



**From the office of OCIP Governor Area 7**

January 15, 2018 (amended January 17, 2018 – see note)

Mr. Robert MacDonald, PhD, RPA  
Managing Partner  
Archaeological Services Inc.  
528 Bathurst Street  
Toronto, Ontario  
M5S 2P9

**SENT BY EMAIL**

Dear Mr. MacDonald

Re: Archaeological Assessments for Meridian Aldershot East Quarry, Burlington, Ontario

Introduction

This letter is in response to the letter from Archaeological Services Inc. ("ASI") dated December 13, 2017.

ASI are licensed archaeologists in the Province of Ontario and were engaged by Meridian Brick LLC ("Meridian") to conduct an Archaeological Assessment ("AA") of the subject property in accordance with the Ministry of Tourism, Culture and Sport Standards and Guidelines for Consultant Archaeologists ("MTCS SG").

The Stage 1 and Stage 2 AAs were completed. ASI recommended a Stage 3 AA which is planned for 2018.

ASI plans to exclude Metis and other Urban Indigenous communities in the Stage 3 AA.

## OCIP position

OCIP disagrees with ASI's position to exclude Metis, and other urban Indigenous communities, from the Stage 3 AA, and ask ASI to reconsider its position.

There is physical evidence of Metis living in the area in the early to mid 1600s. This is sufficient to warrant the involvement of Metis communities whose Metis ancestors originated during this time period. This includes the Montagnais Metis First Nation ("MMFN").<sup>i</sup>

We disagree with ASI's position that Metis rights are limited to traditional harvesting territories. Regardless, this question is related to the Duty to Consult legal obligation of the Crown, and not engagement under the MTCS SG, and is not relevant.

Proceeding without the involvement of Metis communities, or other urban Indigenous communities, is inconsistent with the spirit and intent of the MTCS SG. These communities are deprived of the ability to add to the documentation of their people and history.

Exclusion of Metis also demonstrates a disrespect for Metis interests and heritage which is inconsistent with MTCS and the City of Burlington policy.

The City of Burlington can add to the archaeological record and enrich the local community with historical and cultural knowledge of the first Metis people.

The MTCS is charged with the responsibility to administer the MTCS SG and, together with the City of Burlington, has an opportunity to demonstrate actions matter more than words.

The solution is to include the MMFN (and other identified Indigenous communities) in the Stage 3 AA. No site alterations should occur until the MMFN, or other identified Indigenous communities, have been engaged.

## ASI position

ASI has asserted it has not been delegated any of the Duty to Consult legal obligations of the Crown. ASI's role is therefore limited to the AA under the MTCS SG.

ASI decided to exclude Metis from the AA for the following reasons:

1. Aboriginal rights of the Metis are limited to specific Metis communities and their established traditional harvesting territories.
2. There are no such territories in proximity to the subject property.
3. There is no requirement to engage with the Metis.

## Analysis of ASI position

### *Metis communities and harvesting rights*

ASI asserts Metis must belong to a specific community and the Aboriginal rights of that community is limited to the specific traditional harvesting territories.

ASI's position appears to be based on the *Powley v. Canada* Supreme Court of Canada decision<sup>ii</sup> that determined the Metis community in Sault Ste. Marie had harvesting rights under Section 35 of the Canadian Constitution.

Since the SCC determined the Metis community had a constitutional right to harvest, a Duty to Consult legal obligation applies to any Crown decision that has the potential to affect the Sault Ste. Marie Metis community harvesting rights.

The SCC did not consider if the Sault Ste. Marie Metis community had other Indigenous rights, such as archaeological remains and, since it applies only to harvesting rights, is not relevant for purposes of the ASI AA.

### *Purpose of MTCS SG<sup>iii</sup>*

The purpose<sup>iv</sup> of the MTCS SG is as follows:

“Standards set out the basic technical, process and reporting requirements for conducting archaeological fieldwork. They are practices that Ontario’s community of consultant archaeologists have agreed should be followed for every project and will be the standards to which licensees will be held by the Ministry of Tourism and Culture.

Guidelines give guidance or advice on good practice beyond the requirements of the standards or, under certain circumstances, provide an acceptable alternative to the standards when stated conditions are met. Following the guidelines is considered to be a matter of professional judgment on the part of the licensee.”

A Stage 3 AA is required for the site under MTCS SG section 3.4.

### *MTCS SG Aboriginal engagement is different than the Duty to Consult*

The Duty to Consult is a legal obligation of the Crown which requires consultation before making a decision that may affect the rights or interests of Indigenous communities.

In the context of an AA, a Duty to Consult obligation will frequently lead to a requirement to engage the Indigenous community holding those rights.

However, it is not requirement for an Indigenous community to have protected rights to be engaged in an AA. Archaeologists and the MTCS have engaged, and continue to engage, Indigenous communities in Canada, and the US, who do not have protected rights.

Two examples of this are the Williams Treaty First Nations and the Wyandot/Wyandotte bands resident in the United States.

### Williams Treaty First Nations (“WTFN”)

In *Hiawatha First Nation v. Ontario*<sup>v</sup> the Court decided the WTFN surrendered their rights to archaeological remains when they signed the Williams Treaty.

“[60] It follows that there is no aboriginal right or potential aboriginal right which triggers the Haida/Misikew duty to consult, as the Applicants’

ancestors surrendered all rights of any kind to lands including the Seaton lands, in exchange for the promises made to them in the Williams Treaty”

Despite the lack of legal standing, the WTFN are regularly engaged in archaeological matters in WTFN territory. They participated as monitors in the Burls Creek AA (in Oro-Medonte, Ontario) and are currently being engaged as monitors in the Allandale AA (in Barrie, Ontario).

### Wyandot/Wyandotte of the United States

The MTCS publishes a bulletin called “Engaging Aboriginal Communities in Archaeology: A draft technical bulletin for Consultant Archaeologists in Ontario (2011)”.

The purpose of the bulletin is:<sup>vi</sup>

1. To help the licensed consultant archaeologist engage Aboriginal communities in archaeology as effectively as possible.
2. It summarizes the direction on Aboriginal engagement set out in the Standards and Guidelines for Consultant Archaeologists and provides information and resources to assist consultant archaeologists in successfully following the standards and guidelines.

In the Resource Section the MTCS lists communities that “no longer reside in Ontario, but may have a continuing interest in archaeological sites or resources within their traditional territories.”

Three of the communities, Wyandot Kansas, Wyandotte Oklahoma and Anderdon Wyandot, are resident in the United States.

Since these communities are not resident in Canada the Canadian Constitution does not extend to them. Regardless of a lack of a legal status under the Canadian Constitution the Ontario government nevertheless recognizes they may have an archaeological interest and recommends engaging them when appropriate.

### *Reasons to engage Indigenous communities in archaeology*

The bulletin says archaeology is particularly important to Indigenous communities for these reasons:

- It can help to document Aboriginal histories and peoples.
- It can help to identify sacred sites and ancestral remains.
- Will improve understanding of an archaeological project.
- Will enrich the archaeological record.
- Demonstrates respect for Aboriginal interests and heritage, recognizes Aboriginal peoples' connection to the land, and allows everyone to benefit from their knowledge.

### *MTCS SG Indigenous community definition is inclusive of all Indigenous people*

In the glossary of the MTCS SG the MTCS provides a definition of Aboriginal community for purposes of the MTCS SG:

“Used inclusively in this document to refer to First Nation communities (also known as “bands” under the Indian Act), Metis communities, and communities of other Aboriginal peoples who identify themselves as a community, such as those living in urban centres or those belonging to an indigenous Nation or tribe that encompasses more than one community (e.g., the Pottawatomi, Mississauga, Mohawk).”

By using the word inclusively, and including Aboriginal peoples living in urban centres, the MTCS intention is to include all Aboriginal communities that may have an interest, and not necessarily a legal interest, in Aboriginal engagements.

### *The question of Metis community*

ASI raised the question of whether there is (or was) an historic community of Metis in the area or a modern, urban based, community of Indigenous people in the City of Burlington.

There is evidence of Metis living in the area in the early 1600s and there is a likelihood of an historic community and, similar to the Neutrals, were dispersed in the mid 1600s.

There is a local Indigenous population in the City of Burlington that are a community or are members of smaller communities within the larger Indigenous community.

## Historic Metis community in the area

### *Short history of New France*

StatsCan publishes a report called Early French settlements (1605 to 1691) which shows the population of New France during this period.<sup>vii</sup>

The number of French people were reported as 44 in 1605. By 1641 the “sedentary” population was 241. With the arrival of the filles a marier (“marriageable girls”), and the increasing birth rate, the population increased to 2,000 by 1653.

During the period from 1605 to 1650 the area was visited by Catholic missionaries. First were the Recollects and later the Jesuits. The Jesuits documented their conversion efforts in the Jesuit relations.

Champlain <sup>viii</sup> records encountering 13 or 14 Frenchmen in the area in mid-August 1615. Given the population of New France was small, this represented a substantial portion of the population of New France. It is highly likely the Frenchmen (or possibly Metis) were fur traders.

In 1633 and 1635 Champlain told a large gathering of Indigenous people “our sons will marry your daughters and we will be a single people”.

This policy encouraged Frenchmen to develop relationships with Indigenous women but it was not purely for sexual reasons. Indigenous women had survival skills which helped them cope with the harsh conditions. It also helped the fur trading business since Indigenous people preferred to trade with family members than strangers.

Frenchmen married Indigenous women under a marriage practice called “à la façon du pays (“according to the custom of the country”). It was a common law practice incorporating French and Indigenous customs. Canadian historian Sylvia Van Kirk called the practice the “basis for a fur trading society”.

As one might expect, children were often born of these relationships and these children were Metis.

### *Physical evidence of Metis in the Burlington area*

In 1976 a large burial site was discovered near Grimsby, Ontario (which is about 28 kilometres from the City of Burlington).

A site excavation found human remains of 373 people who were thought to be from the Attawandaron (aka Neutral) Nation. The remains were subsequently reinterred in Centennial Park in Grimsby.

The excavation showed "At least one female buried in Grimsby is clearly of mixed parentage" <sup>ix</sup>.

Experts chose to consider her a Neutral Indian not Metis. This was shaped by the thinking of the time. Metis were not recognized officially until 1982 when they were included in the Canadian Constitution and the word "Metis" was not a commonly used word at the time and even less so in Ontario.

The first group to organize Metis was the Native Council of Canada, now known as the Congress of Aboriginal Peoples, and Harry Daniels, a former national Chief of the Congress of Aboriginal Peoples (and the national affiliate of OCIP), is credited with negotiating the inclusion of Metis in the 1982 Canadian Constitution.

Ignoring Metis was rooted in discriminatory practices of the time much of which persists today.

The Federal Court of Canada commented that discrimination experienced by Metis and Non-Status Indians caused them to suffer greatly over the years:

"[26] In more recent times those deprivations have been acknowledged by the federal government:

The Métis and non-status Indian people, lacking even the protection of the Department of Indian Affairs and Northern Development, are far more exposed to discrimination and other social disabilities. It is true to say that in the absence of Federal initiative in this field they are the most disadvantaged of all Canadian citizens"



We assert the woman of mixed parentage was Metis and is evidence of Metis living in the area. Where there is one woman, there are likely children, and other mixed Indigenous people living with her, and this is a Metis community.

*Metis in Burlington area dispersed to areas in Quebec*

We concur the Neutrals were dispersed around 1650 but disagree they were destroyed. We are aware of people in the United States and Canada who self identify as Neutrals.

The Neutrals were aligned with the French. When they were dispersed by the Haudenosaunee they were mostly assimilated by the Haudenosaunee or left for areas now considered part of the United States.

The Metis children who lived in the area were likely not part of the assimilation or dispersal to the US.

Faced with war with the Haudenosaunee, a limited future with the Neutrals, social and legal acceptance in New France, and additional labour for the father's fur trading activities, it is highly likely Metis children were taken back to Metis or French communities in New France by their French (or Metis) father. Children were valuable in the fur trading business, especially the male children, due to their Indigenous knowledge and relationships. The females could be married to other fur traders to strengthen fur trading relationships.

Who are the Metis?

*There is no modern day single group of Metis*

Until the Supreme Court of Canada decision in Daniels v Canada<sup>x</sup> (April 2016) the popular view was the Metis were those people who fit the citizenship definition of the Metis Nation Council (and the Ontario affiliate Metis Nation Ontario ("MNO")).

The SCC rejected the notion of one Metis people saying:

“[17] There is no consensus on who is considered Métis or a non-status Indian, nor need there be. Cultural and ethnic labels do not lend themselves to neat boundaries. ‘Métis’ can refer to the historic Métis community in Manitoba’s Red River Settlement or it can be used as a general term for anyone with mixed

European and Aboriginal heritage. Some mixed-ancestry communities identify as Métis, others as Indian:

There is no one exclusive Metis People in Canada, anymore than there is no one exclusive Indian people in Canada. The Metis of eastern Canada and northern Canada are as distinct from Red River Metis as any two peoples can be. . . . As early as 1650, a distinct Metis community developed in LeHeve [sic], Nova Scotia, separate from Acadians and Micmac Indians. All Metis are aboriginal people. All have Indian ancestry”

*The MNO is a distinct ethnic group*

The MNO is a distinct ethnic group within the broader Metis community. They define their ethnicity in the Métis Nation of Ontario Secretariat Act, 2015<sup>xi</sup> :

“The citizens of the Métis Nation of Ontario identify as descendants of the Métis people that emerged in west central North America with their own language (Michif), culture, traditions and way of life. These Métis people collectively refer to themselves as the Métis Nation, which includes Métis communities within Ontario”

MNO ancestors emerged after the 18<sup>th</sup> century.

West central North America includes Canadian provinces west of Quebec. The main MNC settlement area is the Red River area of Manitoba. There are some MNO communities in Ontario but they are limited to specific geographic areas such as Sault Ste. Marie.

The MNO does not claim to have an historic settlement in or near the City of Burlington so there is no connection to the area. Since the historic Metis in Burlington lived in the area during the early to mid 1600s they are not MNO ancestors.

Indigenous communities with an actual or potential interest in the site

*Montagnais Metis First Nation (“MMFN”)*

The Montagnais Metis First Nation (“MMFN”) is a community of Non-Status Indians and Metis. Their historical ancestry includes Metis from early New France.

The MMFN have an archaeological and historical interest in this site.

MMFN involvement will enrich the archaeological record, which is one of the goals stated in the MTCS bulletin, of the first Metis in Canada.

### *Urban Indigenous community in the City of Burlington*

About 82% of Indigenous people live off reserve and many live in urban areas.

Given the number of Indigenous people living off reserve archaeologists must consider urban Indigenous communities in their work. To do otherwise ignores the majority of Indigenous people some of whom live in the City of Burlington.

The MTCS specifically mentions communities of urban Indigenous people in the glossary of the MTCS SG so archaeologists are required to consider them.

StatsCan reports that in 2016 there were 1,970 Indigenous people living in the City of Burlington<sup>xii</sup>

Collectively the Indigenous people in Burlington are an urban Indigenous community. The community is a mosaic and there are other communities within the larger community.

### ASI did not consider urban Indigenous communities

OCIP represents urban Indigenous people (including Status and Non-Status Indians and Metis) and is a primary source of information about urban Indigenous communities.

OCIP is known to ASI but ASI did not contact OCIP. It appears ASI ignored the interests of urban Indigenous people.

Since the MTCS SG specifically mentions urban Indigenous communities, in the glossary of the MTCS SG, ASI are required to consider urban Indigenous communities when conducting an Aboriginal engagement under the MTCS SG.

## United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP")<sup>xiii</sup>

In late 2017 the Federal Liberal government announced unconditional support for a private member's bill to fully implement UNDRIP <sup>xiv</sup>. The process of passing the bill appears to be a formality and we expect this to pass in the near future.

UNDRIP article 11 is relevant to this matter:

1. "Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs."

Protection and development of the past, present and future manifestations of Metis culture includes archaeological sites like the Meridian site.

Until UNDRIP is law we assert the government announcement is the equivalent of Federal (and by inference Ontario) government policy that ASI is required to follow.

By excluding Metis from the AA, ASI are not complying with Federal and Ontario government policy and the UNDRIP human rights standard.

Yours Truly,



Keith Doxsee,  
District 7 Governor, Ontario Coalition of Indigenous Peoples

c.c. Chief Brad Maggrah, the Ontario Coalition of Indigenous Peoples  
Premier Kathleen Wynne  
The Honourable Eleanor McMahon, Minister of Tourism, Culture and Sport  
The Honourable Kathryn McGarry, Minister of Natural Resources and Forestry  
Tyandaga Environmental Coalition  
His worship, Mayor Rick Goldring  
Mr. Patrick Kelly, Director of Quality Systems, Meridian Brick, LLC

Note:

Due to an oversight the first paragraph of the January 15, 2018 letter stated the company name as Archaeological Research Associates. The correct name of the company is Archaeological Services Inc. as stated in the mailing address in the January 15, 2018 letter and as amended in the first paragraph of this letter.

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<sup>i</sup> More information about the MMFN can be found on the community website at <http://www.montagnaismetis.ca/>

<sup>ii</sup> Court case can be found at:  
<https://www.canlii.org/en/ca/scc/doc/2003/2003scc43/2003scc43.html>

<sup>iii</sup> The MTCS SG are located on the MTCS website at [http://www.mtc.gov.on.ca/en/publications/SG\\_2010.pdf](http://www.mtc.gov.on.ca/en/publications/SG_2010.pdf)

<sup>iv</sup> Page 1 of MTCS SG

<sup>v</sup> Court case can be found at:  
<https://www.canlii.org/en/on/onscdc/doc/2007/2007canlii3485/2007canlii3485.html?searchUrlHash=AAAAAQASaGlhd2F0aGEgdiBvbnRhcmlvAAAAAAE&resultIndex=9>

<sup>vi</sup> Page 1 paragraph 2

<sup>vii</sup> <http://www.statcan.gc.ca/pub/98-187-x/4064812-eng.htm>

<sup>viii</sup> Biggar H. P. (ed.), 1922-1936– The Works of Samuel de Champlain, Toronto, The Champlain Society, 6 vols. p. 240

<sup>ix</sup> Jackes, Mary, The mid seventeenth century collapse of Iroquoian Ontario: examining the last burial place of the Neutral Nation Page 352

<sup>x</sup> Court case can be found at:  
<https://www.canlii.org/en/ca/scc/doc/2016/2016scc12/2016scc12.html?autocompleteStr=daniels%20v%20canada&autocompletePos=1>

<sup>xi</sup> <https://www.ontario.ca/laws/statute/S15039>

<sup>xii</sup> <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=CSD&Code1=3524002&Geo2=PR&Code2=35&Data=Count&SearchText=Burlington&SearchType=Begins&SearchPR=01&B1=All>

<sup>xiii</sup> [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

<sup>xiv</sup> <http://www.cbc.ca/news/politics/wilson-raybould-backs-undrip-bill-1.4412037>