

Toward a Métis Nation Constitution

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MNBC ANNUAL GENERAL ASSEMBLY

Since I addressed your assembly last year, the MNC has made considerable progress toward the development of a Métis Nation Constitution.

The work we have been doing results from a resolution on Métis Nation Governance adopted by the MNC General Assembly in December 2010.

The objective of that resolution, as set out in its preamble, was to pursue a new modern Constitution as an expression of Métis self-determination and self-government.

In this pursuit, we are following in the footsteps of our earlier governments and organizations.

Our first provisional government in the Red River Settlement under the leadership of Louis Riel negotiated the admission of that territory into Confederation as the province of Manitoba in 1870.

The failure of the federal government to provide a land base for the Métis as promised in the *Manitoba Act* and its subsequent failure to address the demands of the Métis in the Saskatchewan Valley for title to their land led to the formation of the second Métis provisional government under Riel's leadership in 1885.

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

In 1887, Métis at Batoche, Saskatchewan, organized a society named after their patron saint, Joseph, to petition Ottawa with claims for property damage during the Métis resistance of 1885. 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 1928, the Métis Association of Alberta pressured the Alberta government into enacting legislation in 1938 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 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 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.

But under its “Just Society” programs, the Trudeau regime was willing to work with them 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 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 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 Métis associations withdrawing from the Native Council in early March 1983 and

forming the Métis National Council or MNC on March 8th as a vehicle for Métis nationalism.

The fledgling Métis National Council launched a court case against Prime Minister Trudeau, forcing him to accede to the seating of the MNC at the March 15 and 16 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 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, 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 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 affiliates from BC and 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 1994, the Métis National Council and the Métis Nation - Saskatchewan, filed a Statement of Claim in northwestern Saskatchewan 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.

The decade also saw a Métis hunting rights case in northern Ontario move through the courts – the *Powley* case.

This case would 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.

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 MNC in 2002.

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 Governing Members to establish membership or citizenship registries based on the 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.

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.

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 and 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.

One of the Protocol priorities is governance reform to strengthen the capacity of Métis Nation governing authorities to represent their citizens and deliver government programs and services.

The resolution of the MNC General Assembly in 2010 calling for a new constitution was in part a response to the Protocol process.

But it was also an extension of our peoples' continuous struggle for self-government and land and resource rights since our ancestors under Cuthbert Grant unfurled the flag of the Métis Nation at the Battle of Seven Oaks in 1816.

According to the resolution, work on the constitution will lead to a Constitution Convention in conjunction with a General Assembly in 2013 for the purpose of reviewing and adopting a Métis Nation Constitution.

The resolution set out a three-year work plan of consultations with Métis Nation citizens through assemblies and workshops such as this one today.

It also envisaged the Board of Governors and the Métis Rights Panel directing work on the actual drafting of the constitution.

The Métis Rights Panel is chaired by the MNC President and includes an elected representative from each of the Governing Members.

It studies and makes recommendations to the MNC Board of Governors on matters affecting Métis rights.

This includes litigation of harvesting rights under section 35 of the *Constitution Act, 1982* as well as our historic land claims such as *MMF v Canada and Manitoba* and our challenge of the scrip system.

In addition to supervising the work on a Métis Nation Constitution, the Panel provides oversight for the work of MNC and Governing Member officials and registrars on common standards for citizenship.

Toward fulfillment of the 2010 resolution, I and members of the Panel have held workshops on the constitution at assemblies and other gatherings of our Governing Members.

The Métis Rights Panel, with the support of our officials, has also been working on a draft text for the constitution and has already approved in principle some

sections which could go forward for the consideration of the Constitution Convention and General Assembly later next year.

A major milestone in this work was the MNC constitutional workshop held in Ottawa in December 2011 involving the members of the boards of all the Governing Members.

The workshop immediately preceded the Supreme Court of Canada finally hearing the case of the *Manitoba Metis Federation v Canada and Manitoba*, on December 13, 2011, which some of you attended.

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*.

It also brought to the forefront the need for a constitution which is a requirement for self-government.

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.

Either way, 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.

The MNC is engaged in discussions with the federal government 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.

However, 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.

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

So we must be prepared and the best way to do that is to apply ourselves to the task of shaping a consensus around a constitution in the months leading up to the Constitution Convention next year.

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

The first is a durable governance structure.

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 has 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 will have an impact on the pace of our internal political development as a constitution would be needed for any self-government agreement.

We have brought some handouts that were used at the constitutional workshop in Ottawa and may be of assistance in clarifying the remaining issues before the Constitutional Convention in 2013.

The three large placemat-type graphics marked A, B and C in the upper right hand corner depict the current structure of the MNC and Governing Members and how this may be affected by a new constitution and the direct election of a national president.

The first of these graphics marked A depicts the current structure, with the MNC General Assembly, shown near the top and composed of directly elected representatives from the Governing Members, electing the MNC president.

The second of these graphics marked B depicts the current separation of powers within the MNC and between the MNC and Governing Members as well as the formula for the representation of the Governing Members within the MNC and how they participate in decisions affecting amendments to the existing by-laws.

The third of these graphics marked C depicts how the distribution of powers could be affected by a homeland-wide ballot for the direct election of a national president.

This shows the national president being elected by the grassroots electorate of the Métis Nation – as seen by the blue bar running up the right side - rather than by delegates of the MNC General Assembly.

This potential change in the governance structure, along with other changes that may be proposed in further discussions, raises a number of questions that are featured in the MNC worksheets attached to graph C.

These can be a useful tool in developing some options for resolving the remaining issues before the Constitution Convention next year.

I should also touch on where we wish to go once a constitution has been adopted.

Just as a constitution will be needed regardless of which path to self-government we take, political or legal, federal legislation will be needed to put self-government into effect.

The 2010 resolution calls for a *Canada - Métis Nation Relations Act* by the Parliament of Canada which recognizes the Métis Nation Constitution, thereby acknowledging the Métis Nation's right to self-government.

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 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.

2013 is shaping up as a milestone year for the Métis Nation.

It will mark the 30th anniversary of the founding of the MNC.

It is the target date for the adoption of our constitution.

It is also the target date for the adoption of a Métis Economic Development Strategy by the Métis Nation leadership, the federal Minister of Aboriginal Affairs and his counterparts from the five westernmost provinces, with the support of

industry.

The work on this Strategy has been a major initiative under the Métis Nation Protocol, and seeks greater and more effective Métis participation in economic development.

Some of you may have participated in one of the regional engagement sessions in the development of this strategy, the Métis Nation Gateway Summit in Grande Prairie, Alberta, in mid-March of this year that was sponsored by MNBC, MNA and the MNC.

The MNC will be working with MNBC and the MNA on another joint regional engagement session as part of the process for developing the Strategy. This one will be urban based and will likely be in Vancouver.

The Strategy will embody a collaborative approach of the federal and provincial governments, industry and the Métis Nation in accelerating Métis participation in the economy through training and employment policies, expanded access to capital and procurement opportunities for Métis business, and opportunities for Métis governments on behalf of their citizens to participate in resource revenue sharing including equity participation in major projects.

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 a Métis Nation Constitution.

And I can assure you that regardless of the outcome of our current pursuit of self-government in the courts or through the political process, the struggle of the Métis people to realize our place as a founding nation in the Canadian federation will continue.

MARSI