



The MÉTIS Nation

EXECUTIVE OVERVIEW

This issue of the Métis Nation presents an abridged version of the comprehensive and in-depth report to the Royal Commission on Aboriginal Peoples, prepared on behalf of the Métis Nation of Canada. The report constitutes a state of Métis Nation address to the state and people of Canada about how the Métis seek to fit into the Canadian federation as it enters the twenty-first century. It identifies the problems and poor conditions besetting the Métis population and proposes workable solutions based on important precedence and models established by Métis Nation representative bodies in recent decades.



Gerald Morin

The report presents an overview of the conditions, needs and aspirations of the Métis Nation. The report focuses on four major themes.

- The struggle for individual and national Métis identity amidst a state directed policy of defining the Métis people out of existence.
- The struggle for a land and resource base.
- The struggle for federal recognition and the assumption of federal constitutional responsibility to deal with the Métis as an Aboriginal people and a distinct national community.
- The struggle for self-determination in the form of self-government and the right of Métis to control their own social, cultural, and economic development.

Specifically, the report chronicles the major historic developments which have shaped the present conditions of the Métis people and their relationship with the Canadian state: the emergence of the Métis as a distinct Aboriginal people and "New Nation" in western Canada. The evolution of Métis nationalism, the dispossession, the dispersion, and marginalization of the Métis are discussed. The report examines the treatment of Métis issues within the constitutional process and the efforts of the Métis National Council to establish a process for resolving outstanding issues through the Métis Nation Accord.

Federal government jurisdictional responsibility for dealing with the Métis is examined through a review of

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constitutional and case law, Section 91 (24) of the *Constitution Act* and other legislative practice and administrative history paying particular attention to the clarification of federal jurisdiction for the Métis in the Charlottetown Accord and a jurisdictional framework for the implementation of the Métis Nation Accord.

An analysis of the Métis land grant and scrip distribution schemes measures the actual practice of Métis land and scrip grants against the standard of Crown conduct and obligations applying to the treatment of Métis land rights. This analysis demonstrates how the Department of the Interior facilitated alienation of Métis land and scrip grants to speculators. These historical and legal analyses of Métis land grant scheme clearly refute the opinion of the Department of Justice that Métis Aboriginal title was extinguished by federal legislation and forces a reassessment of the exclusion of the Métis from the federal claims resolution process.

The issue of Métis self-government, is explored beginning with the evolution of traditional forms of Métis self-government. The report elaborates on the inherent right of Métis self-government in both the Constitution and international law. Models of Métis self-government at the local, regional, provincial, and national levels as well as exploring Métis participation in public forms of government are offered.

Deficiencies in Métis economic development and financial institutions are identified and measures pro-

posed to place the Métis on a level playing field with other Aboriginal peoples by way of new Métis community economic development and resource development programs. Diversifying Métis financial services and introducing more innovative forms of financing for Métis small business are also explored.

The contemporary issues of justice reform, social, cultural and economic development are dealt with in a comprehensive manner, drawing on the only Métis specific data available.

The critical lack of available Métis specific data has served as an impetus for the development of consolidating the citizenship of the Métis Nation by way of an enumeration and registry system. A clear and concise understanding of the demography of the Métis is imperative in obtaining a confirmation of federal jurisdictional responsibility under Section 91 (24).

It is the hope of the Métis Nation that the Royal Commission will adopt the Recommendations borne out of the research and analysis contained within the report. Fundamentally, it is the collective desire of the Métis Nation that the Commission will adopt as its central recommendation to Parliament the implementation of the Métis Nation Accord outside the constitutional process as the most sensible method of coming to terms with the needs and aspirations of the Métis people.

CRITICAL ISSUES

..... *Historical Relations Between the Métis Nation and Canada*

The origin of the Métis people is rooted in the historical fabric of Canada. It was in the Canadian northwest that they evolved into a new and distinct Aboriginal entity.

The mixed offspring of French fur traders from the North West Company or Scottish and English fur traders from the Hudson's Bay Company and Cree, Ojibway or Saukteaux women formed an ever-increasing proportion of the fur trade population. This cultural evolution commenced in the mid 1600's and reached its height in the late 1800's.

With their mixed traditions and command of both European and Indian languages, the Métis were logical intermediaries in the commercial relationship between two civilizations. They adopted European technology to the wilderness, through innovations such as the Red River cart and York boat that made possible the transport of large volumes of goods and supplies to, and from, the far flung outposts of the fur trade. As people of mixed

ancestry increased in number and married among themselves, they developed a new culture, neither European nor Indian, but a fusion of the two and a new identity as Métis.

By the mid 19th century, Métis villages had appeared in and around fur trade posts from the Great Lakes to the Mackenzie Delta. Then, as now, Métis communities shared a common outlook shaped by their historical circumstances. As provisioners to the North West Company, the Métis of the prairies organized the commercial buffalo hunt. They left their permanent settlements periodically, electing a provisional government for each expedition to make and enforce the laws of the hunt. This activity increased the political consciousness of the Métis and was further heightened by the rivalry between the fur trade companies.

In 1811, the Hudson's Bay Company made a land grant to Lord Selkirk of 116,000 square miles of land in the Red River Valley (southern Manitoba) for an agricultural settlement and source of provisions for the fur trade. Efforts by the the Scottish settlers to restrict Métis hunting and trading practices eventually led to their defeat in 1816 at the Battle of Seven Oaks where the victorious Métis led by Cuthbert Grant, Jr. unfurled the flag of the Métis Nation.

In 1821, the amalgamation of the Hudson's Bay Company and North West Company closed many fur trade

Two-thirds of the Métis people moved out of the Province of Manitoba, most between 1876 and 1884. Some moved to the north or into the United States but a majority went to the South Saskatchewan Valley and to the settlements near Fort Edmonton where they joined or founded Métis communities. They resumed their demands for a land base in unison with those Métis resident in the North West before 1870.

By 1872, the Saskatchewan Métis had already petitioned for an inalienable colony of 1,800,000 acres of land. They asked to "... secure to themselves the right to prohibit people of other nationalities from settling on the lands occupied by them without the consent of the community ...".

The *Dominion Lands Act* in 1879 had extended land grants to those Métis living outside of Manitoba in the Northwest Territories (today's northern Manitoba, Saskatchewan, Alberta and Northwest Territories) in 1870, but it was not until March 31, 1885, after the outbreak of the Northwest Rebellion, that Ottawa authorized the Street (Scrip) Commission to issue scrip (see article 12).

Métis emigrants from Manitoba fared even worse than their brethren resident in the North West Territories in 1870. Having been disqualified from land grants in Manitoba, they were denied scrip in the North West on the grounds their claims should have been settled in Manitoba. Likewise, they were denied homestead lands under the provisions of the *Dominion Lands Act* on the grounds their claims should have been settled by scrip.

While the federal government negotiated treaties with Indians and granted vast tracts of land to the Hudson's Bay Company and railroad companies, it ignored continuous Métis petitions for land title. The Métis were expected to apply for land as homesteaders. In a petition to Sir John A. Macdonald on September 4, 1882, Gabriel Dumont and the Métis of St. Antoine de Padoua claimed exemption from onerous homestead duties on the basis of having "...held the country as its masters and so often defended it against the Indians at the price of our blood ...". The Métis also claimed exemption from the township system of survey which threatened to disrupt their riverlots.

On March 19, 1885, under the leadership of Riel, the Métis formed a second provisional government at

Batoche. As in 1869-70, they demanded responsible government, parliamentary representation, local control of public lands as well as confirmation of land titles according to the riverlot system of survey. Armed resistance to the 8,000 troops dispatched by Ottawa began on March 26, 1885, and ended at the Métis capital of Batoche on May 12, 1885, with the defeat of the Métis.

In the aftermath of the resistance, troops burned Métis homes and destroyed their property. Riel was placed on trial for treason and members of his Provisional Government were sentenced to prison terms. On November 16, 1885, Louis Riel was hanged for treason.

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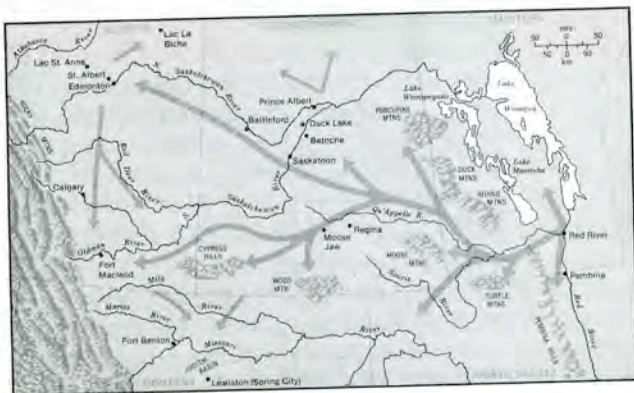
The Rebirth of Métis Nationalism

Riel's vision of a reborn Métis Nation would blur but never die. In 1887, a group of Métis nationalists met in St. Vital, Manitoba to found a historical and cultural society, l'Union Nationale Métisse Saint Joseph du Manitoba, committed to correcting the historical record with respect to the experience of the Métis people. Their undertaking required decades of research and interviews with the Métis of Red River and Batoche and culminated in the publication of *L'histoire de la Nation Métisse dans l'Ouest canadien* in 1935.

During the depression, dire conditions on the prairies provoked political mobilization of the Métis. Founded in 1932, l'Association des Métis de l'Alberta (later to be known as Métis Association of Alberta) pressured the United Farmers of Alberta Government into appointing a Royal Commission to inquire into the conditions of the Métis. Following the recommendations of the Ewing Commission report of 1936, the Province enacted the *Métis Population Betterment Act* providing for the establishment of Métis Settlement Associations which would receive a land mass of 1,280,000 acres from the Province.

In Saskatchewan, the Métis also organized to obtain a land base. Founded in 1938, the Saskatchewan Métis Society directed its "constitutional claims" against the Government of Canada which it held responsible for the historic dispossession of the Métis. During the 1950s, Métis associations would be weakened by an extreme shortage of funds and government sponsorship of dissident groups directed against associations considered too militant. The 1960s witnessed an upsurge in the activity and reorganization of the Métis associations. In 1961 the Métis Association of Alberta launched a court action against the Province in response to its refusal to pay to Métis, royalties on oil and gas removed from Métis settlements.

In 1965, the Métis of northwestern Ontario organized the Lake Nipigon Métis Association (later to become the Ontario Métis Aboriginal Association) to improve economic conditions for its members. In 1967, the Saskatchewan Métis Society amalgamated with the Métis Association of Saskatchewan to form the Métis Society of Saskatchewan to emerge as the most militant of the Métis associations. In the same year, the Manitoba Métis established the Manitoba Métis Federation to unite the



Métis throughout the Province and to work toward the reconstruction of the Métis Nation.

In 1970, the Métis people of Northeastern British Columbia established an alliance with non-status Indians which has now evolved into a Métis only organization. The Métis of Alberta, Saskatchewan and Manitoba established the then national voice of the Métis, the Native Council of Canada. In 1972 the Métis in the Northwest Territories, descendants of Métis people from trading posts established along the Mackenzie River, created what is now known as the Métis Nation—Northwest Territories.

The establishment of the Comprehensive and Specific Land Claims process in 1973 excluded the Métis except in the Northwest Territories. Métis land claims research contributed to an increase in the political consciousness of the Métis and made them aware of their common history and nationhood.

The recognition of the Métis as one of the Aboriginal peoples of Canada in the proposed constitutional patriation resolution on January 30, 1981, appeared to signal a reversal of Ottawa's policy toward Métis. The advent of the First Ministers Conference (FMC) process to define Aboriginal rights sparked a major political realignment of the Métis Nation. The Métis withdrew from the Native Council of Canada and established the Métis National Council (MNC) which demanded two seats at the constitutional table for representatives of the Métis people.

For the MNC, the Trudeau government's refusal to invite the Métis to the constitutional table was a denial of the history, culture, and right to self-determination of the Métis Nation by another in a long line of federal governments determined to avoid dealing with the rights of the Métis.

The Métis launched a court action against Prime Minister Trudeau to gain their rightful seats at the table. In winning an out-of-court settlement to gain representation for the Métis Nation through the MNC, the Métis also succeeded in restoring to the constitutional agenda the issue of a Métis land base which previously had been dropped by the federal government and the other Aboriginal organizations.

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Treatment of Outstanding Issues in the Constitutional Process

The Métis have long argued that they fit within Section 91 (24) of the *Constitution Act, 1867* giving Ottawa jurisdiction over "Indians and the Lands Reserved for Indians" in much the same way that the Inuit, according to a 1939 Supreme Court ruling, fit within that section. Moreover, it was the federal government that had negotiated with Riel's government in 1869 and had enacted and administered the Métis land rights sections of the *Manitoba Act* and *Dominion Lands Acts*.

The lack of federal political will did little to advance discussions directed toward breaking the impasse over

federal-provincial jurisdiction and the Métis. In the absence of provincial will to move on Métis issues, the MNC believed the federal government had the constitutional and historic responsibility for resolving Métis rights.

At FMC '84, the MNC pursued the breaking of the impasse over Métis identification and enumeration and federal jurisdiction. In its opening remarks, it stated its intention to leave the Conference hall the following evening with a firm agreement on Métis self-identification and the enumeration process to establish Métis citizenship. But the Conference ended in a deadlock and the most the Métis could achieve was having their priority issues of Section 91(24) and identification/enumeration elevated to the top of the agenda for FMC '85 by Prime Minister Trudeau.

The new Conservative federal government unveiled a new approach to Aboriginal constitutional matters during the fall of 1984, based on the recognition of a "contingent right" to self-government and a commitment to negotiate self-government agreements at the community or regional level.

At FMC '85, the MNC supported the federal proposal largely on the basis of a commitment given toward the end of the conference by Prime Minister Mulroney that he would use his influence with the provinces to set in motion a process to ensure that the Métis priorities of self-government and a land base would be pursued through tripartite negotiations on the prairies before the final FMC in 1987.

In March 1992, the Beaudoin-Dobie Special Joint Committee delivered its *Report on a Renewed Canada*, including a recommendation for the federal government to respond to the Métis need for land and resources, but stopped short of recommending an amendment to Section 91(24). With the revival of constitutional negotiations on self-government in 1992, the MNC renewed the drive to remove the historic barriers to Métis rights.

At the Ministers' meeting, in April 1992, in Edmonton, then MNC President Yvon Dumont pushed the Provinces for a commitment at the table to a Section 91(24) amendment. He obtained their support. The meeting concluded with an agreement of the MNC, the federal government, and the Provinces to establish a Task Force to pursue the issue further and to make an interim report to the next Ministers' meeting in Saint John. After nine years of unsuccessful efforts, the MNC had finally achieved a separate constitutional process for the Métis Nation.

The meeting of The Task Force, in Saint John, in May 1992, resulted in a commitment to resolve the impasse over Section 91(24). Specifically, provinces and territories would not reduce services to Métis, all parties would agree to participate in Métis land base negotiations and federal and provincial governments would agree to participate and fund an enumeration and registration process for the Métis.

At the Ministers' meeting in Vancouver in May, 1992,

Dumont tabled a draft treaty which, in addition to the commitments agreed to in Saint John, encompassed a full range of roles and obligations to each of, the Métis Nation, the Government of Canada, and the Provinces within the Métis Homeland. He obtained an agreement to convene a special meeting of Ministers to deal with it when the Ministers next met in Montreal.

In May, 1992, Energy Minister, Jake Epp, Métis Interlocutor, convened a task force and reported back to the multilateral body of Ministers on the full range of constitutional issues. The Ministers supported the majority of the elements brought forward but stopped short of recommending their incorporation as a "Treaty" into Section 35 (which would give it constitutional force). The Ministers and the MNC did agree, that the commitments on Métis issues—to be named the "Métis Nation Accord"—would be legally-binding unlike a political accord.

At the next multilateral meeting in Toronto in May 1992, the MNC and the federal and provincial constitutional Ministers agreed to the final draft of the Métis Nation Accord. It constituted a distinct part of the Charlottetown Accord and, taken together with the constitutional amendments on the inherent right of Aboriginal peoples to self-government and Section 91(24) of the *Constitution Act 1867*, closed a decade of struggle by the Métis National Council to establish a new beginning in the Métis quest for nationhood within Canada.

The Métis Nation Accord is the blueprint for future state-Métis relations. It clearly recognizes the historic contributions of the Métis to the Canadian federation and the need to strengthen their place within the Canadian federation. Accordingly, it embodies the MNC's criteria for Métis identification or citizenship within the Métis Nation, basing it on descent from those Métis who received or were entitled to receive land grants or scrip under the provisions of the *Manitoba Act 1870* or the *Dominion Lands Acts* enacted in the Northwest, and others of Aboriginal descent accepted by the Métis Nation. It commits Canada and the appropriate Provinces to contribute resources to the Métis Nation to conduct an enumeration of the Métis Nation directed toward a registry or citizenship roll.

The Accord commits the federal and provincial governments to negotiate with the Métis Nation: tripartite self-government agreements; land and resources; devolution over existing programs and services to Métis; new Métis self-governing institutions; and cost sharing arrangements relating to Métis institutions, programs, and services.

On October 26, 1992, Canadians rejected the Charlottetown Accord in a national referendum. The MNC had made it clear from the start that the Métis Nation Accord—with its practical political solutions to a century of denial and neglect—should be pursued with or without a constitutional amendment on self-government. With the death of the Charlottetown Accord, the MNC reaffirmed its intention to pursue the implementation of the Métis Nation Accord with those governments that had the political will to do so and to seek constitutional protection for agreements at a later date.

For the Métis, the grim reality in the wake of the national referendum is that the status quo remains in place. The federal government continues to deny constitutional responsibility to deal with the Métis or even to take the necessary steps with the MNC to determine the number and location of the Métis people.

The first and foremost recommendation of the Royal Commission with respect to Métis people should be immediate action on the part of the Government of Canada, the Northwest Territories, Alberta, Saskatchewan, Manitoba, British Columbia, and Ontario alongside the MNC to initiate a process for concluding and implementing the terms of the Métis Nation Accord.

CONSOLIDATION OF THE MÉTIS NATION:

..... *An Enumeration and Registry System*

The absence of accurate demographic and statistical information has left the Métis people at a serious disadvantage resulting in the denial of federal services. The tendency has been for federal departments offering "status-blind" Aboriginal programs to deal with readily identifiable Indian and Inuit communities.

Provincial government departments do keep records on status Indian clients because the federal government reimburses the provinces for services to Indians. But provincial departments with a mandate to provide services to Métis do not have Métis-specific data.



Gerald Thom

The Métis Nation has long advocated the right of the Métis Nation to determine its own citizenship. Entrenchment of Métis self-identification criteria would place the definition of the Métis community beyond the power of politicians to tamper with it. It would also put the identity of the Métis beyond the realm of court decisions.

The Métis Nation Accord confirms the right of the Métis Nation to define its membership and sets out criteria for Métis citizenship identification. Essentially, the Accord uses criteria of self-identification and community acceptance. These conditions are consistent with UN criteria set out in the various declarations for Indigenous people; criteria mirrored by the World Council of Indigenous Peoples as well as the International Labour Organization.

The establishment of a Métis Registry System will contribute to the consolidation of the Métis Nation. It can be used to identify those eligible to participate in the electoral process governing Métis political institutions and to the programs and services delivered by Métis

will result in an initial registry of the Métis Nation with a limited amount of data captured in the establishment of the registry. The methodology advocated by the MNC is to build upon the existing Métis memberships and infrastructures in member associations.

The MNC and its six affiliated associations have identified the need to create a Métis Registry System to identify the Métis of Manitoba, Saskatchewan, Alberta, British Columbia, Ontario and the Northwest Territories. The purpose of the Métis Registry System is to provide for the automated capture, storage, retrieval and distribution of information that will help the Métis Nation to administer their own government. The scope of this system includes demographic, socio-economic, genealogical and scrip data, and interfaces with Statistics Canada, Elections Canada, Department of Indian Affairs and National Archives, but excludes data collection.

The Métis National Council or its proposed legislative body, the Métis Nation Parliament, will establish legal instruments to create the independent Registry. A Métis Nation Registry Office and Management Information Support organization will be established and will house the central processor and database as well as one user workstation. All information gathering and data entry will be done in the Métis Homeland.

The Registrar will have the legal responsibility to add or delete individuals from the register and for ensuring that an investigation is made on all protests or appeals relating to Métis status. The Registry Office will conduct the initial enumeration to identify the number of Métis and collect specific information on them. The data obtained from this collection activity will be used in the planned data base which will be developed to maintain and analyze the information. The Registry Office will establish procedures to collect and maintain current data such as marriages, births and change of address on an ongoing basis. In addition, biannual sample surveys and decennial censuses will take place to ensure that the information maintained is complete and accurate.

The Management Information Support component of the Registry Office will conduct an in-depth economic and demographic analysis of the entire Métis population based on information from the enumeration and subsequent censuses.

It is expected that a large part of the Métis population will qualify for inclusion in the initial Métis Nation Registry on the basis of self-identification and community acceptance.

Several Métis associations currently rely on their respective Métis Senates, often consisting of respected elders, to rule on membership appeals. A similar role is assumed by a Métis Settlements Appeal Tribunal established under the terms of the *Métis Settlements Act*. It is expected that the Métis Appeals Board will consist of Métis Senators and respected elders from the MNC's member associations who will meet either on a predefined schedule or when a defined number of appeals has accumulated in any region. The quorum would have at

least one member from the region where the appeals are heard and a preference for the other members to be from that region or an adjoining region.

The Royal Commission should recommend that momentum on the non-constitutional enumeration and registration process should not be lost and that the federal and provincial governments should proceed with the Métis National Council to enumerate and register the Métis Nation according to the terms of the Métis Nation Accord and according to the implementation mechanism in the MNC's Enumeration and Registry plan.

SECTION 91(24) AND FEDERAL JURISDICTION FOR MÉTIS

It has long been the position of the Métis Nation that the Métis are encompassed by the term "Indian" in section 91(24) of the Constitution Act, 1867. This position flows from the historical and legal recognition of the Métis people as an Aboriginal population with Aboriginal title and, accordingly, with a fiduciary relationship with the Crown. The basis for this position can be found in analyzing the original purpose of vesting authority in the Parliament of Canada for Aboriginal people, legislative enactment's, common and constitutional law, and in the ongoing Métis Nation court action against the Government of Canada and the Province of Manitoba.

Research reveals that, while the federal government takes the position today that it does not have legislative capacity for Métis, it nonetheless exercised its legislative capacity prior to and following confederation for people of mixed blood and following confederation for Métis in western Canada. Several pieces of legislation were passed by the governments of Upper Canada and by the new Dominion government recognizing that people of mixed blood were to be considered within the definition of Indians.

With the westward expansion of Canada, the Métis or half-breeds were recognized as part of the Aboriginal peoples and possessing Indian title. The *Manitoba Act 1870* provided for extinguishment of such Indian title possessed by Métis by means which are under court challenge today. The purported extinguishment of the Métis peoples' Indian title outside Manitoba in the Northwest was provided for by the *Dominion Lands Acts*. Métis adhesions to treaties in northern Ontario also recognize the legal interests of Métis.



The first express mention of Métis (half-breeds) within federal legislation concerning Indians is expressed in Section 3.3 (e) of the 1876 *Indian Act* which recognizes the ability of some Manitoba Métis to take the benefit of Treaty, while at the same time denying others the same opportunity. The exclusion of Métis under the 1876 Act was extended in the last major revision of the *Indian Act* in 1951 to exclude all Métis outside of Manitoba who "received or has been allotted half-breed lands or money scrip" or their descendants.

Notable legal experts and Métis historians have examined the issue at length. The conclusion that Métis are properly included in s.91(24), notwithstanding the lack of clear authority and a hundred years of federal practice to the contrary, has been unanimously recognized. The Manitoba Justice Inquiry also concluded that Métis fell within Section 91(24). A position reiterated by the Canadian Bar Association. The Royal Commission on Aboriginal peoples commissioned research into the question which confirmed the conclusions documented by others.

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Case Law

Compelling evidence from the U.S. demonstrates how the Métis living south of the international border but within the boundaries of the historic Métis Homeland—primarily in the states of Minnesota, North Dakota, and Montana—have been viewed by the courts as an integral part of the Aboriginal people with entitlement to "Indian" lands. One of the "Indian" communities in the state of Montana is designated "Métis". Another in the state of North Dakota was the subject of litigation in which the court examined the status of "half-breeds".

The legal authority cited most often as being of direct relevance to the question is the Supreme Court of Canada decision in *Re Eskimos*. The federal government had historically taken the position that Eskimos were not "Indians". The decision does not give an exhaustive definition of s.91(24) and the Supreme Court of Canada did not turn its mind to the question of Métis. It is clear authority for the proposition that while Parliament is entitled to define who is an Indian for the purposes of a particular statute (*viz*, the *Indian Act*, *se Lavell*) it cannot thereby limit the range of persons included in s.91(24). Canada had taken the position that the Inuit were not within its legislative jurisdiction.

In the reference, the Court determined the issue by ascertaining whether the drafters of the *British North America Act* had understood Inuit to be "Indians". Its review of the historical materials satisfied the Court that in 1867 Eskimos were understood to be a tribe of Indians and hence they were "Indians".

It is important in reading this decision to note the emphasis which the Court placed on the report of a Committee of the House of Commons, 1857, concerning the administration of British North America by the Hudson's Bay Company. Included in the Committee's report were a census prepared by the Company, and an accompanying map showing the location of the various tribes.

In both the census and the map, the "Eskimo" fell under the general designation of Indians. It must be noted that in both the census and the map, while Eskimo are indeed listed with and included in the number of Indians, half-breeds are not so included. Métis lawyer, Clem Chartier points out the issue in that case solely concerned the Eskimo, and that therefore no other evidence relating to the half-breed was presented. Moreover, even if the Hudson's Bay Company did not consider the half-breeds as Indians, it is still necessary to determine whether Britain and Canada so viewed them. He argues that the evidence given to the Select Committee by various Hudson's Bay Company witnesses tended to either group half-breeds with Indians, or at least opined that there was no need to distinguish them.

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S.35(1) Constitution Act, 1982

With the patriation of the Constitution and the inclusion of s. 35 recognizing and affirming the existing rights of the Aboriginal peoples which include the Métis people, the case for Métis inclusion in s.91(24) has been clarified further. The courts are in a much better position today to determine the issue of the scope of "Indian" in s.91(24) than was the case in the *RE:Eskimos* decision in 1939 when there was only historical usage to assist the Supreme Court.

The Supreme Court decision in *Sparrow* makes clear that Métis are covered by the protection afforded Aboriginal peoples by s. 35 (1) against provincial legislative power.

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Section 91 (24) and the Implementation of the Métis Nation Accord

The Charlottetown Accord 1992 clarified and confirmed the federal-provincial jurisdictional arrangements sought by the MNC to facilitate the transition to a third order of government for the Métis Nation.

With the demise of the Charlottetown Accord, the federal government has reverted to its long-standing position that the Métis are a provincial responsibility. This has meant that all substantive progress on Métis issues has ground to a halt. The federal position contradicts the understanding reached by the Métis Nation, the Government of Canada, and those Provinces within the Métis Homeland on how governments would sort out their jurisdictions and responsibilities to break the impasse on Métis rights. The proposed amendment to s. 91(24) within the Charlottetown Accord would have clarified federal jurisdiction for all Aboriginal peoples "for greater certainty"—it would not have established this jurisdiction. History and constitutional practice dictate that Ottawa has and has always had an obligation to assume the lead role in dealing with the Métis as an Aboriginal people.

The Royal Commission should recognize the federal government's jurisdiction over all Aboriginal people on the basis of Section 91 (24) and call upon the Parliament to honour its obligations under that section.

MÉTIS ABORIGINAL TITLE CLAIMS

The Métis claim to Aboriginal rights was recognized by the Crown in its dealings with the Métis throughout the nineteenth and twentieth centuries. The Royal Proclamation of 1763, Great Britain, acknowledged the pre-existing interest of the native peoples whose homelands had been "discovered". The Royal Proclamation is a seminal authority which defines how Aboriginal title can be surrendered.

..... Nature of Métis Rights

Constitutional interpretation differs from statutory construction. The need for a broad perspective in approaching constitutional documents is a familiar theme in Canadian jurisprudence. Canadian case law demonstrates that Aboriginal rights should be liberally construed, that Indian Treaty should be given a fair, large and liberal construction in favor of the Indian. These principles are helpful in discerning the purpose behind the constitutional enactment's associated with Métis title.

After the Red River uprising, Riel's provisional government demanded recognition of Métis Aboriginal title and provincial control over lands and natural resources. During the negotiation process, the latter goal was abandoned in favour of the grant of 1.4 million acres of land. The Métis believed they would receive lands they had occupied before transfer to Canada, in accordance with the usage of the country, and a reserve of 1.4 million acres of land which would ensure the survival of their language and culture against the onslaught of settlers. This belief was founded on written and oral assurances from Sir George Etienne Cartier and Sir John A. Macdonald.

Based on Father Ritchot's diaries and the House of Commons debates of the period, it is clear that one purpose of s. 31 of the *Manitoba Act, 1870* was to confer a benefit of 1.4 million acres of land on the Manitoba Métis. A second purpose, stated in s. 31 itself, was to extinguish Métis Aboriginal title in the province. A third purpose was to defuse the Métis resistance, and calm a formidable, politically organized and influential group in the new province by formally recognizing Métis Aboriginal title and making provisions to extinguish it in exchange

for protecting the old settlement belt of the Métis, and enlarging it by an additional 1.4 million acres.

The *Rupert's Land and North-Western Territory Order* was formulated at the same time as these events were underway. The presence of a potentially adversarial group of Métis in the new territory was a factor in the government's thinking, adding credence to the argument above that the Order-in-Council was aimed at compensating Métis as well as Indians, as settlement moved towards unceded territory. The demands by Riel's provisional government, still fresh in the government's mind, would have reinforced the government's thinking that Métis title would need to be extinguished in the Territories in the same manner as other Aboriginal title.

Under Schedule A of the *Rupert's Land and North-Western Territory Order*, the Métis throughout that region, including the province of Manitoba, were guaranteed a right to be dealt with consistent with past Crown practices.

With the possible exception of the *Manitoba Act*, the federal government acted unilaterally to extinguish Métis rights by legislation and order-in-council. After 1883, the *Dominion Lands Act* applied only to those areas of the North-West Territories where Indian title had been extinguished. In that area of the North-West Territories where Indian title had been extinguished, the Canadian government acted unilaterally to impose a scrip system in extinguishment of Métis Aboriginal title. Federal practice with respect to extinguishment of Métis title in areas of the North-West Territories where Indian title had not been extinguished was likewise unilateral. Extinguishment of Métis Aboriginal title was delayed until federally appointed treaty commissioners had completed negotiations with Indians on the terms of surrender of their Aboriginal title, in compliance with the practice since the Royal Proclamation. Once the parties had signed the treaty, the Canadian government would then act unilaterally to appoint Half-breed commissioners to grant scrip in extinguishment of any Half-breed claims in the area covered by the Indian treaty.

The Crown's practice since the Royal Proclamation had consistently been to extinguish Aboriginal rights through negotiation and the treaty process. Federal government policy to unilaterally extinguish Métis Aboriginal title throughout the North-West Territories was therefore contrary to Crown practices.

In the case of the *Manitoba Act*, the Métis did not contemplate government delays, competition with settlers for their lands, the process of scrip instead of land grants, or acts by the government which facilitated the operation of speculators. The Métis did not contemplate the system which ultimately resulted in the dispossession of their lands. The Métis did not contemplate, in Professor Sprague's words, "a reign of terror ... [intended] to intimidate the general population into abject subjugation or migration".

The *Manitoba Act* must be liberally construed in favour of the Métis. Such a reading would not allow



Canada to act in the manner which it did. In this sense, the land grant scheme in Manitoba was not consensual. This makes it contrary to Crown practices post-dating the Royal Proclamation, 1763. If government actions in extinguishing the Aboriginal title of the Métis were not in conformity with Crown practices, then this would work to nullify extinguishment throughout the territory covered by the Order.

Schedule A of the *Rupert's Land and North-Western Territory Order*, imposed a second constitutional obligation on Canada—to deal with the Métis “equitably”. The government had an obligation to settle the claims of the various Aboriginal groups in a fair and equitable manner, as contrasted with each other. It follows that the *quid pro quo* for the surrender of Métis rights should be “equitable” as compared with that received by Indian tribes who surrendered their title through treaties.

In contrast, the Métis in Manitoba received a land grant or scrip, and Métis in the North-West Territories received scrip or a cash grant of \$160 or \$240. Once a Métis had claimed his or her scrip land, the government considered any obligation to be ended. The federal government apparently did not consider that it had a continuing obligation to protect Métis interests as “Indians” under s. 91(24) of the *Constitution Act, 1867*. After 1930, with the enactment of the Natural Resources Transfer Agreements, the federal government washed its hands of the Métis problem. After the signing of the Natural Resource Transfer Agreements, the provinces undertook to alleviate Métis destitution, but not through any concept of a legal obligation to do so.

Although the Métis chose a grant of land instead of entering a reserve system, under the terms of Schedule A to the *Rupert's Land and North-Western Territory Order*, they nonetheless had a right to equitable treatment with other Aboriginal groups. It follows that the Métis had a right to obtain benefits and protections similar to those obtained by Indians taking treaty. They had a right to continued protection from the federal government. This may well have taken the form of a protection of their lands to ensure that they did not pass into the hands of speculators and out of their control.

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The Crown's Duty

The government's treatment of Aboriginal peoples must be such as to preserve the honour of the Crown. Government policies and practices, implemented through legislation and orders-in-council, must be scrutinized to determine whether they meet the standard of preserving the honour of the Crown. If they do not meet that standard, then the official actions are suspect and should be viewed with appropriate suspicion by the courts when assessing their validity.

The Crown appears to have recognized their claim in the *Manitoba Act*, the *Rupert's Land and North-Western Territory Order*, the *Dominion Lands Act* and Orders-in-Council. As an Aboriginal group, under the Royal Proc-

lamation, the Métis could only surrender their Aboriginal title in lands to the federal government. In the *Manitoba Act* and the *Dominion Lands Act* the Crown conferred upon itself the complete discretion to implement and administer the land grant scheme. The two conditions in the case of *Guerin v the Queen* gives rise to a fiduciary relationship present with respect to Canada's dealing with the Métis: a) there is but one avenue of surrender, and that to the Crown and b) the Métis were at the mercy of the Crown's discretion. The Crown was therefore under a fiduciary obligation to exercise its discretion in the Métis' best interests.

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The System Established to Grant Métis Lands In Manitoba

Preoccupied as it was with the difficulties of building railways and establishing settlements throughout the West, the federal government attended to its obligations to the Métis under the *Manitoba Act* through a long-drawn-out series of Orders-in-Council and Statutes. The year following the enactment of the *Manitoba Act*, regulations were approved by the Governor in Council providing for the distribution of the s. 31 lands.

The program was characterized by delays, the seriousness of which was compounded by the pressures imposed by incoming settlers. In 1873, the Governor in Council amended the 1871 Order-in-Council, providing that “the children of half-breed heads of families alone are entitled to share in the reservation [of the 1.4 million acres]”. This inauspicious start is an indication of the problems that would continue to beset the land grant program. Dating from the passing of the *Manitoba Act*, two years were taken to set aside the land for the individual allotment; three years to decide that only children of half-breed heads of families were eligible to share in the grant; five years to determine how best to assess the Métis land claims; six years to decide on a course of action in issuing patents; and four more years to complete the issue of patents.

By *An Act respecting the appropriation of certain Dominion Lands in Manitoba* the federal government provided that the half-breed heads of family were to receive 160 acres of land or \$160 in scrip receivable in payment for the purchase of Dominion Lands. However, by Order-in-Council of March 23, 1876, money scrip was chosen as the sole means.

In 1873, the Manitoba Legislature recognized that Métis were selling their “claims” to speculators. The Legislature moved to protect Métis interests with the passage of the *Half-Breed Land Grant Protection Act*. The Act provided that no promise or agreement made by a Métis to convey title would be binding. In 1877, the year following the commencement of the drawing of allotments of 240 acres and the grant of money scrip to heads of families, the Manitoba Legislature amended the *Half-Breed Land Grant Protection Act*.

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In the North-West Territories

After the transfer of Rupert's Land and the North-Western Territory to Canada in 1870, there was a nine-year hiatus before the government took any action to carry through on its obligations under the *Rupert's Land and North-Western Territory Order*. In 1879, Parliament amended the *Dominion Lands Act* to provide for extinguishment of Métis Aboriginal title.

The government did not act to extinguish Métis Aboriginal title in the North-West Territories, as provided by the 1879 Act, until the Métis rebellion in the spring of 1885. Faced with a discontented and rebellious population of Métis who were demanding that their rights be recognized by the government, the Canadian Cabinet acted through an order-in-council on March 30, 1885.

By the order of March 30, 1885, the federal cabinet provided that the land grant scheme in extinguishment of Métis title, pursuant to s. 81(e) of the *Dominion Lands Act, 1883*, was to be based on scrip.

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Government Knowledge of the Failure of the Scrip System in the North-West

There are several indications that the federal powers were aware that the scrip system was not resulting in the transfer to the Métis of a land base, and the stability and income associated therewith.

The federal government knew of the hazards of the scrip system from the experience in Manitoba where a provincial law was passed as early as 1873 to protect Métis land claims from speculators. The failure of the system in Manitoba with particular reference to the predations of speculators was noted in several House of Commons Debates.

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Actual Capability to Extinguish Métis Aboriginal Title

The seriousness of the ten-year delay in implementing s. 31 of the *Manitoba Act* must be viewed in light of the tremendous pressures on land from incoming settlers who complained to all levels of government about the land-lock caused by the Métis land reserve. The order-in-council of May 26, 1871 allowed incoming settlers to take up homestead on the unsurveyed lands, with the result that some lands regarded by certain Half-breeds as theirs were taken up by white settlers. The land-lock became a source of aggravation for both levels of government, particularly provincial, and an opportunity for the speculators operating in the province to make money.

As early as 1873, before the final decision had been made regarding who was to be entitled to share in the s. 31 lands, the Manitoba government was apparently aware of the operation of speculators who were buying up Métis land rights.

In 1877, just as the actual distribution of lands to the

Métis children began, the Manitoba Legislature passed another amendment which validated any sale for consideration "duly made and executed by deed ... by any Half-breed having legal right to a lot of land as such out of the [1.4 million] acres". The amendment allowed any half-breed child to sell his or her interest in land. By this amendment, Métis children were effectively denied the common law protections relating to conveyance of property which applied to minors under the age of 21. The federal government did not disallow this amendment.

The Legislature retreated somewhat from this *laissez-faire* stance with another amendment in 1878. The amendment provided that after February 2, 1878, only Métis children over 18 years of age could convey their interest in land, if voluntary and with parental consent. Sales by any Métis children which had been made before February 2, 1878 were still valid.

It is significant that the federal government allowed this and other provincial acts to stand which placed land development interests ahead of the Métis rights in land.

It is apparent that speculation in Métis lands was i) a problem; ii) which both levels of government recognized; and iii) which neither level of government seriously tried to control. In fact, both levels of government exacerbated the problem of speculation in Métis lands. It can be seen that the Manitoba government, in particular, was motivated to encourage settlement at the expense of the Métis land grant, and made laws which removed existing common law protections of the children's interests. The federal government allowed Manitoba to do so. The federal government approved a land grant system to the heads of family and "supplementary" children based on scrip, in the knowledge that speculation was inevitable.

The land grant system in the North-West Territories was conceived late enough in the day that all government actors ought to have clearly recognized that scrip as a method of granting lands posed an unacceptable risk to Métis interests. Nevertheless, by an Order-in-Council dated March 30, 1885, the federal cabinet provided that the land grant scheme in the North-West Territories would be based on scrip.

The Royal Commission should unequivocally reject the position of the federal government that Métis Aboriginal title was extinguished by law. It should recognize that there is an outstanding claim to Aboriginal title in favor of the Métis in much of the north west and a claim to Treaty rights flowing from the Manitoba Act.

The Royal Commission should acknowledge that the federal government has both a constitutional and fiduciary obligation to settle Métis land claims.



ADMINISTRATIVE HISTORY OF THE MÉTIS LAND GRANT SCHEME IN THE NORTHWEST

During the era of Dominion Lands policy (1870-1930), the federal government attempted to satisfy the Aboriginal land claims of both Métis and Indians throughout the prairies.

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Dominion Lands Policy

Although Métis land rights were legally and constitutionally recognized prior to any extensive white settlement in the west, a land grant system to fulfill the terms of the *Manitoba Act* was not fully developed until 1876—long after immigration had commenced. The Métis grants, therefore, took place within the context of the famous National Policy, which was intended to stimulate economic development on a national scale. Two of the vehicles for this development were to be extensive western settlement and the construction of a national railroad. Dominion Lands policy involved the disposal of Crown lands on the prairies in such a manner as to achieve these two goals.

The numerous difficulties the government encountered in dealing with these obligations had decisive repercussions on the manner in which subsequent Métis land grant legislation in 1874 and 1879 was implemented. Section 31 of the *Manitoba Act* clearly stated the amount of land to be divided among Manitoba Métis. However, it was vague as to the eligible class of claimants and mute as to the method of allotment. These two uncertainties required six full years of bureaucratic unravelling.

The ten-year delay in implementing Section 31 of the *Manitoba Act* was particularly serious due to the fact that the Métis land reserve took up one-seventh of the area of the original Province of Manitoba until 1881. Aside from railway, Hudson's Bay Company and school land reserves, the government began in 1874-75 to reserve large blocks of land for groups of immigrants. Individual settlers and speculators who were eagerly seeking land, instead discovered a so-called "land lock", about which they bitterly complained to all levels of government. The Métis reserve appears to have been a particular source of aggravation: while the government continued its policy of reserving tracts of land for group immigration in the 1880's, it prepared to drop this practice in regard to Métis

claims as early as 1874. It was in that year that federal legislation was passed first permitting the use of scrip in satisfying any claims to Dominion Lands. With this authority, *An Act respecting the appropriation of certain Dominion Lands in Manitoba* set forth scrip grants as a possible alternative to land grants for the satisfaction of the Aboriginal title claims of the Métis heads of family who had been inadvertently excluded from the *Manitoba Act*.



Ernie Blais

Objections to the Métis reserve finally induced the federal Cabinet to pass an Order-in-Council in March of 1876 whereby the practice of directly granting land to Métis was abandoned forever in favour of issuing scrip coupons redeemable in Dominion land.

The Métis no doubt were ready to try an alternative to the lengthy, complicated procedure in which the 1.4 million acre grant had become enmeshed. The Order-in-Council, passed six years after the *Manitoba Act*, had only just determined the procedure for issuing patents for the Métis land reserve. A more noteworthy item is the reason given for the future use of scrip rather than land. It was not the delay in effecting the grant and the consequent difficulties for the Métis, but rather the obstruction to settlement and the dissatisfaction to be caused by any further Métis land reserves. The Order is a clear statement of the government's belief that land held in Métis hands would impede the progress of Macdonald's national policy. The attraction a system of scrip grants had over the old method of reserving large areas of land for subsequent allotment to individual grantees, was that scrip grantees gained no particular advantage over other land seekers (e.g. prospective homesteaders). Indeed, half-breed scrip could be redeemed only in those Dominion lands open to homestead entry. In this way, the Métis were thrown into competition with homesteaders and the many speculators in homestead lands.

The success of speculation in Métis grants may be attributed to a number of factors. First, during the five years following the 1870 conflict, many Métis moved away from Manitoba, doubting that they would ever receive land as a result of federal legislation. Many already had lost to European squatters the lands they had occupied before the transfer of Rupert's Land. Hoping to make a new life in the North West Territories, out of the way of European settlement, a good number of these people disposed of their land and scrip grants. Others became discouraged with the problems they encountered in obtaining patents to their allotments. Scrip grantees similarly met with a good deal of red tape in trying to convert their scrip coupons into land.



After a commercial depression in 1874-75, Manitoba experienced a revival of business activity in all manner of land dealings. The entry of Métis land and scrip grants onto the market coincided with this economic uplift and became a vital part of the province's commerce in the years leading up to the short-lived boom of 1881. It was estimated that between 1874 and 1878, eighty percent of all business transactions in Manitoba were affected by scrip and that ninety-nine percent of those involved in any kind of commerce, participated in scrip transactions.

Speculation peaked in 1881 when the CPR reached Winnipeg. Soaring land prices caused a further movement of settlers to the North West Territories whose population rose from a few hundred in 1871 to 50,000 in 1891. Syndicates were formed to provide easy credit and almost anyone who could find the money to do so, indulged in speculation, particularly in the lands of the CPR and the Métis lands in the vicinity of Winnipeg. At least until 1885-86, the free homestead system, like the Métis grants, was largely a speculator's tool and as a result, failed to achieve its purported aim of settling *bona fide* farmers on the land. Another similarity between the free homestead, in its early days and the Métis grants is that both systems were exploited by a great number of small operators whose primary occupation lay in some field other than real estate.

By 1885, the CPR was completed and immigration had slowed drastically. A world depression lowered grain prices and affected trade throughout North America. Discontent with federal policies was widespread among all classes of people but was most serious among the Métis and Indians who had the additional problem of European settlement threatening their lands and ways of life. Prior to the 1885 rebellion federal policy in regards to the Indians did not go much further than the desire to conclude treaties as land was required for settlement. The Métis of the North West discovered once more that their land holdings were threatened by settlers and surveyors who seemed to ignore their presence. Many Métis lost their land when the government allocated it to railway companies. In 1879, the *Dominion Lands Act* contained a provision that allowed for grants of land to North West Métis, "towards the extinguishment of their Indian title". No steps were taken however, to implement this legislation, despite persistent petitioning by the Métis throughout the 1870's and early 1880's. Not until the 1885 Rebellion began at Duck Lake was the "North West Half-breed Commission" created and given the authority to investigate Métis claims under the *Dominion Lands Act, 1879*. The use of scrip to 'satisfy' Métis land claims was by now a firmly established federal policy, despite the obvious failure of this system in Manitoba. With few variations, the methods of investigating, deciding on and dealing with Métis claims that were utilized by the 1875 Manitoba Half-breed Commission were adopted by the Commissions that operated in the North West Territories.



Scrip Commission meeting at Lesser Slave Lake, 1899. L-R: J.P. Prudhomme, Major James Walker, J.A. Coté and Charles Mair. R.C.M.P. Museum, Regina

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The Half-Breed Scrip System

The Half-breed Scrip Commissions either operated simultaneously with the Indian Treaty Commissions or followed them because the federal government had a policy of only issuing scrip in regions where the Indians had already ceded their territorial rights. The assumption underlying this policy was that the Métis would use their influence with the Indians in getting a treaty signed if their scrip grants were made contingent on such an event.

Beginning with the 1899 Half-breed Scrip Commission, Métis heads of family received the same amount of scrip as did their children. The scrip certificate could be exchanged for the scrip note once Departmental or Cabinet approval had been given to the claim. In Manitoba, this exchange took place in the Dominion Lands Offices with the result of a considerable amount of abusive and fraudulent practices on the part of government agents. For the North West Territories grants, the government held all scrip notes in Ottawa until they were applied for by the Métis grantee himself or until powers of attorney had been received if the notes were to be sent to someone other than the person named in the certificate.

Money scrip was redeemable at its face value by the bearer in the purchase of Dominion lands, specifically unoccupied Dominion lands open for homestead entry in the Province of Manitoba and the North West Territories (the even-numbered township sections). Since money scrip notes were accepted from the bearer, not just the Métis grantee and since the Department generally delivered the notes to the institution or person who had forwarded the certificates, alienation of this form of Métis grant appears to have been both anticipated and expected. Half-breed land scrip appeared to be much more restrictive in that it could be 'located' or applied to land only by the Métis grantee himself.

Land scrip certificates and land scrip notes carried distinct rights. With a land scrip certificate, the grantee could select a certain area of surveyed, unoccupied homestead land. The government therefore considered the scrip certificate to give the grantee an inchoate interest to land. Once the land had been located by the grantee, he



was entitled under the land scrip note to a credit towards the purchase of the land. The latter right was thought to be a personal one, coming into existence only after the right to locate had been exercised. Consequently, the assignment of scrip notes when the right to locate had not been exercised, conveyed no right to land to the assignee. A survey of Justice Rulings indicates that money scrip was considered to be personal property and land scrip to be real property.

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Métis Grants in the Territories—From Scrip to Cash

Following the Northwest Rebellion, the government not only commenced an issue of scrip to the Métis in the Territories, but also initiated a program to restrain excessive speculation in Dominion lands open for homestead entry. In 1886, the *Dominion Lands Act* was amended by discontinuing pre-emption entries in connection with homesteads as of January 1890. Although pre-emptions had been intended as incentives for the average farmer to increase his holding, resourceful speculators had so manipulated government regulations that less than 170,000 of the 2,215,000 acres entered for in Manitoba (7.65 percent) and less than 31,000 of the 1,210,000 acres entered for in the Territories (2.5 percent) were actually patented.

Land scrip notes were redeemable for the stated number of acres while money scrip was redeemable in land only to the extent of the stated monetary value. The interplay of these factors resulted in the gradual loosening up of restrictions on the alienation and transferability of half-breed scrip.

The distribution of "North West Half-breed Scrip" took place from 1885-1887. Money and land scrip certificates were delivered to the Métis grantee personally who signed a receipt for the certificate. Money scrip certificates then could be disposed of and the bearer of the certificate became entitled to the scrip note. Most money scrip passed into the hands of speculators who followed the Commission from place to place and paid on the average 68-3/4 percent of the scrip's face value.

The degree to which the government was willing to collaborate in the alienation of Half-breed scrip is indicated by its instructions to the Half-breed Scrip Commissioners to be guided by the market value, that is the price set by scrip speculators, in their examination of sale agreements. The government's decision to recognize powers of attorney for delivering Half-breed land scrip was professed to be based on the belief that land scrip notes were useless without the cooperation of the grantee in locating them. However, there is evidence that a considerable amount of land scrip was located by impersonation and fraud. In May 1900, the Department of the Interior agreed to forward land scrip notes to the grantee in care of a firm or individual who had accepted land scrip certificates as collateral.

The application of Half-breed land scrip to canceled

homestead entries by non-Natives is a good example of how homestead and scrip regulations were manipulated jointly to avoid settlement duties. In April 1888, the Department decided that half-breed scrip could be applied by the grantee upon canceled lands (due to non-performance of settlement duties) in the same way as Military Bounty Warrants, namely: upon the locator paying any extra fees or price imposed by the Land Board upon the land affected and also the value of any existing improvements. This decision was inconsistent with the government's claim of concern about speculation in homestead lands and half-breed scrip.

In 1900, special permission was granted to a homesteader to abandon his preemption and allow a half-breed to personally locate his land scrip upon the pre-empted land. After the location of the scrip, the half-breed was to assign the land to the homesteader and a patent was to be issued in the name of the assignee.

The application of half-breed scrip on a pre-emption exhausted the homesteader's preemption right. From 1909 to 1912, several more regulations were passed in regard to this particular use of half-breed scrip.

In 1921, it was decided that the same regulations governing the abandonment of homestead entries in order to apply half-breed scrip were to be extended to the holders of grazing leases, namely, the holder of a grazing lease in good standing could relinquish a quarter section or more from his lease for the purpose of applying half-breed scrip, but all such cases had to have the special approval of the Department and after the land described had been withdrawn from the lease, the scrip could be located and the land assigned in the usual manner.

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Extent of Alienation

The policy of opening scrip accounts for the convenience of large dealers in half-breed scrip appears to have been instituted at the turn of the century. From that time, any large holder of scrip issued by the Department redeemable in purchase of Dominion Lands, upon obtaining the permission of the Minister, could deposit at Ottawa any scrip to be drawn upon by the depositor from time to time and applied to the purchase of lands purchased from the Department. At the depositor's request, he could have an amount taken from his account in Ottawa and placed to his credit in any of the local Dominion Lands Agencies against which scrip could be drawn to meet payments for lands within the particular agency in which the land purchased was situated. No Agent of Dominion Lands was authorized however to accept any scrip order where there was only a credit established at the Head Office in Ottawa without special instructions from the Department.

Twenty scrip accounts held in the ledgers of the Public Archives record the purchase of 3,000 half-breed money scrips which were worth a total of \$337,984.19. Assuming that the Department of the Interiors' figure of \$2,095,817.00 is correct as the total money scrip issued in

this category, then 16.1 percent of this scrip found its way into the scrip accounts. Out of 14,849 half-breed money scrips which were issued, 3,000 or 20.2 percent of the total, were alienated into the scrip accounts. It is likely that these figures do not represent the actual amount of scrip purchased by these large speculators, since much of their scrip was probably resold to buyers of individual scrips and was not recorded in the ledger books.

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Half-Breed Land Scrip

According to the Half-Breed Location Registers found in the Public Archives, out of 9,866 land scrip notes which were issued, 9,463 of them were assigned to another party. *This represents an over-all assignment rate of 95.9 percent.* It is clearly evident that the bulk of the scrip was bought by individuals who purchased only one or two scrip notes. Anyone with an entrepreneurial instinct was quick to note that half-breed land scrip was the best bargain available to those of limited financial means desiring to acquire land.

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Half-breed Money Scrip

According to the Registers of Delivery of Manitoba and North West Territories Scrip, out of 14,849 money scrip notes which were issued, 12,560 of them appear to have been procured by speculators. *This represents an overall alienation rate of 84.6 percent.*

The final phase of federal Métis grants took place between 1921 and 1924, when the whole period of Dominion Lands policy was coming to an end. Ottawa had achieved its goals of settling the west and of building its railroad. Although the Métis grants failed to have any lasting or even significant benefit for the Métis, they had succeeded in satisfying most people that Métis claims had been dealt with. By 1930, the Métis themselves had largely given up protesting about scrip fraud and the scrip system in general and were no longer in the position to force the government's attention upon their claims.



The federal government's position on Métis Aboriginal title is that such title has been extinguished throughout Manitoba, Saskatchewan, Alberta and the Northwest Territories by the issue of land, scrip and cash grants to Métis from 1875 to 1924. The Métis contend that their share of the Aboriginal title to land is yet extant because scrip and cash grants do not constitute a proper or legal means of extinguishing the property rights recognized by the *Manitoba Act, 1870, An Act respecting the appropriation of certain Dominion Lands in Manitoba (1874)* and the *Dominion Lands Act, 1879*. Unlike Indian treaty rights, the compensation required for Métis land rights is legislatively and constitutionally stated in clear terms.

A MÉTIS LAND AND RESOURCE BASE (WAYS AND MEANS OF RESOLUTION)



Ron Swain

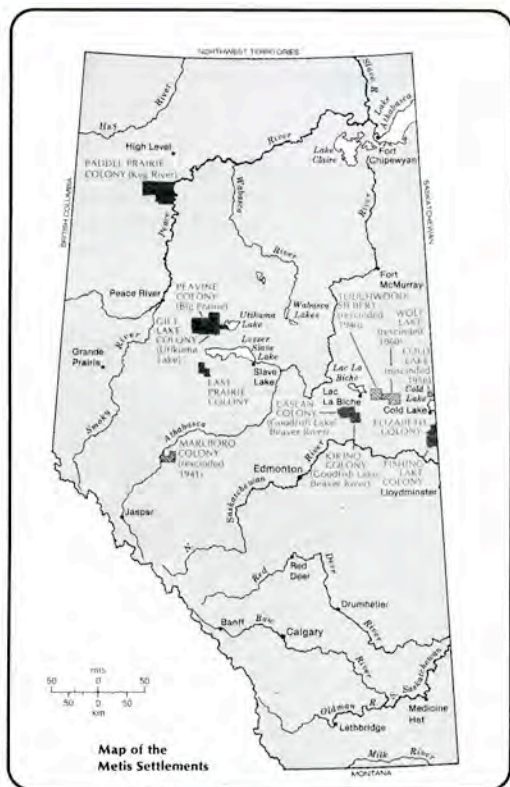
One of the priorities of the Métis National Council since its inception has been to gain constitutional protection for the limited amount of land which has been set aside for Métis in the twentieth century. The MNC pursued this priority during the FMC process with the Alberta Federation of Métis Settlement Associations which was represented on the MNC's Constitutional Committee. The Métis of Saskatch-

ewan, having worked with the Province to set aside lands for Métis after 1930, have witnessed the steady deterioration of the status of these lands as a result of their tenuous legal standing and steady encroachment on these lands by resource development and agricultural interests.

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Toward a New Métis Land Base

The problem of Métis landlessness is most immediate in predominantly Métis communities in the northern part of the prairies, northern Ontario and northeastern B.C. Their very existence is threatened by their inability to gain control over their surrounding lands and re-



sources. Provincial governments are leasing or selling lands traditionally used by these Métis communities to resource corporations and recreational enterprises with little or no benefit to the Métis who see the resultant jobs and contracts awarded to outsiders.

At the same time, provincial governments have imposed restrictive regulations on the Métis inhabitants of these communities making it impossible to derive a livelihood from hunting, fishing, and trapping. The Provinces maintain that Métis trappers have no rights, merely privileges, which can be removed in favor of resource extraction. Fishing is subject to the same arbitrary government decisions which are forcing out Métis fishermen in favor of tourism and sports fishing. Traditional hunting areas are being closed to Métis because of the creation of parks and game preserves. The problem of Métis landlessness is compounded by an expansion of Indian reserves at the expense of nearby Métis communities.

Consultations with Métis communities illustrate how important the establishment of a land base figures in the aspirations of Métis people. For some, it is a cultural base where the Métis people could practise their language and culture and pursue traditional lifestyles. For some, a land base is an economic base which would allow Métis to participate in employment and business opportunities surrounding the management and development of land and its natural resources. The MNC's Ron Swain told the Royal Commission's Round Table on Economic Development and Resources that the Métis have traditionally been entrepreneurs but need equity to overcome historic disadvantages. Inclusion of Métis in the land claims

process would inject much-needed capital or leverage into Métis capital corporations and businesses.

For some, a land base is a political base for consolidating the jurisdictions of Métis government as well as a source of tax revenue for Métis government.

The absence of a land and resource base has proven to be the foremost impediment to the social, cultural and economic development of the Métis Nation since the Battle of Batoche and the execution of Riel. Métis people believe the solution to their landlessness lies not in a general discussion of Aboriginal and Treaty rights — which inevitably focus on other Aboriginal peoples whose land claims are already recognized by Ottawa — but in the resolution of Métis land rights in the *Manitoba Act* and the *Dominion Lands Acts* and in those areas where Métis were not dealt with at all. For Canada to come to terms with the Métis, it must deal with the effects of its devastating Métis land grant and scrip policies and its contemporary land claims settlement process.

For northern communities, the preferred method of land acquisition is a direct transfer of title to Métis communities in fee simple including all natural resources. These lands and resources would be exempt from taxation by governments other than local Métis government. The land base would be collectively owned with formal title resting with local Métis government.

In addition to holding formal title to and regulating Métis lands and resources on the Métis land base, local Métis government should have co-management rights with the Province to lands surrounding the Métis land base. This would enable Métis governments in these communities to negotiate resource use agreements with resource corporations to ensure Métis employment and business opportunities in the territory surrounding the Métis land base. It would also enable the Métis governments to participate alongside the Provinces in the management of public lands and natural resources in this territory.

Variations of this land and resource policy can be applied in the mid and southern parts of the Métis Homeland in areas where Métis may not seek a residential land base but do wish access to land as an economic base. Through their economic development corporations, Métis could participate alongside joint venture partners from the private sector in projects such as forestry, oil and gas, and tourism and recreation. Certain provincial areas would be identified for specific economic use and short or long term leases depending on the resource use. These leases would be accompanied by land or resource use agreements between the Métis, the Province, and private corporations.

The Métis also seek ownership of certain lands of great historical and cultural importance. One such site would be the land in and around Batoche, Saskatchewan a symbol of the last major Métis resistance and sacred shrine to Métis martyrdom. Since 1885, the Métis have maintained strong spiritual, cultural and national affinity with Batoche.

The large number of Métis migrating to urban centers and the relatively high birth rate of Métis families currently living in urban areas also speaks of the need to develop new land policies in the urban areas. Many Métis expressed frustration of being priced out of the property market in urban centers. While expanded social and individual home ownership plans represent an opportunity to redress housing shortages, the MNC believes that future extensions of municipal boundaries should include setting aside a percentage of the lands for Métis living in urban centres. Such a land planning scheme will assist in redressing the acute housing shortages that face many Métis families.

While primary responsibility for settling Métis land claims rests with the federal government, the Provinces have a critical role to play in the claims resolution process. Most of the land belongs to the Crown in right of the Provinces and a good percentage of these lands are subject to third party interests.

The Royal Commission should recommend that existing constitutional mechanisms be used to protect existing Métis lands. In the case of the Métis Settlement Lands, the Royal Commission should call on the federal government to cooperate with the Province of Alberta in amending the *Alberta Act* according to the section 43 amending formula in order to protect the fee simple title held by the Métis in the Constitution of Canada.

The Royal Commission should call on the Provinces of Alberta and Saskatchewan to protect other lands previously set aside for Métis by way of Provincial-Métis land transfer agreements which could be constitutionalized under section 35(3) of the *Constitution Act 1982*.

The Royal Commission should call on the federal government to assume the major responsibility and role, based on its trust and fiduciary responsibility for dealing with the Métis as an Aboriginal people and as a matter of British and Canadian policy and law, for the establishment of a separate claims process for the Métis south of the 60th parallel.

The federal government should make available federal Crown lands for the purpose of satisfying the need of Métis communities for a land base. It should also assist in the purchase of lands for the Métis or compensate the Provinces for the loss of provincial Crown lands.

The Royal Commission should recommend that lands be set aside for Métis in future extensions to municipal boundaries.

North of 60, the federal government should commence negotiations immediately with those Métis regions that are not currently in the claims negotiation process. The land quantum should be based upon the Dene-Métis land formula with self-government agreements incorporated into the claims negotiations.

MÉTIS SELF-GOVERNMENT

Traditional Métis Self-Government

As an Aboriginal people and a historic minority nationality, the Métis people have an inherent right to self-government and self-determination. Since the emergence of the Métis Nation in the eighteenth century, the Métis have asserted and exercised their right to govern themselves through democratic structures and procedures. There is a rich history of democracy, as evidenced through both traditional gathering practises and in the formation of early Métis political structures and governments.

The Métis asserted their inherent right to self-government as the prospect of Confederation with the Dominion of Canada approached. In the summer of 1869 survey crews from Canada began marking out the Red River Settlement in disregard of existing property use. They were stopped by the Métis under the leadership of Louis Riel. During the fall of 1869, with the rumor of Canada sending a governor to take over Rupert's Land, the National Committee of the Métis was formed.

Failure of the Dominion government to respect the land rights of the Métis in the North-West led to the formation of another Métis Provisional Government at Batoche on March 19, 1885. As in 1869, the Métis government demanded responsible government, Parliamentary representation, local control of public lands as well as confirmation of land titles according to the riverlot system of survey. This time, however, their legitimate demands were met by military force rather than negotiations.

The Inherent right of Métis Self-government in the Canadian Constitution and International Law

The Métis Nation takes the view that Métis self-government is already recognized and confirmed in the Constitution of Canada. This is why the Métis Nation supported the inherent right of Aboriginal self-government as set out in the Charlottetown Accord. The Royal Commission on Aboriginal Peoples has also recognized the existence of Aboriginal self-government within the Constitution of Canada. From an in-depth analysis of Canadian constitutional history the Royal Commission concluded that Aboriginal political systems survived the union resulting from confederation and the patriation of the Constitution in 1982 and that self-government is an organic concept stemming from the people. The Commission sets out a theoretical framework for the assertion of Aboriginal self-government and its more formalized reception into Canadian law. It also outlines the practical steps required for Aboriginal people to gain explicit recognition of their rights.

The Commission goes on to suggest that there are two

preconditions for exercising self-government: the existence of a constitution and defined membership. According to the Commission "An Aboriginal group that has a constitution and a reasonably definite membership is in a legal position to exercise its right of self government within the core areas of Aboriginal jurisdiction. The MNC believes that these two preconditions are equally applicable to Métis self-government.

Self-determination forms the background to the assertion of the right of the Métis Nation to self-government. Self-determination, first recognized in Article 1 (2) of the Charter of the United Nations in 1945, provides that one of the purposes of the Charter is to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".

This principle of self-determination has been included in important international instruments passed subsequent to 1945. For example, the *Declaration on the granting of independence to Colonial Countries and Peoples* provides that "all peoples have the right to self determination, by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". In addition, a variation of this formulation can be found in the *International Covenant on Civil and Political Rights* (1966) and the *International Covenant on Economic and Social and Cultural rights* (1966). A further elaboration can be found in the *Declarations of Principles of International Law concerning Friendly Relations and Cooperation Among States* in accordance with the Charter of the United Nations (1970). While this instrument is not a Covenant and thus carries less weight in international law, it nonetheless is informative of the nature and scope of the right of self-determination.

The Métis Nation, while believing that it possesses the right of self-determination in the context of international law, has consistently pursued the recognition of its autonomy within the confines of the Canadian state and has vigorously advocated the need to negotiate self-government arrangements. The Métis Nation Accord is the latest expression of this position and one that dovetails with the current conception of self-determination adopted by the Government of Canada. However, the federal government's current refusal to adopt the Accord, merely illustrates its failure to live up to its watered down positions taken in the international community.

The United Nations' *Draft Declaration On the Rights of Indigenous People* further enhances the position of the Métis Nations' view that it possesses self-government within Canada as a distinct indigenous peoples. The UN document builds upon the notion that self-determination for indigenous people will be of a different character than that afforded to other peoples. However, provisions along with the autonomy provisions of the Draft recognize the ability of the Métis Nation to establish self-government rights and to establish Métis self governing institutions in the urban area. The autonomy provision recognizes that "Indigenous peoples have the right of autonomy and self-government in matters relating to

their internal and local affairs, including health, housing, employment, social welfare, economic activities, land and resource management, environment and entry by non-members, as well as internal taxation for financing these autonomous functions .

The *Nuuk Declaration* also applies these rights to Indigenous people who do not possess an identifiable land base. Paragraph 5 expressly deals with the situation of landless Indigenous peoples. It provides that "Where appropriate the foregoing should not be interpreted as restricting the development of self-government and self-management arrangements not tied to indigenous territory and resources".

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Legislative Recognition of Existing Métis Self-Governing Institutions

Existing Structure of Métis Associations

Métis associations constituting the MNC are a contemporary expression of the centuries-old struggle of the Métis to be self-governing. Despite their lack of legal authority and resources needed to exercise their mandate effectively, Métis associations are the nucleus of Métis self-governing institutions. They are democratic bodies with province-wide, "one-person, one-vote" ballot box elections of leadership.

Membership participates in the provincial bodies by way of local associations and elections are held at the community level. Members elect their local leadership on a local basis, their regional councilors on a regional basis, and their provincial executives at large. Through this system, local associations give direction to regional councils which give direction to the provincial executive or council.

To strike a proper balance between regional and provincial interests, provincial councils consist of a few officers elected at large and one or more members of each regional council. Provincial councils serve as the political voice of the Métis people in each province. They articulate Métis objectives and needs, develop policy for dealing with governments to achieve these objectives, and participate in the design and delivery of programs and services directed toward Métis social and economic development.

The democratic, "bottom-up" approach to political organization adopted by the Métis associations has ensured that ultimate responsibility for agencies and institutions delivering programs and services to Métis people rests with elected leaders who are accountable to the grass-roots membership. In recent years, the Métis associations have moved to enhance their decision-making process by establishing Métis Senates. Consisting of respected elders and former leaders, these are advisory bodies which can also be called upon to resolve disputes within the organizations.

While the Métis people have worked hard to build democratic institutions, their associations are seriously

circumscribed by lack of legal authority and resources. Métis associations are restricted in their capacity to grow by the narrowness of the *Non-Profit Corporations Acts* under which they are registered. They have never been given even the limited legal basis accorded Indian band councils under the *Indian Act* or the Métis Settlement Councils under Alberta legislation. Nor have they been provided with sufficient financial resources to effectively exercise their broad mandate.

Principles to Guide Framework Legislation Recognizing Métis Associations

The time has come for Canada and the Provinces to legally recognize the democratic structures and procedures which Métis people have developed to govern their affairs. Where Métis Nation representative bodies seek this type of legislative framework the following principles should govern the process.

First, the federal and provincial governments must respect the integrity of democratically constituted Métis governing bodies accountable to their members at the ballot-box and should not foster other institutions outside the control of the Métis electorate. Experience has proven that the model of single purpose institutions independent of Métis governing bodies spawns a multiplicity of such institutions without central coordination and overall policy direction. This places additional strain on limited resources and impedes the development of common strategies for dealing with non-Métis government.

Second, federal and provincial governments must respect the integrity of the Métis people and not lump them in with other Aboriginal peoples. The Métis Nation categorically rejects any move to establish "status-blind" Aboriginal organizations which would somehow encompass all Aboriginal interests including Métis interests in urban settings.

Third, the right of Métis to govern themselves flows from the Métis people and is not a creation of federal or provincial legislation or constitutional amendment. Consistent with their inherent rights, the Métis people must have the ability to determine their internal governing structures and procedures through which the powers of their governing bodies set out in law can be exercised. Accordingly, any statutory recognition of Métis governing bodies must respect the right of the Métis electorate to establish and amend the constitutions of their political institutions and must provide for these constitutions or amendments thereto to be given legal force.

Fourth, all Métis people have a right to self-determination and self-government but the extent to which this right can be exercised will vary according to their circumstances, needs and aspirations. Métis government on an ethnically exclusive Métis land base can enact laws and enforce them amongst all people residing on a Métis land base. Off the land base, Métis government can enforce its laws and policies only among those Métis who choose to participate in its affairs.

Fifth, there must be an adequate financial base for

Métis political associations or their successive governing bodies in order for them to fulfill their broad mandates. The existing situation underlines the disparity between the financial capacity of Métis associations and that of other Aboriginal governing bodies and the effect this has on their ability to operate.

Sixth, while self-government for Métis on a land base will look different than that off a land base, certain democratic and rule of law principles will apply.

The Métis Nation also believes that Métis governments must be subject to the rule of law, that is to say Métis government should only affect the lives of Métis where (1) legislation or an administrative order has been properly passed; (2) applied by legal means; (3) carried out by proper authorities; and (4) administers the same treatment to all Métis. Métis do not seek arbitrary measures, rampant patronage, nor despotic rulers.

..... *Evolving Models of Métis Self-Government*

Local Self-Government

Local self-government for Métis on a land base would be suitable to the predominantly Métis communities in the northern part of the provinces, communities that are presently powerless to regulate major economic development projects nearby or to participate in their benefits. All Métis on the land base would be subject to the laws of the Métis government by virtue of residence. In addition, to powers and responsibilities normally associated with municipalities, these Métis governments would own, manage and tax the lands and resources of the designated land base and would enter into co-management arrangements with the Provinces or territories for lands and resources surrounding the land base.

Off a land base, the decisions of Métis local self-government institutions would apply only to those Métis who chose to participate in their affairs.

It is expected that Métis local self-government bodies both on and off a land base will have a broad area of responsibility for matters such as education, training and employment, housing, social services, justice, health and economic development. In many cases, they will serve as delivery agencies for programs and services organized at the provincial or regional level. They could also be involved in the enforcement and administration of justice.

The Métis Settlements of Alberta provide the sole example of Métis government on a land base and encompass many of the above features. The *Métis Settlements Act, 1990*, established a Métis government system consisting of individual Settlement Councils, a General Council representing all eight Settlements, and an Appeals Tribunal or judiciary.

The locals of Métis associations will evolve into local self-government vehicles for Métis people off a land base. They will remain the vehicle through which Métis



participate in larger Métis legislative and policy-making bodies and their affiliated institutions. In urban centres, Métis associations are restructuring their organizational base to create urban authorities which allow their locals within each city to develop policies and deliver programs on a city-wide basis in matters such as economic development, housing and child and family services. Métis locals are the building blocks of the Métis movement and are fully integrated in the provincial and territorial Métis Associations. Currently there are some 500 locals throughout the Métis homeland. They do not benefit from INAC's band funding policy.

Regional Self-Government

The Métis constitute a significant part of the population in the northern part of the prairie provinces, in large areas a plurality or majority of the population. Historically, these regions have been denied effective local or regional government on the grounds they did not have an adequate tax base and hence were governed directly by the Province. The public forms of regional government emerging in these areas offer potential for varying degrees of greater Métis political participation.

Any plan to accommodate Métis self-government through a public or non-ethnic form of regional government under de facto Métis control would have to include guarantees for Métis in the event they became a minority as happened in Manitoba after 1870. One approach would weight representation in regional governments in favor of the Métis. This could be accomplished by basing representation on communities rather than population, thereby ensuring hegemony of the more numerous but less populous Métis communities over the less numerous but more populous growth centres (with their largely non-Aboriginal transient populations). Another method would guarantee a certain number of seats on regional government councils for the Métis.

Another model for greater Métis political participation at the regional level is the Regional Council adopted by the Métis Nation of Alberta as the Métis governing body in six Region. This regional body does not overlap with public forms of government and concentrates on providing Métis specific programs and services, some of which are designed at the provincial level but delivered in a decentralized manner through the regions. A framework agreement between the Métis Nation and the Province of Alberta is partially directed toward the development of the administrative infrastructure of the six Regional Council and involving them in sectoral policy and program areas.

Provincial and Territorial Legislative Assemblies

Métis associations are moving toward the transformation of their Provincial and Territorial Councils into Métis Legislative Assemblies in order to govern the affairs of the Métis Nation in each province and territory. The Legislative Assemblies would represent all the Métis of the province/territory and would consist of elected local government leaders on and off Métis lands. They would be mandated to enact legislation and administra-

tive orders at periodic assemblies. A provincial executive council or Cabinet elected on a province-wide basis would be empowered to implement the legislation through affiliated institutions.

National Métis Parliament

It is also expected that a national Métis Legislature or Parliament will be established to represent the Métis Nation in the national and international forum. Its main role will be to represent the Métis Nation in dealing with the Government of Canada on matters affecting all Métis people and government bodies such as federal funding, constitutional issues, and international issues that impact directly on Métis people. The Métis Parliament will also assume responsibility for the establishment and funding of national institutions such as cultural and communications institutions.

Given the similar electoral systems and structures of the Métis associations, it is expected that the Métis representatives elected at the local and/or regional level will also represent their constituencies in the Métis Parliament together with the provincial executive officers and members of the provincial Métis Senates. It is likely that a president elected at large by all Métis Nation electors would implement the legislation of Parliament between sessions.

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Representation in Parliament and Provincial Legislatures

The Métis Nation has consistently supported the proposal for guaranteed Aboriginal representation in Parliament and the provincial legislatures. It has based its support on the principle of Métis autonomy within the Canadian federation. Toward this end, the Métis Nation seeks self-government for Métis as well as participation in the political institutions of the larger society. The Métis see the precedent for this position in the demands of Métis Provisional Governments in Manitoba in 1869-70 and the Northwest in 1885 for Parliamentary representation for the Métis in addition to self-government by way of Provincehood.

The Métis Nation Accord presents a superior process for pursuing self-government initiatives than that offered by isolated tripartite processes. It would tie together federal, provincial and territorial governments and Métis Nation representative bodies in an enforceable and justiciable agreement to negotiate tripartite self-government agreements.

Given the existing Métis political infrastructure and the guiding parameters of the Métis Nation Accord, tripartite negotiations should result in concrete agreements to vest Métis political institutions with the authority and financial resources they require to fulfill their mandates. Much of the focus of the tripartite negotiations and agreements will be on the affiliated institutions of Métis governing bodies and the essential role they must play in the economic, social, and cultural development of the Métis people.

The Royal Commission should recommend that all federal and provincial government initiatives on Aboriginal program and service delivery matters as they relate to Métis people should be channeled through separate Métis institutions under the control of Métis Nation representative organizations as identified in the Métis Nation Accord or their successor Métis government bodies.

The Royal Commission should recommend the enactment of federal and provincial framework legislation for the recognition of the Métis National Council and its member associations or their successor legislative bodies or governments and their authority to govern the affairs of the Métis Nation. The legislation should be enacted as a complement to the implementation of the Métis Nation Accord and should encompass three essential elements:

- (i) Métis people could establish and amend their own internal constitutions setting out the structures and procedures through which their political institutions can exercise powers set out in law and these internal constitutions plus any amendments thereto must have the force of law;
- (ii) Métis political institutions should be vested with authority appropriate to the circumstances of their electorates; and
- (iii) there must be adequate resourcing of Métis political institutions.

The Royal Commission should recommend the adjustment of the existing separate tripartite process agreements which should serve as means of implementing the terms of the Métis Nation Accord. More specifically, the Royal Commission should recommend that the following provisions of the Métis Nation Accord with respect to self-government should be incorporated as guiding terms of reference for the tripartite processes:

- (i) **Self-government Negotiations:** The parties agree to negotiate in good faith self-government for the Métis including issues of jurisdiction and economic and fiscal arrangements with the objective of concluding tripartite self-government agreements elaborating the relationship between the Métis Nation, Canada and the Provinces;
- (ii) **Devolution:** Canada and the Provinces will negotiate the transfer to Métis self-governing institutions the portion of Aboriginal programs and services currently available to Métis;

The Royal Commission should recommend that the other provision of the Métis Nation Accord on issues such as land and resources and enumeration, should be incorporated as guiding terms of reference into the tripartite negotiation agreements.

The Royal Commission should recommend that these key fiscal provisions of the Métis Nation Accord should also be incorporated as guiding terms of reference into the tripartite negotiation agreements.

The Royal Commission should recommend that agreements from the tripartite negotiation process should be given force by way of special federal and provincial legislation which could be amended only by a special legislative majority and Métis assent. It should also call on the federal government and provincial governments to use the Section 43 amending formula or the section 35 treaty process to give constitutional protection tripartite self-government agreements.

MÉTIS NATION ECONOMIC DEVELOPMENT

..... *A Profile of Métis Participation in the Economy*

Data which is available for Métis indicates that Métis people share not only the poor socio-economic conditions of other Aboriginal peoples but suffer additional disadvantages due to the denial of federal services and benefits available to other Aboriginal peoples. Preliminary analysis of the limited data on Métis available reveals that the Métis suffer lower education and employment levels than the Canadian population as a whole and in some instances, other Aboriginal peoples. Given the large percentage of the Métis population under the age of 15 and the increasing minimum educational and training requirements for participation in the economy, it is imperative to address these disparities.

The findings of the 1991 Aboriginal Peoples Survey (APS) demonstrate that about 17% of Métis population of Canada of the age fifteen and over had less than grade 9 education, in comparison with 13.9% of the total population of the country.

The data demonstrates that Métis people's educational attainments were worse than those of Indian people in 1991 in the area of post-secondary education. Only 3.7% of Métis had completed university as apposed to 11.4% of Canadians as a whole. Indian people's participation in university was 5.1%.

The findings from the 1991 APS Survey demonstrate Métis people's desperate employment conditions. In 1991, Métis population of the age fifteen and over had an unemployment rate of 19% that was almost double the national average of 10.3%.

The 1990 data paints a gloomy picture of Métis employment income. Over 60% of Métis people in Canada earned nothing or less than \$10,000 in the year of 1990. Moreover, only 6.2% of Métis people had an income of \$40,000 and over; that was less than half of the national average (12.7%).



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Metis Education and Training

Many of the problems confronting Métis people in the education system are shared by other Aboriginal peoples. Métis children are alienated by a curriculum which is not socially or culturally appropriate or supportive. The location of many Métis communities requires Métis youths to travel far from home and immerse themselves in an unfamiliar and sometimes hostile environment in order to access further education. Family literacy barriers compound the problems of an unsupportive educational environment.

Government officials are much more aware of the Indian communities and cultures within their jurisdictions than they are of the Métis. In many cases, they confuse the needs of Métis with those of Indians. Provincial departments contract services with and to reserve communities and the federal government. There is no formal mechanism in place for them to contract directly with Métis organizations for the delivery of programs. There is little direct communication between Métis organizations and education authorities.

The denial of federal financial assistance comparable to that enjoyed by status Indians is a major impediment to Métis post-secondary education. The significant gap between the percentage of Indian and Métis students attending university can be attributed directly to the absence of federal financial assistance for Métis education.

There is clearly a need for the Government of Canada to enact a *Métis Education Act* to define the parameters for federal funding of educational programs for Métis people. Federal legislation governing education is not unknown in Canada. The Canadian government has taken legislative action in the past to provide impetus in the area of education. Legislation supporting vocational education is a case in point. The proposed *Métis Education Act* would regulate the expenditure of all federal monies designated for any and all educational initiatives directed toward Métis people. The *Act* would govern monies paid out through cost-sharing agreements with other governments, federal departments, Crown Corporations, private corporations and any other contractors. The *Act* would stipulate that monies shall not be expended unless the Métis people through their representative bodies have adequate involvement in the planning and development of the project and that continuing involvement is an essential part of the operation and evaluation of the project. Applications from Métis educational and training institutions, community groups, and organizations would get priority in the funding of educational programs. The *Act* would specify the funding available each year to meet the goals of Métis education strategies, including an allocation for Métis post-secondary education grants. Fiscal policy would be established and priorities for spending would be set jointly by Métis Nation governing bodies and the federal government. Management committees composed of federal and Métis government representatives would moni-

tor the progress in meeting predetermined goals.

A recurring theme of Métis presentations on education is the need for greater Métis participation in the governance of school boards as they impact on Métis students. While Métis organizations are studying the feasibility of a Métis controlled K-12 system, alternative education programs for Métis students should be explored. Alternative education programs for Métis students could be operated by a Métis board of directors in association with a neighboring public board or district.

The Métis Society of Saskatchewan responded to the alienating effects of the mainstream education system by establishing the Gabriel Dumont Institute (GDI) in 1980. GDI is the only Métis controlled post-secondary educational institution in Canada although the Manitoba Métis Federation is working on the establishment of a Louis Riel Institute.

At a broader level, GDI and its parent, the Métis Society of Saskatchewan, are in the process of determining the need for and feasibility of a Métis controlled K-12 system. They are also working on the development of a Métis Education Act which would be put forward to the Government of Canada for consideration and enactment and which would provide for concerted federal action on Métis education and training initiatives. GDI is also instrumental in training the future administrators of Métis self-government in Saskatchewan.

The Royal Commission should recommend that Parliament, in consultation with the Métis Nation, develop a Métis Education Act to ensure federal funding of Métis education in a manner consistent with the aspirations of the Métis people, including federal benefits for Métis post-secondary students, and whenever possible through institutions developed and managed by Métis people and their governing bodies.

The Royal Commission should recommend that the federal and provincial/territorial governments work with the Métis Nation to strengthen Métis education and training institutions and to establish new institutions where needed.

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Métis Employment

Among the five provinces and one territory investigated, the Métis population in Ontario in 1991 had the best labour force activity performance in comparison with Métis people of other provinces. The Métis people in Ontario had an unemployment rate of 13.6% in 1991; that was 5.4% lower than the national average of Métis people (19.0%). However, it was still substantially higher than the provincial rate of the Ontario total population (8.5%). In terms of participation rate, More Métis people in Ontario (73.4%) were in the labour force than Métis people of the whole nation (68%).

The Métis people in the provinces of Saskatchewan and Manitoba had the highest unemployment rates in comparison with Métis people in other provinces in 1991. According to the APS Survey, 20.9% of Métis people in Saskatchewan and 20.1% of Métis people in Manitoba were unemployed, that was almost three times of the provincial rate of Saskatchewan and two and half times of the provincial rate of Manitoba.

Among the five provinces and territories, the Métis population in the Northwest Territories and Ontario had the best records of occupation distribution in comparison with Métis people of other provinces. According to the 1991 APS Survey, 19.7% of Métis people in the Northwest Territories and 19.1% of Métis people in Ontario were employed in professional positions.

The Métis people in the provinces of Alberta (11.2) and Manitoba (11.9) had the lowest employment rates in the category of professional occupations. Meanwhile, the Métis people in the provinces of Alberta and British Columbia had the highest proportion of people who worked in non-professional occupations (29.1% for Manitoba and 28.4% for British Columbia).

Among the five provinces and one territory, the Métis population in the Northwest Territories and Ontario had the best records of employment income in 1990 in comparison with Métis people of other provinces. According to the 1991 APS Survey, 47.8% of Métis people in the Northwest Territories and 51.9% of Métis people in Ontario earned nothing or less than \$10,000, that was substantially lower than the national average for Métis people (60.2%). In addition, 17.7% of Métis people in Northwest Territories and 10% of Métis people in Ontario had an income of \$40,000 and over, that is much higher than the national average for Métis people (6.2%).

The Métis people in the provinces of Manitoba and Saskatchewan still had the worst record of employment income. First, Métis people of Manitoba and Saskatchewan had the largest proportions of population who were in the category of lowest employment income (64.2% for Manitoba and 67.8% for Saskatchewan). Second, a very small fraction of them (4.1% of Manitoba and 3.6% of Saskatchewan) earned \$40,000 and over in the year of 1990.

Métis Nation representative bodies agree on the partnership principals governing the Pathways process, one based on co-management of the federal government's employment and training programs as they impact on Aboriginal peoples by the federal human resources department and Aboriginal peoples. However, the Métis Nation has always interpreted these principals in terms of a partnership between the Métis Nation and the Government of Canada. The pan-Aboriginal or "status-blind" approach adopted by the federal government in structuring Aboriginal representation on the Pathways management boards undermines the partnership of the Métis Nation and the Government of Canada and for this reason Pathways is not working for the Métis across the Métis Homeland.

Métis people have consistently called for more community-based training programs. They looked to Pathways as a means of building community infrastructure necessary for program delivery. Unlike Indian and Inuit communities, the Métis do not have access to community development funding from CAEDS to build this capacity. Métis people have seen the "pan-Aboriginal" management of the Pathways process taken over by Indian groups that already have community infrastructure in place. The inequities of the present system leave the Métis in double jeopardy—lacking the infrastructure for program delivery and not being able to access the funding to develop the infrastructure through Pathways because the organizations with established infrastructures have taken control of the process.

The Royal Commission should recommend that the federal government restructure the Pathways program and establish a new partnership between Canada and the Métis Nation by establishing Métis only management boards and decision-making processes.

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Métis Economic Development and Financial Institutions

In order to improve the position of the Métis in the economy, Métis associations have concentrated on the acquisition of a land and resource base, development of Métis management and a educated and trained labor force, and improvement of access to capital for Métis businesses. With their limited resources, Métis associations have worked hard to develop an economic infrastructure for Métis communities by way of education and training institutions and economic development and financial corporations.

During the past decade Métis associations have established economic development and financial institutions to foster the suppressed entrepreneurial drive of the Métis people and provide Métis with access to capital. These institutions provide commercial loans to Métis businesses and business advisory services to assist in the preparation of business plans and management strategies. The governing principle underlying these institutions is sound and should be reinforced in their ongoing development: there must be control by Métis self-governing organizations which set the priorities of the economic development institutions and are accountable for their performance to the Métis electorate but otherwise permit them to freely carry out their mandate according to sound business principles and practices.

Despite the impressive number of Métis business start-ups and turn-around situations and related job creation, Métis economic development and financial corporations face a number of serious obstacles to achieving their broad objectives. These obstacles emerge out of the shortfall of funding to the Métis corporations relative to other Aboriginal peoples and the related limitations on

the scope of the corporations both in terms of their broad functions as well as specific services.

The denial of community economic development funding to Métis corporations is particularly discriminatory in view of the fact that the Métis already face serious disadvantages relative to other Aboriginal peoples due to their lack of a land and resource base and the application to them of federal and provincial personal income and corporate tax laws. Community economic development facilitates a more balanced development than the failed selective economic program interventions of the past.

The description of acute disparities in the funding of Indian and Métis economic development institutions is not meant to detract from the hard-earned gains of Indian peoples but rather to focus on the extreme difficulties imposed on the Aboriginal Capital Corporation's (ACC) by the exclusionary policies of the federal government. Métis ACC's have proven their ability to assist individual Métis entrepreneurs in developing their business plans, accessing equity capital assistance, and providing them with commercial loans for the operation of their businesses. However, it is impossible for them to tackle the impediments to entrepreneurial development rooted in the depressed social and economic conditions of Métis communities.

In addition to providing commercial loans and business advisory services, Métis ACC's or related economic development corporations require an additional capacity to promote community economic development and resource development initiatives. Métis Community Economic Development Authorities will be used by Métis communities to identify priorities and opportunities, develop their social and physical infrastructures to support economic development, raise investment capital, promote existing opportunities to potential investors, and plan projects and joint ventures. Métis ACC's or related institutions require new funding to establish these Métis Community Economic Development Authorities which will assume responsibility for planning and infrastructure development.

Métis ACC's or related institutions also require the capacity and funding to establish regional Métis Sectoral Development Institutions (SDIs) which will conduct resource inventories on behalf of Métis communities, identify specific employment and business opportunities for Métis in resource management and development-related projects, participate in the negotiation of resource use agreements with government and private corporations, and serve as a vehicle for Métis participation in these projects. Through SDIs, Métis communities within specific regions can also pursue the numerous employment and business opportunities related to resource development projects.

Métis associations see the need for greater Métis control over the design and implementation of CAEDS initiatives as they relate to Métis. Specific problems encountered by Métis ACC's with program content, eligibility criteria, etc. point to the need for greater Métis

involvement in the larger decision-making process. Their move toward becoming External Delivery Organizations for the Aboriginal Business Development Program (small business grants) is a step in this direction and is in keeping with the "single window" approach to financial services.

Two financial services which have not been actively promoted by CAEDS but offer considerable potential for Métis are mini-loans and venture capital. The two services address situations at opposite ends of the business spectrum which have not been met adequately by existing financing programs. Micro-lending is an appropriate response to the financial needs of small entrepreneurs whose loan requests are too small for conventional lenders (and the CAEDS programs) to consider. Venture capital is an appropriate response to companies with the potential for significant growth that is slowed by the debt servicing requirements of conventional loan programs.

The Royal Commission should recommend that the federal government eliminate the shortfall in the capitalization of Métis ACC's relative to that of other ACC's.

It should recommend that Métis be given access to resources to establish Métis Community Economic Development Authorities and Métis Sectoral Development Institutions to place the Métis on the same playing field as other Aboriginal peoples in the important areas of community and resource development.

It should also recommend that the scope of the ACC program should be expanded to permit more innovative forms of financing such as micro-lending and venture capital by Métis ACC's.

SUSTAINABLE ECONOMIC DEVELOPMENT AND ENVIRONMENTAL PROTECTION

There is one overriding goal that the Métis remain committed to: securing a land and resource base for the Métis people. This goal may be within our grasp immediately and so our strategy for the land, resources and natural environment in the Métis Homeland has several objectives to protect our long-term interests in the meantime. Unlike Treaty Indians on reserves, our future land base is now in the public domain and, we are told, being managed in the "public interest". All too often the public interest dictates that land and/or resources are alienated and assigned to



Gary Bohmet

private interests which are not accountable nor concerned with sustainability for the benefit of future generations.

The purpose of the MNC environmental strategy is to incorporate Métis values and traditions into management of the environment and natural resources. This will ensure sustainability for future generations in ways that still provide for social, cultural and economic opportunity today. This strategy depends in large part on establishing a partnership with government. It is therefore very important that the ways in which the strategy is implemented are ways that meet government requirements and still meet the current and future needs of the Métis.

The Métis remain convinced that a land base is essential if their vibrant culture based on the self sufficient family unit is to survive. The self sufficiency trait is best expressed in the rural and remote setting but can be applied in most social and economic situations. Métis as a people have adapted well to changing times due to this characteristic of their culture. We must retain this trait and the ability to practice its art in the environment where it originated. To ensure that happens we look to governments to work with us so that the traditional land and resource base of our Homeland remains intact. This is the first and most vital requirement for the survival, growth and evolution of the Métis Nation.

To the traditional resource users, co-management means addressing and resolving land use and resource development issues in a process where harvesters, local governments, and senior (provincial, territorial or federal) governments are equal partners to the forum. Métis must participate in developing environment and resource development policies and programs if Métis values are to be incorporated into resource management programs and if Métis are to realize benefits from resource development ventures. A co-management approach should fully involve Métis in the planning and management of projects for land and resource use.

An environmental and resource strategy such as that described above cannot be delivered on the strength of political will alone. It can only deliver the benefits to the Métis and to Canada by concerted action on the part of both. If the Métis and governments are to participate as equals in these ventures, they need to contribute equally to the action. On securing a land base, the Métis will be in a position to participate on a basis of equality. In the meantime, we will need funding to contribute professional talent to the process of land and resource management and to training and education of our people so that they can pursue the opportunities that come with effective co-management of land and resources in our Homeland.

Co-management for the Métis is not an exercise in nationalistic politics. The Métis National Council recognizes that the future health of our people and opportunities for our youth lie more in the resources of our Homeland than in the urban environment of big cities. We feel very strongly that we can serve the Métis Nation

and Canada best by developing the resources in our Homeland in ways that ensure sustainable ecosystems, clean watersheds, productive families and communities, and profitable economics. The Métis National Council is committed to working with government and industry to achieve these results for the Métis Nation and the Métis Homeland.

The Royal Commission should recommend that the Government of Canada and the Governments of Ontario, Manitoba, Saskatchewan, Alberta, British Columbia and the Northwest Territories that:

- laws and regulations over hunting, trapping and fishing be amended so as to recognize the Métis' Aboriginal right to harvest these renewable resources;
 - the lands and resources within the Métis Homeland should be put under a co-management agreement between the Métis and the respective government; and
 - funds be dedicated to land and resource co-management agreements between Métis and appropriate governments.
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MÉTIS NATION SOCIAL DEVELOPMENT

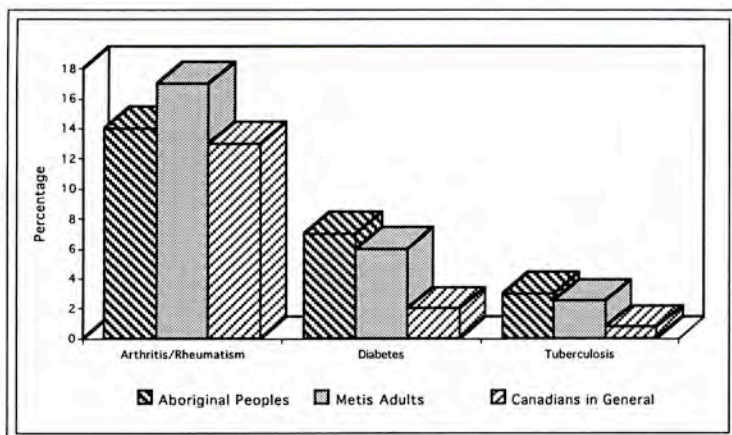
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Métis Health

While Métis-specific data is lacking, Métis community leaders believe that the Métis share the high incidence of violence and accidental death among other Aboriginal communities. In northern Saskatchewan, where a plurality of the population is Métis, accidents accounted for 23% of all deaths over a ten year period compared to 8% for the province as a whole. Among people 15 to 24 years of age, the death rate by homicide is about four times higher than in the province as a whole and the number of alcohol and drug-related offenses was five times as high. The Métis Nation of Alberta reported that northern Métis "suffer from alcohol and drug abuse, family violence, chronic unemployment ... resulting in frustration and anger which manifests itself in criminal activities. A survey of Members of the Manitoba Métis Federation found that 89% of members were concerned about alcohol and drug related problems in the community.

The Women of the Métis Nation in Alberta reported in 1992 that Métis women have been suffering enormously from violence, including rape and child sexual abuse. The MMF survey of members reported that 90% of Members surveyed were concerned with child welfare, while 75% were in favor of wife abuse counseling.

Métis people face many barriers in achieving better health. Poverty is a significant contributor to poor health



and the poor generally have more chronic health problems and a lower life expectancy. Poverty results in poor quantity and quality of food, inability to buy medicine and transportation to health care facilities, and a sedentary lifestyle. Its effects are stress, deprivation and despair.

Poor housing contributes to ill health among the Métis. Large numbers of Métis live in sub-standard and crowded housing. Many northern communities lack basic sewer and water services. The MNA Report to the Royal Commission highlights this concern indicating that "essential programs and services generally available to Albertans are simply not available or woefully inadequate to meet the needs of the Métis". In urban areas, the availability of safe, affordable housing is an issue. Landlords continue to discriminate against Aboriginal peoples especially single mothers.

Low literacy rates create problems in maintaining health and are a particular problem for the Métis. Most information on healthy lifestyles is either inaccessible due to the complexity of the language or its context is so far from the reality of Métis peoples' lives that it is disregarded. Low literacy can also have serious effects on following physicians' instructions, proper use of medications, safety warnings, and program entitlements.

The isolation of many Métis communities and lack of health facilities imposes particular difficulties and costs on Métis people. Either basic health services are not available in many communities in which the Métis live or access is impeded by distance, cost, cultural barriers or reluctance to use the services. Access to health services in northern and remote areas is a significant issue facing the Métis. Combined with remote locations, poverty and lack of health awareness, Métis northern residents are more affected by gaps in health services than non-Aboriginal northern residents.

Many remote and northern Métis communities lack even the most basic health services and in many cases their residents have to travel long distances for medical care. In the past, Métis communities had the experience similar to that of Inuit of losing children to TB sanitariums in the south where children and adults were kept for months without visits from family members and denied

family and community support during recovery. Many of these people lost contact with their communities and remained in urban areas.

In some Métis communities, only emergency care is provided and residents requiring other forms of health care must travel elsewhere at their own expense.

There are no provincial mental health programs designed for Métis people in Canada. General mental health services are also lacking in many communities. Services for women and children who are victims of violence are also lacking. Waiting lists for counselling services are long and support during the criminal court process is difficult to find. Métis women face discrimination and lack of understanding in mainstream services but have not been able to access funding to develop Métis-specific services.

The overall problem of the denial of basic health services to Métis people has its roots in the failure of the federal and provincial governments to sort out their jurisdictional and fiscal responsibilities for Métis, a task mandated by the Métis Nation Accord. The provinces' reluctance to initiate any programs for the Métis seems inexplicable given the obvious presence of the Métis as a distinct community with specific health needs. However, most of the provinces within the Métis homeland argue, in keeping with their position on Section 91(24), that Métis health services are a federal responsibility. Conversely, there is a reluctance on the part of Ottawa to offer any specific programs for the Métis for fear of setting a precedent that would give the provinces a reason not to provide or increase services.

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Métis Child Welfare

Existing child welfare services have grossly neglected Métis culture, values and traditions. Traditional social work practice and non-Métis delivery of child welfare have failed to recognize that culture influences the beliefs, behaviors and choices of clients and communities. Those non-Métis individuals and child welfare agencies who are finally beginning to acknowledge this are not equipped to address the issue. They cannot learn at institutes of higher learning, such as universities, the formal and informal working of the community, the spirituality, the cultural nuances, the unique styles and norms of communication and interaction in the various communities and the Métis community at large. These, in conjunction with the many other unwritten familial, social, historical and environmental realities have had a tremendous impact on the client and community. A working knowledge of these and other customs are the foundation for effective and qualitative services and programs for Métis children and families.

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Family Violence

Family violence is a complex issue involving many jurisdictions. One important consideration when view-

ing the problem of Métis family violence is the constitutional division of powers in Canada in the fields of health, social services and the administration of justice. Thus, provincial and territorial governments, together with many service providers, professionals in local health, social services and law enforcement and the voluntary sector have the responsibility of delivering services related to family violence. The federal government has a leadership role to play in identifying emerging social issues and problems and encouraging innovative ways of responding to these concerns. In partnership and through collaboration with provincial and territorial governments, communities and the voluntary sector, a federal role is to develop coherent national approaches to family violence.

The MNC carried out consultations with individuals and groups who could best identify the issues and point toward constructive reform. These include direct services and Métis advocacy Groups for women, justice personnel ranging from police to correctional services and health care personnel. Feedback also was received from a number of women who have been victims of domestic violence, including some who have been involved in the Justice system. The consultations made it clear that while the response of the Criminal Justice system to domestic violence is critical, the larger issue of the role of the community must be addressed to achieve long-term preventative measures. Without greater awareness at the community level, along with concrete action and initiatives, the Justice system and other crisis services will only continue to act after the occurrence of the abuse in virtual isolation.

The consultations made it clear that family violence does occur in Métis communities. The consultations have established that the community as a whole has a responsibility to acknowledge the pervasiveness of and to deal effectively with family violence. Each individual and organization that was consulted expressed a desire to work toward the best possible response to Métis family violence. Some frustrations were expressed by individuals and organizations who perceived varying degrees of commitment by federal and provincial funding agencies and other components of the community. The need for a genuine commitment to hold abusers accountable for their actions and to ensure that appropriate services are available to abused women, children and abusers were a predominant theme throughout the consultations. This need must be met through the community.

The MNC has proposed a community-based approach to dealing with family violence centred on the more than 500 Métis Locals in the Métis Homeland. It seeks to train 12 Métis as trainers who can act as facilitators, consultants and managers to Métis communities. An additional purpose is to promote and encourage and thereby provide the motivation for Métis to think in terms of the social and family involvement of their communities and of themselves and to actively organize and work towards such goals.

..... *Toward a Métis Health and Welfare System*

Very few Métis-specific services are offered at the community level in Canada. Little funding has been available for Métis programs and governments have not acknowledged the Métis as a distinct group requiring services. The few which have been established are affiliates of the MNC's provincial associations. Their success attests to the need to provide Métis governing bodies with the resources and authority to deliver health services to Métis people.

Métis Child and Family Services in Edmonton has a mandate from the Métis Nation of Alberta to provide services to Métis families throughout Alberta. Much of their work over the last nine years has centred on Edmonton, but increasing contact is being made with other communities. Its approach is to work in a holistic, integrated way with children and families in the area of family support and advocacy for families-at-risk of or having experienced the apprehension of the child. Intervention workers work to preserve or reunite families as often as possible while providing individual support and education to strengthen the family. Funding comes from a number of fee-for-service agreements with various levels of government, a system that is limiting to the organization. Negotiations with the provincial government are underway to establish similar organizations in each of the five other regional zones of the Métis Nation of Alberta. They would operate independently but use the same approach as Métis Child and Family Services in Edmonton.

Programs and services at Métis Child and Family Services are delivered in the most sensitive and least intrusive manner possible. Staff are noted for their exceptional caring and helpful style of providing service, without creating dependency. All staff are fully comfortable with the Métis way of counselling and use other counselling techniques as required. Each and every program is delivered and tailored to Métis culture and lifestyle.

The Métis Addictions Council of Saskatchewan has achieved notable results despite the small size of the operation since its inception in 1969. It is an affiliate of the Métis Society of Saskatchewan and demonstrates the experience and expertise which Métis governing bodies can bring into the development of a Métis health system.

The Royal Commission should recommend that the federal government assume its primary responsibility for providing health services to Métis people and as such, the federal government should:

- **make resources available to Métis to undertake a comprehensive needs analysis and research of Métis health conditions;**



- extend non-insured health benefits including dental services to Métis;
- make available, on a priority basis, resources and institutional support necessary to increase the number of Métis health professionals; and
- take the lead in bilateral and tripartite talks to recognize Métis authority over health care and social services as well as providing financial, administrative and human resources to implement a health care and social services system which will meet the needs of Métis people.
- The Royal Commission should recommend that the federal, provincial and territorial governments work with Métis Nation governing bodies to establish a framework for the provision of Métis health care and social services. A Métis health care and social services delivery system should fit the specific needs and priorities of the communities, operate in an easily understood and accessible manner, and be coordinated amongst different communities within a region in order to maximize cost efficiency and accessibility.

the large number of Aboriginal people in penal institutions. One of the major conclusions reached in the report and highlighted in virtually all subsequent reports relating to the administration of justice linked high incarceration rates with the poor socio-economic conditions of Aboriginal people.

The Report of the Government of Saskatchewan Métis Justice Review Committee also recognized "that without major changes to improve the social and economic conditions which characterize the lives of many Métis people in this province, changes to the criminal justice system will only have only a limited effect". The committee identified this as one of their overarching concerns and outlined that "The criminal justice system in Saskatchewan is ill-equipped to address fundamental social problems affecting Aboriginal people in the areas of poverty, employment, health, education and loss of cultural identity".

However, the Manitoba Métis Federation (MMF) report, *The Struggle For Recognition: Canadian Justice and the Métis Nation* cautioned that simply blaming the socio-economic circumstances of the people has been used as an excuse to do nothing to the criminal justice system and for not holding the system accountable. The MMF report paints a grim picture of the root causes for the social and economic under development. The MMF Report also reviews the historical justice practices of Métis people and the premium that was placed on more sensitive forms of conflict resolution. The report makes a scathing attack on the present justice systems focusing on adversarialism and confrontation. The MMF research concluded that the following factors interact to produce over representation of Métis people as offenders. They are equally applicable in other provinces and territories.

- There has been an historical repression of Métis custom (traditional), social structures and support systems.
- The Métis have little discretionary time or money available to respond as a community to the problems of the crime.
- Official responses to the problems documented above are usually framed in terms of social control rather than social development.
- Aboriginal people as a visible minority have been denigrated and their history has been conveyed in a distorted way. In youths this leads to self-derogation, feelings of helplessness and alienation.

JUSTICE REFORM

..... *Reports Relating to Métis and the Criminal Justice System*

Métis people have voiced concern over the administration of justice for several decades with little or no response from the governments of Canada. A study prepared for the Royal Commission on Aboriginal Peoples noted that over thirty studies have been undertaken leading to numerous recommendations of which few have been implemented. The study concludes that "the fact that these recommendations are repeated reinforces the awareness of the inadequacies of the existing system as well as the need for immediate action".

As with most social policy areas, the majority of the studies fail to focus on the unique interest of the Métis people. The exception to this rule has been the reports in the prairie provinces where the bulk of the Métis people live.

One of the earliest studies into the administration of justice occurred when the Métis established a "Crime and Justice Commission" to examine the reasons for

- The intended child welfare remedies have not worked for Métis children.
- Official justice system interventions have been culturally alien or irrelevant and poorly understood by the Métis community.
- Participation in lawmaking and the administration of the laws has been effectively denied the Métis.
- The official justice system has acted in ways which engender disrespect and cynicism within the Métis community.
- In many instances correctional and other related services have been denied or not made available to the Métis.

The Saskatchewan Justice committee confirmed two important points that are to guide the implementation of reforms to the criminal justice system. These are:

1. that meaningful changes can only come about when the Métis community is actively involved in deciding what changes are to be made, how they are to happen, and shares responsibility for the changes; and
2. that because each Métis community is at a different stage of development, they are at different stages of readiness for change. A project or initiative that may be right for one community may not be right for another. The unique and special circumstances of each community must be recognized.

These are also two principles that guide the recommendations that follow in this report. In addition, the MNC believes strongly that reforms to the justices system must be undertaken in a cooperative fashion involving all levels of government.

The Métis Nation of Alberta's submission to the *Task Force on the Criminal Justice System and its Impact on the Indian and Métis people of Alberta* sums up the views of the MNC on the need for a new and ongoing mechanisms to reform the justice system over time where it states:

- It must override wherever possible, the unjustified withholding of information perpetuated and secrecy which prevents broad understanding of how the system works and the subtle dynamics that influence it.
- It must override the self-serving protectionism that works to avoid change and preserve the status quo.

- It must challenge the use of power and position to perpetuate itself.
- It must be inter-disciplinarian, breaking down barriers between sectors and agencies within the system.
- It must ensure the most complete and effective flow of information possible both among sectors and agencies, and to the public in ways that will transmit knowledge and promote understanding.
- It must ensure that the people are fully informed at all stages of the development of policies, programs and projects affecting them.
- It must ensure that the people are fully informed at all stages of the development of policies, programs and projects affecting them.
- It must ensure that the people openly, directly or through representatives who are accountable to them, have meaningful consultation on all policies, programs and projects affecting them.
- It must ensure that the people have significant participation in the implementation and ongoing maintenance of policies, programs and projects affecting them.
- It must have the complete political commitment of the governments to which those sectors and agencies are accountable.

The Royal Commission should recommend the establishment of a Métis Nation Justice Secretariat with following functions:

- legal studies grants;
 - legal education;
 - intervenor capacity;
 - assist in development of alternative justice approaches;
 - maintain registry of Métis in legal profession; and
 - monitor and maintain statistics (from Métis register)
- **The Royal Commission should recommend: increasing Métis professionals in the justice area; the establishment of alternative Métis justice system; increased community participation in the policing, adjudicating and sentencing of Métis and other recommended reform proposals set out in this Report.**
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MÉTIS NATION CULTURAL DEVELOPMENT

..... *The Politics of Exclusion*

Nowhere is the federal government's exclusionary policy toward Métis more evident than in the cultural field and in Canada's national cultural institutions. These institutions have practiced a form of exclusion which keeps Métis culture and artists on the fringes of multicultural and Aboriginal expositions, in effect denying them entry to either. Like worn-out history textbooks, Canada's national cultural institutions view the Métis as a historic footnote to the conflict between English and French who died with Riel.

The national cultural institutions in Ottawa, despite repeated protests from Métis organizations, perpetuate an exclusion of Métis history, culture and art to this day and pretend that the recognition of the Métis as an Aboriginal people in the Constitution never happened. While considerable focus has been placed on First Nations in the national museums, the pivotal role of the Métis in the history of western Canada has been ignored. The federal government and the cultural establishment in Ottawa have utterly failed in allowing the public access to the rich history, culture and art forms of the Métis. In contrast, the Glenbow Museum in Calgary, with the assistance of oil and gas companies, has done much to capture this rich Métis heritage.

Even in its present efforts to sensitize national cultural institutions to Aboriginal peoples, the Ottawa cultural establishment continues to blatantly discriminate against Métis. A case in point is the establishment of the First People's Advisory Committee by the Canada Council in 1990, an important event through which Aboriginal people are able to determine the future of their own artistic practices. The mandate of this Committee in the letter of invitation from the Canada Council makes it clear it seeks a dialogue with "Indian and Inuit artists" only.

The Métis people and cultural community can hardly be expected to embrace the Council's initiatives when they are so obviously ignored. This is particularly distressing in view of the otherwise positive initiatives of the Council to increase Aboriginal involvement in jury selection, to train Aboriginal arts administration interns, and to increase support and

professional development opportunities for Aboriginal artists through the different sections and programs of the Council. Despite all odds, the Métis people have survived partially due to Métis historical and cultural societies, dance groups, and artisans who kept the spirit of the New Nation alive during the dark decades of the Métis diaspora. These groups have much to offer the Métis and Canadian society as a whole and deserve support to bring their rich art forms to a larger stage. However, in view of Ottawa's long-standing denial of Métis identity - culminating in the removal of the Métis as a people from the census in 1941 - one must seriously question whether the cultural establishment in Ottawa is really prepared to accept the reality of the Métis.



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..... *Michif Language*

Little has been done by linguists in the study of the Métis language known as Michif. There are many opinions regarding the Michif language. It has sometimes been characterized as a Creole language; a dialect of French; a dialect of Cree; or a mixture of languages. A large number of early Métis spoke several Indian languages, French and English. Michif however, is significant as an important part of the development of language in the Métis tradition, and it is unusual, if not unique, among the world's languages.

The early Métis linguistic abilities aided in the development of the West. With their dual heritage and familiarity with Indian customs and languages, their role as intermediary between the Indians and Europeans was invaluable. Acclimatized to life in the West and their ability to adapt successfully both to Aboriginal and European cultures, the Métis were an important element to the labor force at the many fur trade posts.

In November 1984 the Michif Language Committee was formed by the Manitoba Métis Federation due to the concern of the loss of the Michif language and erosion of Métis culture. The objective of the committee was to promote, retain and develop the Métis culture through the Michif language.

The Michif language has survived despite being actively discouraged from speaking it by missionaries, teachers, and pressure from the broader community. The Métis persisted in speaking their own language and it in turn reinforced their Métis identity. Métis oral history and language have been passed down through the successive generations. As with other Aboriginal groups, the Métis of the twentieth century are endeavoring to retain and protect their language for future generations.

The Royal Commission should recommend that the federal government and the governing bodies of the Métis Nation take special steps to preserve and promote the Michif language.

- Federal funding should be made available to Métis cultural institutions and societies active in the use and retention of the Michif language. National broadcasting and film services such as the CBC and National Film Board should work with Métis communications societies and film-makers to promote Michif-language programs and films for Métis people and the CRTC should encourage Michif-language programming in license applications from regions with substantial Métis populations.

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Métis Cultural Institutions

Métis historical and cultural societies have played an important role in preserving and promoting the Métis culture since the dispersion of the Métis Nation after the Battle of Batoche. In 1887, Métis at Batoche organized a society named after their patron Saint Joseph, with similar objectives to Québec's St. Jean Baptiste Society. The Society helped organize annual observances of the resistance at Batoche which continue to this day, attracting thousands of Métis from across the Homeland to an event replete with Métis cultural expositions.

In 1887, a group of Métis nationalists met in St. Vital, Manitoba to found a historical and cultural society, l'Union Nationale Métisse Saint Joseph du Manitoba, committed to correcting the historical record with respect to the experience of the Métis people. Their undertaking required decades of research and interviews with the Métis of Red River and Batoche and culminated in the publication of *L'histoire de la Nation Métisse dans l'Ouest canadien* in 1935. L'Union Nationale remains to this day a cultural body for francophone Métis in Manitoba.

Contemporary Métis cultural organizations continue the efforts of their antecedents. The Manitoba Métis Federation (MMF) Press was founded in 1972 to promote an awareness of Métis history. Métis academics associated with the publishing house undertook research into Métis land claims resulting in a number of important publications.

The MMF Press evolved into Pemmican Publications which was incorporated in 1980. Pemmican is a Métis publishing house in Winnipeg which has been instrumental in depicting Métis culture and lifestyle in a truthful manner. In addition to works of fiction and non-fiction aimed at the general audience, Pemmican has established itself as a leading publisher of children's books. It works with various educational organizations such as the Native Education Branch of Manitoba to produce entertaining, informative and culturally accurate learning books for school children of all ages. Many of these books combine the most modern teaching methods with traditional Métis storytelling skills.

Pemmican books have earned awards of distinction, been made into television dramas and been translated into different languages with the sale of foreign rights. Pemmican has also published *The Michif Dictionary*, an important step in the preservation and promotion of the Métis language.

Another contemporary Métis cultural institute is the Louis Riel Historical Society in Edmonton, incorporated in 1986. The Society's goal is to preserve the history, traditions, culture and language of the Métis through the development of a museum, archives, and resource centre. The Society is an affiliated institution of the Métis Nation of Alberta.

The Royal Commission should call on the federal government to end its discrimination against the Métis people in national cultural institutions and to remove barriers that have denied Métis artists access to support of federally funded councils.

- The Royal Commission should recommend that the federal government enter into discussions with the Minister of Culture and Communications of the Métis Nation toward ensuring that the history and culture of the Métis Nation are adequately and accurately portrayed in exhibitions and study areas of national cultural institutions by way of co-management of projects with full Métis Nation participation.
- The Royal Commission should recommend that the Métis as a distinct people should participate

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in the development and evaluation of the policies and programs of the Canada Council that impact on the promotion of Aboriginal arts and that Métis are guaranteed a role in the building of any Aboriginal-specific unit within the Canada Council with designated resources.

The Royal Commission should recommend that the federal, provincial and territorial governments provide financial assistance to the representative bodies of the Métis Nation to strengthen existing Métis cultural institutes and to establish new institutes which will serve to preserve and promote the history, traditions, language and culture of the Métis Nation.



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