

# **The Evolution and Future Direction of the Métis Nation Governance System**

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Métis nationalism and self-government emerged soon after people of mixed First Nations and European ancestry emerged as a new and distinct people and nation on the plains of western North America during the late eighteenth and early nineteenth centuries

The fur trade companies operating in this territory - the Hudson's Bay Company and the North West Company - had a common interest in blocking agricultural settlement and large-scale immigration onto the western plains from the British colonies to the east.

Hence, the mixed offspring of French fur traders from the North West Company or Scottish fur traders from the Hudson's Bay Company and their Cree, Ojibwe, or Dene wives formed an ever-increasing proportion of the fur trade population.

As the numbers of the mixed offspring grew and they married among themselves, they developed a new culture, neither European nor Indian, but a fusion of the two.

Thus, the Métis people emerged.

With their mixed traditions and command of both European and Indian languages, the Métis were logical intermediaries in the commercial relationship between the two civilizations.

They adapted European technology to the wilderness through innovations such as the Red River cart and York boat, which 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.

They played a central role in the fur trade economy as boatmen, freighters, guides, interpreters, merchants and provisioners of food through the buffalo hunt and farming.

The Métis 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.

By the early 19<sup>th</sup> century the Métis had developed a distinct political consciousness that enabled them to challenge the authority of the dominant fur trade company, the Hudson's Bay Company.

In 1811, the Hudson's Bay Company made a land grant to Lord Selkirk of 116,000 square miles including the Red River Valley for an agricultural settlement and a source of provisions for the fur trade.

Efforts by the new colonists to restrict the Métis hunting and trading practices eventually led to the colonists' defeat in 1816 at the Battle of Seven Oaks, where the victorious Métis led by Cuthbert Grant, Jr. unfurled the flag of the Métis Nation.

In 1821, amalgamation of the Hudson's Bay Company and the North West Company closed many fur trade posts and forced their Métis employees and families to move to the Red River Settlement.

Red River served as an incubator of the new nation and Métis nationalism.

Métis free traders and merchants became the most articulate proponents of a growing Métis nationalism and repeatedly challenged the Hudson's Bay Company monopoly.

By 1869, the Métis constituted 85% of the 11,400 people in the Red River Settlement - one of the largest settlements on the plains of North America west of the Mississippi and north of the Missouri.

In 1869, the Hudson's Bay Company sold Rupert's Land to the Dominion of Canada without any provision for the rights of the Métis majority in the Red River Settlement that was expected to become part of a territory governed directly by Ottawa.

The Métis formed a provisional government under the leadership of its president, Louis Riel, to draft a List of Rights for the Métis.

This list 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.

These negotiations resulted in federal legislation, the *Manitoba Act 1870* by which the Red River Settlement would enter Confederation as Canada's fifth province.

Section 31 of the *Manitoba Act* provided for a 1.4 million acre land grant for the children of the Métis heads of families while section 32 confirmed the land titles of all existing settlers in the province who had interests in land, the majority being Métis.

The Métis believed they had a deal but shortly after the *Manitoba Act* was passed, Macdonald dispatched 1,200 troops to Fort Garry, today's Winnipeg.

Troops and settlers arriving in the new province were hostile to the Métis, some of whom were killed or beaten. Métis landholders were harassed. This period has been described as "a reign of terror" by some historians.

A process for distributing lands to the Métis in fulfillment of sections 31 and 32, originally envisaged by the first Lt. Governor to take a year to complete, would take more than a decade, ten (10) long years, for the federal government to administer.

During this period, confronted by a mass influx of hostile Anglo-Ontarians frequently squatting on and gaining title to their traditional lands caught up in the red tape of Ottawa's chaotic land grant scheme, many Métis moved on.

Some Red River Métis moved to the north or into the United States, but most moved west to the Qu'Appelle and South Saskatchewan River Valleys and to the settlements near Fort Edmonton, where they joined or founded Métis communities.

There they resumed their demands for a land base in unison with those Métis resident in the North-West before 1870.

As early as 1872, the Saskatchewan Métis under the leadership of Gabriel Dumont had petitioned Ottawa for title to their lands.

Their calls went unheeded until 1879 when Parliament amended the *Dominion Lands Act* that provided for the granting of land to the Métis of the North-West, yet it was not until January 28, 1885, that the Macdonald government established a commission to review and settle Métis claims in the North-West.

By then, the Métis of the Saskatchewan Valley had already organized for the second resistance against Ottawa.

In June 1884, they had sent a delegation to Montana to persuade exiled Louis Riel to return to the North-West and on March 19, 1885, under the leadership of Riel, the Métis formed the 2<sup>nd</sup> Provisional Government of the Métis Nation.

On March 26, 1885, fighting broke out at Duck Lake, where Gabriel Dumont and the Métis clashed with the North West Mounted Police, prompting the federal government to dispatch a military expedition under the command of Major General Frederick Middleton.

On April 24, Dumont ambushed Middleton's column at Fish Creek.

Between May 9 and 12, Middleton's army defeated the Métis in the Battle of Batoche.

A few days later Riel surrendered and was transported to Regina for trial. On August 1st, he was found guilty of treason and was hanged on November 16, 1885.

It was only after the armed conflict in the North-West had begun that the Macdonald government adopted orders-in-council for federal Half-Breed commissions to distribute Métis grants under the *Dominion Lands Act*.

These federal commissions would extend grants to Métis throughout the North-West. Starting with the signing of Treaty Eight in 1899, the Treaty Commissions would sit simultaneously as Half-Breed Commissions, that is, the one Commission would deal with both Treaty negotiations and the distribution of Half-Breed scrip.

Grants under the *Dominion Lands Act* took the form of scrip, a coupon denominated in a fixed amount of acres or dollars that could only be applied to the purchase of surveyed dominion lands opened for homesteading.

Land scrip was non-transferable, but the process for redeeming it for land proved to be complicated and lengthy.

Métis from large areas of the North-West that had not yet been surveyed could not use land or money scrip to obtain title to their traditional lands, for example, the 1906 Treaty Ten scrip distribution at Ile a la Crosse and La Loche.

The most common form of grant issued by the Half-Breed commissions was transferable money scrip, such as that on the screen, which could be applied to the purchase of dominion lands or sold and assigned to land speculators, often lawyers and bankers, who were equipped to go through the onerous redemption process.

Most Métis opted for money scrip and then sold it for a fraction of its value to scrip speculators. Ottawa's collusion with speculators extended to every step of the scrip distribution and redemption process.

Scrip speculators travelled with and, in effect, became an integral part of the Half-Breed commissions.

The scrip system was rife with fraud and the Supreme Court of Canada itself in the 2003 *Blais* case has described it as "a sorry chapter" in Canadian history.

Without title to their land and facing a rapid decline of the fur trade economy, the Métis of the North-West were swept away by a tide of immigration in the decades following the North-West Resistance of 1885.

Some moved to the northern forests of the Prairies, where they joined established Métis communities or formed new ones. There they were able to continue their traditional pursuits of freighting, trapping, hunting, and fishing.

In the southern part of the Prairies, some of the Métis 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 on 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, hunting and fishing, or getting by on

relief.

With its transfer of public lands and natural resources to the provincial governments on the Prairies in 1930, the federal government absolved itself of any further responsibility for the Métis.

Despite its recognition of Métis land rights in the original “postage stamp” province of Manitoba and then, by the *Dominion Lands Act*, in the rest of the Prairies, Northeastern BC and the Northwest Territories, Ottawa maintained that Métis land rights had been extinguished by law and that any future interventions on their behalf would have to come from the provinces.

The Métis endured decades of state-sponsored marginalization.

Riel’s vision of a Métis Nation rebirth within a century of his death would blur but never die.

Predominantly Métis communities, Métis historical and cultural societies, and Métis political associations throughout the dark period of the Métis diaspora would preserve the history, culture, traditions and political objectives of the new nation.

In 1887, Métis at Batoche, Saskatchewan, organized a society named after their patron saint, Joseph, with objectives similar to those of Quebec’s St. Jean Baptiste Society. About this time, Métis people began annual observances of the resistance at Batoche that continue to this day.

During the Depression of the 1930s, dire conditions on the Prairies provoked a political mobilization of the Métis.

Founded in 1932, the Métis Association of Alberta in 1934 pressured the United Farmers of Alberta government into appointing a royal commission to inquire into the conditions of the Métis.

Following the recommendations of the Alberta Half-Breed Commission Report, the province enacted the *Métis Population Betterment Act* in 1938 to provide for the establishment of Métis settlement associations that would receive land from the province.

Twelve settlement areas were set aside in the 1940s, but the province later terminated four unilaterally and relocated their populations.

Today there are eight Métis settlements in Alberta comprising a landmass of 1.28 million acres.

Founded in 1937, the Saskatchewan Métis Society sought provincial assistance in directing its “constitutional claims” against the Government of Canada, which it held responsible for the historical dispossession of the Métis.

By the 1940s, twelve townships of public lands had been set aside for the Green Lake Métis Settlement in northwestern Saskatchewan and the CCF provincial government established a number of Métis farms across southern Saskatchewan.

The outbreak of the Second World War derailed efforts to resolve the historical and constitutional claims of the Métis as many of the leaders of Métis associations such as Malcolm Norris, a founder of the Métis Association of Alberta joined the war effort.

During the 1960s, a new set of circumstances caused a revival of Métis political consciousness and organization.

In 1970, the Trudeau government agreed to fund Aboriginal organizations. Three national associations were recognized, along with their affiliated associations. Status Indians formed the National Indian Brotherhood (now the Assembly of First Nations) while the Inuit formed the Inuit Tapirisat of Canada (now the Inuit Tapiritt Kanatami).

Ottawa also offered funds to the existing Métis associations on the Prairies which formed a national association, the Native Council of Canada (now the Congress of Aboriginal Peoples).

During this period, the Métis entered into a marriage of convenience with the non-status Indians.

Despite their fundamental differences in history, culture, and political aspirations - the Métis seeking recognition as a distinct people and nation and the non-status Indians seeking re-instatement to Indian status - the two groups found themselves in much the same relationship with the federal government.

Ottawa's jurisdictional position was that both peoples were a provincial responsibility unlike status Indians and Inuit for whom the federal government had exercised its constitutional responsibility.

For the Inuit, this occurred after the 1939 *Re Eskimos* case where-in the Supreme Court of Canada ruled that the Inuit fell within the term "Indians" in s. 91(24) of the *Constitution Act, 1867* which provided Parliament the jurisdiction or legal authority to deal with "Indians and lands reserved for the Indians".

This issue of jurisdiction remains outstanding for the Métis but will soon be dealt with by the Federal Court – Trial Division in a pending decision in the *Daniels* case brought forward by the Congress of Aboriginal Peoples in 1998.

But under its "Just Society" programs, the Trudeau regime was willing to work with the Métis and non-status Indians to improve conditions, albeit as Aboriginal minorities with "special problems" rather than "special rights".

Toward this end, the federal government found it convenient to group the Métis and non-status Indians together for service delivery purposes.

During the 1970s, the Native Council of Canada expanded from its Prairie Métis base to take in new, predominantly non-status Indian associations from the other provinces and territories.

The Trudeau government's campaign to patriate the constitution from the British Parliament with a Charter of Rights was a further catalyst for the Métis nationalist movement.

Harry Daniels, the Métis president of the Native Council in 1981 was instrumental in ensuring that the Aboriginal rights clause in the patriation bill adopted on January 30, 1981 was expanded to include a specific identification of the three Aboriginal peoples: Indians, Inuit and Métis.

Despite this important breakthrough in constitutional recognition, the federal government in April 1981 rejected Métis land claims.

With the exception of the Métis in the Northwest Territories, it continued to exclude us from its land claims resolution process as it does to this day.

In the same month, the Manitoba Métis Federation launched a major land claims lawsuit against the federal government and the Government of Manitoba, seeking a court declaration that these governments had breached their constitutional obligation to provide the Métis with a land base under the *Manitoba Act*.

Despite Ottawa's legal position on Métis land claims, the Métis leadership on the prairies saw an opportunity to negotiate a land base and self-government through the *Constitution Act, 1982* that provided for a constitutional conference to identify and define the rights of Aboriginal peoples to be included in the Constitution.

The problem was that the prairie Métis associations were vastly outnumbered within the Native Council of Canada by non-status Indian organizations who sought to use the Council's seats at the constitutional conference to pursue their aspirations.

Failure to reach an accommodation on representation led to the Prairie Métis associations withdrawing from the Native Council in early March 1983 and forming the Métis National Council or MNC on March 8<sup>th</sup> in Regina as a vehicle for Métis nationalism.

The fledgling Métis National Council immediately launched a court case against Prime Minister Trudeau, forcing him to accede to the seating of the MNC at the March 15 and 16, 1983 constitutional conference and restoring the issues of a Métis land base and self-government to the constitutional agenda.

The MNC pressed the case for a Métis land base and self-government during the four First Ministers' Conferences on the Rights of Aboriginal Peoples from 1983 to 1987 but these conferences resulted in impasse.

It appeared that the impasse could be broken in October 1991 when Prime Minister Mulroney at a meeting with the MNC in Winnipeg recognized the Métis Nation and sought our participation in the "Canada Round" of constitutional consultations.

On March 10, 1992, Parliament unanimously passed a resolution recognizing the unique and historic role of Louis Riel as a founder of Manitoba and supporting the attainment of the constitutional rights of the Métis people.

The Charlottetown Accord and a companion document, the Métis Nation Accord, concluded in the fall of 1982 appeared to represent a major breakthrough.

The Charlottetown Accord provided for a constitutional amendment to s. 91(24) of the *Constitution Act 1867* making explicit federal jurisdiction for all Aboriginal peoples.

The Métis Nation Accord committed the federal government and the five westernmost Provinces, Ontario to BC, to negotiate a land base and self-government with the Métis National Council and its provincial affiliates or Governing Members which by then included the original three prairie founders of the MNC and new affiliates from that part of our historic homeland in northeastern BC and northwestern Ontario.

The defeat of the Charlottetown Accord in the national referendum in October 1992 dashed our hopes for a negotiated settlement of our outstanding rights and forced us into the courts.

Facing repeated procedural delays by the federal government, the Manitoba Métis land claims lawsuit launched more than a decade earlier continued to wind its way through the courts.

In March 1994, the Métis National Council, the Métis Nation- Saskatchewan, and the Local Presidents and Elders of Northwest Saskatchewan filed a Statement of Claim in the Court of Queen's Bench in Saskatoon regarding the unfulfilled land grants promised under the *Dominion Lands Act* in order to open the door to similar claims and litigation across our historic homeland in western Canada where scrip was issued.

In 1995 the *R. v. Morin & Daigneault* fishing trial took place in Buffalo Narrows, involving two young Métis fishermen from Turnor Lake who were charged with fishing by way of nets without a licence. In 1996 the provincial court judge ruled that the Métis when accepting land and money scrip did not have their Aboriginal right to fish extinguished. This victory was upheld by the Court of Queen's Bench in Battleford on appeal. The Crown did not appeal the case any further, and since then, the Métis of northern Saskatchewan have had the right to hunt and fish without a licence.

The decade also saw a Métis hunting rights case in northern Ontario move through the courts – the *Powley* case. While the charge of hunting without a licence was laid in 1993, it did not get to trial until 1998, with Métis lawyer Jean Teillet who also assisted in the *Morin & Daigneault* case acting as chief lawyer for the Powleys.

This case would eventually culminate in the landmark decision of the Supreme Court of Canada in 2003, establishing that the Métis are a full-fledged rights-bearing Aboriginal people with constitutionally protected harvesting rights.

Hence, the Supreme Court confirmed the correctness of the 1997 Queen’s Bench decision in *Morin & Daigneault*, and set the stage for the victories of the 2005 *Lavolette* Meadow Lake and the 2007 *Belhumeur* Lebreton Métis fishing rights cases.

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 by the Métis National Council in 2002.

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.

In its *Powley* decision, 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.

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 2002 National Definition of Métis.

These registries became an integral part of the governance system of the MNC’s Governing Members that had been expanding steadily since the MNC’s formation.

In 2011, the Supreme Court in the *Cunningham* case also confirmed that the Métis Nation has the right to determine its own citizenship.

Métis provincial organizations had established a distinct system of democratic accountability through province-wide ballot box election of leaders.

They had also established a very successful track record in the administration and delivery of government services such as housing, employment and training, economic development, and child and family services.

These programs were often delivered through professionally managed, arms-length institutions such as the Gabriel Dumont Institute and the Clarence Campeau Development Fund in Saskatchewan that are accountable to the elected representatives of the Métis people.

Although Métis were and still are excluded from federal Aboriginal education and health care benefits, the MNC's Governing Members managed to partially address the needs of our people through facilities such as Métis Nation endowments that provide our students with scholarships for post-secondary education.

At the same time, while the Métis organizations were being called on to serve as governments, they were constantly challenged by the lack of legal authority and reliable financing that would enable them to fulfill this mandate.

The Kelowna Accord in 2005 under the leadership of Prime Minister Martin had great potential to strengthen the capacity of the MNC and its Governing Members toward reducing the gaps in education, health, housing, infrastructure and employment but this Accord would never see the light of day following the defeat of the Martin government a few months later.

The Métis National Council and the Government of Canada under Prime Minister Harper concluded a Métis Nation Protocol in 2008.

Under the Protocol, I have worked with the federal Minister of Aboriginal Affairs and his counterparts from the five westernmost provinces and industry to develop a strategy for promoting greater and more effective Métis participation in economic development.

This work has resulted in a series of significant federal and provincial investments in Métis Nation financial institutions providing loan and equity capital to Métis entrepreneurs.

We are also working under the Métis Nation Protocol process to conclude accords on governance and economic development.

The MNC's ultimate objective is to achieve a self-government agreement with reliable government-to-government financing arrangements.

There are two principal ways to achieve a self-government agreement: the first through a political process such as the Métis Nation Protocol; the second through court action that would require Ottawa to conclude a contemporary land claims agreement including self-government arrangements with the Métis Nation.

Experience has shown that, without a mechanism forcing it to act such as a declaration of the court, the federal government is unlikely to move on its own.

On December 13, 2011, the Supreme Court of Canada finally heard the case of our Manitoba Governing Member: *Manitoba Metis Federation v. Canada and Manitoba*.

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 negotiation of a contemporary land claims agreement including self-government with the Métis Nation.

Whether we achieve self-government through a land claims agreement or a political process, the Métis Nation will require a national constitution that will define the nature of Métis government that will exercise powers under a self-government agreement.

Toward that end, the MNC has been working on a Métis Nation Constitution that is scheduled to go forward to a Constitutional Convention for review and adoption in 2013.

There are important building blocks for constitutional reform that have been assisting us in this work.

The first is a durable governance structure that has its origins in the prairie Métis associations established in the 1930s.

The common foundation of our governance system are local associations and regional councils within each of our Governing Members whose representatives constitute the provincial political structure along with executive officers elected through a province-wide ballot.

Representatives from the provincial councils of the five Governing Members make up the General Assembly of the Métis National Council.

Another building block is our established system of democratic accountability that sets as a condition for membership in the MNC the direct election of the Governing Members provincial executive by province-wide ballot and their regional directors by regional ballot.

Since 2002, the MNC General Assembly has supported in principle the direct election of the MNC president by homeland-wide ballot – in contrast to the indirect election of the president by the MNC General Assembly – and this is something we are trying to achieve as part of the new constitution.

Since citizenship is a critical part of a nation's constitution, our established citizenship registries constitute another important building block for constitutional reform.

In addition to entrenching our National Definition or citizenship code in the constitution, we are now working on ways to integrate the registries of our five Governing Members into a national registry so that they will be interoperable and citizenship will be portable from one province to the next.

The division of powers is an important element in constitutions of a federal nature and in our case we can build on an informal division of powers between the MNC and the Governing Members that has evolved out of practical experience over the past three decades and works well for us.

Accordingly, the MNC offers national and international representation for the Métis Nation, does national policy development, and pursues intergovernmental relations and agreements such as the Métis Nation Protocol on behalf of the entire Métis Nation.

The Governing Members offer representation for the Métis people within their respective provinces, maintain citizenship registries, and administer and deliver programs and services, often through their affiliated institutions.

Under the current system and corporate by-laws of the MNC, each of the three Prairie organizations or Founding Members of the MNC has 15 voting delegates at the MNC General Assembly while each of the Non-Founding Members from Ontario and BC have five.

The unanimous consent of the prairie associations is required for bylaw amendments including those needed for a new constitution.

Delegates to the Constitution Convention in 2013 will have to decide whether this formula will carry over into a new constitution in determining the representation of the Governing Members in a National Assembly and how to amend the constitution.

So when you consider the basic elements of a constitution and the consensus that has to be attained in its adoption, I think it's fair to say that we have made considerable progress already.

The upcoming ruling of the Supreme Court of Canada in the MMF land rights case will have an impact on the pace of our internal political development as a constitution would be needed for any self-government agreement.

Whether Métis self-government agreement is achieved through this court action or through the political process such as the accords we are pursuing under the Métis Nation Protocol, federal legislation will be needed to put it into effect.

For a number of years, I have been proposing a *Canada - Métis Nation Relations Act*.

This federal legislation would recognize the right of Métis people to govern ourselves under our own constitution and would recognize certain initial powers such as our control over our citizenship, our electoral and accountability processes, and the share of those federal Aboriginal programs currently available to Métis such as skills development and employment, business financing and economic development.

The Métis Nation Constitution would establish the institutions of Métis government such as the MNC and its Governing Members or successor bodies.

These governments would derive their legislative authority from the Métis Nation Constitution, not from a delegation of powers from the federal or provincial governments.

The federal legislation would establish a reliable government-to-government block financing system and Métis governments would be accountable for the expenditure of funds to their own legislative assemblies and electorates as well as to Parliament through an independent body such as the office of the Auditor General.

In closing, I hope that my remarks today have provided you with a snapshot of where the Métis Nation has come from, and is heading to, in the pursuit of self-government.

And I can assure you, as we await the ruling of the Supreme Court of Canada, that regardless of the outcome, the struggle of the Métis people to realize our place as a founding nation in the Canadian federation will continue.

Marsi, Merci, Thank you.