

The Metis Nation



On The Move

Report on the Metis Nation's Constitutional Parallel Process

METIS NATIONAL COUNCIL



LOUIS RIEL



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March 31, 1992

The Right Honourable Brian Mulroney, P.C.
Room 309-S, Centre Block
House of Commons
Ottawa, Ontario
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Dear Mr. Prime Minister:

I have the honour of submitting this report on behalf of the Métis National Council and its member associations. The report documents the aspirations and concerns of the Métis Nation with respect to the federal government's constitutional proposal as expressed to task forces appointed by our member associations.

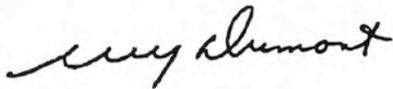
The report identifies, prioritizes and elaborates on the stated constitutional concerns of Métis participants in the consultations. The foremost of these issues which we would like to see entrenched in the constitutional agenda are:

- Recognition of the Métis as a founding nation of Canada;
- Métis land base;
- Métis self-government;
- Federal assumption of responsibility for Métis; and
- Métis representation in the House of Commons and in a reformed Senate.

Each section of the report concludes with specific constitutional recommendations arising from the consultations with our membership and the research and policy development work of our organizations. We trust that the upcoming and ongoing process on constitutional reform will be flexible and responsive enough to accommodate these long outstanding issues.

During the preparatory phase leading up to this current round of constitutional discussions, you visited our Metis homeland and assured us of your government's commitment to open a bilateral process with the Metis people. Experience has proven that without this process, there can be no meaningful movement toward the resolution of the critical issues of federal jurisdiction for Metis and a land base. We look forward to working with you to put this process in place.

Yours truly,

A handwritten signature in black ink, appearing to read "W. Yvon Dumont". The signature is written in a cursive style with a large initial "W" and a long, sweeping underline.

W. Yvon Dumont
President
Metis National Council

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Chapter I

Introduction

I INTRODUCTION

This paper identifies, prioritizes and elaborates on the constitutional concerns of Metis people. It embodies the views of Metis individuals and representative bodies in the consultative process carried out by the Metis National Council (MNC) and its member associations.

The purpose of these community-based consultations was to solicit the views of Metis people on the current constitutional renewal process and their views on how best to entrench Metis rights in the *Constitution*.

In Manitoba, the Manitoba Metis Federation called upon its Metis Senate to conduct its consultations. The Metis Nation of Alberta established a Metis Commission composed of Metis people from each of its regions as well as Metis Senate representatives. The Saskatchewan Metis Society established a three person commission which conducted extensive hearings throughout the province. The Pacific Metis Federation carried out consultations and extensive research on the position of Metis in the province of British Columbia.

The Metis Nation of the Northwest Territories and the Ontario Metis and Aboriginal Association also provided valuable input into the development of the Metis National Council's position. The overall process included conferences on women's issues including reports from Metis women from Manitoba and Alberta. An academic report from leading Metis scholars from Alberta was also produced.

This report attempts to consolidate the views of each of the MNC member association reports and views from Metis women and Metis in the Northwest Territories and Ontario. As such, it sets forth the constitutional aspirations of the Metis Nation.

Chapter II

Metis Identity, History and Culture

II METIS IDENTITY, HISTORY AND CULTURE

A Introduction

In order to understand Metis constitutional aspirations, it is imperative to focus on how the Metis developed as a distinct people and to understand the historical experience of the Metis Nation. Therein lies the roots of Metis aspirations and the solutions to the formidable problems facing the Metis.

1 The Metis People

People of mixed ancestry appeared in eastern Canada soon after initial contact between Indians and Europeans. However, it was only on the isolated plains of western Canada that people of mixed ancestry evolved into a new and distinct Aboriginal entity, a phenomenon attributable to the peculiar history of this region.

In 1670, Charles II of England granted Rupert's Land—the vast territory draining into Hudson Bay—to the Hudson's Bay Company for its exclusive trade and administration. Following the British conquest of New France in 1763, the Hudson's Bay Company faced stiff competition from the North West Company, the old Montreal-based French fur trade company taken over by British and British-American merchants. The hostility of these fur trade companies to agricultural settlement as well as the rugged barrier of the Canadian Shield north of Lake Superior blocked large-scale immigration onto the western plains. Hence, the mixed offspring of French fur traders from the North West Company or Scottish fur traders from the Hudson's Bay Company and Cree or Ojibway women formed an ever increasing proportion of the fur trade population.

With their mixed traditions and command of both European and Indian languages, they were logical intermediaries in the commercial relationship between two civilizations. They adapted European technology to the wilderness, through innovations such as the Red River cart and the York boat that made possible the transport of large volumes of goods and supplies across the west 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 Aboriginal culture. Their "Metchif language" mixed the French, English, Cree and Ojibway languages. Their jigs combined the reels of Scotland with the intricate steps of plains Indians. A fusion of both European and Indian cultures they forged a new culture and a new identity as Metis.

2 The Development of the New Nation

Towards the end of the 18th century, Metis villages had appeared around many fur trade posts. The North West Company was less centralist in its operations than the Hudson's Bay Company and the Metis offspring of its French employees enjoyed considerable economic and political freedom. They established separate communities on the open plains linked by economic interest to the Nor' Westers.

As provisioners to the North West Company, the Metis 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 Metis 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. The Metis feared an influx of Scottish settlers would disrupt their economy and displace them from their territory. Efforts by these settlers to restrict Metis hunting and trading practices eventually led to their defeat in 1816 at the Battle of Seven Oaks where the victorious Metis led by Cuthbert Grant, Jr. unfurled the flag of the Metis Nation.

In 1821, the amalgamation of the Hudson's Bay Company and North West Company closed many fur trade posts and forced their employees and families to move to the Red River Settlement. Here the French Metis from the North West Company posts and later the plains were joined by the Scottish (and, to a lesser extent, English and Irish) Metis from Hudson's Bay Company posts. In the Red River Settlement Scottish Metis joined with French Metis to defend common interests against the governing Hudson's Bay Company. Ties between the two groups were reinforced by frequent intermarriage and common economic pursuits such as the buffalo hunt, overland freighting, fur trade boat brigades, guiding, interpreting and farming.

As the Metis became more concentrated and endogamous, group consciousness grew. The Hudson's Bay Company authorities took this sentiment into account in its administration of the Red River Settlement. They had no choice but to recognize the land holding system of the Metis where Metis parishes were divided into long narrow river lots as in Quebec and the Metis tradition of settling these lots without formal legal title.

In trying to enforce its monopoly over trade, however, the Hudson's Bay Company clashed with Metis free traders. They believed that as a people

conceived on the western plains, the Metis were its true owners along with the Indians and possessed certain rights which the Hudson's Bay Company had not respected. They challenged the Hudson's Bay Company monopoly by engaging in the illicit free trade in furs, starting export industries, and opening up the route from Red River to St. Paul, Minnesota, to gain access to the lucrative American market and a cheaper source of finished goods. In the process, they incurred the wrath of the Hudson's Bay Company which retaliated with repressive measures.

Metis free traders and merchants became the most articulate proponents of a growing Metis nationalism. In 1845, they petitioned the Governor of the Red River Settlement for a recognition of their special status. In 1849, they led an armed body of Metis horsemen who surrounded a court house where Guillaume Sayer was being convicted for trafficking in furs, prompting his release without sentence and a declaration of free trade ("La Commerce est libre") by the Metis. In 1857, the Metis case was presented to the British Parliamentary Select Committee on the Hudson's Bay Company by Alexander Isbister, a Metis lawyer, who had taken up residence in London.

Demographic changes contributed to the growth of group consciousness among the Metis. Unlike in eastern Canada where people of mixed ancestry had been absorbed either by the French or the Indians, in the Red River Settlement between 1820 and 1870, Europeans and Indians were absorbed by the Metis. By 1869, the population of the Red River Settlement—one of the largest west of the Mississippi and north of the Missouri on the plains of North America—consisted of 5,720 French-speaking Metis, 4,080 English-speaking Metis and 1,600 non-Metis.

3 Nation Builders—Bringing Manitoba into Confederation

In 1869, the Hudson's Bay Company sold its right to Rupert's Land to the Dominion of Canada for a small sum of money and 1/20 of the territory's fertile land. During the negotiations preceding the sale, no reference was made to the rights of the Metis majority in Red River. In the words of historian W.L. Morton, "One of the greatest transfers of territory and sovereignty in history was conducted as a mere transaction in real estate." It was expected that the settlement would become a Canadian colony without self-government. Faced with the acquisition of their homeland by an alien government seeking to promote the westward movement of white settlers from Ontario, the Metis resisted.

In October 1869, they formed a National Metis Committee and called for an independent Republic of the Metis Nation. On November 2nd, the National Metis Committee occupied Fort Garry (Winnipeg). On December 8th, it became a provisional government with a newspaper of its own, *The New Nation*. Early in 1870, a special committee of six Metis, three

francophone and three anglophone, including the new President of the Provisional Government, Louis Riel, was appointed to draft a List of Rights. This list, to undergo further amendment, would be carried to Ottawa by three delegates of the Provisional Government and would form the basis of negotiations with the Conservative Government of Sir John A. Macdonald.

Reflecting the three primary concerns of the Metis—political status, language and land—the List of Rights called for the admission of their territory as a province into Confederation, for its representation in the Senate and House of Commons, for the recognition of both English and French as the official languages of the new province, and for provincial control of public lands.

During April 1870, the delegates of the Provisional Government arrived in Ottawa for negotiations with Sir John A. Macdonald and his Quebec lieutenant, Sir George Etienne Cartier. The parties agreed that the Red River Settlement would enter Confederation as the new Province of Manitoba (comprising a “postage stamp” of 11,000 square miles in the southern part of today’s province) with representation in the House of Commons and the Senate. As well, Manitoba’s official languages would be English and French and denominational schools would be safeguarded. The only stumbling block in the talks was the demand for provincial control of public land.

Although the Metis were seeking no more than what existing provinces enjoyed, Sir John A. feared they would obstruct mass immigration into the North West, a central part of his National Policy. He considered Dominion control of Manitoba’s public lands to be non-negotiable. At the same time, he recognized that there was a need to compensate the Metis in order to annex the North West peacefully and to assure Quebec that the francophone Catholic Metis of Manitoba would not be displaced by incoming anglophone Protestants from Ontario.

Compensation would take the form of the retention of existing Metis land holdings in the Red River area, and a 1,400,000 acre land grant to the Metis in recognition of their Indian title. As well, the Province would control occupied lands, riverlots and the distribution of the Metis land grant.

On May 2, 1870, the *Manitoba Act*—including most of the demands in the Metis List of Rights—was introduced in the House of Commons. On May 12, the *Manitoba Act* became law. When news reached Fort Garry, the *Manitoba Act* was endorsed by the Metis-dominated provisional legislature. On July 15, 1870, Manitoba became Canada’s fifth province, in the words of historian G.F.G. Stanley, a “national achievement of the New Nation and the personal victory of Louis Riel”.

4 The First Metis Diaspora

With the end of the Red River resistance and peaceful acquisition of the North West by Canada, Sir John A. Macdonald set out to transform Manitoba, as Archbishop Tache of St. Boniface had warned, into "another Ontario in creed and politics". Earlier in the resistance, he had stated that "these half-breeds have got spoilt by this émeute (riot) and must be kept down by a strong hand until they are swamped by the influx of settlers". The "strong hand" took the form of 1,200 troops Sir John A. dispatched to Fort Garry in May as a punitive mission against the Metis and the first step in the displacement of the Metis.

Next, Sir John A. reneged on his commitments to Riel's delegates. Section 30 of the *Manitoba Act* gave the Dominion jurisdiction over "all ungranted or waste lands" in the province but now Sir John A.'s régime considered all lands—including surveyed riverlot farms occupied by Metis and the 1,400,000 acre grant—to be ungranted or Dominion land. According to Douglas Sanders, "the federal government—the government whose indifference had been a basic cause of the Red River rebellion—was in charge of the land grants which the Metis had won by their political actions".

Finally, the federal government adopted a series of measures undermining those parts of the *Manitoba Act* which offered protection to Metis lands. Section 31 provided for a 1,400,000 acre land grant for the children of Metis heads of families and section 32 allowed occupants of riverlots to secure title to their lands.

These sections had been reinforced when Sir John A. requested the British Parliament to amend the *BNA Act, 1867* to sanction what he had done in Manitoba. The subsequent amendment, the *BNA Act of 1871*, confirmed the *Manitoba Act* by giving it constitutional force. Accordingly, sections 31 and 32 were immune from tampering by the federal government.

Nevertheless, during the next decade, Parliament and the Provincial Legislature unilaterally enacted a number of statutes which, in the words of historian D.N. Sprague, "either repealed portions of sections 31 and 32 or set up qualifications and procedures which were so stringent or complicated that they robbed both sections of their original meaning".

Dispossession and repression led to the dispersion of the Metis; their proportion of Manitoba's population dropped from 83% in 1870 to 7% in 1886. Two-thirds of the Metis 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

Metis communities. Here they resumed their demands for a land base in unison with those Metis resident in the North West before 1870.

5 The Metis in the Northwest

By 1872, the Saskatchewan Metis 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...". In response, Lt. Gov. Archibald stated:

These people can found no claim upon their being Halfbreeds. It is only as settlers that any indulgence can be shown them... Anybody who goes to Saskatchewan to settle has just as much right to go there and enter on unoccupied land as those had who went before them and I shall not be sorry to see a goodly amount of immigration for settlement there next year.

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 Metis petitions for land title. The Metis were expected to apply for land as homesteaders but they believed their contributions and rights were paramount to the new land regulations.

In a petition to Sir John A. Macdonald on September 4, 1882, Gabriel Dumont and the Metis 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 Metis also claimed exemption from the township system of survey which threatened to disrupt their pattern of riverlots borrowed from Quebec.

Inevitably, the Metis faced eviction by the executors of Sir John A.'s National Policy—land speculation companies. Typical of their protests was a petition from the Qu'Appelle Valley: "We have refused to comply with the request of the Ontario and Qu'Appelle Land Company and claim a patent from the Crown for our respective pieces of land ... fully believing that we are justly and legally entitled to the same." As in 1869, Ottawa's indifference to Metis land rights left the Metis no choice but to organize political resistance.

6 The Northwest Resistance

On March 19, 1885, under the leadership of Riel, the Metis 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.

On March 26, 1885, fighting broke out and ended at the Metis capital of Batoche on May 12, 1885. The result of the battle is well known.

In the aftermath of the resistance, the Metis people suffered displacement again. Troops burned Metis 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. According to Metis legend passed on to this day, the charismatic leader had prophesized the rebirth of the Metis Nation within a century of his death.

7 The Second Metis Diaspora

Following the Resistance, a second dispersion of the Metis people began with many moving to the north and west, particularly into what is now Alberta, the Northwest Territories and north eastern British Columbia. Again they pressed for a secure land base and again were trapped by Ottawa's legal and administrative machinations. Unilateral amendments to the *Dominion Lands Act* in 1879 had extended land grants to those Metis 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 resistance, that Ottawa authorized the Street Commission to issue these grants.

While the legislation provided for Metis land grants, the Street Commission and its successors between 1885 and 1908 issued scrip—a certificate redeemable in the purchase of Dominion Lands open for homesteading—to Metis claimants. Some of these certificates were in the form of land scrip stating the grant in acres, but most were in the form of money scrip, stating the grant in dollars. By 1924, the federal government no longer intended to be making land grants, issuing cash payments of \$240 to the Metis of the Mackenzie Valley.

Awesome difficulties in redeeming scrip caused many Metis to sell their grants for a fraction of their value to unscrupulous speculators who were allowed to travel with federal Scrip Commissions. Ottawa facilitated speculation in many ways. It even stepped in to protect land speculators. For example, when Edmonton millionaire Richard Secord was charged in 1921 with obtaining Metis scrip through fraud, Parliament amended the *Criminal Code* to impose a time limitation of three years on the prosecution of scrip offences and nullified the charges.

Metis emigrants from Manitoba fared even worse than their brethren resident in the Northwest 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.

In the southern part of the prairie provinces some of the Metis managed to cling to their lands and earned a livelihood as farmers and farm labourers. Many others were forced into slums on the fringes of Indian reserves and white communities or onto road allowances (strips of public land on either side of public roads). They eked out a subsistence gathering buffalo bones for shipment to fertilizer factories, picking stones on farms, doing other menial jobs, or on relief. The Metis had become the "road allowance people, squatters in their own land".

In summary, the Metis were swept away by a tide of immigration in the wake of Ottawa's perfidious scrip policy and a rapid decline of the fur trade economy. Some moved to the northern forests of the provinces where they joined established Metis communities or formed new ones. Here they were able to continue their traditional pursuits of freighting and trapping.

8 Denial of Metis Identity and the Suppression of Metis Culture

The loss of a land base, economic opportunities and political influence demoralized the Metis and weakened their cohesion and identity. With their setback in 1885, Sir John A. had reversed his earlier policy of recognizing Metis as a distinct people: "If they are Indians, they go with the tribes; if they are half-breed they are white, and they stand in exactly the same relation to ... Canada as if they were altogether white".

As far as the government was concerned, the Metis had become a marginal people, denied an identity of their own and placed on the fringes of Euro-Canadian and Indian societies.

Rather than viewing the Metis as a distinct Aboriginal people and nation with rights inherent in that status, governments viewed Metis as outcasts requiring relief measures to bring about their "rehabilitation" and ultimate assimilation into Euro-Canadian society. This policy continues today.

Prairie society in the twentieth century defined Metis by poverty and racial characteristics rather than their history and culture. This distinction was brought out by the Chairman of an Alberta Royal Commission in the 1930s when defining Metis as "anyone having Indian blood in their veins and living the normal life of a half-breed". According to the Chairman: "You see, you must include 'living the life of a half-breed', otherwise, ... there are a large number of men in Edmonton, some occupying responsible positions, who are not intended to be included in this investigation."

Successive federal governments implemented a policy of non-recognition of Metis by acts of omission rather than commission. When Ottawa transferred its jurisdiction over the public lands of the prairies to the provinces in 1930, it made special provisions for Indians and their lands but none for Metis. Despite its recognition of the Metis as a distinct Aboriginal people in the *Manitoba Act* and *Dominion Lands Act*, Ottawa maintained that the land grant provisions of these statutes had terminated Metis claims and Aboriginality. Accordingly, the Metis were now considered to be ordinary citizens and a provincial responsibility. After 1941, the Metis no longer appeared as a distinct people in the Dominion decennial census.

This policy of non-recognition meant that no official statistics were kept for the Metis people, so that Canada did not know who, how many and where the Metis were. Metis culture was ignored by the country's museums and galleries. Metis historical contributions were ignored by the country's educators. As far as Canada was concerned, the Metis, like the buffalo, had disappeared.

Riel's vision of a reborn Metis Nation would blur but never die. The history, culture and traditions of the New Nation would be preserved by predominantly Metis communities. Metis historical and cultural societies, and Metis political associations would act as a bridge throughout the dark period of the Metis diaspora. They offered a flicker of hope to the thousands wandering on the physical and psychological fringes of two societies, neither their own.

The public neglect of Metis has been nurtured by more than a century of denial by Ottawa of a special relationship between the Metis and the central government. The federal government's inclusion of the Metis as one of the three Aboriginal peoples in the *Constitution* in 1982 has not achieved this objective. Efforts to entrench a constitutional definition of Metis during the 1980s and efforts to enumerate the Metis people have been spurned.

B Canadian Identity and the Federal Canada Clause

The Government of Canada proposes the entrenchment of a "Canada Clause" that captures the essence of the Canadian Identity. The Government of Canada believes that it would be appropriate to recognize, among other things, that Aboriginal peoples were historically self-governing and to recognize that we have rights within Canada.

C Consultative Findings

Many participants in the consultations placed great emphasis on the need for the recognition of the identity and historic contributions of the Metis

people in the *Constitution* of Canada. They see this recognition as one of the cornerstones for the constitutional accommodation of the Metis and see it as an integral part of the Canadian Identity. Inherent in this attitude is the deep-seated conviction that the landlessness and marginal position of the Metis in Canadian society results from a refusal to recognize the Metis as a distinct Aboriginal people with a rich history and vibrant culture.

The Metis support the entrenchment of a Canada Clause, however the Canada Clause must strengthen Metis rights, not weaken them. The present wording of the Clause places self-government in the past tense and may lead the courts to interpret section 35 of the *Constitution Act, 1982* as not currently possessing the existing inherent right of Metis people to self-conern. This is not acceptable to Metis people.

In addition, many participants spoke to the need to constitutionally entrench the right of Metis to determine their own membership. Participants spoke of the need to establish a Metis enumeration/registration process to determine the size and extent of the Metis Nation. Metis participants in the consultative process view control over membership or citizenship in the Metis Nation as a primary responsibility of Metis government. They are fed up with the self-serving arguments of successive federal governments that they cannot deal with the Metis because they don't know who the Metis are. They seek a Metis-driven enumeration of the Metis population based on criteria reflecting the shared history and culture of the Metis people. This process would contribute to the consolidation of the Metis Nation as well as identifying those who would be eligible to participate in the electoral process governing Metis political institutions and the programs and services delivered by Metis governments.

Recommendation #1 — Canadian Identity and the Metis Nation

- i) **The *Constitution* should recognize the contribution of the Metis Nation in the development of Canada and bringing Manitoba into Confederation. The history of Canada confirms the Metis as one of the founding nations of Canada and this fundamental characteristics should be reflected in the Canada Clause.**
- ii) **The Metis Nation wants to see the entrenchment of a positive reference to the inherent Aboriginal right to self-government. The Metis Nation does not support a past tense reference to self-government within the Canada Clause.**

Recommendation #2—Metis Enumeration

The Metis Nation also recommends the recognition of the right of Metis to control their own membership and recommends that the federal government facilitate a Metis driven enumeration process.

Chapter III

The Metis Land Issue

III THE METIS LAND ISSUE

A Introduction

The pursuit of a land base has been the top priority of Metis associations since the dispersion of the Metis Nation. In 1887, a group of Metis nationalists met in St. Vital, Manitoba to found a historical and cultural society, *l'Union Nationale Metisse Saint Joseph du Manitoba*, committed to correcting the historical record with respect to the experience of the Metis people. Their undertaking required decades of research and interviews with the Metis of Red River and Batoche and culminated in the publication of *L'histoire de la Nation Metisse dans l'Ouest Canadien* in 1935.

During the depression, dire conditions on the prairies provoked political mobilization of the Metis. Founded in 1932, *l'Association des Metis de l'Alberta* (later to be known as the Metis Nation of Alberta) pressured the United Farmers of Alberta Government into appointing a Royal Commission to inquire into the conditions of the Metis. Following the recommendations of the Ewing Commission report of 1936, the province enacted the *Metis Population Betterment Act* providing for the establishment of Metis Settlement Associations which would receive land from the province. Twelve settlement areas were set aside in the 1940s but only eight—Fishing Lake, Elizabeth, Kikino, Caslan, East Prairie, Gift Lake, Big Prairie and Paddle Prairie—were established, comprising a land mass of 1,250,000 acres.

In Saskatchewan, the Metis also organized to obtain a land base. Founded in 1938, the Saskatchewan Metis Society directed its “constitutional claims” against the Government of Canada which it held responsible for the historic dispossession of the Metis. It sought federal assistance to allow the Metis to establish themselves in agriculture and industry. As usual, Ottawa turned a deaf ear. In 1940, the Saskatchewan Government supplemented its Metis farms with additional townships of public lands for the Green Lake Settlement.

1 The Land Claims Policy and Metis Exclusion

The British Crown took a relatively enlightened attitude toward its colonial possessions through the implementation of a land policy which recognized that the original inhabitants of a colony possessed certain land rights. In British North America, the *Royal Proclamation of 1763* is the embodiment of this policy and Aboriginal people view the *Proclamation* as an Aboriginal Bill of Rights. Essentially, the *Proclamation* set out the boundaries of Quebec and the American Colonies, while reserving specific lands for the nation and tribes inhabiting North America and established procedures including the requirement of consent, before the Crown could acquire clear title. Following the *Proclamation* and paralleling the westward and northern expansion of Canada, Treaties with Indian peoples were entered into until 1923. However, the Metis people were

not included in the Treaty process, except where Metis surrendered their identity and adhered to Treaties, as was the case with the half-breed adhesion to Treaty #3.

In the landmark *Calder* case in 1973, the Supreme Court breathed new life into the land claims issue by recognizing that Indian peoples possess a continuing Aboriginal title to land. The decision sent a clear message to Parliament that there were significant areas of the country that had not been properly surrendered. It was against this background that the federal government introduced a comprehensive land claims policy designed to extinguish Aboriginal title in exchange for specific negotiated rights and benefits.

With the recognition of the existence of Aboriginal land rights by the Supreme Court of Canada in 1973, Metis associations on the prairies devoted considerable energy to the research and development of their land claims. A lead role was undertaken by the Manitoba Metis Federation and its publishing arm, the Manitoba Metis Federation Press. Much of this research focussed on the link between the historic dispossession and dispersion of the Metis and the statutory alterations to the *Manitoba Act* and faulty implementation of the *Dominion Lands Act*.

Primary research was compiled in 1981 and submitted to the federal government in the form of a statement of claim based on Aboriginal title. This claim was submitted directly to the Cabinet and was rejected in a terse letter from the Minister of Justice. The position of the government then was that Metis, outside the Northwest Territories, do not possess Aboriginal title. No legal opinion was produced to back up the federal government's rejection.

2 Placing Land on the Constitutional Agenda

With the advent of the first of four First Ministers' Conferences on Aboriginal Rights in 1983, the prairie Metis united in demanding that Metis land base and self-government be included in the constitutional agenda. In this, they met resistance from the Indian and Inuit organizations who wanted the issue of land to be dealt with under the heading of Aboriginal title. This position was backed by the non-status Indians within the Native Council of Canada, prompting the Metis to withdraw from the Native Council and to form the Metis National Council to pursue a Metis land base as a separate constitutional agenda item and objective.

In order to gain seats for the Metis people at the 1983 First Ministers' Conference, the Metis National Council launched a court action against then Prime Minister Trudeau. In winning an out-of-court settlement to gain representation for the Metis Nation in the constitutional conferences,

the Metis National Council also succeeded in having a land base for the Metis included in the agenda for the ongoing process. This Metis land base agenda item figures in the 1983 *Constitutional Accord on Aboriginal Rights*.

Notwithstanding the Prime Minister's commitment to convene a meeting with Metis on the land issue at the 1985 FMC, the four First Minister's Conferences on Aboriginal Rights expired without meaningful discussion dealing with the Metis land issue. The failure can be attributed to Ottawa's refusal to accept responsibility for settling Metis land claims.

In view of this position at the constitutional table and the continued exclusion of the Metis from Ottawa's comprehensive claims policy, the Manitoba Metis Federation reactivated its court action against the federal and Manitoba governments. Since 1985, Thomas Berger has represented the Manitoba Metis in these proceedings. Unfortunately, these have been delayed repeatedly by procedural motions of the Department of Justice. It is obvious that the department is trying to avoid the case going to trial.

In response to Aboriginal concerns with the claims policy, the federal government established a task force to review the comprehensive claims policy in 1985. The task force reported in 1986 in a report entitled *Living Treaties: Lasting Agreement*, otherwise known as the *Coolican Report*. The *Coolican Report* suggested that a separate policy and process should be developed by the government so that Metis can negotiate with government to remedy past injustices and to establish new relations. This recommendation, like many of the others, was not acted upon in the new 1986 policy statement. As a result, Metis do not presently have access to a land claims process.

Moreover, experience has shown that lumping the Metis in with other Aboriginal peoples on land questions works to their detriment since Ottawa has established a process for implementing the land rights of the others but not for the Metis. For example, the constitutional entrenchment of land claims agreements as "Treaties", a result of the 1983 *Constitutional Accord*, benefits the Indians and Inuit included in land claims settlements, but is meaningless for most Metis as long as Ottawa refuses to negotiate a settlement of Metis land claims.

B The Federal Proposals

The federal proposals do not commit governments to provide a land base for Metis or even to negotiate a land base with Metis. The proposal merely suggests that Aboriginal governments may possess *jurisdiction over land* and this further depends on the requirements and circumstances of the Aboriginal group.

C Consultative Findings

The consultative process revealed how important the establishment of a land base figures in the aspirations of Metis people. For many, it is a cultural base where the Metis people could practise their language and culture and pursue traditional lifestyles. For many, it is an economic base which would allow Metis to participate in employment and business opportunities surrounding the management and development of land and its natural resources as well as a source of tax revenue for Metis government.

The problem of Metis landlessness is most immediate in predominantly Metis communities in the northern part of the prairies, northwestern Ontario, the territories and northeastern B.C. Their very existence is threatened by their inability to gain control over their surrounding lands and resources. Provincial governments are leasing or selling lands traditionally used by these Metis communities to resource corporations and recreational enterprises with little or no benefit to the Metis who see the resultant jobs and contracts awarded to outsiders.

At the same time, provincial governments have imposed restrictive regulations on the Metis inhabitants of these communities making it impossible to derive a livelihood from hunting, fishing, and trapping. Without any control over the management of renewable resources, the Metis have witnessed serious depletion of fish stocks, timber, and other sources of sustenance and wealth. The problem of Metis landlessness is compounded by an expansion of Indian reserves at the expense of nearby Metis communities.

While some Metis in Alberta do have land, the Metis Nation of Alberta's consultation process illustrates the need for Metis living off the Settlements to secure an adequate land and resource base. During the public hearings, a Metis land base was viewed as a high priority issue that must be dealt with in the current round of constitutional discussions. Participants felt that the land base should be held collectively and should not be allowed to be sold. Participants felt strongly that Metis lands should be protected for future generations.

Participants in the Metis consultative process across western Canada believe that the solution to their landlessness lies in the resolution of Metis land rights in the *Manitoba Act* and *Dominion Lands Act*, not in general discussions of Aboriginal and Treaty rights which inevitably focus on other Aboriginal peoples whose land claims are already recognized by Ottawa.

Recommendation #3

- i) **The inherent right of Metis to a land and resource base must be recognized in the *Constitution*.**

- ii) **Any meaningful progress on Metis issues in upcoming constitutional talks requires the re-inclusion of Metis land and resource base as a distinct agenda item.**
- iii) **Any constitutional commitment to negotiate must make specific reference to a Metis land and resource base as an issue to be negotiated.**

Chapter IV

Constitutional Entrenchment of Metis Self-Government

IV CONSTITUTIONAL ENTRENCHMENT OF METIS SELF-GOVERNMENT

A Introduction

Fundamental to any understanding of Metis aspirations is the need to recognize the inherent right of the Metis people to self-government. From the time of their emergence as a new people and a new nation on the plains of western Canada in the late seventeenth century, Metis people have asserted their right to self-determination.

Without a doubt, the early relationship and conflicts between the Metis and the European settlers were marked by an assertion of self-determination by Metis people. It manifests itself in the Metis victory over the Selkirk settlers at the Battle of Seven Oaks in 1816, and their challenge of the Hudson's Bay Company fur trade monopoly. It shaped the political development of western Canada in the form of the Metis Provisional Government of 1869-70 which chose to bring Manitoba into Confederation as a province and the second Metis Provisional Government in Saskatchewan which led the Metis in a war of resistance against Ottawa in 1885.

While Metis rights were not recognized, their leader executed, and their lands taken away, their assertion of self-determination did not cease. In fact, shortly after their defeat, the Metis people began annual observances of the resistance at Batoche which continue to this day.

During the dark decades of the Metis diaspora, their very identity under assault by successive federal governments trying to define them out of existence, the Metis resisted. The history, culture and traditions of the New Nation would be preserved by predominantly Metis communities, Metis historical and cultural societies, and Metis political associations. The political struggle would centre on regaining a land base for the Metis people but in the 1970s, the provincial Metis associations on the prairies expanded their mandate to deal with the social and economic problems of their constituents.

B Metis Political Associations

The Metis associations constituting the MNC are a contemporary expression of the centuries-old struggle of the Metis to be self-determining. For the Metis people, self-government is the right of the Metis to have their own democratic political institutions to represent the interests of the Metis Nation within the Canadian federation and to manage their social, cultural, and economic affairs. Despite the present lack of legal authority and resources needed to exercise this mandate effectively, Metis associations are the nucleus of Metis self-governing institutions.

The MNC member associations 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 leadership on a regional basis, and their provincial executives at large.

Through this system, local associations give direction to regional councils. The local presidents and regional directors form regional councils which in turn give direction to the provincial executive or council. To strike a proper balance between provincial and regional interests, provincial executives or councils consist of a few officers elected at large and one or more members of each regional council.

The provincial councils serve as the political voice of the Metis people in each province. They articulate Metis 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 Metis social and economic development.

Provincial Metis associations have built a variety of educational and cultural institutions such as the Gabriel Dumont Institute in Saskatchewan (education and training), Pemmican Publications in Manitoba (Metis publishing house) and the Louis Riel Historical Society in Alberta, in addition to operating their own newspapers. They provide a range of social services by way of Metis housing authorities in rural and urban areas, Metis child and family services, and alcohol and drug abuse programs. They have established economic development corporations and financial institutions to facilitate business development.

This democratic, "bottom-up" approach to political organization adopted by the Metis associations has ensured that ultimate responsibility for agencies and institutions delivering programs and services to Metis people rests with elected leaders who are accountable to the grass-roots membership. In recent years, the Metis associations have moved to enhance their decision-making process by establishing Metis 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 Metis people have worked hard to build democratic institutions, their associations are seriously circumscribed by lack of legal authority and resources. Metis 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 Metis Settlement Councils under Alberta legislation. Nor have they been provided with sufficient financial resources to effectively exercise their broad mandate.

C The Federal Proposal–Justiciable Right of Self-Government

The Government of Canada proposes an **amendment** to the *Constitution* to entrench a general justiciable right to Aboriginal self-government within the Canadian federation. The right would not be enforceable for a period of up to ten years. The nature of the right to self-government would be described in the *Constitution* so as to facilitate interpretation of that right by the courts. The proposal also contemplates imposing a commitment on governments to negotiate self-government agreements. Once these agreements are reached, they would receive constitutional protection. The government also proposes regularly scheduled First Ministers Conferences on this subject. Finally, the right of self-government would be subject to the *Canadian Charter of Rights and Freedoms*.

D Consultation Findings

1 Inherent Right

Participants in the consultation process felt strongly in the need to constitutionally entrench an inherent right to Metis self-government in the *Constitution*. In taking this approach, however, Metis participants made it clear that they were not seeking sovereignty outside of Canada. Metis participants believe in the need for Canadian Unity and seek a new version of Canadian federalism. Metis people indicated they are a Nation within a Nation and that federalism is flexible enough to accommodate this reality.

Participants also believe the inherent right should be enforceable in the courts immediately, but they see the need to provide Metis and governments with an opportunity to negotiate self-government agreements prior to any litigation. The Metis leadership is aware that 124 years of constitutional history cannot be erased overnight. That is why the Metis seek a clearly defined negotiation process to accompany the rights of self-government in the *Constitution*.

For Metis people, the main purpose of self-government is to guarantee sufficient legal authority and financing to Metis self-governing bodies to enable them to effectively manage the affairs of their members. Several Metis associations have entered into tripartite discussions with federal and provincial governments to examine ways of expanding the involvement of Metis associations in the design and delivery of government programs in areas such as economic development, education and training, natural resource management, housing, and family services.

Metis participants in the consultative process examined self-government models on and off a land base.

2 Metis Self-Government On a Land Base

Participants indicated that land-based Metis governments would have greater and more applicable legislative authority than self-governing bodies off a land base. All Metis on the land base would be subject to the laws of the Metis government by virtue of residence. The nature and scope of the laws would be defined as would the applicability of federal and provincial laws of general application. Participants felt strongly that these arrangements would best be worked out through negotiated self-government arrangements.

This form of self-government would be suitable to the predominantly Metis communities in the northern part of the prairies and northeastern B.C., communities that are presently powerless to regulate major economic development projects nearby or to participate in their benefits. In addition to powers and responsibilities normally associated with municipalities, these Metis governments would have authority for managing and taxing their lands and resources or entering into co-management arrangements with the provinces.

In addition, they could assume responsibility for the enforcement and administration of justice. It was noted that the Aboriginal Justice Inquiry for Manitoba had recommended that the Manitoba Metis Federation and the government of Manitoba should identify those Metis communities where Metis justice systems could be established. Those communities identified would then be defined geographically through negotiations between the provincial government and the Metis people of each community for the purpose of establishing a Metis justice system.

3 Metis Self-Governing Institutions Off a Land Base

Off a land base, the decisions of Metis self-government institutions would apply only to those Metis who choose to participate in their affairs. As such, Metis self-governing institutions would possess jurisdiction and responsibility for Metis individuals over a clearly defined range of matters. Metis participants in consultations see their own provincial associations as models for Metis government structures which will promote Metis rights at the provincial level while respecting the autonomy of the Metis at the community and regional levels.

Metis self-governing institutions could take the form of a provincial Metis legislative assembly mandated to enact legislation and administrative orders at periodic assemblies and comprising Local Presidents. A provincial executive council or Cabinet elected on a province-wide basis would be empowered to implement the legislation through its various departments such as economic development, social services, housing, etc.

Of course, any transformation of present Metis associations into meaningful Metis self-governing institutions requires the federal and provincial governments to transfer sufficient powers and financing to Metis self-governing authorities. The process endorsed by Metis begins with the constitutional entrenchment of the inherent right of Metis to self-government. This would set the stage for an orderly transfer of jurisdictional authority from the federal and provincial governments to Metis governments.

4 Self-Government Parameters and Jurisdiction

The Metis people are willing to work within an expanded version of Canadian federalism. Metis are prepared to accept certain parameters on Metis self-government and are prepared to set out the jurisdictions Metis governments and Metis self-governing institutions would possess. Reflecting its historic democratic traditions, the Metis Nation believes that Metis governments on a land base and self-governing institutions off a land base must follow democratic principles and practises. Only through a direct electoral process will accountability be ensured.

The Metis Nation also believes that Metis governments must be subject to the rule of law, that is to say Metis governments should only affect the lives of Metis 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 Metis. Metis do not seek arbitrary measures, rampant patronage, nor despotic rulers.

5 Self-Government Negotiations

Metis participants believed that transfers of jurisdiction can best be accomplished through self-government negotiations. Subsequent agreements would provide for the federal and provincial governments to vacate certain jurisdictional areas upon the enactment of Metis law or by Metis governments or the assumption of responsibility by Metis self-governing institutions. Self-government negotiations would also lead to an entrenched source of financing for Metis governments and institutions. Among these sources could be resource revenue sharing arrangements or equalization and transfer payments from Ottawa. It has also been suggested that in view of the provincial structure of Metis associations, provincial trust funds could be established from which Metis self-governing institutions at the local, regional, and provincial levels could draw funding.

6 Dispute Resolution Tribunal

Metis leaders do not believe the lower courts of the country are particularly suited to interpret the meaning of self-government or to expedite the negotiation process. Disputes between Metis governments and other

levels of government could best be resolved by an expert tribunal consisting of an appointee of Metis government, an appointee of the federal government and a third mutually acceptable appointee. The decisions of the tribunal would be binding on all parties with appeals lying directly to the Supreme Court of Canada.

Recommendation #4

- i) **The Metis Nation seeks explicit constitutional reaffirmation of the inherent right of Metis self-government in section 35 of the *Constitution Act 1982*.**
 - ii) **The Metis Nation recommends that disputes about such matters as jurisdiction and conflicts with other levels of government be referred to an alternative dispute resolution tribunal composed of one Metis and one government representative with a chair to be selected by mutual agreement. A decision of the tribunal would be binding on the parties with an appeal lying directly to the Supreme Court of Canada.**
 - iii) **The Metis Nation supports parameters of self-government which may include the following:**
 - **requirements for democratically elected governments and democratic institutions;**
 - **acceptance of the rule of law; and**
 - **retention of the existing *Charter* and the application of a Metis Charter of Rights and Freedoms.**
 - iv) **The Metis Nation asserts that both levels of governments must vacate jurisdictions to Metis governments and that this commitment to vacate jurisdiction should be explicitly entrenched in the *Constitution*.**
 - v) **The Metis support the constitutional entrenchment of a non-exhaustive list of jurisdictions that Metis governments and Metis self-governing institutions would exercise.**
 - vi) **A constitutional commitment should commit governments to negotiate at the request of the Metis and shall include, but not necessarily be limited to, matters respecting self-government including, jurisdiction, powers, land, resources, funding and preservation and enhancement of language and Metis culture. The Metis Nation is prepared to enter into negotiations on self-government at its earliest opportunity.**
 - vii) **The MNC has no objection in principle to the application of the *Charter* and further supports the development of a Metis Charter.**
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Chapter V

Section 91(24) of the Constitution Act, 1867

V SECTION 91(24) OF THE CONSTITUTION ACT, 1867

A Introduction

While the Metis were recognized as a distinct Aboriginal people within section 35 of the *Constitution Act, 1982*, the federal government continues to disclaim legislative responsibility for Metis. This legal stance was delivered in response to a Metis land rights report in 1981. The Minister of Justice rejected Metis land claims on the basis that the federal government had no legal responsibility for Metis and if they did, its obligations were fulfilled under the *Manitoba Act* and the *Dominion Lands Act*.

The federal government has ducked its responsibility for settling Metis land issues and for providing distinct programs and services to Metis. Moreover, the federal government has made it known that even if the Supreme Court were to rule that the federal government had legislative responsibility for Metis under section 91 (24), it would not feel compelled to enact legislation or undertake responsibility for the Metis.

While the issue has been raised by Metis people for nearly three decades and has been discussed in several federal-provincial fora, the issue has never been directly litigated nor has a political solution proven to be achievable.

The MNC attempted to resolve the jurisdiction issue during the FMC process (1983-1987), without success. In 1983 and 1984, the MNC led a debate over the jurisdictional issue as well as over entrenching the definition of Metis in the *Constitution*. During the preparatory process in 1985, then Justice Minister Crosby, offered to refer the matter to the Supreme Court. The offer was turned down by the MNC in favour of pursuing the issue in the political arena. It is also to be noted that the Prime Minister undertook to personally hold a meeting on the Metis land base issue at the 1985 FMC.

Following the failure of the 1985 First Ministers' Conference, the federal government indicated a willingness to participate in negotiations led by provincial governments to define and implement self-government arrangements for Metis. However, a pre-condition for these discussions was the implicit commitment by the provincial governments to assume primary responsibility for Metis. It has argued that this pre-condition was necessary to preserve its legal position.

During the 1987 FMC, the jurisdictional issue was identified as an impediment to progress on the entrenchment of Aboriginal self-government. The linkage with self-government was designed to ensure that the issue was dealt with by First Ministers. To prepare the ground work for Ministers, a special officials working group was held to examine the issue and to prepare options for ministerial consideration. This options paper was discussed by intergovernmental Affairs Ministers but the issue was dropped when the Prime Minister tabled the agenda for the 1987 FMC.

B Federal Proposals

The federal government has made a commitment to address "the appropriate roles and responsibilities of governments as they relate to the Metis". The commitment to address the roles and responsibility of both levels of government has been bolstered by the Prime Minister's recognition of the Metis Nation and his recent commitment to open up a bilateral process with the Metis National Council.

C Consultative Findings

The jurisdictional issue was identified as one of the central constitutional objectives of the Metis Nation. Metis people want the federal government to assume its constitutional responsibility for dealing with the Metis under section 91(24) of the *Constitution Act 1867*. History has shown that when the federal government coveted Metis lands, it was more than willing to exercise this constitutional responsibility by enacting the *Manitoba Act* and the *Dominion Lands Act*. Once the Metis were dispossessed and dispersed, Ottawa abandoned its responsibility for the Metis people.

Metis leaders have identified the jurisdictional issue as a major obstacle to progress for Metis people. On a daily basis, Metis people are denied basic services offered by the federal government to other Aboriginal peoples on the grounds that Ottawa is not responsible for providing these services to the Metis. The Supreme Court has now recognized that the federal government owes a fiduciary obligation to all Aboriginal peoples, including Metis. The courts are now getting ahead of the federal government and the political process.

Metis participants are aware that the implementation of Metis self-government may very well require tripartite agreements and cost sharing arrangements with the provincial and the federal governments. Nevertheless, they feel that the federal government has ultimate responsibility for dealing with the Metis as a nation transcending provincial boundaries and an obligation to act regardless of the outcome of the constitutional process.

In his meeting with the Metis National Council, Prime Minister Mulroney made a commitment to open a bilateral process with the Metis but to date, this commitment has not been fulfilled. This process should be initiated immediately, should proceed parallel to the constitutional process and should continue even if the constitutional talks fail. Foremost of the bilateral issues must be the issue of the unresolved Metis land rights.

Another critical matter for inclusion in the bilateral process must be enumeration. As an exercise in Metis nation-building, the compilation of a central Metis citizenship registry must employ uniform procedures and criteria and must accommodate the mobility of Metis people across provincial boundaries.

Metis people wish this comprehensive census of the Metis to be undertaken as a joint effort of the MNC and the federal government.

Recommendation #5

- i) **Consistent with previous positions, the Metis Nation supports the federal assumption of jurisdiction and responsibility for Metis under section 91(24) of the *Constitution Act, 1867*. For greater certainty, the Metis Nation welcomes an amendment to clarify that section 91(24) applies to Metis. The amendment should be numbered 91(24.1) and read as follows:**

91(24.1) For greater certainty, section 91(24) applies equally to the Indian, Inuit and Metis peoples of Canada.

- ii) **The Metis Nation believes that a bilateral process must be developed by the federal government and the MNC, directed toward resolving outstanding Metis issues including land claims, Metis enumeration, and other outstanding matters.**

Chapter VI

Metis Participation in Parliamentary Institutions

VI METIS PARTICIPATION IN PARLIAMENTARY INSTITUTIONS

A Introduction

Metis people have historically sought to participate in the central institutions in Canada. This was the position of the Provisional Government in the Red River settlement and in the Provisional Government in the Northwest. There have only been three Metis people, south of 60 elected to the House of Commons since *Confederation*. All three, including Riel, were elected last century when the Metis were the majority in the Red River settlement area

The Metis have fared worse in the Senate. The Metis do not have, nor have they ever had a self-identifying Metis person appointed to serve in the Senate.

B Federal Proposals

The Government of Canada proposes that Aboriginal representation should be guaranteed in a reformed Senate. The changes suggested to the Senate include electing future Senators, providing Senators with increased powers over language and culture, retaining its suspensive veto over issues of national importance and over national defence, maintaining its mandate to conduct special inquiries on public policy issues and ratifying a variety of Order in Council appointments.

C Consultative Findings

Metis participants in the consultative process voiced strong support for guaranteed representation in the House of Commons and in a reformed Senate. Metis people were acutely aware that Metis support is rooted in the history of the Metis Provisional Governments in Manitoba and Saskatchewan which sought self-government for the Metis as well as guaranteed representation in Parliament. However, Metis historical experience in this regard also reflects the overall politics of exclusion to which the Metis have been subjected. Thrice elected, Louis Riel was denied his seat in the House of Commons.

The contemporary experience of the Metis has been no better. While two Indians and two Inuit have been appointed to the Senate, there are no Metis in the Upper Chamber. The federal proposal for guaranteed Aboriginal representation in a reformed Senate as well as the recent report of the Royal Commission on Electoral Reform and Party Financing proposing Aboriginal constituencies for the House of Commons hold out the promise of correcting this situation, but only if the Metis are guaranteed the right to elect their own representatives.

This is a call echoed by many Metis participants in the consultative process who seek an elected Metis Senate seat for each of the provinces within the Metis Homeland. Likewise, the Royal Commission heard from Metis that any effective plan for Aboriginal representation in the House of Commons requires the establishment of separate electoral districts for the Metis and Indian peoples in western Canada.

Recommendation #6

- i) A constitutional amendment for an elected Senate must provide for distinct and guaranteed representation of the Metis people.**
- ii) The federal proposal for the Senate to have the power to ratify appointments to regulatory boards and agencies can be effective for Metis people only if that Chamber is bound by the principle of appointment equity to ensure proper representation for Metis people in these federal agencies.**
- iii) The Metis Nation supports guaranteed Metis representation in the House of Commons. Metis electoral districts should be capable of crossing provincial boundaries.**

Chapter VII

Ongoing Constitutional Process

VII ONGOING CONSTITUTIONAL PROCESS

A Federal Proposals

The Government of Canada proposes the entrenchment of a constitutional process to address Aboriginal matters that are not dealt with in the current constitutional deliberations and to monitor progress made in the negotiations of self-government agreements.

B Consultative Findings

Metis people welcomed the provisions respecting Aboriginal participation in the ongoing process. Participants felt strongly that only Metis can speak for Metis. The Metis made it clear—they want to work toward building a new and strengthened Canadian federation.

Having negotiated the Province of Manitoba into Confederation, Metis leaders follow in the steps of their forefathers. Metis leaders were also aware that their subsequent exclusion from the political process resulted in the systematic erosion of Metis rights. Metis believe that the best guarantor of ensuring that this does not happen again is to have Metis people at the table when matters of national importance are being discussed.

The measure to provide for ongoing FMCs is a recognition of the outstanding and lengthy constitutional Aboriginal agenda. On the one hand, a commitment to an ongoing process also serves as a dumping ground for difficult issues which will never be, or cannot be resolved during this round of constitutional discussions. It can also be seen as a safety valve for the federal government if it fails to gain an Aboriginal group's acceptance of its current proposal. That is, it can express disappointment that its proposals fell short of the mark, but will move ahead on the understanding that the issues can be revisited at a later Aboriginal FMC.

Metis leaders do not believe that the ongoing process should be used as an avenue to avoid important issues such as the need to resolve the federal and provincial governments responsibilities to the Metis. The Metis believe that every effort should be made to resolve as many Metis constitutional issues as possible in the current round of discussions.

Metis people bring a different perspective and new insights into the constitutional process. Metis practise the politics of inclusion not exclusion. Metis ask only that which they expect from themselves. They believe that democracy works best when all voices of the nation are heard. That is why Metis people support full Metis participation in an ongoing constitutional process.

Recommendation #7

- i) The Metis Nation supports an ongoing constitutional process.**
- ii) Such conferences should be constitutionally entrenched and held at least annually with full Metis Nation involvement in the preparatory process and in setting agendas.**
- iii) The agenda should include matters not dealt with from the 1983 *Political Accord* and others matters that may be agreed to from time to time. However, the Metis Nation believes that the Metis jurisdiction and land and resource base issues must be dealt with during the current round of constitutional discussions.**

Chapter VIII

Division of Powers

VIII DIVISION OF POWERS

A Federal Proposals

The federal proposals include the recognition of exclusive provincial responsibilities for training, tourism, forestry, recreation, mining, housing and municipal affairs, as well as new administrative arrangements for wildlife and conservation. The federal proposal also includes a removal of federal residual power and for legislative delegation between the federal and provincial governments.

B Consultative Findings

In view of the importance of the relationship between the Metis and the federal government, considerable concern has been expressed over federal proposals for a decentralization of power to the provinces. One concern is that their interests may be jeopardized by large scale transfers to provincial government particularly relating to current native affairs programing. Metis have not benefitted from previous administrative transfers by the federal government to provincial governments. There is a need to ensure that Metis interests are protected in any transfers of jurisdiction or administrative responsibility.

Metis people agree with the principle that Canadians are better served when decision making is closer to the people. This is one of the fundamental cornerstones of the need for Metis self-government. As such, Metis believe that as they are closest to the people, any transfers of federal responsibility should be made to Metis people, not to provincial governments.

Recommendation #8

- i) **Any changes to the division of powers must recognize a third order of government—Aboriginal self-government. As such, any proposed transfer of federal jurisdiction over areas that affect Metis must be made to Metis governments.**
- ii) **Any transfer of jurisdiction affecting the Metis Nation must, to the extent that they affect Metis, be subject to Metis consent.**

Chapter IX

Other Aspects of Federal Proposals

IX OTHER ASPECTS OF FEDERAL PROPOSALS

While other aspects of the federal government's constitutional package did not figure prominently in the Metis consultations, the Metis National Council has tabled its response to all 28 proposals incorporated into the federal constitutional package. The following represents the MNC's position on the rest of the federal government's proposals.

Proposal #1. Reaffirming the Rights and Freedoms of Citizens

Property Rights:

The MNC does not support the entrenchment of property rights.

Proposal #2. Recognition of Quebec's Distinctiveness

The MNC supports the recognition of Quebec as a distinct society. However, the recognition of Quebec's distinctiveness shall not abrogate nor derogate from Aboriginal and Treaty rights.

Proposal #3. Aboriginal Participation in Current Constitutional Deliberations

The *Constitution* of Canada must provide the Metis Nation a guaranteed place in the constitutional process and must include involvement in discussions relating to the establishment of the process and agenda on all matters that directly or indirectly affect the Metis people.

The Metis Nation asserts that its participation in constitutional discussions should not be limited to participating in matters that are referred to in section 35.1. The Metis Nation supports a broadening of section 35.1 to guarantee Metis participation in all constitutional matters.

Proposal #8. House of Commons

The Metis Nation supports enhanced Metis participation into the affairs of the House of Commons. In particular, the Metis Nation supports the establishment of a mechanism and resources to allow the Metis Nation to provide its views to Parliamentary committees on a full range of issues, not just the Aboriginal Affairs Committee.

The MNC supports the principle of guaranteed representation of Metis people in the House of Commons to represent Metis views. Metis electoral districts should be capable of crossing provincial boundaries.

Proposal #11. Senate Ratification of Appointment to Regulatory Boards and Agencies

The Metis Nation supports the new role for Senators in the ratification of appointment, however, the Senate should be required to ensure that an equitable number of Metis appointments are made. Consequently, the Metis Nation supports the establishment of an appointment equity provision.

Proposal #12. Appointments to the Supreme Court of Canada

The Metis Nation supports enhanced consultation concerning appointments to the Supreme Court of Canada but believes such consultation should be extended to Metis governments. The process for Supreme Court appointments should be broadened. As a policy matter, the Metis Nation believes a Metis individual should be appointed to the Supreme Court of Canada at the government's earliest opportunity.

Proposal #13. The Constitutional Amending Formula

The Metis Nation agreed with the approach of only opening up the amending formula for debate if there is consensus on the issue. But, the Metis Nation wants to make it clear: if it is opened up, Metis consent to any future amendments affecting Metis would be required.

Proposal #14. Common Market Clause

The Metis Nation believes that the time is not right for this proposal.

Proposal #15. Power to Manage the Economic Union

The Metis Nation believes that the time is not right for this proposal.

Proposal #16. Harmonization of Economic Policies

The Metis Nation believes that the time is not right for this proposal.

Proposal #17. Reforms to the Bank of Canada

The Metis Nation believes that the time is not right for this proposal.

Proposal #19. Immigration

The Metis Nation is not opposed to these proposals. However, new immigrants should be required to learn and understand the contribution of Metis people to Canada, and the roles and responsibilities of Metis governments.

Proposals #20 & 21. Culture and Broadcasting

The Metis Nation seeks enhanced cultural initiatives and resources for Metis people and the constitutionalization of cultural agreements between the federal government and the Metis. The federal government must support Metis culture. However, control over Metis heritage sites, artifacts and other aspects of Metis culture should be the sole responsibility of the Metis Nation.

The Metis Nation should have the right to establish and operate publicly supported elementary and secondary schools, as well as institutions of higher learning. We also believe that provincial governments should include Metis history and culture within the prescribed curriculum.

The Metis Nation believes there should be a role for Metis in appointments to all federal and provincial cultural and communications institutions and regulatory agencies and bodies. The Metis Nation also supports greater Metis input into the design, regulation and implementation of broadcasting policy in both northern and southern Canada together with strong enforcement provisions.

Proposal #22. The Residual Power

The Metis Nation opposes removal of the federal residual power.

Proposal #23. The Federal Declaratory Power

The Metis Nation does not object to this proposal.

Proposal #27. Exercise of the Federal Spending Powers in Areas of Exclusive Provincial Jurisdiction

The Metis Nation supports the section in principle. However, federal expenditures affecting Metis must require Metis consent.

Proposal #28. A Council of the Federation

The Metis Nation does not support the Council of the Federation.

Creation of New Provinces and Extension of Provincial Boundaries

The Metis Nation believes that Territorial consent must be obtained prior to the creation of Territories and the extension of Provincial boundaries.

Chapter X

Conclusion

X CONCLUSION

The Metis Nation has honoured its long tradition of political participation and has been an enthusiastic participant in the current Canada round of constitutional discussions. Metis people throughout the Metis Homeland expressed a deep and abiding belief in Canada. Metis people believe Canadian unity is achievable and Canadians are prepared to support the rights and aspirations of the Metis Nation.