to establish, “a new government-to-government relationship based on respect, recognition, and accommodation of Aboriginal title and rights.” The Trust is a non-profit organization that supports BC First Nations in developing key capacity in governance, education, language, youth and elders, and economic development. The Trust was established through a $100M grant from the BC Government on inception, and continued funding is maintained through an investment portfolio. Funding applications to the Trust are limited to applications by First Nations or band councils. The Trust also manages additional programs and funding for First Nations from time to time. The Métis Nation is excluded from this trust and does not have a similar program.

As with the First Nations Gaming Revenue Sharing agreement, establishment of the Trust was a monumental funding commitment by the BC Government to benefit the BC First Nations, especially with the funding administered fully by First Nations representatives, and to be self-sustaining through continued investment.

The governance structure of the Gaming Revenue Sharing Fund and the New Relationship Trust ensure First Nations are making decisions on funding that affects First Nations in BC, thereby fulfilling the principles of self-determination and enabling self-government. The obvious question is, where are the Métis equivalents? Imagine where the Métis of BC would be currently if a proportionally equivalent Trust was given by the BC Government fifteen years ago – or if a Gaming Revenue Sharing Fund was established for the Métis in BC. What, if any, justification exists to ignore the Métis of BC in steps towards enabling Indigenous groups to achieve self-determination and self-governance goals through independent capacity funding? The BC Government is loath to admit that there is a “hierarchy” of

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Indigenous peoples in BC, but their actions regarding funding for Indigenous peoples strongly suggests otherwise.
THEME TWO: MÉTIS SPECIFIC FUNDING FROM THE BC GOVERNMENT IS INSUFFICIENT FOR TANGIBLE RESULTS:

Children and Families

One can see the obvious flaws in this funding formula - simple calculations show that the total amount allocated to First Nations would come to just over $6M, while the maximum amount that the Métis agencies are eligible for is $210,000.

The MNBC has not pursued jurisdiction regarding children in provincial care until very recently. Through joint commitments between the BC Ministry of Children and Family Development (MCFD) and the MNBC, jurisdiction for children in care will be fully transferred by 2021. Despite these jurisdictional changes, the funding difference between First Nations and Métis children in care is best demonstrated in a CBC Article from 2019. In this article, MCFD stated that the 203 First Nations child authorities, and the seven Métis agencies, were each eligible to apply for up to $30,000 in funding.15

One can see the obvious flaws in this funding formula - simple calculations show that the total amount allocated to First Nations would come to just over $6M, while the maximum amount that the Métis agencies are eligible for is $210,000. This results in 3% of the eligible funding being allocated for Métis agencies - a tenth of the fair share based on aggregate populations numbers from the census. The actual funding formula could be further skewed, as this is not based on the actual numbers of children in care in British Columbia.

Education

The 2016 Census figures show that the proportion of self-identified Métis individuals aged fourteen years or younger in BC matches the general proportion of the Métis population in British Columbia, in that they entail close to 30% of identified Aboriginal individuals of this age range in British Columbia.16 The First Nations Education Steering Committee (FNESC) is a policy and advocacy organization that has a mandate to support First Nations students and advance First Nations Education in BC, but does not provide direct educational services to students. Some of the policy work they do is curriculum review and

cultural training for BC schools, for which they receive $4.3M in annual funding from the BC Government. In the same time frame, the MNBC received $100,000 to conduct the same policy work.

The omission of the Métis in the First Peoples curriculum is in contradiction to the BC Government’s declaration that the Métis Nation is a, “distinct... community with their own history.”

One of the achievements that the BC Government has celebrated as a large step toward reconciliation with Aboriginal peoples in the province is the implementation of First Peoples courses in the high school curriculum. The courses are core required courses for all students from Grade 10 to Grade 12. In the teacher’s guide provided by the FNESC for these courses, the Métis are the focus of only one of the instruction units - and, in this unit, the focus is on the struggle of the Métis being identified as Indigenous in Canada, essentially, a comparison to First Nations. The only mention of the Métis in the curriculum is in contrast to the First Nations, with no specific mention of the Métis Nation as a distinct Indigenous peoples with a distinct culture. Within the BC Ministry of Education curriculum, the Métis are only mentioned in the phrase “First Nations, Métis, and Inuit.” There is no mention of separate, distinct Métis education on culture or history.

Through reading of the curriculum, it is almost a certainty that BC students will assume that the Métis are one of the many First Nations of BC. This is a problem as it is overlooking a significant and unique Aboriginal presence and experience in the province. It is unthinkable that a distinct Nation in British Columbia, encompassing 30% of the Aboriginal population in BC, would be under-represented to this extent in the First Peoples Curriculum, regardless of if they signed a modern treaty or were otherwise recognized as a Section 35 rights holding people by the BC Government. In addition, the omission of the Métis in the First Peoples curriculum is in contradiction to the BC Government’s declaration that the Métis Nation is a, “distinct... community with their own history.” It begs the question of if the BC Government is concerned that a fulsome account of Métis history in BC will contradict their legal stance that the Métis are unable to demonstrate historical Section 35 rights practices in BC.

Health

First Nations Health is governed through the First Nations Health Authority (FNHA). The First Nations Health Authority, like the education committee mentioned above, does not provide direct services to First Nations clients. The funding the FNHA receives from the provinces is a tenth of their overall budget, ($60M funding from the province). The MNBC, in turn, receives $200,000 annually from the provincial government for the MNBC Ministry of Health, doing the same work as the FNHA.

The funding the FNHA receives from the provinces is a tenth of their overall budget, ($60M funding from the province). The MNBC, in turn, receives $200,000 annually from the provincial government for the MNBC Ministry of Health, doing the same work as the FNHA.

17 Ibid, the largest distinctly counted First Nation in BC, according to the 2016 Census, are the Cree who number just over 35,000 in BC. This is followed by the “Salish”, which includes general response of Salish ancestry and responses of specific Salish nations, e.g., ‘Coast Salish’, ‘K’omoks’, etc.

annually from the provincial government for the MNBC Ministry of Health, doing the same work as the FNHA.

One thing that the FNHA does provide their clients with is extended health benefits. Extended health benefits, including dental and pharmacare, are provided at no cost to all Status First Nations in British Columbia. The program partnered with Pacific Blue Cross to deliver benefits to users.

The FNHA Health Benefits ensure extended health benefits are provided to people who are not provided employer provided extended health benefits or do not meet the requirements for income, hardship, or disability assistance payments from the BC Government. While there are other programs, such as the Healthy Kids Program, that Métis would be able to access if they meet the requirements, undoubtedly, there are Métis in BC that would fall in this coverage gap, where the FNHA health benefit would cover them if they were Status.

Justice

The BC First Nations Justice Council released the First Nations Justice Strategy in 2020. This strategy was initialized by a Memorandum of Understanding (MOU) with the BC Government signed in 2017. This MOU was originally signed between the Government and what was initially called the BC Aboriginal Justice Council. It is difficult to state that this original MOU was intended to include the Métis of BC, as there was no Métis representation at the signing of the MOU, or Métis representative appointed to the Council. However, with the council recently being renamed the First Nations Justice Council, it became clear this was another First Nations centric program.

The BC Government subsequently signed a MOU with the MNBC to set up a Métis Justice Council in 2019, with the goal to create a Métis Justice Strategy. This project has similar goals with the First Nations Justice Council. However, the original MOU that created the BC Aboriginal Justice Council, signed in 2017, committed capacity funding of $400,000 for that fiscal year. The MNBC has been limited in Justice Council funding to $90,000 per year.
THEME THREE: FUNDING FOR MÉTIS IS TOO OFTEN PUT INTO A “PAN-INDIGENOUS” POT, CREATING COMPETITION BETWEEN MÉTIS AND INDIGENOUS ENTITIES:

First Citizen’s Fund

As mentioned previously, the First Citizen’s fund generates revenues between $1.6M-2M annually. With the moniker, “First Citizen’s Fund,” it could be assumed by a casual glace, that this fund would serve for the benefit of all Aboriginal peoples in British Columbia. Regrettably and predictably, this is not the case. The Student Bursary Program, which is administrated by the BC Association of Aboriginal Friendship Centers (BCAAFC) is open to all Indigenous students, who must, “demonstrate a financial need,”¹⁹ to be eligible for this funding. Further, there is no portion of the funding reserved solely for Métis applicants; they are in competition with First Nations students for access to this funding. Additionally, the Post-Secondary Student Support Program provides funding to, “access education opportunities at the post-secondary level,”²⁰ but is only open to First Nations students who hold Status but do not have a band membership.

The Indigenous Business Advisory Centers are also funded through the First Citizen’s Fund. These three Advisory Centers offer no-cost business skills training, business services, such as market research, legal and registration assistance, bookkeeping reviews, and business advice. Two of these Advisory Centers are affiliated with local First Nations and all three Centers do state they are Aboriginal focused. While they do not exclude Métis from their services, they do not explicitly state that their services are open to Métis people. Métis people do not see themselves included in pan-Indigenous programming, nor do they usually access it.

Education

The BC Aboriginal Education Partners Group is a provincial education group that does include the MNBC. Funding is provided through the Ministry of Education to the FNESC to act as the secretariat.

Even though the Group does include the MNBC, the Group is dominated by First Nations members, and therefore the priorities are focused on First Nations’ needs. The MNBC does not have the capacity funding to participate in each meeting of the FNESC.

The MNBC has been involved in the Indigenous Post-Secondary Education and Training Partners Table for several years, (also administered through the FNESC, resulting in the same struggles as outlined above). The MNBC has achieved greater success engaging directly with Post-Secondary Education partners, with participation at the initial planning phase and impacting high-level policy documents, resulting in a meaningful Métis Nation impact on education policy.

The BC Government must pivot towards a distinctions-based approach in regards to Indigenous funding. While increased funding towards improving the lives of Indigenous peoples and reconciling historical injustices is always welcome, allocating these funds to a “pan-Indigenous” pot dilutes the impact of the funding towards the Métis.
THEME FOUR: THE BC GOVERNMENT DOES NOT RECOGNIZE MÉTIS SECTION 35 RIGHTS IN BRITISH COLUMBIA:

The Métis people of Canada are identified under Section 35 of the Constitution as a rights-holding Aboriginal peoples. These rights are equal to the “Indian” (First Nations) and Inuit peoples of Canada.\(^{21}\) There is a misconception nationally that treaty rights with First Nations supersede the Section 35 rights of the Métis, or merely that the Section 35 rights of the First Nations supersede Métis Section 35 rights. This misconception is not supported by the Constitution or any relevant case law.\(^{22}\) Métis Section 35 rights are equal to the Section 35 rights of First Nations and Inuit.

In Thomas Issac’s 2016 report for the Government of Canada, A Matter of National and Constitutional Import: Report of the Minister’s Special Representative on Reconciliation with Métis, the BC Government, “stated clearly that they do not believe that there are Métis rights-bearing communities that would meet the criteria set out in Powley. Because of this position, British Columbia does not consult with Métis regarding assertions of Section 35 Métis rights.”\(^{23}\)

The BC Government’s policy towards the Métis Nation in BC is shortsighted.

While both of these citations are from a previous government, the current government, in power since 2017, has not rescinded or improved the policies that flow from these positions. The 2017 Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples does recognize the “Métis Nation” as one of the Indigenous Peoples of Canada, “consisting of distinct, rights-bearing communities with their own histories, including with the Crown.”\(^{24}\)

The BC Government must change their position regarding the Métis Nation. This stance is similar to the argument that the BC Government brought forward to the Supreme Court of Canada in 2004 in the Haida Nation v. British Columbia (Minister of Forests) case, which was ultimately defeated. The Haida case dealt with a dispute in which the Haida Nation, without any treaty signed with the Crown, asserted the BC Government had a duty to consult with them regarding resource exploitation on the territories within their treaty claims. In the decision, it was stated:

“The Crown, acting honorably, cannot cavalierly run roughshod over Aboriginal interests… It must respect the potential, but yet unproven, interests.”\(^{25}\)

This decision defined the Crown’s duty to consult with Aboriginal peoples as a pre-proof remedy. When a prima facie claim of Aboriginal Section 35 rights is made by an Aboriginal group, it must be treated as valid until proven otherwise, not treated as invalid until proven, as in the current BC Government’s policies towards the Métis Nation.

The BC Government’s policy towards the Métis Nation in BC is shortsighted. To use the current legal standpoint as a justification to deny the duty to consult and to continually underfund the Métis Nation

\(^{21}\) Supra note 4, c 35.

\(^{22}\) Supra note 2, at 12.

\(^{23}\) Supra note 2, at 23

\(^{24}\) Supra note 15, at 7.

\(^{25}\) Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73, at 27.
does not respect the principles of UNDRIP and reconciliation, which the BC Government has put greater focus on in the last few years.

**Duty to Consult**

The duty to consult with Aboriginal peoples in British Columbia is a responsibility of the Environmental Assessment Office (EAO). The EAO engages First Nations on development projects that may negatively impact their land, whether it be reserve land or part of their traditionally held territory. The legislation governing the Environmental Process was amended in 2018. The EAO states they, “worked with Indigenous Nations at every step of the Environmental Assessment Revitalization process…”

The revitalized Environmental Assessment process puts more focus on achieving free, prior, and informed consent with First Nations, including funding capacity for First Nations to participate in the consultation process.

The terminology used by the EAO throughout their documents refers to “Indigenous nations,” but the Métis Nation was not included in the revitalization process that led to amended legislation, and is not included in the environmental assessment consultation process. The BC Government, “does not recognize Métis as having any inherent rights,” and, as such, excludes the Métis Nation from EAO Indigenous working groups and does not notify the Métis Nation of any provincial consultation process.

The BC Government will, “only engage the Métis as stakeholders,” which is not consultation. This is contradictory to the approach by the federal government, which does recognize the duty to consult with the Métis in BC.

Refusing to recognize the duty to consult with the Métis in BC, and excluding the Métis Nation from the same level of engagement as First Nations, contributes to the fallacy that there is a hierarchy of rights with Section 35 peoples. If the BC Government is committed to improving the environmental assessment process to foster more involvement with Indigenous groups, as well as bolstering the ability for Indigenous groups to give free, prior, and informed consent on projects that could have

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28 Ibid.
29 Ibid.
long-lasting impacts to their land, they must adopt federal guidelines, recognize that there is a duty to consult with the Métis in BC, and include the Métis Nation as an Indigenous partner in the process.

**Harvesting Accommodations**

*Status Indians from outside BC are allowed to harvest within BC without applying for the requisite licences. The Métis in BC are not afforded these accommodations.*

The harvesting rights of Aboriginal peoples are protected under Section 35. Status Indians are permitted to harvest on reserves and Crown lands without requiring the harvesters to hold hunting or fishing licences, or require them to apply for Limited Entry Hunting authorizations, provided they are harvesting for food, social, or ceremonial purposes, and that they adhere to any regulations enacted by their Nation. Additionally, Status Indians from outside BC are allowed to harvest within BC without applying for the requisite licences.


MÉTIS NATION RELATIONSHIP ACCORD (MNRA II)

The MNRA II was signed in 2016, reaffirming the principles of the original MNRA signed in 2006 and expanding the subject matter covered by the Accord. The identified areas of mutual interest are:

- Children and Families;
- Economic Opportunities;
- Housing;
- Justice;
- Wildlife Stewardship;
- Education (Lifelong Learning) and Training;
- Health (community, Family, Individual);
- Information Sharing; and
- Métis Identification and Data Collection.

The Accord calls for a Secretariat, consisting of a senior official from each party, (the BC Government and the MNBC), be formed to, “encourage the implementation of the provisions of the Accord and to review the progress of the implementation on an ongoing basis.” The Accord also requires a joint progress report be issued by the Parties annually and posted publicly on the BC Government website.

The original MNRA had a provision to establish a Secretariat for implementation of the Accord, but this was neither established or funded. Annual reporting, which was not required until MNRA II, have not been published yet, but efforts to draft the reports have been undertaken collectively by both parties.

MNRA II does not solidify any funding arrangements between the BC Government and the MNBC. Additionally, the MNBC does not receive any funding from the BC Government to negotiate the terms of bilateral agreements, which is commonly given to First Nations when they negotiate these agreements. Achieving the objectives of the Accord will require funding from the BC Government. While funding for some of the objectives has been provided, without a set funding formula from the BC Government, the success of the MNRA II is purely subjected to the whims of the government in power, and funding is always in danger of being cut or eliminated.

Awareness of the shortcomings, and ways to improve the implementation of MNRA II, have been vocalized recently by MLA’s. In budget estimates for the Ministry of Indigenous Rights and Reconciliation in July 2020, MLA Sam Sullivan posed pointed questions to the Minister regarding the MNRA II Secretariat. Mr. Sullivan also further commented that in regards to the BC Government and funding for Indigenous peoples, “it does seem that there is kind of a hierarchy.”

The relationship and recognition of the Métis has improved with the current BC Government. Currently, in government documents that relate to consultation and recognition of Indigenous peoples in British Columbia, the Métis are clearly identified as “one of the Indigenous peoples of Canada, consisting of distinct, rights-bearing communities with their own histories, including with the Crown.”

This shift in thinking towards the Métis in BC, in conjunction with the application of the UNDRIP

33 British Columbia, Legislative Assembly, Hansard, 41st Parliament, 5th session, No 12 (July 17, 2020) at 206 (Sam Sullivan).
34 Supra note 15, at 7.
legislation into provincial law, could be interpreted as a positive signal that an improved relationship, one that recognizes the Métis under Section 35, is finally within reach. However, the current attitudes and actions in regards to Indigenous peoples in the province suggest it is more likely that the BC Government is going to engage as little as possible with the Métis Nation in BC while continuing to focus on improved relationships and reconciliation with the BC First Nations.
IMPLEMENTATION OF UNDRIP LEGISLATION

Unfortunately, even on the simple case of the BC Government implementing a UN declaration on Indigenous rights, they failed to include the Métis Nation in a meaningful way.

In the 2018 provincial budget, the BC Government committed $5M over three years\(^{35}\) to the Ministry of Indigenous Rights and Reconciliation to advance the principles of UNDRIP, with the ultimate goal to enshrine the articles of UNDRIP in BC Legislation. This was completed with the passage of Bill 41 in 2019, named the Declaration on the Rights of Indigenous Peoples Act, (DRIPA). DRIPA defines “Indigenous peoples” as the Aboriginal peoples in Section 35 of the Constitution, and “Indigenous governing body” as an entity authorized to represent Section 35 rights holders in Canada.\(^ {36}\) As such, the MNBC is the “Indigenous governing body” representing the Métis people in BC. It is therefore surprising that the MNBC was not included in the discussions and negotiations in drafting the DRIPA legislation, given that the legislation will greatly impact the Métis Nation and will ultimately define the relationship that the Métis Nation will have with the BC Government.

Unfortunately, even on the simple case of the BC Government implementing a UN declaration on Indigenous rights, they failed to include the Métis Nation in a meaningful way. Therefore, the annual reports required under the DRIPA legislation to tabulate progress in implementing the principles of DRIPA scantily reference the Métis Nation.

In the mandate letter to Minister of Indigenous Reconciliation and Relationships, the priorities for the ministry are laid out, and all but one were exclusive to First Nations. The first priority listed in the mandate letter is to, “guide the adoption of the United Nations Declaration on the Rights of Indigenous Peoples,” by, “working collaboratively and respectfully with First Nations.”\(^ {37}\) There is no mention in the mandate to engage with the Métis Nation on this important piece of legislation.

The stance of the BC Government towards the Métis in BC is in contravention with the DRIPA legislation. There is no controversy, according to the Constitution Act, 1982, that the Métis are an Indigenous peoples. The definitions in the DRIPA legislation do not give provisions that exempt Indigenous peoples who are not land-based or are not recognised by the BC Government- the legislation clearly recognizes the Métis as noted in the Constitution Act, 1982.

This gives greater weight to the following articles of the DRIPA legislation:


\(^{36}\) Bill 41-2019, Declaration on the Rights of Indigenous Peoples Act, 4\(^{th}\) Session, 41\(^{st}\) Parliament, British Columbia, 2019 cl 1

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Under the definitions through the Constitution and the DRIPA Legislation, the Métis of BC are clearly entitled to self-government and adequate funding to execute self-governance at an equitable level to the other Indigenous residents of British Columbia.

The BC Government has set a benchmark through long-standing and newly announced funding for First Nations. By the numbers, the Métis of BC are entitled to 30% of this funding amount. If the BC Government were to fund the Métis equally compared to the BC First Nations, or even close to the population proportion in the 30% amount, the gaming fund revenue alone would be $21-million per year – four times the amount currently received by the MNBC from the BC Government for all programs and services.
CONCLUSION

However, the sole focus on First Nations reconciliation while ignoring the Métis Nation, a major Indigenous population in BC, is a glaring error by the BC Government.

The BC Government is to be commended for their pursuit of reconciliation with the First Nations in British Columbia. The government's recent actions appear to be meaningful steps towards reconciliation and nation-building, and are long overdue. However, the sole focus on First Nations reconciliation while ignoring the Métis Nation, a major Indigenous population in BC, is a glaring error by the BC Government. The arguments that are proffered by BC are inappropriate given that the Métis are clearly recognized under Section 35 of the Constitution Act. The funding provided by the BC Government to the Métis Nation is not sufficient to deliver tangible results, and is disproportionately low when compared to the funding provided to BC First Nations. Métis in BC are also competing with other Indigenous peoples in BC when funding is available under a “pan-Indigenous” strategy. While there is no “hierarchy” in Section 35 of the Constitution, the BC Government, through their funding policies, have essentially enshrined a hierarchy of Indigenous peoples within the province.

Thomas Isaac underscored the difficulty governments face nationally regarding reconciliation with the Métis in his 2016 report:

"It is clear from the law to date that there is no hierarchy of Aboriginal rights within Section 35. Métis are a distinct Aboriginal peoples with equal but unique Aboriginal rights as other Section 35 Aboriginal peoples. There is no question that balancing rights within Section 35 is a challenging proposition. However, simply because something is challenging cannot be a reason for ignoring the rights of one peoples over another and is inconsistent with the honor of the Crown and Section 35 more generally."38

If the BC Government is truly committed to impacting meaningful change with the passage of their DRIPA legislation, it is overdue that the relationship between the Métis Nation BC and the BC Government changes dramatically.

38 Supra note 2 at 32
Appendix A: First Nations and Métis funding compared

<table>
<thead>
<tr>
<th>Funding Category</th>
<th>Current Funding First Nations (annually)</th>
<th>Current Funding MNBC (annually)</th>
<th>Proportional Amount for MNBC (30% of First Nations Funding)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Nations Gaming Revenue</td>
<td>120,000,000(^2)</td>
<td>0</td>
<td>36,000,000</td>
</tr>
<tr>
<td>First Nations Clean Energy Business Fund</td>
<td>7,600,000</td>
<td>0</td>
<td>2,280,000</td>
</tr>
<tr>
<td>First Citizen’s Fund</td>
<td>1,800,000(^3)</td>
<td>0</td>
<td>540,000</td>
</tr>
<tr>
<td>New Relationship Trust</td>
<td>10,000,000(^4)</td>
<td>0</td>
<td>3,000,000</td>
</tr>
<tr>
<td>Children and Families</td>
<td>6,090,000</td>
<td>210,000</td>
<td>1,827,000</td>
</tr>
<tr>
<td>Education</td>
<td>4,300,000</td>
<td>100,000</td>
<td>1,290,000</td>
</tr>
<tr>
<td>Health</td>
<td>60,000,000</td>
<td>200,000</td>
<td>18,000,000</td>
</tr>
<tr>
<td>Justice Council</td>
<td>400,000</td>
<td>90,000</td>
<td>120,000</td>
</tr>
<tr>
<td>Total</td>
<td>210,190,000</td>
<td>600,000</td>
<td>63,057,000</td>
</tr>
</tbody>
</table>

\(^1\) Figures in this table only reflect figures cited in this paper, and are not a fulsome inventory of funding by the BC Government for First Nations or the Métis Nation.

\(^2\) Based on estimates of BCLC revenue.

\(^3\) Fund consistently returns 1.6M-2M in revenue, median figure used.

\(^4\) 10% rate of return assumed, based on S+P 500 average of last ten years.
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A Tale of Two Nations: Highlighting the Inequities of the Treatment of the Métis in BC

October 2, 2020

Métis Nation British Columbia
107-5668 192 St, Surrey, BC V3S 2V7, Canada