

MEMORANDUM

To: Day Star First Nation

From: MLT Aikins LLP

Date: March 30, 2026

Re: **Federal Updates to Template Settlement Agreement for Agricultural Benefits Claims**

File No: **0182067-0001**

INTRODUCTION AND BACKGROUND

The “cows and plows claim” or “**Agricultural Benefits Claim**” relates to a promise that Canada made in Treaty 4 to provide the Day Star First Nation (the “**Nation**”) with farming supplies, tools, animals and other benefits. The Agricultural Benefits Claim alleges that Canada failed to provide the agricultural benefits promised under Treaty 4 and made it impossible for the Nation to transition to an agricultural economy. Canada has accepted the validity of the Nation’s Agricultural Benefits Claim, and negotiations have begun. During the negotiations between the Nation and Canada, Canada presented to the Nation information about how compensation will be calculated, as well as a proposed Settlement Agreement. Negotiations paused when a federal election was called in March 2025. Negotiations recently re-commenced, and Canada has presented the Nation with an updated form of Settlement Agreement (the “**New Settlement Agreement**”).

On March 3, 2026, the Nation met with Canada for an initial discussion about the New Settlement Agreement. At that meeting, representatives from Canada explained that the New Settlement Agreement is intended to clarify aspects of the previously-proposed Settlement Agreement. To this end, the New Settlement Agreement includes a series of new provisions that touch on important substantive issues, including provisions that set out legal releases and assumptions that may impact the viability and value of future claims the Nation may wish to advance against Canada.

The purpose of this memorandum is to explain how changes to Canada’s settlement terms reflected in the New Settlement Agreement may impact the Nation’s interests. To do this, we will draw from our experience negotiating settlement agreements for other First Nations, which Canada has agreed to. For convenience, we will refer to these past agreements together as the “Old Settlement Agreement”.

Our opinion is that the New Settlement Agreement creates additional risk for First Nations who accept it. Canada says it views the New Settlement Agreement as closing gaps, and as being a better representation of what Canada always intended the Settlement Agreement to be, however the broad language of the proposed clauses could have unintended consequences.

We will provide our detailed analysis of the key changes reflected in the New Settlement Agreement in the attached **Appendix "A" (Material Changes to Template Settlement Agreement)**, as well as related recommendations. In general, our view is that changes are required to the New Settlement Agreement to protect the Nation's interests.

We add that although some of the risks described Appendix "A" may seem alarming, we do not believe that Canada necessarily intends to create all of the risks described. In some cases, they certainly do. However, in other cases, the risks may stem from legal drafting issues that can be addressed through further negotiation. At this stage, despite our generally negative views of the New Settlement Agreement, it is not our intention to imply that Canada is acting in bad faith.

We hope that the commentary in this memorandum is helpful. Please do not hesitate to contact us if you have any questions or concerns.

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APPENDIX "A"
MATERIAL CHANGES TO TEMPLATE SETTLEMENT AGREEMENT

No.	Material Change	Description	Analysis and Recommendation
	<p>Constraints of future reserve loss of use claims</p> <p>Sections 2.2, 4.1(c), 4.2 and 5.3(m)</p>	<p>The Old Settlement Agreement includes an acknowledgement intended to explain the nature of the Compensation payment. In essence, the Old Settlement Agreement indicates that the Compensation payment represents the difference between: (i) revenue the Nation's reserve land could generate through leasing or other uses that do not involve the application of labour, management and capital; and (ii) revenue the Nation's reserve land could generate through the application of labour, management and capital to agricultural activities. The New Settlement Agreement includes an equivalent provision.</p> <p>Despite the theory behind the Compensation being the same in both the Old Settlement Agreement and the New Settlement Agreement, the New Settlement Agreement includes a new release in favour of Canada that says the Nation cannot pursue reserve loss of use claims, unless the claim relates to the lost opportunity to lease reserve land for agriculture, or the lost opportunity to use reserve land for activities "compatible" with agriculture.</p> <p>Similarly, the New Settlement Agreement updates a clarification that was included in the Old Settlement Agreement. The update suggests that in the future if the Nation pursues claims in respect of the capital value (e.g. CUMV) of its reserve land or loss of use of reserve land, losses for those claims should be calculated on the bases that: (i) the capital value of the land is connected to its agricultural value, and (ii) the value of the lost use is connected to its agricultural lease value.</p>	<p>There is a risk that the new release in the New Settlement Agreement may prevent the Nation from making reserve loss of use claims that calculate compensation on the basis of land uses that: (i) may be more valuable than agriculture, or (ii) Canada interprets as incompatible with agriculture.</p> <p>For example, if Canada caused the Nation to lose the opportunity to use the surface of reserve land for an energy project or mining project, Canada may argue that particular use of the surface is incompatible with agriculture. Canada may say, for instance, that digging a hole in the surface to open a mine is incompatible with agriculture, because the surface area of the hole would become unavailable for farming. This may then call into question whether the Nation could claim mineral loss of use. This is obviously absurd, but it would be an argument available to Canada. On this basis, Canada may contend that the Nation should not be able to claim compensation for that particular loss and instead should be limited to calculating losses on the basis of the agricultural lease value of the land in question. Canada has explained that this change was not intended to capture a situation where a Nation has an opportunity to develop oil and gas interests, although the language is broad enough that there is an argument that this claim could be caught.</p> <p>The risk described above hinges on the interpretation of "compatible", and what activities are "compatible" with ongoing agriculture on reserve. It may be possible to make arguments to get around the risk above, but those arguments may be unsuccessful. We also highlight that the risk is speculative, because we are currently unaware of claims that fit the description above. If no such claims are known to exist, the risk may be immaterial.</p>

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			<p>In our view, this is a significant extension of the releases. The inclusion of this release in effect takes an assumption that was necessary for permitting calculation of Compensation for Canada’s wrongs related to agriculture benefits (i.e. that all land was used for agriculture), and leverages that assumption in an attempt to justify a broad release that may insulate Canada from liability for other unrelated wrongs.</p>
	<p>Broad assumptions may impact future claims</p> <p>Sections 1.1(o), 5.2 and 5.3</p>	<p>The Old Settlement Agreement explains that it may impact future claims of the Nation, and that aspects of the Old Settlement Agreement may inform negotiation of future claims to avoid double recovery for losses already compensated under the Old Settlement Agreement. The New Settlement Agreement includes an equivalent provision.</p> <p>However, the New Settlement Agreement goes on to include a new section that sets out a series of assumptions on which the New Settlement Agreement is purportedly based, which we understand Canada may wish to leverage when settling future claims. Of course, if Canada does not intend to leverage them in future claims, there is likely no value in stating the assumptions in the New Settlement Agreement.</p> <p>To some extent these assumptions are justifiable. For example, one assumption is that Canada did not breach its obligations to supply Agricultural Benefits or Agricultural Instruction. Another assumption is that the Nation successfully transitioned to an intergenerational, self-sustaining agricultural economy. Since the New Settlement Agreement specifically compensates for these breaches, it is reasonable to assume these facts for future claims.</p> <p>However, a number of these assumptions are a stretch. For example, one assumption is that Canada “fulfilled all of the terms of Treaty 4”. Another assumption is that the Nation received and retained its full treaty land entitlement. A further assumption is that Canada did not impose any discriminatory policies on the Nation. Further still, the</p>	<p>There is a risk that if the Nation agrees to the assumptions stated in the New Settlement Agreement, and further agrees that these assumptions may impact future claims, Canada may leverage these assumptions to undermine the Nation’s ability to make a wide range of legitimate claims in the future.</p> <p>For example, imagine the Nation has an outstanding treaty land entitlement claim. If the Nation were to advance that claim, Canada may attempt to point to the New Settlement Agreement and say the Nation has agreed to assume it received all of its treaty land entitlement, and therefore the Nation cannot argue the contrary to support further claims.</p> <p>For a further example, imagine the Nation has a claim relating to a lost economic development opportunity that required labour to capitalize on. If the Nation were to advance that claim, Canada may point to the New Settlement Agreement and say the Nation has agreed to assume its entire labour force was occupied with agricultural activities, and therefore the Nation cannot argue that labour would have been available for the economic development opportunity.</p> <p>The risk described above may be mitigated to some extent because section 5.2 expressly indicates it is intended to prevent double recovery of losses addressed in the New Settlement Agreement. Section 5.3 also explains the purpose of the compensation. However, we remain of the view that the inclusion of section 5.3 creates risk for the Nation.</p>

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		New Settlement Agreement assumes the Nation used all of its available labour for agricultural activities.	
	<p>Claims must be dismissed before the New Settlement Agreement is executed</p> <p>Sections 7.1 and 9.1(h)</p>	<p>The Old Settlement Agreement provides that the Nation must seek dismissal of court proceedings related to the Nation's Agricultural Benefits Claim within 90 days of the effective date of the Old Settlement Agreement.</p> <p>The New Settlement Agreement requires the Nation to seek dismissal of court proceedings related to the Nation's Agricultural Benefits Claim prior to the execution of the New Settlement Agreement by the Minister. This means that Canada is asking the Nation to have its court claims relating to agricultural benefits dismissed before Canada executes the New Settlement Agreement and legally commits to pay compensation for those same claims.</p>	<p>There is a risk that the Minister will not execute the Agreement despite the Nation's court claims being dismissed. If that were to happen, the Nation would have no active court claims for agricultural benefits, and no legal commitment from Canada to pay compensation. At minimum, this would create procedural delay in advancing the agricultural benefits claim if it needs to be re-commenced in court. At worst, seeking dismissal of the claim prematurely could potentially prejudice the viability of the claim if procedural rules or limitations of actions rules would operate to bar its re-commencement.</p> <p>This risk is mitigated to some extent by the doctrine of the honour of the Crown, which in theory will preclude Canada from acting in bad faith and leveraging this feature of the New Settlement Agreement to swindle the Nation.</p>
	<p>Expanded release for failure to provide famine relief</p> <p>Sections 2.3(d), 4.1(a) and 5.3(h) and (j)</p>	<p>The Old Settlement Agreement includes a release for Canada's failure to provide famine assistance. However, the release only applies if the famine in question was caused by the absence of Agricultural Benefits or Agricultural Instruction. Famines caused by other factors such as adverse weather conditions, crop disease and climate change, were not released. This was specifically important in the Treaty 6 context, because we needed to ensure the release in the Old Settlement Agreement did not undermine famine assistance rights provided for in that Treaty.</p> <p>The New Settlement Agreement releases Canada for all failures to provide famine relief assistance to the Nation. Canada candidly admitted that this represents an expansion of the release, but indicated that the compensation assumes full agricultural production each year, so famine would not have occurred.</p>	<p>Although Treaty 4 does not include the same rights to famine assistance as are found in Treaty 6, our view is that the Agreement's expanded release in respect of famine assistance is unwarranted. There may be other reasons Canada ought to have provided famine assistance to the Nation in the past (e.g. fiduciary duty).</p>

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	<p>Expanded release for trust fund mismanagement claims connected to agriculture</p> <p>Sections 2.3(e) and 4.1(a)</p>	<p>The Old Settlement Agreement includes a release for Canada’s encouragement of the Nation and its Members to expend funds to purchase tools, suppliers and services that Canada owed to the Nation as Agricultural Benefits and Agricultural Instruction.</p> <p>The New Settlement Agreement includes a similar release, although it arguably expands the scope of the release by covering Canada’s encouragement of the purchase of <i>any</i> tools, supplies, instruction or services for agriculture regardless of whether they were owed to the Nation under Treaty 4.</p>	<p>The language described at left can be interpreted as clarifying the release. It is also not currently known whether the inclusion of this language may prejudice any future claims of the Nation that relate to agricultural purchases that may have been encouraged by Canada.</p>
	<p>Expanded release for loss of use of agricultural benefits, reserve land and labour, management and capital</p> <p>4.1(b)</p>	<p>The Old Settlement Agreement includes a release of all matters described in the equivalent provisions of Articles 2.1, 2.2 and 2.3 of the New Settlement Agreement which prevented the Nation’s transition to an intergenerational, self-sustaining agricultural economy, including: (i) Canada’s failure to supply Agricultural Benefits, (ii) Canada’s failure to supply Agricultural Instruction, (iii) Canada’s adoption of oppressive policies to the extent those policies interfered with the Nation’s pursuit of a livelihood through agriculture, (iv) famine assistance, and (v) trust fund mismanagement connected to agriculture. The New Settlement Agreement includes an equivalent release.</p> <p>However, the New Settlement Agreement arguably goes further and also releases Canada from “all matters related to the Members’ lost opportunity to use...Agricultural Benefits and Agricultural Instruction...Reserve Lands...and labour, management and capital...to engage in agriculture of any kind on an Owner-operator basis to support [the Nation’s] transition to an Intergenerational, Self-sustaining Agricultural Economy...”.</p>	<p>In the Old Settlement Agreement, the equivalent provisions of Articles 2.1, 2.2 and 2.3 essentially represent an acknowledgement by Canada of how it wronged the Nation in relation to the Nation’s transition to an intergenerational, self-sustaining agricultural economy. The Old Settlement Agreement connects the Compensation to these wrongs, and the Nation then releases Canada from the related liability. In other words, the Old Settlement Agreement is based on cause-and-effect logic that is sensible and appropriate.</p> <p>In the New Settlement Agreement, Canada is seeking a full release in respect of “all matters related to the Members’ lost opportunity” to use its resources to transition to an intergenerational, self-sustaining agricultural economy. In other words, the New Settlement Agreement says that Canada is released from all liability, in relation to everything it has ever done, that may have prevented the Nation from using its resources to transition to an agricultural economy. To some extent this undermines the cause-and-effect logic of the Old Settlement Agreement, and creates risk that the Nation may inadvertently release Canada from liability for wrongs completely unrelated to agricultural benefits, agricultural instruction and economic transition, if the effect of the wrongs was an impact on the Nation’s economic transition.</p>

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	<p>Indemnity settlements without the Nation's consent</p> <p>Section 6.6</p>	<p>The Old Settlement Agreement provides that the Nation will indemnify and save Canada harmless from court proceedings brought against Canada that relate to agricultural benefits or any other matter described in the Old Settlement Agreement. The New Settlement Agreement includes an equivalent provision.</p> <p>The Old Settlement Agreement also provides that Canada may settle court proceedings for which the Nation must indemnify Canada, as long as the Nation consents to the settlement. The Nation is not allowed to unreasonably withhold its consent.</p> <p>The New Settlement Agreement removes the consent requirement.</p>	<p>There is a risk that Canada may settle proceedings for which the Nation must indemnify Canada, confirming with the Nation that it is comfortable with the settlement.</p>