Opening Remarks of

President Clément Chartier

Métis National Council to

Standing Senate Committee on Aboriginal Peoples

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Mr Chairman and Committee members, thank you for the opportunity to participate in your hearing today.

During my appearance here in November 2011, I set out the two foremost priorities of the Métis Nation that fit squarely within the scope of your broad study mandate to examine and report on the federal government's constitutional, treaty, political and legal responsibilities to First Nations, Inuit and Métis peoples.

The first priority is the outstanding land rights of the Métis people resulting from the unfulfilled provisions of two federal statutes that had recognized these rights in the 19th century: the Manitoba Act 1870; and the Dominion Lands Act of 1879.

The second priority is our current initiative with the federal government to expand the relationship between Canada and the Métis Nation in a practical way through the negotiation of accords on governance and economic development under the Métis Nation Protocol entered into between the government of Canada and the Métis Nation in September 2008.

I believe that the study you are presently undertaking on issues respecting the recognition of the collective identity and rights of the Métis in Canada addresses these priorities and I welcome it.

The scope of your study encompassing Métis identification and registration, access to federal programs and services, and the implementation of Métis Aboriginal rights clearly speaks to the relationship between the federal government and the Métis Nation.

I'd like to start with Métis Aboriginal rights, in particular land rights, as this has, to date, defined the legal relationship between Canada and the Métis Nation.

Despite the recognition of the Métis in the Constitution as one of the

three Aboriginal peoples in Canada, and in the *Powley* decision of the Supreme Court of Canada in 2003 as a full-fledged rights-bearing Aboriginal people, successive federal governments have maintained that our land rights have been extinguished by law.

In practice, this means that, with the exception of the Métis north of 60, the federal government excludes us from its land claims resolution process.

Exclusion from this process entails exclusion from self-government agreements and, by extension, a predictable and reliable form of intergovernmental fiscal transfers rather than the unreliable and dysfunctional form of financing we currently operate under.

On December 13, 2011, the Supreme Court of Canada heard the *Manitoba Metis Federation v Canada and Manitoba* land rights case based on s.31 of the *Manitoba Act 1870*.

This marked the culmination of a thirty year battle in the courts to seek justice for the unfulfilled Métis land grants promised by the Manitoba Act 1870, itself a result of negotiations between the Métis Provisional Government of Louis Riel and the federal government of

Sir John A. Macdonald.

The Manitoba Metis Federation is seeking a declaration that will require the federal government to enter into negotiations of a contemporary land claims agreement including self-government with the Métis Nation.

We are awaiting the ruling of the Supreme Court, which may alter the way in which the federal government views the rights of the Métis as the Manitoba Court of Appeal has already upheld certain principles that should have significant implications going forward.

The ruling will also affect our land claims covering the rest of the prairie provinces and northeastern BC where scrip was issued by a series of federal Half-breed Commissions pursuant to the Dominion Lands Act of 1879.

I had proposed in my earlier appearance that expanding the existing land claims process or establishing a new Métis Claims Commission to settle our claims would offer a useful alternative to costly litigation.

It would bring the relationship between Ottawa and the Métis Nation

more in line with Canada's legal responsibilities as set out by the Supreme Court of Canada in the *Powley* decision.

Not only did the Court rule that the Métis are a full-fledged rights-bearing Aboriginal people with constitutionally protected harvesting rights, it also established a test of objectively verifiable criteria for membership in a Métis rights-bearing community that was remarkably similar to the National Definition of Métis adopted earlier by the Métis National Council.

According to this National Definition, a Métis is a person who self-identifies as such, is of historic Métis Nation ancestry, is accepted by the historic Métis Nation, and is distinct from other Aboriginal people.

The Supreme Court basically concurred with us, ruling that being of mixed European and Indian ancestry did not in itself make one Métis; in addition, the Court ruled one had to prove an ancestral connection to, and acceptance by, historical Métis communities.

In a number of post-Powley cases, courts have confirmed the existence of regional historical Métis rights-bearing communities in

our traditional homeland between the Upper Great Lakes and the Rockies.

The courts have also ruled against claims to constitutionally protected Métis harvesting rights of mixed-ancestry groups outside our historical homeland such as those in Atlantic Canada on the grounds that there was no evidence of historical Métis communities in these regions.

The Supreme Court in *Powley* also required governments to provide resources to Métis organizations to identify their rights-bearing members.

This led to federal support for the MNC's five provincial affiliates or Governing Members to establish membership or citizenship registries based on the MNC's National Definition of Métis.

However, rather than viewing registry funding as a constitutional obligation, the federal government has treated it as another program.

Like other federal programs accessed by Métis, the funding is delayed, unreliable and often leads to layoffs of key personnel.

Compare this to the attention and funding the federal government pays to its own Indian registry and you will see the extent to which the federal government respects Métis rights.

Membership or citizenship is a critical function of Aboriginal self-government; predictable and reliable financing to maintain registries will never be achieved if this function is subject to the whims of federal bureaucrats.

It can only be secured through a Métis self-government agreement.

This is the only way in which the federal government can be held to its obligations and it is also in its interest to do so if it wishes to ensure that only those who meet objectively verifiable criteria are included in Métis rights and self-government arrangements.

In the application of the Crown's Duty to Consult and Accommodate and its delegation of these obligations to the proponents of major economic projects, the federal approach to Métis people is again haphazard.

The result is that industry routinely ignores or heavily discounts our

interest in the planning of major projects throughout our homeland as is the case with the proposed Northern Gateway pipeline.

As for Métis access to federal programs and services for Aboriginal peoples, we are denied access to most of them because of the federal abrogation of its constitutional responsibility to deal with Métis.

This results in the exclusion of Métis from federal Aboriginal education and health care benefits.

In its recent budget, the federal government terminated the minimal Health Canada funding provided the MNC for health research and coordination of the research work of its Governing Members.

It also terminated funding for the National Aboriginal Health Organization or NAHO despite joint efforts by the MNC, AFN and ITK to have NAHO's First Nations, Inuit and Métis centres transferred to our three respective national organizations.

What I found most disturbing was the Minister of Health citing the opposition of the three National Aboriginal Organizations to the corporate governance of NAHO as an excuse to wipe out the three

centres that could have worked fine within the governance structures of the NAOs.

A classic case of throwing the baby out with the bathwater.

The exclusion of Métis from federal Aboriginal post-secondary education financial assistance makes no sense and speaks to Ottawa's lack of understanding of the life-situation of Métis youth.

While the gap in high school graduation rates between Métis and the general population has been considerably reduced, the gap in university educational attainment remains immense, due largely to financial barriers faced by Métis youth.

It cannot be overstated how great the return on investment in Métis post-secondary education would be if these financial barriers were removed, in particular those erected by the federal government's exclusionary policy toward Métis.

A recent study of Saskatchewan's only Métis professional degree program - the SUNTEP program for urban teachers offered by our

Gabriel Dumont Institute – shows that since the first of its more than one thousand graduates since 1984, SUNTEP has increased provincial GDP by $2.5 billion and provincial government revenue by $1.0 billion.

The Métis National Council's five Governing Members have tried to mitigate the gap in university education attainment by establishing endowment funds that provide scholarships for post-secondary education.

These endowments have leveraged matching funds from universities.

A substantial injection of new capital into these endowments would represent the best investment the federal government could ever make but, as in so many other aspects of Métis affairs, a strong business case and a logical action path mean little when a government is blinded by the mantra that we are a provincial responsibility.

I cannot overstate just how entrenched this jurisdictional barrier is in the mindset of the federal government in dealing with Métis.

Nowhere is this better illustrated than in the federal government's refusal to date to take responsibility for compensating victims of Métis residential schools.

In March 2012, a number of these victims gathered in Saskatoon including some from the infamous Métis residential school in Ile-a-la-Crosse, Saskatchewan, which I attended.

I can assure you that listening to the continued torment of these people decades later is itself a traumatic experience.

Making their anguish so much worse was the raised expectation that their grievances would finally be redressed - as was the case during the 2006 election campaign when then Opposition Leader Stephen Harper promised compensation for the victims of the Metis residential school in Ile-a-la-Crosse - and then be left out again when the new government took power.

That the denial of their demand for justice should be based on jurisdiction – that it is the Province's responsibility to deal with them

- undermines and vitiates the new beginning promised in the Prime Minister's apology to Aboriginal peoples on the floor of the House of Commons in June 2008.

If not redressed, this betrayal of these Métis survivors, those still living often in poor health and broken spirit, will mark the foremost moral failure of the current federal government.

In seeking to overcome the jurisdictional barrier that has blocked successive governments in Ottawa from dealing effectively with the Métis Nation, I am proposing a stronger relationship with the federal government, not a larger federal bureaucracy.

This gets me to the second of our broad priorities that I discussed with you in November, which is to work through our 2008 Métis Nation Protocol with the Government of Canada to conclude accords on governance and economic development.

As in the case of our first priority regarding land rights, this priority is directed toward a self-government agreement that would put our relationship with Canada on a stable footing; but, this would be negotiated rather than litigated.

These accords would build on the democratic accountability system of government developed by our Governing Members through province-wide ballot box election of leaders.

They would also build on the successful track record of our Métis Nation labor market and financial institutions that have played a major role over the past few decades in bringing the Métis labor force participation rate close to that of the general population.

The key to success in this approach is the adoption of a government-to-government financing system for Métis governing bodies.

The Métis people are, and have always been, taxpayers, have their own democratically constituted governance system and elected leadership and, according to an Environics study of urban Aboriginal peoples in 2010, are more likely to see the Métis National Council as representative of their interests than any of the federal political parties.

They are, in effect, subject to taxation without representation.

In 1992, the Mulroney government and the five westernmost

provinces mustered the will to address this injustice through the Métis Nation Accord, a companion to the Charlottetown Accord.

This provided for the shared financing of Métis government by Ottawa, the Provinces of Ontario-west and Métis government itself that would receive a portion of income tax paid to the federal and provincial governments by Métis Nation citizens.

The defeat of the Charlottetown Accord in the national referendum, despite public support for its Aboriginal self-government provisions such as the Métis Nation Accord, ushered in two decades of ever-expanding federal bureaucracy in Métis affairs and its micro-management of the highly limited amount of funding for our organizations.

The result is a multitude of narrowly defined contribution agreements multiplied exponentially by reports under which the MNC and each of its Governing Members operate.

Despite all the rhetoric about the need to reduce the reporting burden and the attendant federal bureaucracy, the reality is that it only increases and, with it, the waste of financial and human resources.

Our proposals to reduce the federal bureaucracy as it relates to Métis affairs and strengthen the governance capacity of the Métis Nation to administer and deliver important services such as economic development have met with positive responses at the political and policy levels of the federal government.

But these proposals and the strong business cases backing them face considerable and unremitting pushback from the bureaucracy at the operations level.

And in a federal government, where, in reality, there is no one looking out for Métis interests, who do you think wins out?

A legally binding self-government agreement with a government-to-government financing system for our Métis Nation governments is the only way that a rational and cost-efficient relationship between the federal government and the Métis Nation will be established.

Block funding would enable comprehensive single source financing of the core governance, citizenship, labor market and economic development functions of our governments for which we would be

accountable to our own electorate through ballot box elections, assemblies and audited financial statements, and to Parliament through a single agency such as the Auditor General.

How we get to a self-government agreement – whether it be through our land claims in the courts or through a political process such as the Métis Nation Protocol – remains to be seen.

I hope our survey of the issues today will provide a foundation for your Committee to further their discussion and clarification and thereby assist the government in taking long overdue steps to place its relationship with the Métis Nation on a more stable and mutually beneficial basis.

Marsi/Merci/Thank you.