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RE: MNBC Comments on the Notice of Motion filed by Gitxaala to the Joint Review Panel

The Métis Nation of British Columbia (MNBC) would like to approve the Gitxaala requests to the Panel.

- Gitxaala Nation is exempt from the Affidavit Requirement in relation to the Historical Documents Identified
- The Historical Documents be admitted as evidence to be considered by the panel.

MNBC agrees with the Gitxaala argument that these Historical Documents should be admissible as evidence.

Historical, or primary documents, are records that have been created in the past. These documents may be written records (from personal diaries to government statistical records), or other non-document records; such as photographs, moving pictures, the spoken-word, architectural plans or botanical records (Sandwell 2008). All of these inventories provide information about how people lived in the past and are the “raw materials” that historians, and scientists, work with as they piece together what happened in the past, and what this means to us now in the present.

Historical facts are vital to proving aboriginal title and rights. Given that the essential elements of proof exist beyond living memory, historical facts must be relied on to prove events took place (Rush 2008). For example, the courts have declared that the relevant date for the determination of the existence of aboriginal title is the date the colonizing state declared sovereignty (in B.C., 1846). In the case of Aboriginal rights the relevant date is first direct contact. As there is no direct evidence of these time periods, historical information is obviously crucial (Rush 2008).

The courts have consistently recognized the importance of historical evidence in Aboriginal rights litigation. *Tsilhqot'in* is one recent example, but historical evidence has been used in every Aboriginal title and rights case since *Calder v. British Columbia (Attorney-General)*, [1973] S.C.R. 313. The Supreme Court of Canada decision in *R. v. Marshall*, [1999] 3 S.C.R. 456, acknowledged the role of historical evidence in treaty interpretation and highlighted some of the academic literature on the role of historians in Aboriginal litigation (Rush 2008).

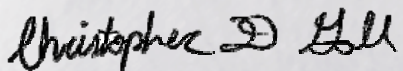
Traditionally, history has been viewed as the study of written human existence in the past. Facts were established from documents, and documents were considered the most reliable source of information. Historians today rely on a wide variety of disciplines for their histories, including archaeology, anthropology, ecology, and meteorology (Rush 2008). Still, these additional sources of information are primarily written and are almost exclusively the product of a literate culture and the western mind. Thus, history as we have come to know it is a written record of the past (Rush 2008).

Documents typically relied on, for Aboriginal rights and title litigation; include fur trade records, settler diaries, newspaper articles, learned treatises, government letters, colonial office minutes and directives, parliamentary debates, and contemporary maps (Rush 2008). These early documents (more than 30 years old) from a trustworthy source (archives) are commonly relied on as proof of historical facts. Traditionally, historical evidence goes to "general history" or to facts of a general and public nature, and not to the details of history. This was the view of McEachern C.J. at trial in *Delgamuukw v. British Columbia*, [1991] 5 C.N.L.R. xiii (S.C.). Historical treatises (scholarly articles and papers) are also used to prove historical facts. In *R. v. Zundel*, (1987), 58 O.R. (2d) 129 (C.A.), it was also accepted that an expert historian can give evidence of the existence of a historical event relying on materials to which any historian would resort (para. 176). However, there are problems with placing historical/traditional evidence before a court. Telling the history of a nation puts the very existence of the people on trial. Yet, the history of the nation is the foundation of its rights and so history from the Aboriginal perspective must be told if it is available (Rush 2008).

History does not just allow us to learn lessons from certain events in the past. This kind of critical inquiry is exactly the kind of complicated and compassionate process of knowledge-building that we need to have to understand our contemporary world (Barton and Levstick 2004). The process of historical inquiry, a dialogue among people about evidence from the past, is necessary to explore who we were and are, and how we can turn benefit future generations.

Métis are stewards of the land and MNBC will work to ensure that local Métis Aboriginal rights are respected and appropriately addressed. We will work diligently and in good faith to protect all the natural resources that Métis people have, and continue, to rely on as a way of life.

Kind Regards,



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References:

Barton, K. C. and L.S. Levstik. 2004. Teaching history for the common good. London: Lawrence Erlbaum Associates.

Rush, S. 2008. Aboriginal practice points: Oral histories. Continuing Legal Education Society of British Columbia. <http://www.cle.bc.ca/PracticePoints/ABOR/Oral%20History%20FINAL.pdf>

Sandwell, R. 2008. Using primary documents in social science and history. The Anthology of Social Studies: Issues and Strategies for Secondary Teachers V2, Chapter 27.