

# CROWN-MÉTIS RELATIONS

 SECTION 91(24) OF THE CONSTITUTION ACT, 1867 

February, 5<sup>th</sup> – 7<sup>th</sup>, 2006  
Winnipeg, Manitoba  
Fairmont Hotel

## Overview of Symposium

Major changes are afoot with respect to the Métis reality in Canada: the unanimous Supreme Court of Canada judgment affirming the constitutional rights of the Métis in *R. v. Powley*; a commitment in the 2003 Speech from the Throne to find the place of the Métis in federal government policies; the uniting of the portfolio of the Federal Interlocutor for Métis and Non-Status Indians with that of the Minister of Indian Affairs and Northern Development; the Prime Minister's signaling that Aboriginal issues will assume a high priority under his administration by hosting a (e.g., the Canada-Aboriginal Peoples Roundtable process and calling a First Ministers Meeting on Aboriginal Issues) and the signing of a Canada-Métis Nation Framework Agreement in May 2005.

Underlying all of these developments are significant legal and policy issues that require action and clarification in order for Crown-Métis relations to evolve meaningfully. In order to examine some of these issues, the Law Commission of Canada ("LCC") and the Métis National Council ("MNC") have agreed to jointly host a two day symposium in Winnipeg in February 2006. The symposium will explore with academics, lawyers, government officials and Métis leadership the issues that require action and clarification in order to improve Crown-Métis relations. These sessions and discussions will focus on jurisdiction questions, the implications of the Supreme Court of Canada's decisions on Métis rights, Métis identity, Métis self-government and the state of current on Crown-Métis relations. Specifically, the following four areas will be tackled at the symposium:

- Are the Métis people, "Indians" for the purposes of section 91(24) of the *Constitution Act, 1867*?
- The doctrine of inter-jurisdictional immunity and the Aboriginal rights of the Métis.
- Moving forward on Métis self-government, Identification and Citizenship
- Métis exclusion from federal programs and service available to other Aboriginal peoples.

Discussions will take place in four separate panels, one on each of the above topics. There will be 3 to 4 presenters for each panel to present papers on the panel topic, and a panel chair who will comment on and provide a response to the papers provided by the presenters. A discussion will follow which will include all symposium participants. It is anticipated that these papers, along with an overview of the symposium proceedings will then be published into a single volume book. It is hoped that the book and these papers within it will be used to inform the evolution of the evolving relationship between the Métis and the Crown.

## **Session I: Section 91 (24) of the *Constitution Act, 1867***

This panel will address the question of Métis jurisdiction and legislative jurisdiction for the Métis. While section 35 of the *Constitution Act, 1982* recognizes and protects the Aboriginal and Treaty rights of the Indians, Inuit and Métis peoples, Canada has only acknowledged it has legislative jurisdiction for Indians and Inuit, and has opined that it does not have jurisdiction for the Métis. This has left the Métis in a legislative vacuum with most provincial governments taking the position that the Métis are a federal jurisdiction. The panel will include a discussion of “continuity of language”, the historic use of the word “Indians” for the purposes of section 91(24), the issue of legislative jurisdiction in Canada and its obligations, the views of the Métis, Canada and the provinces on this subject, the possible implications of how s. 35 interplays with section 91(24).

## **Session II: Métis Self-Government**

To date, aside from the Métis Settlements in Alberta, Métis self-government, south of 60°, has been evolving off a land base. As a result of this and the underlying jurisdictional issues, to date, tripartite self-government “negotiations” between Métis, Canada and provincial governments have been limited in scope (e.g., non-rights based) and mainly focused on the delivery of programs and services rather than arriving at self-government arrangements. Recent court decisions, along with upcoming litigation on Métis lands and self-government are pushing governments to rethink Métis self-government policies. Moreover, Métis are having to really think and plan about what their future self-government structures will look like. The panel will discuss some of the issues within the “Métis self-government agenda”, including, current federal and provincial Métis self-government policies, best practices in Métis self-government, sustainable funding for Métis governments, a land base for Métis, Métis exclusion from programs available to other Aboriginal people, evolving from corporate organizations to governments, roles and responsibilities between the national, provincial, regional and local bodies, etc.

## **Session III: Métis Identity and Registration**

Who are the Métis? This panel will tackle the contentious issue of Métis identity in the 21<sup>st</sup> century. Two years ago the Supreme Court of Canada held that the identification of rights-bearing Métis is an “urgent priority” for governments and Métis groups. The panel will look at Métis identification from a historic perspective as well as review contemporary factors that are having an effect on today’s Métis identification, including, *Powley*, recent lower court decisions, the Métis Nation’s national definition, other Métis groups, community acceptance, dual citizenship, “recent vintage” Métis and Bill C-31.

## **Session IV: The Aboriginal Rights of the Métis and the Doctrine of Inter-Jurisdictional Immunity**

To date, only two Supreme Court of Canada decisions have addressed the nature and scope of the Aboriginal rights of the Métis. While *R. v. Powley* confirmed Métis have existing Aboriginal rights protected by s. 35 of the *Constitution Act, 1982*, the *Blais* decision held that Métis are not “Indians” within paragraph 12 of Manitoba’s *Natural Resource Transfer Agreement, 1930* and therefore cannot harvest wildlife under the benefit of the Indian provisions of that agreement. However, neither of these decisions address the question of the application of provincial laws to subject matters that fall within

the core of “Indianness” or “Métisness” (e.g., the heart of section 91(24)) and whether they are immunized from provincial laws by virtue of the doctrine of inter-jurisdictional immunity. This panel will explore the implications of recent cases regarding the core of 91(24) and Métis rights, the question of if Métis rights fall within the core of s. 91(24) are such rights immunized from the application of provincial laws and what this means in the Métis context (i.e. s. 88 of the *Indian Act* does not apply to the Métis therefore no legislative means of referentially incorporating provincial laws).