

# News

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# Métis Nation of Ontario, Ottawa sign memo of understanding

JEFF BUCKSTEIN

The Métis Nation of Ontario has signed a Memorandum of Understanding (MOU) to advance reconciliation with the federal government that could lead to a historic land settlement.

“The anticipated framework agreement would establish a formal negotiations process based on mutually agreeable subject matters, including Métis self-government, lands, rights and outstanding claims against the Crown,” the parties announced, with September 2017 as the deadline to arrive at a framework agreement.

“If the parties are able to develop a mutually acceptable framework agreement through the exploratory discussion table, the Minister of Indigenous and Northern Affairs Canada will then take measures aimed at obtaining a formal negotiation mandate,” the MOU explained.

Margaret Froh, president of the Métis Nation of Ontario, expressed optimism during the signing.

“Today, we celebrate this new relationship — one based on respect and recognition,” she said. “I thank the minister and the government of Canada for their strong leadership on advancing reconciliation with the Métis Nation of Ontario through this nation-to-nation, government-to-government agreement that further solidifies a strengthened relationship with Canada.”

This reference to the Métis Nation of Ontario as having a nation-to-nation relationship with the federal government is quite significant, noted Signa Daum Shanks, a professor and director of indigenous outreach at Osgoode Hall Law School in Toronto.

That wording is also contained within the MOU, which states,



Lee-Andersen

“There is considerable uncertainty about what [those] rights are, and what territory they apply to. ... So the fact that the federal government has agreed to sit down and talk to the Métis to try to work out a framework is a helpful step.”

David Bursey  
Bennett Jones LLP

“Canada is committed to working, on a nation-to-nation, government-to-government basis with the Métis Nation, through bilateral negotiations with the MNO, to advance reconciliation and renew the relationship through co-operation, respect for Métis rights and ending the status quo.”

“It’s one of the most strongly phrased MOUs I’ve seen involving an indigenous government,” said Daum Shanks.

This MOU is a step toward reconciliation, which will help achieve certainty, said David Bursey, co-leader of Aboriginal law with Bennett Jones LLP in Vancouver.

“There is considerable uncertainty about what [those] rights are, and what territory they apply to, and what recognition the governments will give to those rights. So the fact that the federal government has agreed to sit down and talk to the Métis to try to work out a framework is a helpful step,” Bursey added.

The historical significance of a settlement for the Métis people would be profound. Previous

*Columbia* [2014] 2 S.C.R. 257; and *R. v. Powley* [2003] 2 S.C.R. 207.

Selina Lee-Andersen, a partner with McCarthy Tétrault LLP in Vancouver, said the timing of this MOU is significant from a legal standpoint because it closely follows the *Daniels* Supreme Court decision.

“It’s part of a broader legal objective to advance reconciliation — an important first step to kick off that reconciliation process,” she added. “Until recently, Métis groups have been sitting on the sidelines while other Aboriginal groups have been engaged in processes enabling them to move the needle forward on issues such as the Crown duty to consult.”

Lee-Andersen said she believes there are several reasons why the Métis people have faced an uphill battle in the courts historically.

One is the unique nature of Métis heritage, in particular the mixed ancestry of Métis people. This raised issues around the legal identity of the Métis, and it was not until the Supreme Court decision in *Powley* that a test was established for determining who is Métis for the purposes of s. 35 of the *Constitution Act, 1982*.

*Powley* requires not only the need for self-identification as a member of the Métis community, but also evidence of an ancestral connection to a historic Métis community and a demonstrated acceptance by a modern Métis community, she said.

“Another reason is the absence of clear geographical parameters for Métis communities across the country, which has made it challenging to identify specific Métis groups as compared to other Aboriginal groups. Finally, the existence of diverse and non-traditional forms of governance structures for Métis communities has led to uncertainty about which entities have the proper authority to represent Métis interests,” Lee-Andersen added.

The MOU states it is “not legally binding, is intended only as an expression of goodwill and political commitment, and does not create, amend, recognize or deny any legal or constitutional right or obligation on the part of either party.”

That is important because it allows for candid talks. Both parties want to be able to explore ideas freely without those issues being used later against them, explained Bursey.

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