The Honourable Stephen McNeil
Premier of Nova Scotia and Minister of Aboriginal Affairs
(on behalf of the Government of Nova Scotia)
Province House
1700 Granville Street, PO Box 726
Halifax, **Nova Scotia** B3J 2T3
Fax: 902-424-7648

October 1, 2017

Dear Mr. McNeil,

RE: Duty to consult with the of Sou' West Metis Council/ Nova Scotia Wampanoag

In honor of Treaty Day, we make this submission to insist that the government of Nova Scotia honor their legal and moral obligations to engage in meaningful negotiations with the descendants of the Wampanoag Nation who comprise the membership of the Sou' West Nova Metis Council, otherwise known as the Nova Scotia Wampanoag. These obligations arise under Treaty, as affirmed in Sections 25, 35 and 132 of the Constitution of Canada, 1982.

To review, Section 25 clearly states that the Charter shall not be construed in any way that abrogates or derogates from any Aboriginal or Treaty rights, including, but not limited to those recognized under the Royal Proclamation of 1763. Section 35 protects the Aboriginal and Treaty rights of all Aboriginal people of Canada. Section 132 confers upon Parliament and the Government of Canada the power to uphold the obligations of Canada and any of the provinces, as part of the British Empire, toward any nation that has entered into a treaty with the Crown.

The Royal Proclamation of 1763, aside from other objectives, sought to protect the lands and rights of the Aboriginal peoples within the colonies claimed in North America and elsewhere in the name of the British Crown.

Article 3 of the Jay Treaty of 1794, signed between the British Crown and the then newly independent nation of the United Sates of America, also enshrines the rights of Aboriginal people, among others, to pass freely and engage in trade and commerce on either side of the Canada- United States border.

Most recently, the Supreme Court of Canada in *Daniels v. Canada (Indian Affairs and Northern Development),*2016 SCC 12, stated that Status, non-Status and Metis people are all ¨Indians¨ for the purpose of Section 91(24) of the Constitution, which is the Federal government´s jurisdiction over Aboriginal people and lands.

Treaties, by their very nature and intent, are solemn covenants between independent nations and can only be entered into when there is a recognition that each party is, in fact, an independent nation with the legal capacity to enter into such a sacred agreement on behalf of the members of their respective nations.

The treaty rights of the Nova Scotia Wampanoag and other treaty descendants of Nova Scotia and the Maritime provinces, including, but not limited to, the right to consultation, arise under the Peace and Friendship Treaty of 1725/26. This treaty was signed in Massachusetts with the New England tribes, including members and representatives of the Wampanoag Confederacy, in December of 1725, before

being signed at Nova Scotia with the Mi`kmaw and other tribes in the area in February of 1726 since, at that time, the entire eastern seaboard was under claim by the English Crown. Therefore, we, as descendants of the Wampanoag Nation, have the exact same treaty rights as the Mi'kmaw and all other Aboriginal peoples who were represented under those treaties. Further, later ratifications in Nova Scotia due to conflict between the Mi'kmaw and the English, served only to reaffirm, but not revoke, the provisions of the 1725/26 Treaties.

This government and its predecessors have taken the position that we are disentitled to any recognition or rights in Canada because we descend primarily from an American Aboriginal people despite the fact that our community has existed in Nova Scotia since the mid 1700`s, when the entire eastern seaboard was still considered a large and unified colony of the British Crown. As descendants of an Aboriginal nation that was represented under the Peace and Friendship Treaty of 1725/26 signed within the boundaries of this colony, as they then existed, we submit that this position is both legally and factually untenable. Our reasons are as follows:

It is clear from the text of the Peace and Friendship treaties that the beneficiaries of those treaties were the members of the contemporaneous communities and all of their descendants, regardless of the passage of time and without qualification as to how those descendants were to benefit from them. Furthermore, neither in the original treaty of 1725/26, nor in any subsequent ratifications with the Mi`kmaw, were there any qualifications or limitations pertaining to areas to be inhabited by the contemporaneous or subsequent beneficiaries, nor were there any requirements as to registration on band lists, blood quotients, degrees of relationships, generations or any of the arbitrary and discriminatory criteria later imposed by the colonial regime which are completely contrary to the spirit and intent of the treaties or how Aboriginal people have traditionally identified ourselves or our community members and communities.

As an Aboriginal people with contemporary and historical communities on both sides of the Canada/ United States border, we rely on these treaties and decrees as an acknowledgement that our people, and other Aboriginal people, have always had the right to harvest, engage in trade and commerce, travel freely, and to have these rights on either side of the border. Nowhere in any of these are those rights or our mobility limited. I also note that nowhere are the Aboriginal people subject to British law or to the will of the Crown with respect to these or any other relevant matters, and, until the enactment of the Indian Act in 1876, there were no laws pertaining specifically to Aboriginal people with the notable exception of the famous "scalping law" in Nova Scotia, which has yet to be repealed despite the outcry of our Aboriginal people.

Although the courts have never upheld the rights conferred under the Jay Treaty, having taken the position that it was never adopted into Canadian law, we submit that this is also an untenable position since the British Crown still held Treaty making power until it was indirectly conferred unto the Governor General of Canada under the Letters Patent of 1947. It is also a well known principle of law that treaties and the rights conferred under them remain in force unless expressly extinguished, which is not the case with respect to any of the foregoing. Therefore, we submit that the government of Canada and all provincial governments still have an obligation to honor the terms of all treaties, including the Jay Treaty, made between the British Crown and Aboriginal people regardless of which side of the Canada/US border their communities originated on if the area in which the community was located was included in or contemplated by the terms of the treaty.

Following a presentation to the Senate Standing Committee on the Legal and Political Rights of the Metis in Canada by our lawyer and legal consultant, Daphne Williamson, on November 6, 2012, the Government of Canada recognized Sou West Nova Metis Council/ Wampanoag of Nova Scotia as an Aboriginal community in Canada. It is therefore incumbent on all levels of government to honor our rights as treaty people, including the right to meaningful consultation. The government of Nova Scotia has no discretion in this regard except in keeping with valid legislative objectives. However, since the same rights that we are seeking are extended to the Mi'kmaw, legislative objectives cannot be relied upon to deny us these rights.

I wish to emphasize that our right to meaningful consultation is separate from the duty owed to the Mi'kmaw and other Aboriginal people of this province and therefore any attempts to negotiate with the Mi'kmaw or the Native Council of Nova Scotia on our behalf are completely misguided. Not only is our culture and history separate and distinct from any other Aboriginal community in Canada, but the bylaws of the Native Council clearly state that they only represent the treaty rights of the Mi'kmaw. Further, if previous dialogue and debate is any indication, the Mi'kmaw are in strong opposition to the recognition of these rights by any level of government. Yes, the Native Council puts forth the position that they represent the Metis as well, but they neither engage with nor advocate for the Metis and do not understand our community or our needs. Therefore, they are not in a position to, nor do they have the jurisdiction or our permission, to speak on our behalf with respect to our treaty rights.

There has been much debate about whether or not there are even Metis in Nova Scotia and, if so, whether these are a rights-bearing people or simply a self-identifying collective. To this we respond that even a cursory review of history makes it clear that European settlement of any significance was first established by the English in Massachusetts and the French in Nova Scotia, as well as the fact that these first European settlers established friendly relations with the Aboriginal peoples who inhabited those areas at that time, including conjugal relations which produced children of mixed cultural heritage. Therefore, whether or not there were distinct communities is not a valid challenge to the existence of these children or later generations and, further, it depends on whether one limits the definition of "community" to a specific geographic location or uses the broader definition, used in many other contexts, as a collective with shared interests, culture, values, etc. We submit that the narrower definition is simply yet another way, used by the government and the courts, to extinguish us and other mixed blood communities for political, policy and financial reasons.

A closer review of history will reveal that the term "Metis", as derived from "metissage", arose in Nova Scotia as a result of the baptism of the child of a French man and a Native woman in the early 1600`s. Also, that Charles LaTour's son reportedly had children with a Native woman, and that Francois Muise d'Entremont, a signatory to the ratification of the Peace and Friendship Treaty in Nova Scotia in 1752, was a Metis.

There are similar accounts of these types of relationships and prominent citizens of mixed heritage in Massachusetts, many of whom were our direct ancestors. These family lines have been preserved through intermarriage within the Nova Scotia Wampanoag community, although there have also been marriages with members of the Mi'kmaw and European community, as is the case with most contemporary Aboriginal communities. In fact, many of the prominent family names in the contemporary Mi'kmaw community derive from such historical relationships with the French, as many of the prominent names in our own community derive from similar historical relationships with the English before discrimination and persecution became prevalent.

As evidenced by my brief foray into the historical origins of the term “Metis”, most of the terminology used to describe Aboriginal people in Canada is of European origin. Columbus first used the term “Indian” to describe the Aboriginal inhabitants of the Caribbean islands when he mistakenly thought he was in India and the terms “Status” and “non-Status” did not exist before the Indian Act became the brainchild of the then Canadian government in 1876.

In short, these are not identities which we ascribed to before European conquest and attempts to categorize us by discriminatory and demoralizing labels associated with ethnic purity for the purpose of deciding how deserving an Aboriginal person was with respect to the treatment and benefits received. These are the very identities that we and all Aboriginal people in Canada must now ascribe to in order to gain recognition, rights and any potential benefits that may flow to us under the treaties that our ancestors and predecessors signed, even though they diminish and disregard how Aboriginal people have historically and traditionally identified ourselves and our communities or community members.

Even though we prefer the term Aboriginal as a more representative and unifying term, the people of the Nova Scotia Wampanoag Nation, due to our mixed ancestry and historical lack of legal and political recognition and representation in Canada, have had no choice but to identify as Metis in order to gain recognition and the protection of our treaty rights as guaranteed by the Constitution of Canada and the right to meaningful consultation provided for by the courts and the Report of the Senate Standing Committee on the Legal and Political Rights of the Metis in Canada. However, in order for such consultations to be meaningful, they must take place separately from any other Aboriginal community in Canada, including the Mi’kmaw, in recognition of our unique cultural and historical place in Nova Scotia and, more broadly, in Canada.

We are here today and make this presentation to insist that such consultations take place and without further delay and that this government ensure that Ms. Williamson, our legal consultant and spokesperson, is present for any such consultations in order to ensure that we understand the implications of any agreements reached. Further, that her presence must facilitated by the governments of Nova Scotia and Canada, whether or not expenses must be incurred in doing so.

Finally, we submit that the Wampanoag of Nova Scotia, as beneficiaries of the Peace and Friendship Treaties, should also be involved in the current proposed ratifications to these treaties currently underway pursuant to the Made in Nova Scotia Treaty reaffirmation process.

Thank you for your time. We look forward to sitting with you and your representatives as soon as possible. We can be contacted through our legal consultant and spokesperson, Ms. Daphne Williamson at daphne.williamson@live.ca.

In good faith,

Tony Cunningham
Chief of the Nova Scotia Wampanoag /
Sou’ West Nova Metis Council