



## DRAWING BACK TO THE CONSTITUTION

### A Metis Nation Response to the Province's White Paper Seeking Greater Provincial Autonomy In Natural Resources

The Métis Nation – Saskatchewan is providing this paper in response to the recent report by the Government of Saskatchewan (“Saskatchewan”) titled “Drawing the Line: Defending Saskatchewan’s Economic Autonomy (the “White Paper”).

While the White Paper focuses on the constitutional rights granted to Saskatchewan through the *British North America Act, 1930*, it is silent on other relevant constitutional principles, including protection for Aboriginal rights set out in the *Constitution Act, 1982*, and the Crown’s obligation to negotiate the resolution of Indigenous claims (including Métis claims over lands).

The White Paper calls for Saskatchewan to be a “nation within a nation” and for the removal of federal involvement in provincial resource development, but ignores the Indigenous nations that have rights and interests in lands across Saskatchewan.

Métis share a desire to see Saskatchewan prosper. For centuries before the establishment of Canada and Saskatchewan, our Métis ancestors built communities that continue to this day. They once prospered on the natural resource wealth of these lands. The rights of Métis peoples are now constitutionally protected and must be reflected in Saskatchewan’s approach to natural resource development. **The Province must evolve its approach to natural resource development in collaboration with the Métis – returning to the 1930s is not an acceptable option.**

The Métis Nation – Saskatchewan invites greater dialogue among Indigenous governments, Canada, and Saskatchewan on natural resource development. Indigenous rightsholders must play a key role in both provincial and federal regulatory processes, and need to be included in these processes from their outset. The Métis Nation – Saskatchewan would support developing pathways to fast-track both federal and provincial regulatory processes where there is support from the public and those Indigenous peoples who will be impacted by a project.

Saskatchewan should also enter into dialogue with Indigenous nations over how the impacts of climate change can be addressed or mitigated. While Saskatchewan overall may benefit from higher carbon emissions, Indigenous peoples and their lands will be disproportionately impacted by the effects of climate change. There must be an open and honest dialogue



around how to avoid the burdens of economic development again falling on Indigenous peoples including on Métis people.

Finally, Saskatchewan must immediately abandon its unconstitutional consultation policies which work to minimize and marginalize Métis voices. Efforts to minimize and marginalize Métis voices are reprehensible and will divert resources from industry, government, and Indigenous peoples to litigation rather than reconciliation. This is not in the interest of Métis people, Saskatchewan, or industry.

### *A Short History of the Métis and Saskatchewan*

Our Métis ancestors have used and occupied the Homeland since the 17th century. The Métis homeland predates the creation of modern national and provincial borders by centuries. In 1816, we fought under the Métis flag at the Battle of Seven Oaks. In 1885, we fought to protect our lands, communities, and independence at the Battle of Batoche in Saskatchewan.

The tragedies of colonialism that followed are well known. Our Métis ancestors were alienated from their lands and communities through the predatory scrip process, residential schools, and resource development that extracted wealth and poisoned lands, waters, and animals across our Homeland. During this era, the Province of Saskatchewan was formed (1905) and the British North America Act was signed (1930). These two events gave the Government of Saskatchewan substantial authority over our people and our lands.

The enactment of the *Constitution Act, 1982* heralded a new era. The Métis rights – rights which predated the creation of Canada and Saskatchewan – were recognized. The Supreme Court of Canada has instructed that governments may no longer take unilateral action on developing lands and resources without considering and respecting Métis rights and interests.

The lands and resources in Saskatchewan must be understood in the context of their entire history, including those steps that have been reflected in Canada's constitution. The lands that now make up Saskatchewan belonged to Métis and First Nations peoples. From the 1870s until the early 20<sup>th</sup> century, Canada entered into a series of treaties with First Nations which addressed the lands interests of First Nations; no such treaties were negotiated with the Métis.

When Canada transferred ownership of lands to Saskatchewan in 1930, they were transferred *subject to* the pre-existing rights of the Métis. The *Constitution Act, 1982*, which protects and affirms the existence of Aboriginal rights, imposed new obligations on Saskatchewan to respect Métis rights, including those to lands across Saskatchewan.



### *The Métis, Saskatchewan and Canada Today*

Almost a century later, Saskatchewan continues to act as though it is 1930 and the *Constitution Act, 1982* does not exist.

Saskatchewan does not meaningfully engage Métis people regarding the development of our lands. Where other governments across Canada seek to collaborate with Indigenous peoples on a government-to-government basis, Saskatchewan categorically refuses to even discuss critical aspects of Métis rights, including Métis title and Métis rights to commercial harvesting.

In contrast, Canada does engage with the Métis Nation – Saskatchewan in accordance with constitutional principles, including in respect of Métis land rights. In practice, this means that resource development projects which require authorization from Canada proceed very differently from those which only involve Saskatchewan.

### *A Constitutional Approach – 6 Calls to the Province*

The Métis Nation – Saskatchewan puts forward the following 6 principles for reviewing provincial and federal authority in the context of Saskatchewan's natural resource regimes:

1. The Métis Nation – Saskatchewan supports a review of resource development regimes applicable to Saskatchewan that is focused on ensuring compliance with all constitutional principles. The goal cannot be to simply return Saskatchewan's resource regime to 1930.
2. The Métis Nation – Saskatchewan supports the collaborative development of "Fast-Track" regulatory pathways in both provincial and federal regulatory processes where projects are clearly supported by the public and those Indigenous peoples who will be impacted.
3. Saskatchewan's natural resource regimes regularly fail to uphold their constitutional obligations and the honour of the Crown, and have left Métis people distrustful of government systems which prioritize proponents and disregarding Indigenous interests. The Métis Nation – Saskatchewan calls for Saskatchewan to renounce all unconstitutional policies and practices employed against Métis rightsholders, and to try to work with the Métis Nation – Saskatchewan to build trust and consensus.



4. Until Saskatchewan adopts modern and constitutionally-sound practices with respect to Métis and First Nation rights and people, the Métis Nation – Saskatchewan calls for Canada to:
  - a. use its authority under the *Impact Assessment Act, 2019* to review any natural resource development project that has the potential to significantly impact Aboriginal rights; and
  - b. continue its practice of ensuring the Crown's duty to consult and the honour of the Crown are upheld in each regulatory decision that it undertakes, understanding that Saskatchewan's consultation policies are inconsistent with the *Constitution Act, 1982*;
5. The Métis Nation – Saskatchewan calls on Saskatchewan to begin a dialogue with Métis and other Indigenous governments on how to address the disproportionately negative effects of climate change on our peoples and lands.
6. The Métis Nation – Saskatchewan calls on Saskatchewan participate in ongoing negotiations between Canada and the Métis Nation – Saskatchewan to address Métis historic rights-based claims, including land claims. Not only is negotiating these claims a constitutional obligation of Saskatchewan, it will also reduce uncertainty and provide greater autonomy and incentives to Métis rightsholders to develop our own lands.

The pathway to greater prosperity must include the Métis, and requires a modern approach based on dialogue. Returning to 1930 is not a realistic approach, will eventually be overturned by the courts, and will only promote frustration and uncertainty.