

Advancing Métis Rights and Claims in Alberta

Understanding the New Objective and Oath of Membership
in the Métis Nation of Alberta's Bylaws



Métis Nation of Alberta

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These are exciting times for the Métis Nation! A series of legal and political victories have put the need for reconciliation with the Métis Nation in the spotlight. Now, finally, Canada and Alberta are willing to negotiate with the Métis Nation of Alberta (“MNA”)—which includes its Locals, Regions, and the Provincial Council—for the recognition of Métis rights. This is an opportunity, among other things, to attempt to address the shameful legacy of the dispossession of our people and communities through the fraudulent Métis scrip system. Through years of perseverance, we have created this once-in-a-generation opportunity. Now—together—we must take advantage of it.

The Métis Nation within Alberta—through the MNA and its predecessors—has long led the way in fighting for the return of Métis lands and advancing Métis rights. We have always been leaders within the Métis Nation because we have worked—together—to build a strong, united Métis government in Alberta. Now, again, we have an opportunity to lead the way and advance Métis self-government, harvesting rights, consultation and accommodation, and land claims. As always, our strength comes from our focus on working together as a united Métis government that includes our Locals, Regions, and Provincial Council. Most importantly, the MNA is committed to ensuring that the rights of all our citizens—wherever they live in Alberta—are recognized and protected. We will never allow the Métis Nation within Alberta to be divided.

The Need for the 2016 MNA Bylaw Changes

It is and will always be the MNA's steadfast position that our mandate—as a Métis government—flows from the Métis Nation's inherent right to self-government and our legitimacy in the eyes of our own people. Courts and other governments, however, are increasingly requiring that Métis governments demonstrate that we have “objectively verifiable” registry systems and are “authorized” to deal with the collectively-held Métis rights, interest, and claims.

“It is important to remember that, no matter how a contemporary community defines membership, only those members with a demonstrable ancestral connection to the historic community can claim a s. 35 right.”

R v Powley, [2003] 2 SCR 207

For example, in 2003, in *Powley*, the Supreme Court of Canada directed that, “[a]s Métis communities continue to organize themselves more formally and to assert their constitutional rights, it is imperative that membership requirements become more standardized so that legitimate rights-holders can be identified.”

The MNA: A Legacy of Achievement

- The MNA—as a Métis government—is almost 90 years old. It is the oldest of the Métis National Council's governing members.
- Because of the MNA's early advocacy, Alberta is the only province with a protected Métis land base—the Métis Settlements.
- The MNA was the first Métis government to negotiate a province-wide harvesting agreement with a provincial government, though it was subsequently cancelled. The MNA has recently secured a new commitment from Alberta to re-engage on harvesting issues.
- The MNA delivers high-quality, accountable programs and services to assist Métis children, youth, families, and communities across Alberta.
- The MNA has created the largest and most credible registry of Métis Nation citizens of all Métis governments.

“...the organization purporting to represent the rights-bearing community must be able to demonstrate that it had been authorized by the rights-bearing community to do so.”

*Fort Chipewyan Métis Nation of Alberta
Local #125 v Alberta, 2016 ABQB 713*

More recently, in 2013, the Supreme Court of Canada recognized that “an Aboriginal group can authorize an individual or an organization to represent it for the purpose of asserting Aboriginal rights.” Organizations claiming to represent Aboriginal groups, however, must be able to demonstrate that they are legally

authorized to do so. This can be a challenge. In December 2016, for example, the Alberta Court of Queen’s Bench refused to recognize that the Government of Alberta needed to consult with an MNA Local because the Local could not demonstrate that it was “authorized” to represent the collective rights of the Métis community for which it claimed to speak.

The MNA has taken proactive steps to meet the demands of courts and other governments head on. In August 2016, the MNA’s 88th Annual Assembly passed two special resolutions amending the MNA Bylaws. The first replaced the MNA’s Oath of Membership. The second added to the MNA’s objectives.

What Does the New Oath Do?

The MNA’s new Oath of Membership (the “Oath”) removes any doubt that—as the government of the Métis Nation within Alberta—the MNA is authorized to represent the collectively-held Métis rights, claims, and interests of our members and the communities comprised of those members. This authorization is shared by Locals, Regions, and the Provincial Council, which work—together—as the government of the Métis Nation within Alberta.

Notice of the new Oath was given to all of the MNA’s over 30,000 members through a province-wide mail out and media advertising. In response, not one MNA member cancelled their membership. Further, over 2,000 new MNA member have signed the new Oath,

The MNA’s New Objective

“...to negotiate on behalf of the Métis in Alberta, a modern day treaty relationship with the Crown through a “land claims agreement” or other arrangement as called for and contemplated within the meaning of section 35(3) of the *Constitution Act, 1982.*”

and many more do each week.

The MNA’s new Oath is very similar to those of other

Métis Nation governments. When individual Métis join the Métis Nation of Ontario, for example, they sign an Oath of Membership like the one the MNA recently

adopted. The bylaws of other Métis governments—such as the Manitoba Metis Federation—set out similar authorization for their members.

MNA Oath of Membership

I agree to the Métis Nation’s Bylaws and policies, as amended from time to time, and, voluntarily authorize the Métis Nation to assert and advance collectively-held Métis rights, interests, and claims on behalf of myself, my community and the Métis in Alberta, including negotiating and arriving at agreements that advance, determine, recognize, and respect Métis rights. In signing this oath, I also recognize that I have the right to end this authorization, at any time, by terminating my membership within the Métis Nation.

What Does the New Objective Do?

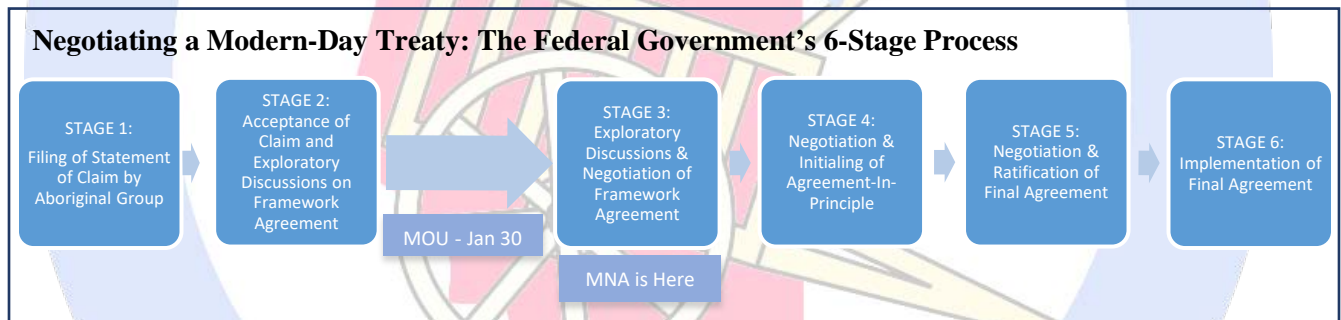
The MNA's new objective makes clear that the authorization the MNA receives from our members extends to negotiating a constitutionally protected agreement with the Crown that would

- recognize Métis rights
- provide a just settlement of Métis claims, and
- finally recognize the MNA's unique self-government structure on a nation-to-nation, government-to-government basis

The 2016 Bylaw Amendments: A Foundation for Advancing Métis Rights

With these Bylaw amendments in place, on January 30, 2017, the MNA was able to sign a *Memorandum of Understanding on Advancing Reconciliation* ("MOU") with Canada. This officially put the MNA on the path towards negotiating a constitutionally protected modern-day treaty for the benefit of the Métis Nation within Alberta. This was a momentous achievement. Finally, after decades of denial, the federal government acknowledged the need to engage with the MNA and negotiate for the settlement of Métis claims and recognition of Métis rights—including Métis self-government.

As contemplated in the MOU, Canada and the MNA are now in the process of finalizing a framework agreement. The framework agreement will set out how formal negotiations will proceed and the topics to be addressed, including self-government, rights recognition, consultation and accommodation, and addressing outstanding Métis land claims in Alberta.



In addition, on February 1, 2017, Alberta and the MNA concluded a 10-year *Métis Nation of Alberta – Government of Alberta Framework Agreement*. Again, this agreement was made possible because of the mandate the MNA receives from our members to promote, pursue, and defend collectively-held Métis rights. This agreement commits Alberta to several processes relating to Métis rights, including Métis harvesting and consultation. These discussions are now underway. The MNA is optimistic that they will soon lead to greater Métis rights recognition in Alberta.

The 2016 Bylaw Amendments: A Well-Trodden Path to Indigenous Self-Government

Like the Métis Nation within Alberta, many other Indigenous peoples across Canada have used corporate structures or an association to advance their self-government. Of course, an Indigenous people can never be “incorporated.” Rather, the group’s members create a legal entity to represent them and negotiate with other governments. The changes to the MNA’s Oath and objectives were adopted to strengthen the MNA’s mandate to do just that. When self-government negotiations are ultimately successful, the corporation or association is then transitioned into a recognized Aboriginal government. The MNA is now on that well-trodden path to self-government.

Indigenous Group	Corporation to Advance Self-Government	Recognized Government
Dene (NWT)	Dogrib Treaty 11 Council Inc.	Tłı̨chǫ Government
Inuit (NFLD)	Labrador Inuit Association	Nunatsiavut Government
Inuit (NU)	Nunavut Tunngavil Inc.	Nunavut Government

What Happens Next?

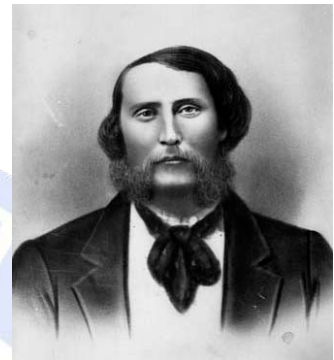
There are exciting times ahead for the MNA! We hope that by the fall of 2017, we will have signed a framework agreement with Canada that establishes formal negotiations on key issues of importance to our people. As a part of these formal negotiations, extensive consultations will be required with the MNA’s membership, Locals, Regions, and the Provincial Council to set out our vision—as the Métis Nation within Alberta—for generations to come. As talks with governments advance, the MNA will keep its members informed and provide opportunities for youth, men, women, knowledge-holders, and Elders to have their voices heard. Any arrangements or agreements for the recognition of Métis rights or the settlement of Métis claims must reflect our members’ vision of self-determination. Together, we will build a strong Métis Nation based on Métis rights!

The Métis Nation within Alberta

Our Ongoing Self-Government Journey



1897 Métis in present-day Alberta establish the St. Albert Métis Association. It was formally organized, had an elected president, and conducted meetings using parliamentary procedure. The Association advocated for the fair handling of Métis land claims and petitioned Ottawa for improvements to the scrip system.



John Rowland, prominent Métis, St. Albert, Alberta [ca. 1870s]

1928 Métis organize in response to the federal government's decision to transfer control of natural resources to the province. They are concerned about the impact of the transfer on Métis living on Crown land. They form the *Association des Métis Alberta et les Territoires du Nord-Ouest*, which would become the Métis Association of Alberta ("MAA").

L'Association des Métis d'Alberta

President: J. F. DION, Gurneyville, Alberta

2nd Vice-Pres.: F. CALLIHOO, St. Paul, Alberta

1st Vice-Pres.: M. F. NORRIS, Edmonton, Alberta, Sub. P.O. 18

3rd Vice-Pres.: P. C. TOMKINS, Jr., Gronard, Alberta

J. P. BRADY, Secretary-Treasurer, Lac La Biche, Alberta, Box 75



Glenbow Archives PA-2218-109

The First MAA Executive. Back Row L-R: Peter Tomkins (Vice-President), Felix Callihoo (Vice-President); Front Row L-R: Malcom Norris (Vice-President), Joseph Dion (President), James Brady (Secretary-Treasurer).

1932 The MAA is established. It has 31 locals across Alberta and advocates for a secure land base for Alberta Métis.

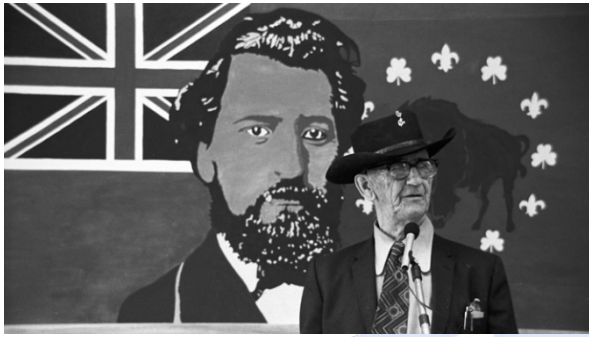
1934 In response to MAA lobbying, Alberta appoints the Ewing Commission. Joe Dion, Malcom Norris, and Adrian Hope consistently attended the Commission's hearings. After a two-year investigation, the Commission recommends that the province provide Métis with a secure land base and adequate services.

1938 Responding to pressure from the MAA and the Ewing Commission's recommendations, Alberta adopts the *Métis Population Better Act*, which creates the province's 12 original Métis colonies (now known as Métis Settlements).

1961 The MAA formally registers as a society under provincial legislation. This gives the



Joe Dion at organizing meeting, Elizabeth Métis Settlement, Alberta [ca. 1939]



Adrian Hope, MAA President (1961-67) [ca. 1978]

MAA access to federal funding. Membership is open to any “Metis, non-treaty Indian or any person of mixed White and Indian blood.”

1972 The MAA Bylaws are amended, for the first time creating 6 “Zones” (the precursors to the MNA’s present-day Regions).

1982 After intense consultations with the MAA, the Premier of Alberta, Peter Lougheed, proposes the final wording for what would become s. 35(1) of the *Constitution Act, 1982*: “The

existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.” “Aboriginal peoples of Canada” is defined to explicitly include the Métis.

1983 The MAA, the Métis Society of Saskatchewan, and the Manitoba Metis Federation create the Métis National Council to advocate for the Métis Nation at the federal level.

1985 In response to the inclusion of “Métis” as an Aboriginal people with s. 35 rights, the MAA restricts its membership to Métis persons, excluding non-status Indians.

1991 The MAA changes its name, officially becoming the Métis Nation of Alberta Association (“MNA”), and declares itself to be the representative government of the Métis Nation within Alberta.



The MAA Constitutional Committee, 1982. Back Row L-R: Stan Sewell, Henry Houle (Vice-President), Peter Pelletier, Andy Collins, Sam Sinclair (President), Tom Bouvette; Front Row L-R: Archie Laboucane, Brian Fayant, Clifford Gladue

2003 The MNA Annual Assembly formally adopts the National

Definition of Métis for Citizenship within the Métis Nation into the MNA Bylaws. The MNA begins the process of re-registering all its members.

2003 *R v Powley*: The Supreme Court of Canada confirms that s. 35 of the *Constitution Act, 1982* protects Métis rights. The Court urges Métis groups to standardize their registration systems to identify Métis rights-holders in an objectively verifiable manner.

2004 Alberta and the MNA sign the Interim Métis Harvesting Agreement, which allows MNA members to harvest throughout the province.

2005 The MNA issues its first new membership card based the requirements of the National Definition of Métis for Citizenship within the Métis Nation to MNA President Audrey Poitras.

2007 Alberta cancels the Métis Interim Harvesting Agreement, in part because the MNA’s old “red and white cards” do not provide certainty that all card-holders were Métis rights-holders.

2011 *Alberta v Cunningham*: The Supreme Court of Canada confirms that “[t]he right of the Métis to their own non-Indian culture is confirmed by the *Constitution Act, 1982*, s. 35.”

2013 *Manitoba Metis Federation v Canada*: The Supreme Court of Canada confirms that the Manitoba Métis Community has an outstanding collective claim against the federal government flowing from the promise of land in s. 31 of the *Manitoba Act, 1870*. The Court also recognizes the MMF’s standing to advance this claim based on the authorization it receives from its members. This sets the stage for a possible Métis claim relating to scrip in Alberta.

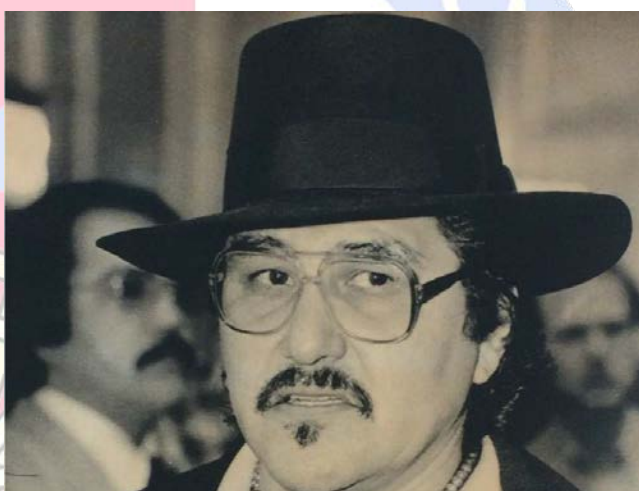
2013 *Behn v Moulton Contracting*: The Supreme Court of Canada confirms that “an Aboriginal group can authorize an individual or an organization to represent it for the purpose of asserting its s. 35 rights.”

2013 The MNA Annual Assembly cancels all old “red and white” membership cards because they do not meet the documentation requirements of the National Definition of Métis for Citizenship within the Métis Nation.

2015 Douglas Eyford, Ministerial Special Representative on Renewing the Comprehensive Claims Policy, recommends that “Canada should develop a reconciliation process to support the exercise of Métis section 35(1) rights and to reconcile their interests.”

2016 *Daniels v. Canada*: The Supreme Court of Canada confirms that the federal government has responsibility to deal with Métis issues.

2016 Thomas Isaac, Ministerial Special Representative on Métis s. 35 Rights, finds that Métis organizations that receive express legal authorization from Métis s. 35 rights holders “have the ability to govern in respect of their unique Métis heritage and Section 35 rights.” Isaac recommends that Canada develop a policy “that expressly addresses Métis Section 35 rights claims and related issues.”



Harry Daniels, former MAA Vice-President and plaintiff in *Daniels v. Canada*

2016 The MNA Annual Assembly amends the MNA Bylaws to include negotiating a modern-day treaty on behalf of Métis in Alberta as one of its objectives and to adopt a new Oath of Membership that provides additional clarity regarding the MNA’s mandate to advance Métis rights and claims on behalf of Métis in Alberta.

2016 *Fort Chipewyan Métis Nation of Alberta Local #125 v Alberta*: The Alberta Court of Queen’s Bench confirms that an organization claiming to represent a rights-bearing Métis community “must be able to demonstrate that it had been authorized by the rights-bearing community to do so.”

2017 Canada and the MNA sign the *Memorandum of Understanding on Advancing Reconciliation* (“MOU”), putting the MNA on track to negotiate a modern-day treaty for Métis in Alberta. In part because of the MNA’s new objective and Oath of Membership, the MOU acknowledges that “the MNA is mandated to advance Métis rights, self-government and self-determination in Alberta.”



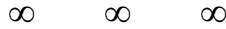
2017 Canada and Alberta sign a renewed 10-year Framework Agreement, in which Alberta “recognizes the MNA’s

Singing of the MOU on Advancing Reconciliation. L-R: Carolyn Bennett (Minister of Indigenous and Northern Affairs), Audrey Poitras (MNA President), Bev New (MNA Co-Minister Métis Rights and Accommodation)

representative role on behalf of its Citizens.” The Framework Agreement includes commitments to deal with Métis harvesting, consultation, and other rights related issues.



Frequently Asked Questions



What is the new objective in the MNA's Bylaws?

The new objective added to the MNA's Bylaws by the MNA's 88th Annual General Assembly is "...to negotiate on behalf of the Métis in Alberta, a modern day treaty relationship with the Crown through a "land claims agreement" or other arrangement as called for and contemplated within the meaning of section 35(3) of the *Constitution Act, 1982*."

What is the new Oath of Membership in the MNA Bylaws?

The MNA's new Oath of Membership is as follows:

I agree to the Métis Nation's Bylaws and policies, as amended from time to time, and, voluntarily authorize the Métis Nation to assert and advance collectively-held Métis rights, interests, and claims on behalf of myself, my community and the Métis in Alberta, including negotiating and arriving at agreements that advance, determine, recognize, and respect Métis rights. In signing this oath, I also recognize that I have the right to end this authorization, at any time, by terminating my membership within the Métis Nation.

Why did the MNA change its objectives and Oath of Membership?

The Crown has long avoided negotiations and consultations regarding Métis rights by taking the position that no organization in Alberta is properly authorized to represent Métis rights-holders. This was never true, however. For over 90 years, the MNA has been the Métis Nation's institution of self-government in the province. Because of the MNA's long-standing advocacy efforts, Canada and Alberta are now beginning to acknowledge this. The changes to the MNA's objectives and Oath of Membership are meant to remove any lingering doubt that the MNA is authorized by its members to represent them with respect to their collectively-held Métis rights. This will improve the MNA's effectiveness when negotiating agreements with the Crown. These changes are part of the MNA's natural evolution as a vehicle of Métis self-government.

Will the amendments to the MNA's objectives and Oath of Membership change the MNA's role in representing Métis in Alberta?

No. Prior to the amendments made to the Bylaws by the MNA's 88th Annual General Assembly, the MNA's objectives already included "to stand as the political representative of all Métis in Alberta and to promote self-determination and self-government for Métis in Alberta and Canada" and "to promote, pursue and defend aboriginal, legal, constitutional, and other rights of Métis in Alberta and Canada." By joining the MNA, every MNA member had already voluntarily agreed that the MNA would pursue these objectives on their behalf. The MNA has always done this by negotiating agreements with the Crown for the recognition and implementation of Métis rights. The amendments to the MNA's objectives and Oath of Membership will simply make it easier for the MNA to demonstrate to other governments that it has the authorization it needs to represent Métis rights-holders.

Do other Métis governments have objectives and Oaths of Membership similar to those adopted by the MNA?

Yes. When individual Métis join the Métis Nation of Ontario, for example, they take an Oath of Membership similar to the one the MNA recently adopted. The bylaws of other Métis

organizations—such as the Manitoba Metis Federation—set out objectives similar to those of the MNA. Courts have recognized that these organizations are properly authorized to represent and advance the collectively-held Métis rights of their members.

As an existing MNA member, do I have to take the new Oath of Membership?

No. Notice of the new Oath has been provided to all MNA members through a province-wide mail out that was done in early 2017. All existing members are deemed to accept the new Oath since it is now a part of the MNA Bylaws. If an individual does not agree with the new Oath, they have the right to terminate their membership in the MNA.

The Oath of Membership says that if I terminate my membership, I am “terminating my membership in the Métis Nation.” Is that true?

In the MNA Bylaws, the term “Métis Nation” is a defined term that means the “Métis Nation of Alberta Association” (MNA Bylaws, art. 4.9). The terms “Métis Nation” and “Métis Nation of Alberta Association” are used interchangeably throughout the MNA Bylaws. What the Oath says is that an individual can terminate their membership in the MNA. The Oath does not say that an individual can terminate their membership in the Indigenous people known as the Métis Nation. With that said, community acceptance is a necessary component to being recognized a citizen of the Métis Nation and a Métis rights-holder. By going through the MNA’s registry process, individuals are accepted and registered as citizens of the Métis Nation by the MNA. Within Alberta, this registration can only be done by the government of the Métis Nation within Alberta—the MNA.

Have any MNA members terminated their membership since the Oath of Membership was adopted?

No. On March 10, 2017, the MNA mailed notices to all its members—over 33,000 people—to explain the new Oath of Membership. In response, no one has terminated their membership in the MNA.

Does the Oath of Membership allow the MNA to terminate my membership?

No. The Oath of Membership does not empower the MNA to terminate an individual’s MNA membership. As set out in the MNA Bylaws, there are only three ways an MNA membership can be terminated: (1) by the member being registered on a Band list or as an Indian under the *Indian Act*; (2) by the member voluntarily terminating their MNA membership; or (3) by the MNA Judiciary Council issuing a declaration that the member is not Métis as defined in the National Definition of Métis. These are the only ways an individual’s membership in the MNA could ever be terminated, and the MNA is not alone in providing for the termination of membership in this way. Other Governing Members of the Métis National Council have similar bylaws that provide for the termination of individuals’ memberships in similar circumstances.

Does the Oath of Membership ask me to speak on behalf of other members of my Métis community?

No. Métis rights, like all Aboriginal rights, are collectively held rights. You only have Métis rights by being a member of a Métis community. You do not hold them independently from the community and nation to which you belong. You cannot speak on behalf of your Métis community, however, without being properly authorized to do so. For this reason, the Oath does not ask you to speak on anyone else’s behalf. Through the Oath, you are only providing your authorization to the MNA to represent you with respect to the rights and interests you enjoy as a member of a Métis community and citizen of the Métis Nation. Because the MNA has received

this authorization from the overwhelming majority of citizens of the Métis Nation within Alberta, the MNA has the authorization to speak on behalf of the Métis Nation within Alberta as a whole.

By changing its objectives and Oath of Membership, did the MNA “take” its members’ rights?

No. It is not possible for the MNA to “take” its members’ rights, and the MNA would never want to do so. All members of the MNA are citizens of the Métis Nation—one of the Aboriginal peoples recognized within the meaning of s. 35 of the *Constitution Act, 1982*. They hold their inherent, Aboriginal rights collectively. These rights cannot be transferred, and they cannot be taken. As the Supreme Court of Canada has made clear, however, “an Aboriginal group can authorize an individual or an organization to represent it for the purpose of asserting its s. 35 rights.” This is necessary for collectively-held Aboriginal rights to be asserted effectively in negotiations with the Crown. So that the MNA may be an effective advocate for its members, the MNA’s new objectives and Oath of Membership make clear that it is authorized by its members to represent them with respect to their collectively-held rights. If for any reason an MNA member decides that they no longer wish to be represented by the MNA, they are free to withdraw their membership at any time.

What Happens Next?

On January 30, 2017, Canada and the MNA signed a *Memorandum of Understanding on Advancing Reconciliation*. This was a significant event. For the first time, it puts the MNA on track to begin negotiations with Canada for the resolution of Métis claims and recognition of Métis self-government. Until now, Métis in Alberta have been denied this opportunity. The MNA hopes to conclude a Framework Agreement that will mark the beginning of formal negotiations in fall 2018.

On February 1, 2017, Alberta and the MNA concluded the Métis Nation of Alberta – Government of Alberta Framework Agreement. This agreement commits Alberta to a number of processes that the MNA hopes will lead to greater recognition of Métis rights, including discussions with the MNA regarding provincial policies with respect to Métis harvesting and consultation with the MNA. These discussions are underway, and the MNA is optimistic about the progress being made.

As a part of these formal negotiations, extensive consultations will be required with the MNA’s membership, Locals, Regions, and the Provincial Council to set out our vision—as the Métis Nation within Alberta—for generations to come. Please get involved by contacting your closest Local or Regional Office, checking out the MNA’s website as well as following us on Facebook and Twitter. We want to hear from you.