Institute On Governance / Institut sur la gouvernance

Exploring Options for Métis Governance in the 21st Century

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Executive Summary

Major changes are afoot with respect to the Métis reality in Canada as evidenced by a number of developments including the unanimous Supreme Court judgement affirming the constitutional rights of the Métis in *R. v. Powley*. It is a near certainty that the coming years will herald major advancements with respect to the Métis agenda. What is unclear, however, is what form these advancements will take – how will the process of registration of the Métis citizenry evolve? How will Métis choose to implement their rights? How will the Métis people relate to the Canadian state? How will the Métis people govern themselves? Métis people, the public, and governments at all levels have great interest in how these important questions are determined.

Despite the urgency of these questions, and in contrast to the governance issues relating to First Nations, there has been relatively little written or researched on Métis Nation governance. In order to begin to fill this gap, the Institute On Governance ("IOG") and JTM Consulting Inc. conducted this research study with the following purpose: to review existing Métis Nation governance structures in Canada and explore options for their future development in order to stimulate thinking among Métis and across governments.

In Section I of the paper we explore the concepts of governance and good governance and conclude that there are five universal principles of good governance: legitimacy and voice; fairness; accountability; performance; and direction.

Applying these good governance principles in practice must take into account the historical, cultural and political factors a specific society, like the Métis Nation, faces. Consequently, Section II of the paper provides a brief historical overview of the Métis Nation; describes current Métis governance systems; outlines a series of governance challenges facing the Métis Nation; and concludes with a description of some best practices on which to build.

In Section III, the principal section of the paper, we begin by providing an overview of some of the key rationales for Métis Nation self-government. We then explore the following fundamental governance issues that Métis Nation needs to address. In each of these subsections we analyze the issues in play and present options or, in some instances, specific proposals for further consideration and reflection. These include:

- Addressing Métis identification issues;
- Identifying the roles and responsibilities between national, provincial and local bodies;
- Reviewing leadership selection processes;
- Strengthening internal governance and administration;
- Clarifying the place of the Métis in the Canadian federation;
- Crafting a sound government-to-government relationships; and
- Financing Métis governments in the future.

In the concluding section, we identify a number of priority areas emerging from the analysis in this paper. First among these is the need to make progress on Métis identification and registration. This includes identifying the scope of the Métis Nation and its rights-bearing

communities as well as the registration of Métis individuals. The authors believe that establishing this area as a high priority will be key to realizing Métis self-government in a real way because so much will depend on having credible registries in place (i.e. who does the Métis Nation represent and negotiate on behalf of, credible elections results, being able to identify Métis socio-economic needs based on data, etc.). To move forward in this area, we proposed several initiatives for further discussion:

- The establishment of a national panel on identifying the extent of the Métis Nation homeland to make recommendations to the Métis Nation's political bodies;
- The establishment of a National Métis Citizenship and Elections Commission, headed by a National Commissioner; and
- Regular audits on the system for registering members of the Métis Nation by an independent Métis Nation Auditor General.

A second set of priorities revolve around constitutional development. To make progress on these issues the Métis Nation must develop a broad based and transparent consultation process which engages all levels of the nation (i.e. individuals, local communities, provincial leaders, etc.). We suggest that the following be the preliminary subject matters for these discussions:

- Roles and responsibilities of the various levels of Métis government;
- Leadership selection issues, especially at the national level;
- The Métis Nation's vision for its place within the Canadian federation; and
- Generating revenues for Métis governments.

A third priority area is to continue the development of the Métis Nation's governance and administrative capacity. Much has been accomplished over the past decade and Métis organizations can point to many exemplary practices. Nonetheless, much remains to be done and further work on developing a longer-term capacity building strategy or Métis-specific training approaches would produce important dividends for the future.

Finally, developing effective intergovernmental relationships with the federal and provincial governments from Ontario west remains an ongoing priority. We suggest Métis leadership review other intergovernmental models, such as the Social Union Framework Agreement, in order to craft sound government-to-government relationships that meet the Métis Nation's unique needs. As a part of this exercise, the Métis Nation's desired place within the Canadian federation and a strategy to realize the Nation's eventual goal should be debated. In the shorter term, building upon the recently signed *Canada-Métis Nation Framework Agreement* provides a vehicle for making progress. The Métis proposal for a multilateral process with both the provinces from Ontario west and the federal government will be an important venue for developing more effective intergovernmental relations.

The above four priority areas represent an ambitious agenda, one that will require considerable political will and energy to launch. We hope this paper is a useful tool for the Métis Nation and other governments to make substantive progress on these challenging governance issues.

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Introduction

Background

Major changes are afoot with respect to the Métis reality in Canada as evidenced by the following developments: the unanimous Supreme Court judgement affirming the constitutional rights of the Métis in *R. v. Powley* ("*Powley*"); a commitment in the 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 signalling that Aboriginal issues will assume a high priority under his administration (*e.g.,* Canada-Aboriginal Peoples Roundtable process); the signing of a Canada-Métis Nation Framework Agreement and an upcoming First Ministers Meeting of Aboriginal Issues scheduled for the fall of 2005. It is a near certainty that the coming years will herald major advancements with respect to the Métis agenda. What is unclear, however, is what form these advancements will take – how will the process of registration of the Métis citizenry evolve? How will Métis choose to implement their rights? What are their collective goals? How will the Métis people relate to the Canadian state? How will the Métis people govern themselves? Métis people, the Canadian public, and governments at all levels have great interest in how these important questions are determined.

Purpose

Despite the urgency of these questions, and in contrast to governance relating to First Nations, there has been relatively little written or researched on Métis Nation governance issues. In order to begin to fill this gap, the Institute On Governance ("IOG") and JTM Consulting Inc. conducted this research study with the following purpose: to review existing Métis Nation governance structures in Canada and explore options for their future development in order to stimulate thinking among Métis people and across governments. The Office of the Federal Interlocutor for Métis and Non-Status Indians provided funding for this project but in no way influenced the content. We emphasize that this paper is a 'think piece'. It has been drafted to stimulate further discussion and debate on this important topic and is not meant to be prescriptive. In keeping with this general purpose we have made ample use of 'boxed' questions throughout the paper as a way of inspiring reflection among readers on key issues.

Methodology

We conducted this study by reviewing a range of background literature on the topic, and interviewing individuals with knowledge of the Métis, including political leaders and senior administrators from the Métis National Council ("MNC") and its regional affiliates.[1] As well, we spoke to others who are familiar with the issues including federal and provincial officials and academics. Specific comments by particular interviewees have been kept confidential. A list of interviewees is contained in Annex I.

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[1] These regional affiliates include: Métis Nation of Ontario ("MNO"), Manitoba Métis Federation ("MMF"), Métis Nation – Saskatchewan ("MNS"), Métis Nation of Alberta ("MNA") and Métis Provincial Council of British Columbia ("MPCBC")

Scope

This paper focuses on non-land based governance structures of the Métis Nation.2 By and large, the Métis Nation is made up of communities from throughout the three Prairie provinces as well as part of Ontario, British Columbia, the Northwest Territories and the northwestern United States. These communities share a traditional territory, language, extensive kinship connections, culture, way of life and collective consciousness. Based on its extensive research and study, the Royal Commission on Aboriginal Peoples ("RCAP") concluded the following:

> Application of the [nationhood] recognition policy is not likely to cause any problems for the Métis Nation. Its long-standing existence as a nation seems to us indisputable. It is widely acknowledged that the Métis Nation is culturally distinct and that it has a demonstrated social cohesiveness as well as political determination and effectiveness throughout its eventful history.[3]

This paper focuses on this Métis people. We acknowledge that there are varying and divergent opinions on the question of who are the Métis in Canada. For example, in *Powley*, the Supreme Court of Canada postulated that there may be more than one Métis 'people' within Canada.[4] It is beyond the scope of this paper to address this issue.

We also note that this is paper does not provide an in-depth legal analysis on Métis rights and self-government. Rather, the focus is on governance issues. Other resources[5] are better suited for exploring these complex legal questions (e.g., what is the legal definition of a Métis community, what communities are rights-bearing, do Métis have Aboriginal title, etc.). There is no doubt that the answers to these legal questions will influence the evolution of Métis governance and institutions. Nonetheless, this paper tackles some practical governance issues the Métis Nation is facing today and outlines some options for consideration in moving forward on the Métis governance agenda.

Terminology

Within this paper, the authors have chosen to use specific terms and language for consistency and convenience that require explanation. The "Métis Nation" is understood to mean the Métis people who have been described in the section above. The MNC is the national body which represents this Métis Nation. The MNO, MMF, MNS, MNA and MPCBC represent Métis Nation citizens within their respective provincial jurisdictions and collectively come together to form the MNC. We have described these regional affiliates as "provincial Métis organizations". The use of the term "organization" is not meant to diminish these institutions and does not mean that these structures are not Aboriginal governments or emerging Aboriginal governments. As well, this paper uses the term "membership" instead of "citizenship". For our purposes, the two terms mean the same thing.

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[2] This paper does not deal with the situations of the Métis Nation north of 60º or the Métis Settlements in Alberta.
[3] Royal Commission on Aboriginal Peoples, *Royal Commission on Aboriginal Peoples Final Report,* [hereinafter "*RCAP*"], *Perspectives and Realities, Volume IV, Métis Perspectives* (Canada Communications Groups: Ottawa, 1996) at p. 232.
[4] *R. v. Powley*, [2003] 2 S.C.R. 207 (S.C.C.) at para. 11.
[5] For example see Jean Teillet, "2005 Métis Law Summary" (Unpublished). This summary is available at www.pstlaw.ca.

Organization of Document

We have organized this paper into three main sections. Section I centres on a brief discussion of some key terms - governance and good governance. Without some common understanding of these terms, the rest of paper would rest on a shaky foundation indeed.

Following a discussion on these fundamental concepts, Section II begins with a brief historical overview of the Métis Nation and then describes and analyzes contemporary Métis governance systems including current challenges and best practices.

Sections I and II serve as a prelude for Section III, the heart of the paper. There, we identify and elaborate on some principal issues that will shape future Métis governance.

The paper concludes by summarizing the four main priority areas for making progress on governance issues in the years to come.

I. What is Governance and Good Governance?

Before discussing what principles of good governance might be helpful in guiding our analysis, it is important to explain exactly what we mean by the term 'governance'.

There are two sets of 'governance' issues we address in our study. On the one hand, governance in *organizational* space refers to the relationships between elements of an organization – for example between a Board, an Executive Director, and staff in a not for profit organization, or in the case of this study, between the executive, legislative, and judiciary branches of an emerging set of governments.

The study also discusses Métis 'governance' in *societal* space. In this context we argue that 'governance' needs to be seen as something broader than 'government'. Rather, governance is best understood as a process whereby societies make their important decisions, determine whom they involve in the process and how they render account. In this dynamic process are a number of players in the overlapping and interconnected spheres of government, civil society, private sector, and media. These varying players make one another accountable for their decisions, allow opportunities for citizens to participate in governance in varying ways, identify and create potential leaders, and find the most effective and efficient means to achieve goals. Effective governance systems require the full development of *all* of the spheres, not just government, and the achievement of balance between them.

Governance processes consist of a number of formal elements – agreements, procedures, conventions, policies, institutional arrangements – which are most easily observed and analysed. But there are also a number of less tangible factors such as history, culture, technology and traditions – factors that also influence how decisions are made. For governance systems to meet societies' needs, the formal elements need to reflect these less tangible but important historical, cultural, and traditional factors. For this reason many Western governance institutions imposed on colonized societies have proven deeply problematic. It is important to note, however, as David Newhouse of Trent University points out, that "tradition is a guide not a jailor". Governance systems – like democracy itself – should also be dynamic, adapt to modern circumstances, and take advantage of new technological possibilities as they emerge.

Good Governance

The IOG has developed a set of five broad principles of 'good' governance, based on the experience of the United Nations Development Program working in a wide range of cultural contexts worldwide, and grounded in broadly accepted declarations such as the Universal Declaration of Human Rights.[6] These are legitimacy and voice, accountability, direction, fairness, and performance. They are set out in the chart below, alongside the nine UNDP principles upon which they were based.

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[6] More information on this topic is available in John Graham and Jake Wilson, "Aboriginal Governance in the Decade Ahead: Towards a New Agenda for Change", at www.iog.ca/publications/tanaga_framework.pdf; and IOG Policy Brief #15, "Principles for Good Governance in the 21st Century", at www.iog.ca/publications/policybrief15.pdf.

	Chart 1: Principles of Good Governance	
IOG Principles	**UNDP Principles**	
Legitimacy and Voice	**Participation** – all men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their intention. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively.	
	Consensus orientation – good governance mediates differing interests to reach a broad consensus on what is in the best interest of the group and, where possible, on policies and procedures.	
Direction	**Strategic vision** – leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded.	
Performance	**Responsiveness** – institutions and processes try to serve all stakeholders.	
	Effectiveness and efficiency – processes and institutions produce results that meet needs while making the best use of resources.	
Accountability	**Accountability** – decision-makers in government, the private sector and civil society organizations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organizations and whether the decision is internal or external.	
	Transparency – transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.	
Fairness	**Equity** – all men and women have opportunities to improve or maintain their well-being.	
	Rule of Law – legal frameworks should be fair and enforced impartially, particularly the laws on human rights.	

This proposed list of good governance principles warrants elaboration. First, these principles represent an ideal that no society has fully attained or realized. As the UNDP notes, democracy and human development are a "journey" not a "destination", "…a promise rather than a list"[7]. Furthermore, there is controversy about how best to stage this journey, that is, whether different approaches to governance are suited to different stages of development. For example, some repressive societies with a high degree of government control have experienced levels of economic development far surpassing that of many of the more richly endowed developed countries. Supporters attribute economic success and social stability to their governance policies[8].

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[7] United Nations Development Program, "Human Development Report: 2002", p. 61
[8] For an interesting analysis of the relationship between governance and economic growth, see the UNDP's "Human Development Report: 2002". One robust finding is that "…while the economic performance of dictatorships varies

The Case for Universality

An even more fundamental point is whether it is appropriate to even propose a universal set of good governance principles. Some argue that the emphasis given to different aspects of governance will vary in different settings because societies value outcomes differently. Determining what constitutes "good governance" thus leads to a debate on values and cultural norms, and on desired social and economic outcomes. This in turn leads to questions about the role of government, how governments should relate to citizens, relationships between legislative, executive and judicial branches of government, and the roles of different sectors. In short, does cultural relativism trump any attempts at developing universal norms of good governance?

Of the five proposed principles, "Direction" and "Performance" are surely the most anodyne. On the other hand, the most controversial in their claim for universal status are likely "Legitimacy and Voice" and "Fairness". And yet both of these can rest their case on over a half century of UN accomplishments in the field of human rights, accomplishments that have the broad support of a large majority of UN members. Since that time the UN has adopted eight treaties and five protocols[9], which together make up the body of international human rights law and which support and elaborate on the original 1948 Declaration.

Yet another indicator that the international human rights movement is not some "western" ploy occurred at the World Conference on Human Rights in Vienna in 1993. There, 171 States, 800 NGOs, national institutions, academics – altogether 7000 participants – agreed to the Vienna Declaration, which reaffirmed "…the solemn commitment of all States to fulfill their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law."[10] The United Nations Millennium Declaration took up this theme in stating that governments "…will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development."[11]

In summary, there are strong grounds to argue that five UNDP-based principles have a claim to universal recognition[12]. That said, support at a high level of abstraction is one thing; their application is another. In this regard the following are useful reminders:

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from terrible to excellent, democracies tend to cluster in the middle. The fastest-growing countries have typically been dictatorships, but no democracy has ever performed as badly as the worst dictatorships" (p. 56).
[9] The eight treaties are: the Convention on the Prevention and Punishment of the Crime of Genocide (1951); the Convention on the Elimination of all Forms of Racial Discrimination (1969); the Covenant on Economic, Social and Cultural Rights (1976); Covenant on Civil and Political Rights (1976); Elimination of Discrimination against Women (1981); against torture (1987); the Rights of the Child (1990); Protection of the Rights of all Migrant Workers (adopted in 1990, not yet in force).
[10] See Newton Bowles, "The Diplomacy of Hope" (United Nations Association of Canada: Ottawa, 2001).
[11] The African signatories of the New Partnership for Africa's Development (NEPAD) made much the same declaration: "…Africa undertakes to respect the global standards of democracy, the core components of which include political pluralism, allowing for the existence of several political parties and workers' unions, and fair open and democratic elections periodically organized to enable people to choose their leaders freely." (Section 79)
[12] For an Arab and Islamic perspective on the question of good governance and human rights, see Muhammad AS Hikam, "Islam and Human Rights: Tensions and Possible Co-operation: The Case of Indonesia", The Asia

- The principles are not 'water-tight' compartments; they overlap and sometimes reinforce one another e.g. sound accountability buttressing legitimacy and voice;

- On the other hand, these principles are not absolute[13]. Most conflict with others at some point and this calls for balance and judgement in their application;

- Societal context (history, culture and technology) will be an important factor in how this balance is determined and how these principles play out in practice[14];

- Complexities abound in the application of these principles: "the devil is indeed in the detail"; and

- Governance principles are both about ends and means - about the results of power as well as how it is exercised.

Good Governance in an Aboriginal Context

A strong case can be made that the five principles outlined above can be applied in a Canadian Aboriginal context. In RCAP's final report, nine key aspects of Aboriginal traditions of governance were identified: the centrality of the land, individual autonomy and responsibility, the rule of law, the role of women, the role of elders, the role of the family and the clan, leadership and accountability, and consensus in decision-making.[15] In a similar vein, Haudenosaunee (Mohawk) political theorist Taiaiake Alfred, from Kahnawake, has outlined eight characteristics of strong indigenous communities, including: wholeness with diversity, shared culture, communication, respect and trust, group maintenance, participatory and consensus-based government, youth empowerment, and strong links to the outside world.[16]

From these two lists and the full explanations in the actual texts, it is clear that the principles are largely comparable with those of 'good governance', although particular emphasis in many Aboriginal cultures on certain aspects of each of our five categories must be noted: (a) *legitimacy and voice* are achieved through a strong emphasis on consensus rather than simple majority rule; (b) *fairness,* in terms of conceptions of *equity*, involves a unique view of and respect for the roles of elders, women, and youth in society; while in terms of a system of *rule of law*, it is rooted in spiritual learnings and oral traditions rather than written legislation; (c) *direction*, or leadership, tends to derive from adherence to common culture, community identity, and the promotion of collective well-being; (d) *performance*, particularly in terms of use of resources, is based in a holistic view of people's place in nature and a deep respect for the land and all its creatures; and

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Foundation, February 1997, and "Liberating Human Capabilities: Governance, Human Development and the Arab World", *United Nations Development Report*, Chapter 7, 2002

[13] This statement will come as no surprise to those interested in constitutional law. Freedom of speech, for example, does not permit the yelling of 'fire' in a crowded theatre. That said, circumscribing governance principles based on human rights demands far greater care than factors associated with performance or direction.

[14] For a thoughtful discussion of "… the troubled relationship that is developing between multiculturalism and the defence of women's rights", see Anne Phillips, "Multiculturalism, Universalism and the Claims of Democracy", United Nations Research Institute for Social Development, December 2001.

[15] RCAP Report, "Restructuring the Relationship", Vol. 2, Part 1, p. 116.

[16] Taiaiake Alfred, *Peace Power, Righteousness: An Indigenous Manifesto* (Oxford University Press, Don Mills, 1999), p. 82.

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(e) *accountability* relationships are built in to family, kinship, and community structures and as such may not resemble the formal institutions of European cultures.

As we consider contemporary governance challenges of the Métis Nation in the next sections of the paper, it is important, therefore, to remain mindful of its unique social organizations and culture. How these developed in the focus of the next section of the paper.

ISSUE: PRINCIPLES OF GOOD GOVERNANCE

Are the UNDP-based principles of good governance outlined above appropriate guides for reviewing the current Métis governance system and charting a future path for its evolution?

II.   Understanding Métis Governance Structures

A.   A Brief Historical Overview of the Métis Nation[17]

Understanding the governance structures of any society must include a grasp of the history and evolution of the group in question. This is particularly important in the Aboriginal context. Often, events (internal and external) dramatically shape and change the identity and cohesion of Aboriginal peoples. Governance structures and institutions react and adapt to these realities. The Métis are not an exception to this proposition; therefore, a brief historical overview of the Métis Nation's development is key to understanding their current governance structures.

The Métis Nation, as an Aboriginal people, evolved out of the initial relations of European men and Indian women who were brought together as a result of the early fur trade. While the initial offspring of these relations were individuals who simply possessed mixed European and Indian ancestry, continued relations between these cultures made way for a new and distinct people - the Métis. Beginning as early as the 1700s, distinct Métis settlements arose along the freighting waterways and Great Lakes of Ontario, throughout the historic Northwest and as far north as the McKenzie river.[18] Métis settlements were generally organized around a mixed economy (i.e. combining economic trading and a subsistence-based lifestyle) with the use of resources being largely dependent on the geographic location of the settlement (i.e. parkland, woodlands, etc.). [19] As a result, Métis have historically been recognized for their ability to rapidly adapt to their environs in order to sustain themselves, families and communities. An interesting first-hand assessment of this characteristic can be found in the writings of Alexander Ross who was a visitor to the Red River in the early 1800s. Ross observed, "[t]hey [Métis] are not, properly speaking, farmers, hunters, or fisherman; but rather confound the three occupations together, and follow them in turn, as whim or circumstances may dictate. They farm today, hunt to-morrow, and fish the next, without anything like a system; always at nonplus, but never disconcerted."[20]

While specific Métis settlements were established at fixed locations which were often strategic subsistence, trading and freighting points, a broader Métis identity evolved as a part of the extensive fur trade travel network, ongoing seasonal rounds and growing kinship connections

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[17] Parts of this section are from other papers and documents written by Jason Madden for various sources.

[18] For a more detailed review of the history and evolution of the Métis Nation and its communities see *RCAP: Métis Perspectives, supra*. For a helpful collection of academic writings on Métis emergence in North America see Jennifer S.H. Brown and Jacqueline Peterson, ed., *The New Peoples: Being and Becoming Métis in North America* (University of Manitoba Press: Winnipeg, 1985).

[19] For writings describing Métis 'mixed economies' depending on territory and resources available see: Arthur J. Ray, *Final Historical Report on Métis Economy in Sault Ste. Marie for R. v. Powley* (Unpublished); Frank Tough, *The Importance of Freshwater Fisheries to the Métis of Western Canada: A Report for R. v. Laviolette* (Unpublished) and Nicole St. Onge, *Saint-Laurent, Manitoba: Evolving Métis Identities* (Canadian Plains Research Centre: Regina, 2004).

[20] Alexander Ross, *The Red River Settlement: Its Rise, Progress and Present State* (Smith, Elder and Co.: London, 1956, republished 1984) at p. 193. The authors credit finding of this quote to *Tough, supra*. It is also interesting to note that in *Powley*, the Métis use of resources around Sault Ste. Marie was described by experts and accepted by the trial judge as "opportunistic" in nature depending on season, availability, location, needs, etc.

between the fixed settlements.[21] This group identity evolved from more than just a mixing or adaptation of two divergent cultures. Through a process known as 'ethnogenesis', a distinct Métis culture, language (Michif), dress, music and way of life emerged. Dr. Arthur Ray, one of the experts in *Powley*, emphasized the need to appreciate this point in his testimony at trial:

> The problem with the term Half-breed or mixed-blood is … [i]t implies that just half of this and half of that is what a Métis is. It overlooks the fact that the Métis culture was a creative result of a mixing of those two in language, art and song and a way of life, so it wasn't just half this and half that and I think that would be the major point that I would make.[22]

Another important element of this emerging identity was that the Métis no longer saw themselves as extensions of Indians or European communities, but as a distinct Aboriginal group who operated and asserted themselves as such.   In the early 1800s, one of the first examples of this Métis collective consciousness occurred. The Métis of the Red River, led by Cuthbert Grant, protested the arrival of the Selkirk settlers whose agriculture focus threatened the traditional lifestyle of the Métis. An initial 1815 treaty[23] between the Hudson's Bay Company ("HBC") and the Métis subsided tensions for a period; however, in 1816, upon the arrival of a new HBC Governor and more settlers, the Battle of Seven Oaks ensued. Grant and the Métis killed the HBC Governor and a number of settlers. As a result, the settler colony left. In victory, the Métis Nation flag was raised in an act of nationalism as the 'new nation' sentiment grew amongst Métis.

Throughout the 1800s, the settlement at Red River continued to evolve as a highly visible, cohesive and populated centre for Métis culture and nationalism. These factors, along with others, led to the Riel-led Red River Rebellion of 1869 and the resulting negotiations between the Métis and Canada, which led to the *Manitoba Act, 1870*. Further, Métis living at other fixed settlements launched their own collective actions to assert their identity and rights. From the Mica Bay uprising near Sault Ste. Marie (1850) to the Rainy Lake Half-Breed Addendum to Treaty #3 (1875) and numerous rights and land petitions throughout the Northwest (1800-1885), the Métis were consistently a force to be reckoned with in Canada's nation-building exercise. In 1885, Métis in Saskatchewan once again asserted their existence and rights in the face of Canada's ongoing westward expansion. This assertion culminated in the well-known Battle of Batoche and Canada's labelling of the Métis as traitors.

It is equally important to note that Canada's response (or in some cases a lack thereof) to Métis collective actions underlie many of the current challenges that exist between the Métis Nation and Canadian governments. For example, while Canada proceeded to deal with Indians, as collectives, through negotiating treaties with them and setting aside land bases for them (i.e.

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[21] In his testimony at trial in *Powley*, Dr. Arthur Ray provided a helpful description to understand this concept: "…these [Métis] communities get moved around with changing political boundaries and so on, but, so that there are nucleated settlements beginning to emerge, but there's also this larger Métis community that may or may not be present in any one of those communities at any point in time. … there is a movement back and forth in the area [Sault Ste. Marie], people coming and going. There are ties to the Red River in the West, but it isn't all one way, it's backward movement as well." See Testimony of *Dr. Ray, Trial Transcripts in R. v. Powley*, Vol. II at p. 265. *Powley* trial transcripts available at www.metisnation.org.
[22] *Testimony of Dr. Ray, supra* at p. 267.
[23] A copy of the treaty is reprinted in D. Bruce Sealey and Antoine Lussier, *The Métis: Canada's Forgotten People* (Winnipeg: Pemmican Publishing, 1975) pp. 39-40.

reserves), its policy towards Métis was substantively different.[24] By and large, the Métis were dealt with as individuals rather than as an Aboriginal people with collective rights and interests. Canada's administration of the Métis land provisions of the *Manitoba Act, 1870* and the subsequent Métis land and money scrip system implemented through the *Dominion Lands Act 1879* and various Orders-In-Council evidence this. These individual-based systems were fraught with maladministration, sharp dealings and outright fraud and resulted in Métis becoming a landless Aboriginal people by the end of the 1800s.[25]

Moreover, the political events of 1885 dramatically reduced Métis assertions against the Canadian state. The very public prosecution, imprisonment and hanging of Louis Riel as a traitor dampened the public presence of the Métis. RCAP made the following observation about the Métis during the post-1885 period:

> Some Canadians think that the Métis Nation's history ended on the Batoche battlefield or the Regina gallows. The bitterness of those experiences did cause the Métis to avoid the spotlight for many years, but they continued to practise and preserve their culture and to do everything that was possible to pass it on to future generations.[26]

Even in the face of this adversity, some Métis continued to gather and organize politically. The Union Nationale Métisse de Saint-Joseph was created on July 17, 1887 at St. Vital, Manitoba to write the Métis record on the events that took place in 1870 and 1885.[27] Beginning in the 1920s, more visible Métis political movements began to emerge once again to assert the rights and existence of the Métis. In 1928, a small group of Métis in the Cold Lake area began to meet. This group, led by Charles Delorme, created L'Association des Métis Alberta et Les Territories du Nord-Ouest, which evolved into the Métis Association of Alberta (now the MNA).[28] Similarly, the Saskatchewan Métis Society (now the MNS) was formed in 1938. The MMF was created as a federation made up in part by local Union Nationale councils as well as Métis throughout all of Manitoba. These political movements, along with others from Ontario and British Columbia, led to a revitalization of Métis Nation self-government aspirations. Many of these political movements and their initial structural manifestations form the underlying frameworks for contemporary Métis governance structures.

Beginning in the 1950s, a new Aboriginal political awareness began to emerge. The deplorable socio-economic conditions facing all Aboriginal peoples were a national embarrassment. As well, Aboriginal peoples began to use the courts to seek redress. The Métis Nation was a key player in this new momentum. The Métis joined with non-status Indians and other Aboriginal peoples in forming regional political organizations to draw attention Aboriginal issues. These

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[24] Commenting on the moral, legal or constitutional soundness of Canada's policy approach to the Métis is beyond the scope of this paper.

[25] Currently, the constitutionality and legality of these Canadian government imposed systems on the Métis are the subject of litigation in *MMF v. Canada* (Manitoba) and *Morin v. Canada* (Northern Saskatchewan).

[26] *RCAP, Métis Perspectives, supra* at p. 227

27 For additional information on the formation of Union Nationale Métisse de Saint-Joseph see: A.-H. de Tremaudan, *Hold High Your Head (History of the Métis Nation in Western Canada)*, translated by Elizabeth Maguet (Pemmican Publications: Winnipeg, 1982).

[28] For additional information on the political history of Alberta Métis see: Sawchuk Joe, Partricia Sawchuk and Theresa Ferguson, *Métis Land Rights in Alberta: A Political History* (Métis Association of Alberta: Edmonton, 1981).

organizations were brought together under a national organization - the Native Council of Canada ("NCC"). However, even within these pan-Aboriginal organizations the Métis Nation maintained a distinct agenda.

In 1982, all Aboriginal peoples were successful in securing the recognition and protection of Aboriginal and Treaty rights in the Canadian Constitution. In particular this was a triumph for the Métis Nation, with the explicit recognition of the Métis as one of Canada's three Aboriginal peoples within s. 35(2) of the *Constitution Act, 1982*. Following the 1982 amendment, a series of four First Ministers Meetings ("FMM") were to be held to elaborate on and agree to additional changes needed to address and implement the new Aboriginal provisions of the constitution. Prior to these FMMs, Métis leadership from the Prairies led a drive to separate from the NCC in order to form a Métis-specific national representative body. In March 1983, the MNC was formed. After negotiating an out-of-court settlement with Canada flowing from an injunction application to stop the Prime Minister from holding the FMM, the MNC assumed a full seat at the FMM table representing the Métis Nation.

Aligned with this national direction, the NCC's western-based organizations began to reorganize in order to form Métis-specific and Non-Status Indian organizations. These Métis-specific organizations have evolved into the MNO, MMF, MNS, MNA and MPCBC, which currently form the MNC.

B.   *Current Métis Nation Governance Systems*

The section above provides a brief historical overview of the Métis Nation. Several important factors within this history have shaped and continue to shape present day Métis governance. These include:

- The result of historic Crown (federal and provincial) policy vis-à-vis Métis lands have left Métis, by and large, a landless people;[29] therefore, a majority of Métis governance structures have evolved off a land base;

- Until recently, both the federal and provincial governments have denied the existence of Métis rights. As a result, federal and provincial governments have limited the scope of Métis "self-government" discussions to cultural preservation, program and service delivery and limited institutional capacity development. Moreover, currently, these governments continue to only recognize Métis governance structures as "organizations" rather than as "Aboriginal governments" with jurisdiction. While government policies slowly catch up to the emerging law, these current policy realities affect Métis governance developments;

- Métis have historically and continue to have consequential populations in urban areas. As a result, Métis have significant capacity, institutions and a presence in urban centres (i.e. Sault Ste. Marie, Winnipeg, Edmonton, Saskatoon, Vancouver) in relation to other Aboriginal peoples;

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[29]A notable exception are the Métis Settlements in Alberta which are beyond the scope of this paper.

- Neither the federal nor provincial governments have maintained or supported Métis identification systems or registries; therefore, the exact population of Métis in Canada is unknown and existing Métis membership systems vary in scope and credibility from province-to-province;

- Métis governance structures have largely evolved on a province-wide basis based on mandates received through ballot box elections and assemblies. As a result significant institutional capacity is at the provincial level while the capacities of local communities vary;

- Jurisdictional positioning between the federal government and provinces on what level of government has jurisdiction for Métis has limited Métis moving forward on self-government and socio-economic initiatives.

Based on these and other factors, Métis governance structures have evolved with the following layers:

Local - Locals and Community Councils

Communities are the foundation of Métis governance structures. They are organized as 'Locals' or 'Community Councils' which represent people at the community level. Local governance structures provide a mandate and feed into the larger regional and provincial based structures as well as the national one.
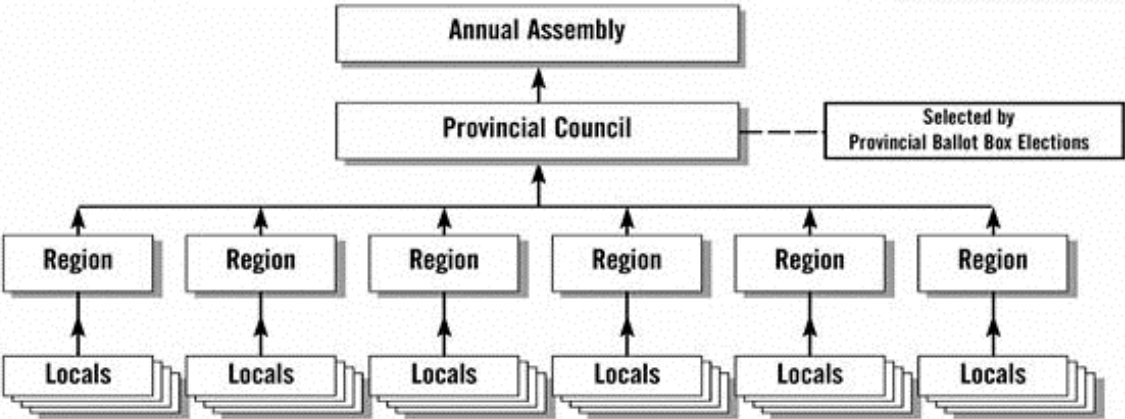
Provincial - Provincial Organizations

By and large, the role of provincial Métis organizations is twofold: (1) they politically represent (i.e. act as an advocate for, negotiate on behalf of) the Métis people within their respective province and (2) they undertake cultural and socio-economic programming and services for Métis people living within their respective province. Even though there are differences between each provincial organization's structure, there are some consistent elements between them, including:

- Each provincial Métis organization maintains a membership list or, in some cases, a registry of Métis members within their respective provincial boundary;

- Each provincial Métis organization has a governance structure which allows community (through Locals and Community Councils), cross-cutting (i.e. women, youth, elders, etc.), provincial and national interests to be effectively represented and balanced within the Métis Nation;

- Each provincial Métis organization's leadership is democratically selected through province-wide ballot box elections, held at regular intervals;

- In between elections, the provincial Métis organization's accountability to members is maintained by holding annual assemblies at which leadership report back to constituents;

- These governance structures incorporate women, youth and elders into decision-making processes;

- An elected provincial President acts as the chief spokesperson for the Métis people within their respective province;

- Annual assemblies give members an opportunity to be updated on activities as well as provide input and direction to the elected board of directors in between general elections; and

- Program and service delivery infrastructures (i.e. affiliate corporations, internal administration etc.) provide cultural and socio-economic initiatives to all Métis people within the province,

The following provides a visual overview of how provincial Métis organizations are structured:

National - Métis National Council

The MNC is formed by the provincial Métis organizations coming together to mandate a national governance structure. The President of each provincial Métis organization sits as a member of the MNC's national governance structure (Board of Governors), along with a national President, who is elected by the MNC's General Assembly every two to three years.

The MNC has established two secretariats, which participate in the affairs of the MNC on behalf of women and youth (i.e. Métis National Youth Advisory Council and Women of the Métis Nation). As well, the MNC has a Métis Nation Cabinet.[30] The MNC President appoints Ministers who are accountable for specific Ministries and these Ministers play a supportive and collaborative role with the MNC President and the Board of Governors in order to pursue various sectoral initiatives on behalf of the Métis Nation.

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[30] The Métis Nation Cabinet includes the following Ministries: Social Development, Environment, Health, Women's Issues, Youth Issues, Métis Rights & Self-Government, International, Economic Development, Justice, Culture and Heritage.

C. *Current Governance Challenges*

We have developed the following list outlining some of the key issues currently being discussed and debated within the Métis Nation in order to provide an underpinning for the remainder of the analysis. Thus, among the chief policy concerns to be accommodated in any discussion of future directions of Métis governance are the following:

- **Communicating the argument for Métis self-government to the public-at-large** – Notwithstanding recent victories, such as the Supreme Court of Canada's decision in *Powley*, the Métis Nation still faces challenges in gaining public familiarity and acceptance and making its agenda clear.

- **Addressing misconceptions on the Métis agenda held by other governments** – There is a need to overcome some of the misconceptions often held by the federal and provincial governments that Métis seek identical rights and benefits to that of First Nations (*e.g.,* Métis seek Indian "status" or a "Métis" Indian and Northern Affairs Canada, etc.).

- **Clearly articulating a vision of implementing Métis self-government** – Throughout the Métis Nation, there is a lack of understanding as well as differences in opinion on how best to move forward on implementing Métis self-government.

- **Identification and registration of Métis** – In order to give Métis governments maximum legitimacy, a nationally consistent set of registration criteria and acceptance processes along with credible 'objectively verifiable' identification systems will be indispensable – a major challenge, given the varying stages each provincial Métis organization is at in implementing a credible system and the high degree of regional autonomy.

- **Clarifying local, regional, provincial, national roles** – As Métis make advances on their self-government agenda there will be an increased need on delineating who is responsible for what among local, region, provincial and national bodies. Development of constitutions that are regionally and nationally in sync will be extremely helpful for moving forward on Métis Nation self-government. As well, the question of what is a "Métis community" as set out by the Supreme Court of Canada in the *Powley* case may influence what level of Métis governance structures other governments deal with on various issues (i.e. consultations, negotiations, etc.).

- **Building a Métis public service** – Recruiting, training and retaining a strong Métis public service is a challenge faced by Métis organizations. Common problems include the inability to compete with salaries offered in private and public sector, a lack of clear protocols between politicians and officials, a lack of internal communications and human resources policies, job security issues with changes in leadership, the ability to offer competitive compensation packages, and training on how the Métis self-government agenda relates to program delivery.

- **Resolving the question of legislative jurisdiction** – The Métis have long sought acknowledgment by Canada that they are 'Indians' for constitutional purposes in s. 91(24) of the *Constitution Act, 1867* and thus a federal responsibility. What would this mean and equate to? Are there other strategies to better address the 'jurisdictional limbo' Métis currently face?

- **Establishing new fiscal arrangements** – Unlike First Nations living on-reserve, Métis pay income tax, although only a fraction of the services they consume are delivered by Métis governments. As Métis governments assume a greater range of functions from Canada and the provinces, new fiscal relationships will be required to support these roles.

- **A land base for Métis** – While a form of Métis self-government is possible off a land base, many Métis believe acquiring a greater land base is essential. How would this look and operate? Would lands be set aside for cultural and ceremonial purposes? Could compensation address land issues in urban centres? Where would a land base in fee simple be practical (*e.g.,* northern communities)?

- **Building checks and balances among Métis governments** – Power in the Métis Nation currently rests inordinately at the provincial level, and the national organization has little authority to coordinate initiatives nationwide or to consider appeals of province-level decisions. Some suggest direct elections of a national leader might improve the delineation of power between the MNC and regional Métis organizations.

- **Building governance capacity at all levels** – Unlike other Aboriginal peoples, a majority of Métis communities have not been provided with adequate resources to operate local governance structures. For the most part, the concentration of capacity and power has been at the provincial level, while the national, regional and local levels have varying levels of capacity to provide governance functions.

- **Considering greater cooperation with other parties** – There have been historical differences between the Métis Nation and other Aboriginal political and service delivery organizations claiming to represent "Métis" or urban Aboriginal peoples. While there have been important reasons for the divergent views, could any future governance approaches accommodate the possibility of closer future cooperation between these groups on common goals (*e.g.,* protocols, partnerships, etc.)?

- **Better integrating the growing range of Métis program delivery vehicles** – Similar to how other governments are able to focus efforts to target the needs of their populations, Métis governance structures must be able to improve coordination and integration between its delivery structures. Moreover, in recent years, in some provinces, a model of governance that is too decentralized has proven problematic (i.e. affiliates with separate board of directors and no accountability to the larger body politic). Efforts should be made to horizontally manage limited resources and possible establish single-window delivery of Métis services under one roof (i.e. labour market training, business development and financing supports, child and family service, etc.) for cost efficiency and convenience.

ISSUE: CURRENT CHALLENGES OF MÉTIS GOVERNANCE

Are the issues outlined above the most important Métis governance concerns? Are there others that have been omitted?

D.   *Some Best Practices in Métis Governance*

Although acknowledging significant governance challenges for the Métis Nation, interviewees identified a number of successes which merit consideration as future initiatives are contemplated. Some of these include:

Devolution of Child and Family Services to Métis in Manitoba

In 1988, the Government of Manitoba established the Aboriginal Justice Inquiry (AJI) to examine the relationship between the Aboriginal peoples of Manitoba and the justice system. The AJI also looked at the historic treatment of Aboriginal peoples by the Manitoba child and family services system. In its final report, issued in 1991, the AJI concluded that the mainstream child and family service system did not serve Aboriginal peoples well and recommended a number of changes. One of these recommendations was to establish a mandated province-wide Métis agency to deal with Métis child and family services, along with separate agencies to address the needs of First Nations.

In 1999, Manitoba announced its commitment to address the AJI's recommendations and established the Aboriginal Justice Implementation Committee (AJIC) to review the report and identify priority areas for action. In its first report, the AJIC recommended that the Government of Manitoba enter into agreements with the Assembly of Manitoba Chiefs and the Manitoba Métis Federation (MMF) to "develop a plan that will result in First Nations and Métis communities developing and delivering child and family services." By August 2000, Manitoba and the MMF signed an agreement establishing a joint initiative to "recognize a province-wide Métis right and authority" for child and family services.

Through a three-year joint implementation process, known as the Aboriginal Justice Inquiry – Child Welfare Initiative (AJI-CWI), a collaborative and incremental approach was taken between the MMF and Manitoba in order to establish a Métis Child and Family Authority, which has province-wide responsibility for Métis child and family services, a Métis Child and Family Agency, which is responsible for service delivery (*e.g.,* counselling, case management, etc.) based on the direction of the Métis authority, as well as a Métis Family and Community Institute, which undertakes policy development and research for the Métis community. At the same time, similar approaches were undertaken with First Nation jurisdictions.

On September 13, 2003, the Métis Child and Family Authority received its formal mandate from the Government of Manitoba to oversee Métis child and family services province-wide. As well, the Manitoba *Child and Family Services Authority Act*, which is the legislative basis for the new Métis and First Nation authorities, was proclaimed on November 24, 2003. Since this time, the Métis Child and Family Agency has begun to take over service delivery and cases as offices and staff capacity come on line. It is expected that the Métis authority and agency will fully assume all responsibilities and cases by the end of 2005.

This initiative is the first of its kind for Métis anywhere in Canada. It establishes a new standard with the legislative recognition of Métis responsibility over child and family services. Further, it

demonstrates that jurisdictional issues can be easily overcome through political will and by Métis and provincial governments working together.[31]

Implementing a Centralized Registry System for Alberta Métis

In 1991, the Métis Nation of Alberta (MNA) made the decision to centralize its membership system in its Head Office in Edmonton. Although Métis could still obtain applications for membership at the local level, it became standard practice that all completed applications were then forwarded to the MNA's Head Office for review, final approval and the issuance of a MNA membership cards. This centralized system allowed the MNA to ensure the criteria for membership were being met in a uniform manner (i.e. completed and signed application form, genealogy documentation, etc.).[32]

Today, within this centralized system, the MNA has over 31,000 members. Currently, the MNA employs a full-time Registrar along with 4 staff to support the work of the provincial registry. Appeals on membership issues are heard by an independent Métis Judicial Council. As a result of this work, the MNA has the most comprehensive Métis membership database in Canada. Further, the MNA continues to strengthen its Métis identification system. For example, the MNA has a working relationship with INAC to verify that Métis members are not registered as Indians under the *Indian Act*. Further, it has incorporated statutory declarations and standardized family trees into its application process.

At the time that the MNA moved towards a central registry, this system was a significant departure from other provincial Métis organizations, which continued to allow locals to issue membership cards on behalf of the provincial organization. The remaining Prairie Métis organizations are at various stages of moving towards more centralized systems. The MNO has implemented a centralized registry since its creation in 1995 and the MPCBC has just started a centralized registry in 2005.

Establishing a Métis Post Secondary Education Institute in Saskatchewan

In 1980, the Gabriel Dumont Institute (GDI) was established as the educational arm of the Métis Nation – Saskatchewan (MNS). Since its inception, GDI has focused on "education through cultural research as a means to renew and strengthen the heritage and achievement of Saskatchewan's Métis".[33] It is the only wholly Métis-controlled, accredited post-secondary institution of its kind in Canada and is overseen by a board of directors that includes the MNS's Minister of Education along with Métis representatives from throughout the province. A majority of GDI resources come from the Government of Saskatchewan.

Currently, GDI develops and publishes Métis-specific curriculum and historical education materials; trains Aboriginal teachers through the Saskatchewan Urban Native Teachers Education Program (SUNTEP); maintains libraries and information services for students; administers a scholarship program; and delivers programming contracted from the province's

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[31] Additional information on this initiative is available at www.aji-cwi.mb.ca and www.mmf.mb.ca.
[32] Additional information on the MNA's Registry is available at www.albertametis.com.
[33] Gabriel Dumont Institute, *2002/03 Annual Report* (Gabriel Dumont Institute: Saskatoon, 2003) at p. 5.

universities, colleges and technical institutes. It has offices and offers services in Regina, Saskatoon and Prince Albert and employs over 100 staff and faculty (part and full time). GDI serves approximately 700 adult students each year. In the 1990s, GDI also established Dumont Technical Institute (DTI), which deals with adult upgrading and training as well as Gabriel Dumont College (GDC), which delivers the first two years of an Arts and Science program to students anywhere in Saskatchewan. [34]

Today, over 650 teachers (First Nations and Métis) have graduated from GDI with a Bachelors of Education. In 2001, a comprehensive evaluation was done which further confirmed GDI's success. As of the spring of 2001, GDI had graduated 544 teachers. Of these teachers, 79% were female (428) and 21% were male (116). Overall GDI has a 90% placement rate for all of its graduates. In 2001, 71% of graduates were still employed in the K-12 system.[35]

GDI is an example of a win-win-win partnership between Saskatchewan and the Métis: the Métis community is able to build its own educational institution to enhance its cultural identity, individual Métis are able to access post-secondary education in a culturally appropriate way and secure gainful employment, and the province benefits from Métis teachers who are able to contribute to the educational and labour market needs of Saskatchewan.

Federal Devolution of Labour Market Programming to Métis Organizations

In the early 1990s, when the Government of Canada was divesting its role in labour market programming to provincial jurisdictions, a decision was made to devolve an Aboriginal allocation of labour market programming to First Nation, Métis and Inuit jurisdictions.

In 1996, National Framework Agreements were signed with the national organizations representing the three constitutionally recognized Aboriginal peoples; namely, the Assembly of First Nations (First Nations), the Métis National Council (Métis) and the Inuit Tapirisat of Canada (Inuit). These Agreements were enabling documents for Human Resources and Skills Development Canada[36] (HRSDC) to begin the process of administrative devolution of Aboriginal labour market programming to the identified regional affiliates[37] of these national organizations. These regional affiliates entered into subsequent Regional Bilateral Agreements with HRDC for responsibility to deliver labour market programming to their respective constituencies.

In 1999, this process was renewed through the five-year Aboriginal Human Resource Development Strategy. This time, the MNC signed a Métis Accord on Human Resources Development and subsequent Métis Human Resource Development Agreements (MHRDAs) were signed with each identified Métis provincial organization. MHRDAs serve province-wide constituencies, and they have all accordingly been required to establish a delivery structure that reaches Métis throughout the province concerned.

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[34] Additional information on GDI is available at www.gdins.org.
[35] *Gabriel Dumont Institute, supra,* p. 17.
[36] This federal department was then known as Human Resources Development Canada (HRDC).
[37] For the MNC these affiliates included the MNO, MMF, MNS, MNA and MPCBC. As well, a special provision was included for the Métis Settlements in Alberta.

Collectively, since 1996, these Métis delivery structures have successfully administered well over $300 million in labour market support services by making strategic investments to meet the training and employment needs of Métis people (approximately $43 million annually from Ontario west). MHRDAs support 85+ points of entry from Ontario west for Métis to access labour market programming in urban, rural and remote communities. The provincial organizations are responsible for the overall management of their respective MHRDA, while programming and funding decision-making is based at the community level. This type of developmental platform has enabled strong governance and sound financial management infrastructures to be developed, implemented and sustained. As well, these infrastructures lower overall administration costs further by the sharing of office space and administration with other federal and provincial programs delivered by Métis.

Within the Métis Nation, this devolution model is considered an overwhelming success. For example, for the period 1999-2003, over 25,000 Métis were served through MHRDAs; and close to 10,000 of those clients found employment as a result of these interventions.[38] Further, these MHRDAs have established effective partnerships with private sector employers, universities and training institutions to improve Métis positioning in the labour market (*e.g.,* MNO establishing a $4.2 million bursary trust at 32 colleges and universities in Ontario, MMF establishing a recruitment initiative with employers like Maple Leaf Foods, Manitoba Hydro and others; MNA partnering with First Nations in urban centres for cost-shared delivery, etc.). MHRDAs have also successfully incorporated youth initiatives from both AHRDS funding and resources provided by the Department of Canadian Heritage through the Urban Multi-Purpose Aboriginal Youth Centres (UMAYC) program into their infrastructures.

Ensuring Good Governance through a Community Charter System in Ontario

One of the on-going challenges faced by Métis has been the lack of formal recognition, by all levels of government, of Métis self-government structures and institutions. Unlike First Nation bands, which are recognized as legal entities under the *Indian Act*, Métis currently have no such recognition. The result has been Métis governance structures and institutions having to incorporate under federal or provincial not-for-profit or societies legislation in order for governments to deal with them or to flow monies.

Often, these corporate constraints frustrate Métis self-government aspirations. For example, Métis governance structures now have numerous incorporations at the provincial, regional and local level. However, based on corporate law each of these incorporations are "their own masters". This makes it difficult to have direction or decisions in one corporation uniformly implemented in all associated corporations. For example, although locals may be affiliated with a provincial body, each local has the authority under its own bylaws to issue its own membership cards. Further, provincial bodies do not have the authority to step in if a board of directors misappropriates Métis community assets or local elections are not held.

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[38] Métis National Council, *Moving Forward: Results of Métis Constituency Consultations on the Renewal of the Aboriginal Human Resources Development Strategy* (Métis National Council: Ottawa, March 2003) at pp. 26-27.

In 1994, when the Métis Nation of Ontario (MNO) was formed, it adopted an approach to remedy some of the incorporation issues it had witnessed in Ontario and other provinces. The MNO developed a Community Charter Agreement,[39] into which it would enter with each MNO Community Council. Under the Agreement, the local community did not have to incorporate separately and could use the MNO's incorporation number in exchange for ensuring it fulfilled the terms of the Charter. Some of these terms included:

- Community Councils using the MNO's central membership list for identifying Métis members;
- Community Councils holding regular local elections for leadership;
- Community Councils ensuring regular public meetings are held;
- Community Councils maintaining financial statements and assets remaining in the name of the Community Council;

The Charter Agreements also provide for a dispute resolution mechanism between the MNO and the Community Council if issues arise. The MNO's Charter Agreements have proven themselves invaluable in ensuring the provincial body can intervene when problems arise within the community (*e.g.,* contested elections, financial irregularities, lack of public meetings, etc.).

Initially, other levels of governments did not recognize the MNO's Charter Agreements. In 1996, the Government of Ontario agreed to formally recognize the MNO Charters for administrative and funding purposes. The federal government soon followed suit. Today, provincial and federal government funding flows directly to the Community Councils while the MNO ensures the terms of the Charter Agreement are fulfilled.

Partnerships with First Nations and Aboriginal Service Delivery Organizations in Ontario and Manitoba

A lack of recognition and respect for Métis jurisdiction is often a legitimate 'make-or-break' issue for Métis when working with other groups and stakeholders. This issue can often frustrate making progress on potential initiatives as well as cause extensive divisiveness within the overall Aboriginal community.

Some provincial Métis organizations have moved forward on delineating their jurisdiction with other bodies in order to build a cooperative and collaborative atmosphere in the province and urban centres.

- In 2002, the MMF signed a Protocol Agreement with the Manitoba Association of Friendship Centres (MAC).[40] It commits to regular meetings between the respective groups at a provincial and local level annually. In the Protocol, MAC recognizes that the MMF is the legitimate political representative of the Métis people in Manitoba and has the sole responsibility to move forward on the Métis self-government agenda. In turn, the MMF recognizes that the MAC is a service delivery organization providing services to Métis

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[39] A sample of the MNO's Charter Agreement is available at www.metisnation.org.
[40] A copy of the signed MMF-MAC Protocol is available at www.mmf.mb.ca.

people in Manitoba and supports MAC's continued efforts. Moreover, the Protocol commits the parties to coordinating service delivery efforts for Métis people where possible.

- In 2004, the MNO signed a Political Protocol with the Chiefs of Ontario (COO).[41] The Protocol recognizes the MNO as the representative body of the Métis Nation in Ontario and COO as the representative body of First Nations at a provincial level in Ontario. It commits to a government-to-government relationship and sets out a schedule for regular MNO-COO meetings at a leadership and officials' level. The Protocol also states that the parties will work collaboratively on issues where appropriate.

Building Métis Self-Sufficiency through Economic Opportunities for Alberta Métis

The Métis Nation of Alberta (MNA) has focused significant efforts on engaging in economic opportunities with a view to moving towards Métis economic self-sufficiency in the province. Some of these strategies include:

- Since 1988, the MNA's capital corporation (Apeetogosan [Métis] Development Inc.) has lent out more that $32 million to Métis entrepreneurs starting and expanding their businesses in the province. In total, over 800 businesses have been created through Apeetogosan's support. These businesses have created jobs and opportunities for Métis individuals, communities and the Alberta economy.[42]

- In June 2002, the MNA acquired a double telescopic drilling rig through a partnership with EnCana Corp. and Lakota Drilling Inc. After the repayment of loans and Métis people receiving training on the operation of the rig over a five year period, the MNA expects Métis in Alberta to play an expanded role in the oil and gas sector. Further, the profits from the rig can support the self-government aspirations of Alberta Métis.[43]

- The MNA is in the process of establishing Métis Crossing at Victoria Landing (a national historic site) as a Métis Culture Heritage Centre. Centre plans call for an interactive adventure and learning experience on Métis culture and history; a training and conference facility; a 'live' education site; a live theatre for drama and musical productions; and a traditional farming experience. Organizers anticipate that the project will be fully completed by 2008 and will become a self-sustaining enterprise for Alberta's Métis from tourist dollars, campground fees, meetings and conferences.

Implementing Métis Self-Government in Saskatchewan

In 1993, as a part of moving forward on Métis self-government, the Métis of Saskatchewan adopted a political Constitution. This Constitution, the first of its kind in the Métis Nation, established the Métis Nation-Saskatchewan (MNS) as a self-governing entity outside of the *Saskatchewan Non-Profit Corporations Act*. Further, the Constitution established a Legislative Assembly, which includes representation from all Saskatchewan Métis communities as the

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[41] A copy of the MNO-COO Protocol is available at www.metisnation.org.
[42] Additional information on Apeetogosan is available at www.apeetogosan.ab.ca.
[43] Additional information on this initiative is available at www.albertametis.com.

supreme authority within the MNS with the mandate to enact legislation and regulations; a Senate to oversee citizenship and elections; and the Provincial Métis Council as the cabinet responsible for all MNS affiliates, departments, programs and ministries. The MNS also maintained a corporate secretariat for the sole purpose of carrying out the administrative duties of the MNS.[44]

Building upon the MNS's self-government agenda, in 2002, the Government of Saskatchewan proclaimed *The Métis Act*.[45] The Act had three principal features: (1) to recognize the distinct culture and heritage of the Métis people and their contribution to Saskatchewan; (2) to establish a bilateral process for negotiations between Saskatchewan and the MNS; and (3) to establish the legal recognition of the MNS's corporate secretariat outside of the *Saskatchewan Non-Profit Corporations Act. The Métis Act* is the only one of its kind in Canada.

ISSUE: BEST PRACTICES OF MÉTIS GOVERNANCE

Are these the best examples of major Métis governance advances, or are there other 'best practices' to serve as inspiration across the country?

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[44] Copies of these documents are available at www.metisnation-sask.com.
[45] *An Act to recognize contributions of the Métis and to deal with certain Métis Institutions*, S.S., Ch M-14.01.

III. Exploring Options for Métis Governance

With Sections I and II as important backdrops, we now turn attention to exploring eight fundamental governance issues that Métis people will need to face and resolve in order to make real progress in realizing their governance aspirations. The first of these is coming to grips with the underlying arguments or rationale for Métis self-government, an issue which goes to the heart of the good governance principle of legitimacy and voice.

A.   Rationales for Métis Self-Government

There are numerous legal, policy and moral rationales for implementing Métis self-government in Canada. Over the past few decades, the case for Métis self-government has grown stronger. Recent court victories in favour of the Métis, a resurgence of Métis pride and culture, evolving Métis governance structures with increased capacities and stability, a clearer vision and articulation of Métis self-government aspirations and increased political attention to Aboriginal issues have all been positive developments for the Métis.

Of all these rationales, the ever-increasing recognition that Aboriginal peoples possess the inherent right of self-government has served as an important driver for change. International law has already recognized that this right exists.[46] The Supreme Court of Canada has not yet recognized an undefined Aboriginal right of self-government;[47] however, there is strong support for this proposition from RCAP's conclusions, academics and, to date, one lower court.[48] Moreover, since 1985, federal policy[49] has recognized that the inherent right of Aboriginal self-government is an existing right protected by s. 35 of the *Constitution Act, 1982*. Provincial and territorial governments have adopted varying policies on how they approach Aboriginal self-government and relations in their respective jurisdictions.[50]

Similar to other Aboriginal peoples, the Métis Nation has long asserted it is a rights-bearing Aboriginal people which possesses the inherent right of self-government. In its final report,

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[46] *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, art. 1, entered into force Mar. 23, 1976; *International Covenant on Economic, Social and Cultural Rights*, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, art. 1, entered into force Jan. 3, 1976; *Declaration on the Granting of Independence to Colonial Countries and People*, U.N.G.A. Resolution 1514 (XV), 15 U.N. GAOR, Supp. (No. 16) 66, U.N. Doc. A/4684, adopted on December 14, 1960.
[47] See *R. v. Pamejewon* [1996] 2 S.C.R. 821 (S.C.C.) where the Supreme Court assumed without deciding that s. 35(1) includes self-government claims.
[48] See *RCAP: Restructuring the Relationship, Vol II, Part I, supra,* at pp. 202-213; Brian Slattery, "Aboriginal Sovereignty and Imperial Claims" (1991) 29 *Osgoode Hall Law Journal* 681; John Borrows, "Constitutional Law from a First Nation's Perspective" (1994) 28 *U.B.C. Law Review* 1; Patrick Macklem, *Indigenous Difference and the Constitution of Canada* (University of Toronto Press: Toronto, 2001) and *Campbell v. British Columbia (AG)*, [2000] B.C.J. No. 1524 (B.C.S.C.) where the British Columbia Supreme Court upheld the self-government provisions of the Nisga'a Treaty, partly based on the Nisga'a people's inherent right of self-government.
[49] Minister of Indian Affairs and Northern Development, *The Government of Canada's Approach to the Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* (Government Communication Canada: Ottawa, 1995).
[50] For example see Government of Alberta's *Aboriginal Policy Framework* available at www.aand.gov.ab.ca/PDFs/final_strengthrelations.pdf Government of Ontario's *New Approach on Aboriginal Affairs* available at www.nativeaffairs.jus.gov.on.ca/english/news/aboriginalaffairs.pdf.

RCAP supported this assertion.[51] More recently, in support of this position, the Supreme Court of Canada affirmed in *Powley* that Métis have existing Aboriginal rights protected by s. 35 of the *Constitution Act, 1982*. The Supreme Court held that s. 35 is based on a "commitment to recognizing the Métis and enhancing their survival as distinctive communities"[52] and that the Métis are a full fledged rights-bearing people. Based on *Powley*, lower courts have increasingly been recognizing the rights of Métis from Ontario west.[53]

Without a doubt, over the next decade, ongoing litigation will further delineate the nature and scope of Métis rights. Current federal and provincial policies of denying Métis rights and only recognizing Métis governance structures as "organizations" rather than as "governments" will have to be revisited in order to keep up with legal and political developments. Key to this evolution will be a willingness, first on the part of other governments to work and share with Métis in order for them to implement their unique self-government aspirations, and second on the part of the Métis people to grapple with and address important self-government issues they face.

There is also increasing support for the rationale that, from a policy perspective, Aboriginal self-government makes sense. After 15 years of research, the Harvard Study on American Indian Economic Development has concluded that First Nation economic self-sufficiency is closely linked to practical sovereignty, capable governing institutions and culturally matching government institutions to Indigenous concepts on how authority should be organized and exercised.[54] Central to this study is the finding that when First Nations have a sense of ownership and control over their own destinies - improvements in quality of life indicators result. While this type of specific research in relation to Métis has not yet been undertaken, the conclusions reached can be easily applied to the realities faced by many Métis communities.

Moreover, Métis governance structures and institutions already have a long history of effectively delivering to their own people as well as other urban Aboriginal peoples. Currently, provincial Métis organizations administer well over $125 million annually in combined federal and provincial programs and services.[55] Best practices and outcomes can be cited in all areas where federal or provincial investments have been made;[56] however, there are significant gaps in some areas (*e.g.,* health, justice, education) and varying investments from province to province. This results in a patchwork of programming and an inability of Métis governance structures and institutions to address the holistic needs of Métis citizens. Often Métis face "silo" programming in urban, rural and remote communities and are shuffled between uncoordinated delivery agencies. From a policy perspective, the failings of the current programmatic approach are

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[51] *RCAP: Métis Perspectives, supra* at p. 232.
[52] *Powley, supra* at para 17.
[53] *R. v. Willison* [2005] B.C.J. No. 924 (BC Prov. Crt.); *R. v. Laviolette* 2005 SKPC 70. See also *R. v. Morin & Daigneault* [1996] 3 C.N.L.R. 157 (Sask Prov Crt); aff'd [1998] 1 C.N.L.R. 85 (Sask QB).
[54] For additional information on and publications from Harvard Project on American Indian Economic Development see http://www.ksg.harvard.edu/hpaied.
[55] See Métis National Council, *Snapshot of the Nation: An Overview of the Métis Nation's Governance Structures and Institutions* (Métis National Council: Ottawa, 2000). Also note that this figure does not include programs and services delivered by regional or local Métis organizations (i.e. regional council, locals, etc.).
[56] See "Best Practices in Métis Governance" section of this paper for some notable examples.

readily apparent. As a result, a strong case can be made that Métis would benefit from a more coordinated, self-government framework.

Finally, another rationale for implementing Métis self-government is that it reflects Canadian values and traditions. In the *Quebec Sucession Reference*, the Supreme Court described Canada as an experiment in "reconciling diversity within unity."[57] Throughout its history, Canada has recognized the value of a multiculturalism policy which allows distinct identities and cultures to survive and flourish. For example, one of the oldest ethnic communities in Canada, the Montreal Jewish community, has an impressive history of institution building stretching back over 200 years. Current programs span family and children services to education and culture to services for seniors with annual budgets in the tens of millions of dollars. Equally impressive, as a second example, is the rich array of institutions developed by the Franco-Manitoban communities with some 30 to 40 active community organizations that host cultural events, promote economic development and provide services in a wide range of areas.[58] And we could cite many more examples.

In a similar vein, Métis communities seek to deliver services to their people in a culturally appropriate manner and to promote their culture, language and traditions through their own institutions. Canada's diversity has always been one of its strengths. A strong argument can be made that supporting Métis self-government contributes to Métis self-sufficiency and the Canadian federation overall.

ISSUE: RATIONALES FOR MÉTIS SELF-GOVERNMENT

Do these suggested rationales – legal, policy and the reflection of Canadian values - cover the main arguments in support of Métis self-government? Are there others? What is the strongest rationale?

B.   *Identifying Métis Nation Citizens and Métis Rights-Holders*

Addressing issues with respect to Métis Nation citizenship over the next few years will be crucial in moving forward on implementing Métis self-government. At stake is the determination of who is represented by the MNC and its affiliated provincial Métis organizations, who is being represented in negotiations, who is entitled to exercise Métis rights and benefit from negotiated agreements or settlements, who can access Métis-specific programs and services and who can participate within Métis governance structures (i.e. voting in elections, holding office, etc.). All of these questions are central to ensuring fairness, accountability, legitimacy and voice in Métis governance structures.

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[57] *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 (S.C.C.) at p. 278.
[58] For more information on these two communities and others, see Institute On Governance, "Ethnic Minorities in Canada: A Governance Perspective", March 2000, http://www.iog.ca/publications/ethnic.pdf.

There are two main developments that will dramatically affect how these citizenship questions are approached. The first is the Métis Nation's adoption of a "National Definition of Métis for Citizenship within the Métis Nation". The second is the Supreme Court of Canada's decision in *Powley*. In order to better understand the implications of these developments the sections below provide background information.

<u>National Definition of Métis for Citizenship in the Métis Nation</u>

In the past, a major stumbling block for Métis nationalism was the reality that there was not one uniform definition of Métis across the Métis Nation. With each regional Métis organization having jurisdiction for its respective membership there were variations in definitions as well as application requirements (i.e. a centralized registry vs. local communities issuing memberships, documents required). While there was some consistency in the key elements of these definitions (i.e. self-identification, ancestral connection and community acceptance), varying practices often frustrated Métis individuals moving from province to province.

Further, as outlined in the sections above, the political realities of these governance structures have evolved over the years. Naturally, membership requirements within these organizations have not been static and have resulted in some individuals who used to be members no longer being eligible for membership. Finally, the lack of provincial or federal resources to support sustained work on these membership lists has resulted in varying levels of integrity and capacity within the systems.

In an attempt to address these inconsistencies, in September 2002, after years of consultations, discussion and debate, the MNC, at a General Assembly, adopted a "National Definition of Métis for Citizenship within the Métis Nation". This national definition is included in the box below. Following this ratification, each of the MNC's affiliated provincial Métis organizations undertook a process to incorporate the national definition into their respective bylaws or constitution. As of September 2003, a uniform definition of Métis has been put into place across the Métis Nation.

National Definition of Métis for Citizenship in the Métis Nation

"Métis" means a person who self-identifies as Métis, is distinct from other Aboriginal peoples, is of Historic Métis Nation ancestry, and is accepted by the Métis Nation.

Defined Terms in National Definition of Métis

"Historic Métis Nation" means the Aboriginal people then known as Métis or Half-breeds who resided in the Historic Métis Nation Homeland.

"Historic Métis Nation Homeland" means the area of land in west central North America used and occupied as the traditional territory of the Métis or Half-breeds as they were then known.

"Métis Nation" means the Aboriginal people descended from the Historic Métis Nation which is now comprised of all Métis Nation citizens and is one of the "aboriginal peoples of Canada" within the meaning of s.35 of the Constitution Act 1982.

"Distinct from other Aboriginal peoples" means distinct for cultural and nationhood purposes.

It should also be noted that the National Definition's companion "Acceptance Process" (see Annex II) has not been formally ratified at a national level. The Acceptance Process has been adopted, in-principle, by the MNC General Assembly; however, it has been agreed that additional consultations on the document are to be undertaken. Many of the outstanding contentious issues (which are outlined later in this subsection) still need to be addressed in order to move forward on ratifying a final Acceptance Process.

<u>The Supreme Court of Canada's Decision in the *Powley* Case</u>

While the Métis Nation, like other Aboriginal peoples, maintains that only it has the right to define its membership, it is undeniable that the Supreme Court of Canada's decision in *Powley* will have some effect on Métis identification issues. However, it is important to note that the court did not set out a comprehensive definition of who is "Métis".[59] Instead, the court set out a "test" to identify a rights-bearing Métis community and who is eligible to exercise a rights-bearing Métis community's constitutionally protected harvesting rights. Specifically, the Supreme Court sets out three criteria to determine who is an eligible Métis rights-holder: self-identification, ancestral connection, and community acceptance. A detailed description of the meaning of these terms is set out in the box below.

The Supreme Court's Criteria for Identifying Métis Rights-Holders

First, the claimant must <u>self-identify</u> as a member of a Métis community. This self-identification should not be of recent vintage: While an individual's self-identification need not be static or monolithic, claims that are made belatedly in order to benefit from a right will not satisfy the self-identification requirement.

Second, the claimant must present evidence of an <u>ancestral connection</u> to a historic Métis community. This objective requirement ensures that beneficiaries of s. 35 rights have a real link to the historic community whose practices ground the right being claimed. We would not require a minimum "blood quantum", but we would require some proof that the claimant's ancestors belonged to the historic Métis community by birth, adoption, or other means. Like the trial judge, we would abstain from further defining this requirement in the absence of more extensive argument by the parties in a case where this issue is determinative. In this case, the Powleys' Métis ancestry is not disputed.

Third, the claimant must demonstrate that he or she is <u>accepted by the modern community</u> whose continuity with the historic community provides the legal foundation for the right being claimed. Membership in a Métis political organization may be relevant to the question of community acceptance, but it is not sufficient in the absence of a contextual understanding of the membership requirements of the organization and its role in the Métis community. The core of community acceptance is past and ongoing participation in a shared culture, in the customs and traditions that constitute a Métis community's identity and distinguish it from other groups. This is what the community membership criterion is all about. Other indicia of community acceptance might include evidence of participation in community activities and testimony from other members about the claimant's connection to the community and its culture. The range of acceptable forms of evidence does not attenuate the need for an objective demonstration of a solid bond of past and present mutual identification and recognition of common belonging between the claimant and other members of the rights-bearing community.

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[59] *Powley, supra* at para 12.

The Supreme Court made several additional important points, these include:

- *Métis Are Not Just Mixed Blooded Individuals:* The Court held, "[t]he term "Métis" in s. 35 of the *Constitution Act, 1982* does not encompass all individuals with mixed Indian and European heritage; rather, it refers to distinctive peoples who, in addition to their mixed ancestry, developed their own customs, and recognizable group identity separate from their Indian or Inuit and European forebears."[60] This dispels the often held notion that Métis are any mixed blooded individuals. Simply put, non-status Indians are not Métis and Indians losing status do not become Métis by default.

- *The Geographic Scope of a Métis Community:* The Court defined "Métis community" in a broad sense by holding that a "Métis community can be defined as a group of Métis with a distinctive collective identity living together in the same geographic area and sharing a common way of life".[61] It did not find that a Métis community is limited to a town, village or "dot on a map"; however, it also did not set out a clearly defined means of identifying the geographic scope of a Métis community or its traditional territory.

- *Urgency in Identifying Métis Rights-Holders:* The Court gave strong direction to all levels of government to get on with the task of supporting Métis identification systems. Specifically the Court held, "[t]he development of a more systematic method of identifying Métis rights-holders for the purposes on enforcing hunting regulation is an urgent priority. That said, the difficulty of identifying members of the Métis community must not be exaggerated as a basis for defeating their claims under the Constitution of Canada".[62]

- *Objectively Verifiable Process:* The Court said that there must be an "objectively verifiable process" to identify Métis rights-holders. Directions were given to Métis organizations for their membership requirements to become more standardized, however, governments were also directed to support this work. Ensuring Métis identification systems are "objectively verifiable" will be key to the legitimacy and credibility of systems.[63]

Outstanding Questions and Challenges Relating to Métis Identification

In assessing the state of current Métis identification processes and systems, there seems to be several layers of issues and challenges that must be addressed by the Métis Nation. A preliminary challenge is one of clearly identifying the Métis Nation and its members. Specifically, identifying the geographic scope of the Métis Nation's "Homeland" and which communities are a part of this distinct Aboriginal nation is a priority. While, to date, the Métis Nation has defined the general parameters of its "Homeland", it has not specified just how far its traditional territory spans and which communities are apart of the larger nation. Moreover, the

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[60] *Powley, supra* at para. 10.
[61] *Powley, supra* at para. 12.
[62] *Powley, supra* at para. 49.
[63] *Powley, supra* at para. 29.

MNC's national definition is somewhat cyclical in nature on how it identifies the "Historic Métis Nation" and the "Historic Métis Nation Homeland".[64]

In the future, at a political level, it may become challenging to claim the Métis Nation is a distinct Aboriginal people based on a common history, identity, culture, language, while the Nation itself has not delineated what communities are a part of this 'nationhood'. Moreover, on a practical level it will also be increasingly difficult for provincial Registrars within provincial Métis organizations to identify whether someone is of "Historic Métis Nation" ancestry when the geographic boundaries of the nation are not defined. As a result, deciding whether an applicant from one community outside the Métis Nation's Prairie core is "in or out" becomes a somewhat arbitrary decision, rather than being based on the Métis Nation's inherent right to define its membership. Clearly, work in this area with respect to agreeing to indicia for recognizing communities as a part of the Métis Nation, research on communities and mapping of the Métis Nation Homeland is needed.

Further, the need to identify and recognize rights-bearing Métis communities and their traditional territories will also be part of addressing this preliminary challenge. So far, some governments have relied heavily on the Supreme Court's statement in *Powley* that "to support a site-specific aboriginal rights claim, an identifiable Métis community with some degree of continuity and stability must be established through evidence of shared customs, traditions, and collective identity, as well as demographic evidence"[65] to narrow the scope of Métis rights. For example, in some jurisdictions, the terms "site-specific" and "community" in *Powley* have been interpreted to mean a specific town, village or lake. Conversely, Métis assert that a broad interpretation of community must be used. Métis leadership consider the Métis Nation, in its entirety, as a rights-bearing Métis community. Recently, in lower court decisions applying the *Powley* case, judges have been adopting an expansive regionally-based community approach.[66] Irrespective of differing positions, it is clear that more research and traditional land use work needs to be undertaken in order to develop a factual basis for identifying rights-bearing Métis communities. Flowing from this work, complex issues relating to mobility and the role of communities in regulation can then begin to be addressed.

Finally, related to this preliminary challenge is the issue of public education by raising awareness of the Métis Nation as a distinct and culturally coherent Aboriginal people. Part of this task is ensuring that Métis are not equated with the population of mixed-race, non-status Indians or others. Misconceptions in the general public over issues of Métis identity and why Métis have rights have been a major obstacle to political progress on the Métis agenda. Part of this may be due to the fact that Canada's political system tends to centralize power in the populous centre of the country, where the Métis are less prevalent. Other factors may include a lack of diligence on the part of the media, apathy from the public-at-large with respect to Canadian and Aboriginal

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[64] In the National Definition the "Historic Métis Nation" is defined as being comprised of Métis or Half-breeds who resided in the "Historic Métis Nation Homeland". The "Historic Métis Nation Homeland" is then defined as "the area of land in west central North America" used and occupied by Métis or Half-breeds. The definition provide no further precision on "Métis Nation" or "Métis Nation Homeland".

[65] *Powley* at para. 12.

[66] See *R. v. Willison, supra* and *R. v. Laviolette, supra* for applications of *Powley* with respect to defining the geographic scope of a Métis community.

history, the lack of a clear, publicly-oriented message from Métis and the diffusion of the Métis population within the Canadian electoral system.

The second group of challenges relate to the more technical, but equally important task of registering members. There are many issues that still need to be addressed and overcome as Métis identification systems evolve. In the wake of the *Powley* decision, the federal government has made some funding available to the MNC and provincial Métis organizations to take on this significant task.[67] For the first time in the Métis Nation's history, capacity resources have been dedicated to Métis registries. As a result, significant effort is now being dedicated to establish or enhance Métis identification systems.

Interviewees working in the identification area highlighted the need for some important outstanding issues to be addressed in the very near future since Métis organizations are making significant investments in and building the foundations for their registry systems. One provincial Registrar emphasized that if consistent and compatible processes are going to be put into place across the Métis Nation, they should be put into place now or else it will be very difficult to make changes down the road once a province has developed their "own way of doing things".

There is widespread recognition that addressing many of these registry issues will be controversial since Métis identity goes to the core of an individual's self-worth as well as the broader collective's identity. Several interviewees stressed the need to address these difficult issues because the foundations of these new identification systems being developed are at stake. Among the more contentious of these issues are the following:

- *Ratifying an Acceptance Process for Métis Registration:* As discussed above, although the MNC General Assembly has adopted an in-principle Acceptance Process, it has not been formally ratified. There continues to be a need to move forward on adopting an Acceptance Process since each region is now addressing issues that are within the Acceptance Process on their own (i.e. document requirements, adoption, being on another Aboriginal registry, etc.).

- *"Grandfathering" of Existing Members:* The issue of whether existing Métis card-holders, who do not meet the new national definition of Métis, should be grandfathered into the new membership list is an issue. For example, there are many founding members of Métis organizations that have always culturally identified as Métis; however, they do not have Métis Nation ancestry. The current definition of Métis and the proposed Acceptance Process do not provide a means to accept these individuals.

- *Control over Applications and Cards:* In some provinces, the issue of who has control over membership has not been resolved. For example, some Locals want to maintain complete control over membership applications and issuance of cards rather than a centralized provincial registry.

- *Adoption:* The issue of adoption remains a contentious issue. Currently, the national definition of Métis does not provide for adoptees being accepted as Métis. However, within

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[67] Within the 2004 Federal Budget, $20.5 million was committed for *Powley* related work . The 2005 Federal Budget committed to another $30 million over 2 years (2005-2007) for ongoing *Powley* related work.

the in-principle Acceptance Process, children adopted at birth can become citizens of the Métis Nation. This issue cuts to the heart of whether being "Métis" is a racial or cultural concept. If it is the latter, adoptees and their children should not be distinguished from 'birth' Métis in terms of their voting rights, rights to run for office, right to harvest, or the status of their own children. Further, in *Powley* the Supreme Court accepts that adoptees can be rights-bearing Métis within the ancestrally connected branch of its test.[68] On the other side of the argument, individuals express concerns about adoptees automatically becoming a Métis member even though they have no Métis ancestry or connection to the Métis Nation.

- *Community Acceptance:* The role of local, regional and provincial bodies in accepting Métis members needs to be uniformly addressed. Some jurisdictions undertake community acceptance on a provincial basis (i.e. if you meet the requirements for registration you are deemed to be accepted by the Registrar), while others still require Locals to accept new members through meetings at the community level. Ensuring consistency and meeting the community acceptance requirement set out in *Powley* is an important issue.

- *Bill C-31:* There are individuals who culturally identify as Métis, but who registered as status Indians under the *Indian Act* in the advent of Bill C-31. Currently, these individuals have no legal means to be removed from the *Indian Act* registry. Based on current policies that are being implemented (i.e. Métis citizens cannot be registered on another Aboriginal registry), provincial Métis organizations will not register these individuals and are removing these registered Indians off of Métis membership lists. There are strong arguments on either side of these issue. Registered Indians who culturally identify as Métis argue that if Métis identity is based on a common culture, why should a racist and external piece of legislation such as the *Indian Act* define Métis citizenship. These individuals also point to their inability to remove themselves from the *Indian Act* as a factor that should be considered. On the other side of the argument, Métis who have never tried to get Indian status take the position that these individuals made a choice and are now apart of the Indian community. Also, many life-long Métis members become upset by these individuals having the ability to "double dipping" or that they are now just coming back because to the Métis community because it appears that Métis are making gains. It should be noted that the MNC's in-principle Acceptance Process addresses these issues directly by refusing registration to anyone who is already on another Aboriginal registry such as the *Indian Act* registry.

- *Compatibility:* As each provincial Métis organization moves forward on implementing their identification systems there is concern that the database systems being established will not be compatible if a national registry is ever established. This issue is also of concern to Métis who move between provinces and whether they can seamlessly transfer their membership or have to reapply in each province.

- *Separate Cards for Membership and Harvesting:* The question of whether there should be separate cards for membership and harvesters is an issue that is being dealt with differently between provincial Métis organizations.

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[68] *Powley, supra* at para 32.

- *Security of Métis Cards:* Ensuring highly secure, fraud-proof cards are produced will be essential to the integrity of the systems. Currently, a majority of these cards are far from secure.

Addressing these issues in a timely manner will be critical to the Métis Nation. Without a doubt, provincial Métis organizations need to ensure that these registration processes are of the highest integrity, because dependable Métis membership cards and registries have many crucial uses – not least of which include exercising Métis rights, voting in Métis elections, participating in Métis political processes and accessing Métis programs and services.

Moreover, because so much of the future legitimacy of these provincial Métis organizations and the exercise of Métis rights nationwide will rest on the integrity of these registries, there is a strong argument for nationally consistent and stringent approaches to registration. Without this, situations might occur such as a non-Aboriginal person using a false or wrongly-issued Métis membership card to harvest or access Métis-specific programs, or a particular Métis local or region registering large numbers of non-Aboriginal people for electoral or funding purposes. Such situations could create conflict or attract negative media coverage, impacting the reputation of the <u>entire</u> Métis Nation and the credibility of <u>all</u> Métis identification systems. The media will not likely distinguish between the quality of each provincial Métis organization's card system. The black eye will likely be on all Métis cards. Thus, there are serious needs both internal to the Métis Nation and external to ensure a level of credibility in all identification systems.

This is a difficult task, however, as each provincial Métis organization has jurisdiction for its own membership and the fact that registration processes currently vary significantly from province to province and even within some provinces. Historically, a range of Métis organizations at the local, regional, and provincial levels – and even some service delivery entities – distributed membership cards. Thus a plethora of 'Métis cards' exists nationwide, many highly insecure and of doubtful validity, as the registration requirements were not thorough in many cases.[69] Some provincial Métis organizations managed to assemble all this locally-generated information into central registries, although the comprehensiveness of all files within these centralized registries is an issue as well.

Given the sensitivity of decisions around identifying the Métis Nation and rights-bearing communities as well as the registration of Métis individuals, it will be essential to establish clear processes that are insulated from political considerations, include adequate checks and balances, and that allow for appeals. Such processes are critical to the fairness principle of good governance. The following contains some elements of governance initiatives that the Métis Nation may want to consider:

National Métis Citizenship and Elections Commission

One approach with respect to Métis identification might be to institute a nationally consistent system administered by a National Métis Citizenship and Elections Commission, which would

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[69] It is important to note, however, that some of these old cards could still be useful, because they could help meet the Supreme Court's requirement that a rights claimant prove that their self-identification as Métis is not "of recent vintage" as described in *Powley*.

be made up of a National Commissioner (who would act as Chair of the Commission) along with provincial Registrars. This Commission would be tasked with ongoing reviews of the registry systems and electoral processes as well as making recommendations to Métis leadership and assemblies for improvements to the systems. All members of the Commission would be non-political, arms-length officers of their respective Métis organizations. As well, an independent, arms-length Métis Nation Auditor-General would be responsible for regularly auditing the provincial systems and electoral processes in order to ensure confidence in the systems. Details of such an approach could include the following:

- **Establishing a National Métis Citizenship and Elections Commission and Métis Nation Auditor-General:** A Commission and Auditor-General, as outlined above, would be established through legislation passed by the MNC General Assembly and subsequently ratified by all provincial Métis organizations. The legislation would outline roles and responsibilities, mandates, appointment and removal procedures and reporting requirements.

- **A Consistent National System with Regular Independent Audits:** The Provincial Registrars, with guidance of the National Commissioner, would agree on a nationally consistent approach to registration of members, to include the types of documents required, roles and responsibilities of the various officials involved, and the nature of identification cards and registry systems. The independent Auditor-General would then conduct audits of provincial registries and applications processes based on agreed to checklists of needed documents and policies to ensure that the system agreed upon is indeed enforced.

- **National Métis Identification Card with Regional Affiliation:** Each region's card would be highly secure, standard nationwide, and indicate the individual's affiliation with a particular provincial Métis organization as well as with the Métis Nation (i.e. MNC).

- **Centralized Provincial Registries:** All files as well as electronic information in a database would be securely housed within a provincial registry. Efforts would be made to ensure all information was in digital format rather than cumbersome paper files. Locals and Community Councils can assist with application intake and may also have a role within accepting local members; however, a centralized registry will be established and maintained. Along with proof of residency in the jurisdiction concerned, the citizenship rolls would provide the basis for voting rights at all levels. Membership lists would also serve as electoral lists with Chief Electoral Officers and provincial Registrars working closely together during provincial elections.

- **Virtual National Registry:** Because Métis registered in one province could become resident in another province and wish to retain political voice as well as access to programs and services, a national registry of Métis citizens is required (it would also include people denied Métis citizenship, in order to prevent 'shopping around'). Only the provincial Métis organizations would have the authority to add or remove affiliated members, although the National Commissioner would provide administrative support for the database (including, by monitoring INAC's Indian and Inuit registries, recommendations to the provincial organizations that they remove Métis who gain such status). It would thus function like a 'chest with five keys'.

- **Selection of Provincial Registrars, Chief Electoral Officer, National Commissioner and Auditor-General:** So as to ensure their political independence and integrity, the Registrars,

Commissioner, Chief Electoral Officers and Auditor-General should be politically independent and appointed by a resolution of their respective Métis assemblies and the MNC General Assembly, and would serve lengthy terms (perhaps 5-10 years). They would be removable only for cause, by the provincial or national President, after a majority vote by the particular assembly.[70]

- **A One Time Reapplication:** In order to make stronger and more credible identification systems, there would be a one time reapplication for all members across the Métis Nation based on the new national definition and agreed to registration procedures.[71] This nation-wide process may alleviate some of the political fallout for leaders in specific regions asking their members to reapply. A national as well as regional communication strategy would be undertaken to explain to members the need to reapply and what is required. In addition to public announcements, all members of existing lists would be contacted regarding the new registration requirements.

- **Acceptance Process:** In order to make the proposed one-time reapplication process effective, an Acceptance Process (which addresses the outstanding issues canvassed above) must be ratified through political processes. This Acceptance Process would then guide the work of the National Citizenship and Election Commissioner and provincial Registrars.

- **Appeals Process:** Appeals of provincial decisions on membership or elections could be made to the National Métis Citizenship and Elections Commission, which would establish procedures and mechanisms to hear appeals consistent with fairness and transparency. Any constituted appeal panel would not include the provincial Registrar from the province whose decision is being appealing. A similar principle would be applied to appeals from provincial elections.

- **Reporting:** Members of the National Citizenship and Elections Commission would be required to report regularly to the MNC Board of Governors, provincial boards and assemblies on its activities. A national annual report along with provincial reports on activities would be a requirement. As well, the Commission would make recommendations for changes to existing membership and elections policies as well as its enabling legislation through ongoing internal and external reviews.

National Panel on Identifying the Métis Nation Homeland

In order to assist the Métis Nation in delineating the geographic scope of its traditional territory, there is a need to establish a fair, principled and fact-based process. While the decision of identifying which communities are a part of the Métis Nation ultimately rests with the Métis people themselves, a transparent process will assist the political bodies in getting to a point where they can make these difficult and contentious decisions.

- **Agreeing to Criteria for Identifying a 'People'**: Although there is no universally accepted definition of a "people", domestic and international jurisprudence has generally taken a very

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[70] This is akin to the selection process for Canada's Chief Electoral Officer.
[71] Some provincial Métis organizations with well-established centralized registries may not require the reapplication of all members, just those who do not have enough documentation on file to meet the Métis Nation's national definition and acceptance process requirements.

broad view of the term. Without being exhaustive or essential, objective elements include: common language, history, culture, kinship, race or ethnicity, way of life and territory. In addition, a subjective element is necessary, whereby a "people" identifies itself as such.[72] Since the Métis Nation's largely bases its self-government and rights claims on being a distinct Aboriginal people, it would seem logical to use these well-recognized indicators to assess which communities are a part of the Métis Nation. Through a consultation process, key indicators could be agreed to which would then assist the assessment process.

- **Establishing A Métis Nation Homeland Review Panel**: In order to undertake the assessment of communities based on the indicators agreed to by the political bodies, a blue ribbon Métis Nation Homeland Review Panel would be assembled. This Panel would consist mainly of independent experts in the field, such as academics and professors. The Panel could also include Elders to assist or guide the experts in their work. The task of the Panel would be to assess communities (historically and in contemporary times) based on the agreed to indicators and make recommendations based on fact-based research and visits to the communities. The Panel would then table a final report with the Métis Nation for consideration.

- **Political Review of the Panel's Report:** The final step in the process would be for the Métis Nation's political bodies to review and decide whether to accept all, some or parts of the Panel's report. As stated above, decisions in relation to nationhood ultimately lie with the people themselves; therefore, members would have the opportunity to provide comments on the Panel's final report and whether to accept its recommendations.

ISSUE: IDENTIFYING MÉTIS NATION CITIZENS AND RIGHTS HOLDERS

Are the proposals in this subsection for making progress on issues relating to identifying Métis citizens and rights-holders worthy of consideration? Can they be improved?

C.   *Roles and Responsibilities of Métis Governments*

Having outlined the leading rationales for Métis self-government and reviewing the pivotal issue of identifying and registering the Métis citizens and rights-holders, we can now proceed to discuss what the chief functions of Métis government might be and which of the four levels of Métis government might handle them – national, provincial, regional, and local.

Currently, most Métis governance functions are carried out at the provincial level: provincial Métis organizations handle the bulk of Métis program funds; manage most cultural, historical, linguistic, and educational facilities; coordinate the exercise of harvesting rights; conduct registration; appoint members to the MNC's General Assembly; and are the focus of the most high-profile elections. It seems likely that most of these responsibilities would stay as it is. That

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[72] Reference re Secession of Quebec, supra at pp. 278, 281-282; Ronald Lambert, "Does a Canadian People Exist", S.C.C. File No. 25506 (3 March 1998) (QL) and *RCAP Restructuring the Relationship, Volume II, Part I, supra* at pp. 169-178, 184.

said, there are a few areas – particularly citizenship and elections – in which improved national coordination and the possibility of appeals to the national level would benefit the nation as a whole, as well as a few areas in which capacity building at the regional and local level could improve service delivery and ensure Métis are engaged and consulted in relation to their rights and interests vis-à-vis natural resources and economic development within or around their communities.

The need to delineate the roles and responsibilities between Métis governments is an important exercise that must be undertaken in order to move forward on constitutional development. To date, the MNC's development of a Métis Nation Constitution has been stalled. Factors such as limited resources and concerns from Métis leadership that power may be substantially redistributed between the national and provincial bodies are challenges. Further, some provincial Métis organizations are just in the process of undertaking their own governance reform or constitutional development; therefore, the development of a national constitution is seen as a daunting and unwieldy task. Irrespective of these challenges, achieving some form of agreement on the division of powers between the Métis Nation's governance structures and institutions will be critical in moving forward on the Métis Nation's self-government agenda.

The following outline proposes a set of roles and responsibilities for the four levels of Métis government, as well as areas that would be shared, along with explanations.

Roles and Responsibilities Shared by All Four Levels

➢ **Promotion of Métis Nation identity and culture –** All four levels of government should be involved in defending and promoting Métis culture – including language, history, traditions, arts, values, heritage, traditional knowledge, spirituality, and way of life. Efforts to maintain interest, understanding, and involvement within the nation – particularly among youth – as well as in the general Canadian population are equally important. In considering the current activities of the various organizations, it appears that there could be a greater national role in this regard – including through national historical, educational, linguistic, or artistic organizations, or through higher-profile national gatherings. Important institutions such as the Gabriel Dumont Institute have been established at the provincial level, but there is little reason the national organization could not connect to these and build on them in order to better reach out to all Métis Nation citizens and increase the national profile of the Métis Nation.

➢ **Negotiations on Métis rights and self-government** – dependent on the nature and scope of negotiations specific or multiple levels of Métis governments may be engaged – examples could include:
  ▪ lead up negotiations to First Ministers Meeting, which would be undertaken by the MNC based on the direction of provincial Métis organizations
  ▪ negotiations involving specific land or resource development, which would need to involve affected local Métis communities with possible support from regional and provincial Métis governments that possess increased capacity and expertise in these areas.

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National Roles and Responsibilities

➢ **Advocacy and legal coordination around rights**– because of the high cost of legal processes and the need for coordination, because Métis rights nationwide are in many ways affected by court rulings on the subject, and because of the need for expertise in the area, the MNC should continue to play a lead role in advocacy, and supporting and coordinating legal pursuits around Métis rights.

➢ **Intergovernmental and international fora** – the MNC should represent the Métis at fora such as the First Ministers Meetings and other important federal-provincial meetings, as well as at international meetings of Indigenous peoples or other international fora relating to rights and other issues.

➢ **Liaison with the federal government** – the MNC would continue to play a major role in a) coordinating national negotiations and agreements around federal initiatives relating to the Métis or to Métis-specific policy and b) maintaining ongoing relations vis-à-vis existing federal programs, in particular around federal programs managed by Métis organizations such as the Aboriginal Human Resource Development Strategy (ARHDS), Aboriginal Language Initiative (ALI), etc.

➢ **Communications to members on issues of national concern** – the MNC and the National President should be seen and regarded as the national voice of the Métis Nation in order to avoid confusion and mixed messages among Métis leadership on issues of national concern.

➢ **Auditing provincial registries and electoral processes, ensuring accountability and resolving intergovernmental disputes** – a 'Métis Nation Auditor-General' could play a valuable role in holding the MNC as well as provincial Métis organizations to account for the stewardship of the money of the Métis people, including through value-for-money audits of financial statements as well as special examinations of particular programs. As well, this type of arms-length and well-respected Métis institution could be called upon by other governments when administrative issues arise. Instead of a third party, who is often unfamiliar with the issues, conducting a review, an independent 'Auditor-General' could investigate and make findings and recommendations. Proactive measures such as this when these situations arise could also help to avoid strained and severed relations between Métis organizations and governments. Moreover, the 'Auditor-General' could make findings with respect to governments not fulfilling their obligations to provincial Métis organizations (*e.g.,* late payments to Métis organizations, disputes on funding guidelines, etc.). Finally, as discussed previously, the Auditor-General would audit provincial registries and electoral systems.

➢ **Coordination of research activities** – the MNC could be tasked with coordinating and becoming a clearinghouse of research and academic study on the Métis Nation and Métis communities; part of this role would be to ensure information is accessible to the Métis community at large.

➢ **Equalization of revenues among provincial Métis organizations** – depending on the form of the fiscal agreements forged between the federal and provincial governments and their Métis counterparts, there could be a role for the MNC to manage the sharing of revenues between 'have' and 'have-not' provincial Métis organizations. The Métis organizations who

provide and those who receive revenues under this system may well be different from the 'have' and 'have-not' provinces of the Canadian federation, and their status may also change over time. While controversial for some, equalization is a common feature of the great majority of federal systems worldwide and is generally seen as essential to maintaining the unity of the nation over the long-term. It can also help residents of resource-dependent regions – which include many Métis people – weather periodic economic downturns.

Shared National and Provincial Roles and Responsibilities

➢ **National Commission on Métis Citizenship and Elections –** as outlined in the section above, the Métis Nation could establish an arms-length National Commission consisting of a National Commissioner and provincial Registrars who would work together to ensure integrity and consistency within the Métis Nation's registries and electoral processes.

➢ **Coordinating relations with other Aboriginal peoples** – in part because of the Ottawa location, the MNC can play a lead role in coordinating advocacy efforts and other issues with the leadership of the other National Aboriginal Organizations, representing First Nations and Inuit. Provincial Métis organizations would take a lead on establishing relationships and possibly coordinating efforts at a regional level with tribal councils or First Nation provincial bodies.

➢ **Fiscal agreements with provincial and federal governments** – the provinces will be more inclined to engage the Métis Nation in a serious manner if they see their neighbours taking similar initiatives.   Consequently, the MNC can play a useful role in supporting and coordinating the activities of the provincial Métis organizations as major agreements – particularly around fiscal relations – are concluded with the federal and provincial governments.

Shared Local, Regional, and Provincial Roles and Responsibilities

➢ **Receipt of membership applications** – as we discussed above, it is important to allow Métis members different channels to submit applications for membership. In some cases, gaining the signature of the local and/or regional President could be a useful way to demonstrate 'community acceptance' before the application is passed on to the provincial Registrar for final approval. As well, local communities could assist applicants in completing their membership application. On the other hand, for families who have moved to another region and lost personal ties to their ancestral community, but can still demonstrate through other means that they have retained their culture, there should also be the possibility of applying for citizenship directly to the provincial Registrar, with the necessary genealogical and other evidence.

➢ **Communicating to members** – all three levels of Métis government would have the responsibility to ensure members are informed of activities and initiatives that affect them. Specific communications tools for each level of Métis government could be agreed to. For example, provincial bodies could publish quarterly magazines or papers and maintain a website for members, regional bodies could publish regional newsletters, and locals and councils could hold regular information meetings.

Provincial Roles and Responsibilities

➢ **Liaison with provincial governments –** just as the MNC would take the lead on federal initiatives, the provincial organizations would have the chief role in negotiating agreements with provinces in the areas of education, youth, child and family services and so on.

➢ **Maintaining a provincial registry –** as described above, arms-length provincial Registrars should be appointed to approve individuals' applications for Métis status, and handle appeals of local or region-level decisions.

➢ **Communications on issues of regional concern** – the provincial Métis organization and provincial President should be seen and regarded as the provincial voice of the Métis Nation in order to avoid confusion and mixed messages among Métis leadership on issues of regional concern.

➢ **Advocacy around natural resources** – because natural resources are provincial jurisdiction, and the provinces differ widely in their willingness to engage Aboriginal communities in consultation around forestry, mining, oil and gas, and other natural resources, advocacy efforts around revenue sharing or other opportunities around natural resource development are best left up to the provincial Métis organizations.

➢ **Program and service regulation, oversight, funding coordination, and some delivery** – provincial Métis governments are already involved in coordinating funding, regulating, and overseeing the delivery by regional or local Métis governments of programs and services. In a number of cases, the programs and services are delivered directly by the provincial organization. In the Prairie provinces, where the Métis organizations are deeply involved in many of these kinds of programs, their involvement should continue and expand where possible. The MNO and MPCBC may over time wish to take on greater roles as their capacities evolve and as situations warrant as well. The principal programs and services which the provincial organizations currently govern, or might seek to govern, are as follows:

  ▪ Child and family services;
  ▪ Some aspects of justice and corrections programming (particularly around young offenders, probation and community reconciliation);
  ▪ Youth programs (such youth councils, summer camps, etc.);
  ▪ Some aspects of education programming (especially culturally-appropriate special education, curriculum development, stay-in-school programs, mentorship programs, adult education and employment training, and scholarship funds);
  ▪ Labour market programs (such as counselling, skills upgrade, access to apprenticeship opportunities);
  ▪ Health (such as long term and personal care workers, prevention programs, education and awareness on diabetes, prenatal nutrition, infant health, responsible gambling, addictions, residential schools survivors);
  ▪ Economic development (such as Métis-controlled business ventures, resource sharing agreements, impacts and benefits agreements);
  ▪ Financial services (such as a credit union or other lending institutions); and
  ▪ Housing programs (such as building and maintaining social housing, repair programs).

- **Coordination and oversight of harvesting activities** – provincial Métis organizations should play a lead role in coordinating and overseeing harvesting activities. For example, as is currently the case in Ontario, this would involve appointing local coordinators of harvesting activities (in this case Captains of the Hunt) to implement the provincial Métis government's harvesting policy and any agreement with provincial departments. This coordinating role should remain at the provincial level because the nature of Métis harvesting practices varies from province to province, and because the most important linkages are with provincial rather than federal ministries. The only national role in this regard should be that of the Commissioner, who could oversee the integrity of the provincial harvesters' registries (though not make decisions on individual cases) as well as liaison with the federal government on its limited role in the area of harvesting. This national role is crucial, for the better the Métis oversee their own processes, the less oversight provincial natural resource departments will require in order to assess Métis harvester cards.

- **Appeals from program related disputes** – many government programs have appeal mechanisms so that citizens denied program benefits have a means of airing their grievances. The provincial organizations could assume that role, perhaps by establishing an ombudsman-like function or some other dispute resolution mechanism.

Regional Roles and Responsibilities

- **Delivery of programs and services** – depending on the level of capacity present in the regional organization, provincial Métis organizations could delegate many of the tasks of delivering programs and services such as those listed above to regional organizations. These regional organizations should remain creatures of the provincial organization, constituted by it and financially accountable to it, though with their own democratically-elected leadership. Indeed, efforts should be made to enhance the delivery capacity of these regional organizations as well as their accountability to the Métis communities (i.e. MNO Community Council Charter Agreements)

- **Coordination of resource-related opportunities** – if Métis communities succeed in gaining a greater stake in natural resource development, there may be a role for regional organizations in distributing royalties, or managing opportunities around jobs, contracting, training, or business ventures, particularly where the project affects multiple communities.

- **Aggregated governance functions for groups of communities on a land-base** – the Métis Settlements General Council and the Métis Settlements Appeals Tribunal handle a range of regulatory, appeals, and oversight functions and deliver a number of programs and services to the eight disparate Settlements, which each have their own local governments delivering municipal-like services. If other Métis communities on a discrete land-base are established elsewhere, or if the existing Settlements one day choose to integrate with the other Métis Nation governance structures, clear jurisdictions for aggregated regional Métis governments to serve such communities might need to be established.

Local Roles and Responsibilities

> **Delivery of programs and services** – as with the regional bodies, where capacity exists, the provincial organizations may engage local organizations in the delivery of certain programs and services such as those on the list above.

> **Local governance of geographically-specific communal rights** – local authorities appointed by the provincial organization should coordinate the exercise of harvesting rights at the local level, and in accordance with provincial Métis harvesting policies and relevant agreements with government departments.

> **Provision of local government functions on a land-base** – as in the case of the Métis settlements, if any land-base communities are newly established or absorbed into the Métis Nation governance system, clear jurisdiction for municipal-like government functions for these local authorities should be established.

Independent Métis Judicial or Dispute Resolution Institutions

> **Resolving disputes between various levels of Métis government** – there may be a need to establish an independent body, such as a Senate, to resolve disputes between the MNC and provincial Métis organizations when they arise. As well this body could be responsible for interpreting legislation or any eventual Métis Nation Constitution.

> **Final level of appeal for identified citizenship or election disputes** – this non-political independent institution could also act as a final level of appeal in citizenship and election disputes, which would be first heard by a National Métis Citizenship and Elections Commission. Its functions were outlined in the previous sub-section.

In order for constitutional development to move forward, members need to come to some agreement about who does what. Once there is general agreement in this area, constitutional development will become an easier exercise, since all bodies will have a clear sense of what they do and how they interrelated with other levels of Métis government. The authors believe that until there is a level of comfort between the parties in this key area, constitutional development will continue to be stalled. Similarly, until the unresolved identification issues that were outlined in the section above (i.e. scope of Métis Nation, acceptance process issues, etc.) are addressed national constitution development will be a difficult and challenging task.

ISSUE: DIVISION OF MÉTIS GOVERNMENT JURISDICTIONS

Is the proposed division of jurisdictions appropriate for the Métis Nation?

Are there responsibilities that have been overlooked or assigned to the wrong level of Métis government?

How might these divisions of powers be reflected in a Métis Nation Constitution?

D. *Leadership Selection in Métis Government*

Having outlined the principal functions of the different levels of Métis government, and some of the checks and balances between them, we can proceed to consider how Métis political leadership might be selected – including 'executive' and 'legislative' branches of government. The above analysis discussed a potential body to handle appeals of decisions at all levels (a 'judicial' branch), based at the national level.

At the local, regional, and provincial levels, there is little apparent reason to make significant changes to leadership structures or elections processes beyond what was discussed above, such as the arms-length governance of registries, and provincially-appointed local coordinators to manage the exercise of harvesting rights. One significant change which could be introduced, outlined above, would be the creation of a non-political, arms-length Métis Nation Auditor-General. This Auditor-General, appointed by the MNC General Assembly, would hear appeals of decisions by local, regional, and provincial elections officials, and in very serious cases with cause, hold recounts or even order new elections. He or she would also have the responsibility of auditing provincial registry systems. The authors believe that this type of Métis-mandated, arm-length institution would strengthen the transparency and integrity of all regionally-based Métis elections which, in some regions, have been increasingly challenged over the years.[73]

At the national level, on the other hand, if greater governance responsibilities are to be assumed as proposed above, reforms to leadership selection system may well be worthy of consideration. There appear to be three options for national leadership selection:

1. The status quo, where provincial delegates choose the National President, and Provincial Presidents sit on the national Board of Governors;

2. A directly elected National President and National Assembly; and

3. A National Assembly, composed of all Provincial Councillors, which chooses the National President.

1. Status Quo: Provincial Delegates choose the National President

The current MNC bylaws provide for the following arrangement (except for the provisions for the Cabinet):

▪ The MNC **General Assembly**, composed of voting delegates chosen by provincial organizations, sets policy and elects a MNC **President**. Each provincial organization determines how its voting delegates to the General Assembly are chosen.

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[73] One notable example is the MNS elections held in May 2005. Complaints about irregularities led the Government of Saskatchewan to commission a report by the province's former Chief Electoral Officer. This report concluded that that the MNS's elections were not run in a "fair and democratic manner" and could not be relied upon. As well, subsequent to the election, several individuals were charged in relation to election activities. A copy of the report is available at www.fnmr.gov.sk.ca/html/documents/metis/Lampard_intro.htm. Unfortunately, in the fall of 2005 the MNS election issue has still not been resolved. Métis within Saskatchewan continue to suffer due to both the federal and provincial government cutting off direct ties with the MNS. Due to a lack of a clear strategy or agreeable institution that could oversee the next election this issue drags on.

- An MNC **Board of Governors**, composed of the MNC President plus the Provincial Presidents, carries out the mandate set out by the General Assembly (there are also ex-officio positions on the Board of Governors for women and youth representatives).

- The Board of Governors administers the following two rules to determine how many voting delegates can be sent to the General Assembly by each of the provincial organizations:

  - A minimum of 15 voting delegates must come from the founding members (MMF, MNS, MNA); and a minimum of 5 from other members (currently the MNO and MPCBC)

  - Each President of the three founding members has 5 votes in determining how many voting delegates constitute the General Assembly; the other members have between 1 and 5 votes in this determination, based on the percentage of their members to the average membership of the founding members.

- The MNC President also appoints a **Cabinet** responsible for eight departments (in practice the cabinet posts have been filled by the provincial and national presidents as well as the heads of the national Métis women and youth organizations, so the Cabinet and Board of Governors have almost identical membership).

Under the current arrangement, the MNC leadership is essentially selected by the leadership of the provincial Métis organizations, and thus has no direct base of legitimacy of its own to use as leverage over the provincial Presidents at the Board of Governors level. The voting structure is also weighted strongly in favour of the Founding Members – the MMF, MNS, and MNA – each of which has a veto over the admission of new provincial/territorial members. The other Governing Members – MNO and MPCBC – have limited voting power, at least until they develop registries which are accepted by the Founding Members and can prove that they contain a population of citizens at least comparable to the Prairie average. Moreover, due to the lack of agreement on the scope of the Métis Nation, current membership list increases within the MNO and MPCBC are often questioned. The current structure often leads to division between at the national level.

However, the current structure also has demonstrated some benefits. It has proven effective in maintaining the strength of the provincial Métis organizations, while ensuring that the six key leaders are closely connected on important advocacy efforts.[74] Moreover, it is economical, because separate elections for the national leadership are not required, and because General Assembly and Board of Governors members do not need to be remunerated, as they generally already have paid positions at the provincial level. Finally, the model also avoids some of the adversarial dynamics inherent to systems with greater checks and balances, such as those with an independent 'legislative' branch, or separately elected leaders at provincial and federal levels. The downside is that there is limited accountability or power over provincial leaders and their organizations, and a relatively weak national body with limited flexibility to speak for the interests of the 'nation' rather than for the various interests of its constituent parts.

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[74] For example, an unanimous direction from the Board of Governors gives the National President a rock solid mandate to push forward on in comparison to an organization like the Assembly of First Nation which is made up of 600+ First Nation which often take the position that they each speak for themselves on issues.

2. Direct Elections for MNC President and Assembly

If greater roles are to be played by the national government in shaping the future of the Métis Nation, a stronger base of legitimacy for its activities and greater accountability to the Métis people may be required. Achieving a shift to this fundamentally new governance model might be achieved through a nationwide referendum of Métis citizens, to also address other issues around governance reform, particularly the question of national and provincial jurisdictions.

One effective means to enhance the political legitimacy and authority of the national body might be through direct elections of a National Assembly and of the National President. Under such a model, the national organization would consist of the following governing bodies:

- **A directly elected National Assembly of 15-20 members** – One approach would be for each province to have two to four seats in the National Assembly, depending on provincial membership levels. Directly elected women and youth commissioners would also form part of the National Assembly. The assembly might meet four to six times annually for two-day periods. So as to avoid conflicts of interest and ensure focus on national issues, assembly members would not hold other offices in the Métis Nation. The National Assembly would be an important accountability mechanism and check on the actions of the executive, and would have the following roles and responsibilities:
    - To approve policies and bylaws proposed by the executive and in some cases propose policies and bylaws,
    - To appoint the Métis Auditor General and receive audit reports,
    - To approve a National Métis Citizenship and Elections Commissioner nominated by the National President (and to remove such a Commissioner if required, with cause), and
    - To approve budgets.

- **A directly elected National President** – each Métis citizen's vote nationwide would count equally. A preferential ballot could be employed to select the President from a list.

- **A National Cabinet chosen by the President from among the National Assembly members** – the eight or so Cabinet members could receive higher remuneration than regular National Assembly members, and would assume roles similar to those of the current Cabinet.

- **A Commissioner of Citizenship and Elections and an Auditor-General nominated by the National President and confirmed by the National Assembly** – as discussed above, these officers would need to be insulated from 'politics' by, among other things, holding lengthy terms and being removable only for cause.

A directly elected National Assembly President would be helpful to improving checks and balances and accountability between the national and provincial levels. It would also help Métis citizens gain a stronger sense of their common 'nation', and debate and deliberate across provincial boundaries on issues of common concern. Logistically speaking, an important requirement would be for the provincial Métis organization to synchronize their elections dates and terms so as to enable simultaneous national elections. Failing that, separate elections would be required, implying considerable costs and efforts. Synchronization of elections is likely the

better option, because it would elicit greater turnout of Métis citizens, which could among other things help demonstrate to the rest of Canada the importance of Métis affairs to Métis people.

Challenges with this type of model could include increased costs (this is a real concern in light of the challenges provincial Métis organization have in supporting their political arms at the present time), possible conflicts between the National Assembly and provincial Métis organizations leading to prolonged power struggles and a drain of political talent from provincial Métis organizations.

3. National Assembly of all Provincial Councillors chooses the National President

In this third option, a National Assembly would be held two to four times annually, consisting of all members of Provincial Councils, who would join and retire from the Assembly on a staggered basis as Provincial elections are held. Once every three years (or another fixed period) this National Assembly would choose the National President, likely over the course of multiple rounds of voting (as in party leadership contests). The National President would then form a Cabinet from among all Provincial Councillors, with at least one Minister to be appointed from each Province.

The advantages of such a system are that no new elections and no new offices would be required, and the group choosing the national executive would be broadened beyond the Provincial Presidents and drawn evenly from across the Métis Nation. There are two significant complications with this system. First, the staggered entry of various Provincial Councillors to the National Assembly necessitates fixed terms and election dates for the National President, which in turn means that a mid-term confidence vote against the National President (a crucial accountability mechanism in Canada's parliamentary system) would not be possible, and 'gridlock' between the executive and legislative branches could ensue. Second, the Provincial Councils have widely varying numbers of councillors representing varying populations, so fair and equal representation of Métis citizens in the National Assembly would require one of two measures, neither of which is straightforward: (1) a reorganization and alignment of provincial and national Métis constituency boundaries, allowing provinces with greater memberships more seats and vice-versa; or (2) provisions for National Assembly members to have varying voting powers, based on the memberships of their constituencies.

ISSUE: SELECTION OF NATIONAL MÉTIS LEADERSHIP

Which of the following options would be best for selecting the leadership of the national Métis government, given its current and/or future authority vis-à-vis provincial Métis organizations?

- **The status quo, where provincial delegates choose the National President;**
- **A directly elected National President and National Assembly;**
- **A National Assembly, composed of Councillors, which chooses the National President; or**
- **A variation of the proposals outlined.**

E.   Strengthening Governance and Administration

As the national and provincial Métis organization continue to grow, the need to strengthen governance and administration becomes more and more pressing. Governance deals with the roles and responsibilities of elected leaders and how they interact with the Métis civil service or bureaucracy. Administration deals with more internal matters (i.e. day to day program delivery, accounting for results, recruitment, retention, training, financial checks and balances, etc.).

Clearly, stable, long term funding for Métis organizations a solution to many of the problems cited by interviewees in the areas of governance and administration. That said, funding will not be the panacea for all of these issues. For one thing, there is a widespread need for improved understandings of the roles that political leaders and board members need to play and how these relate to those of staff. Further reflections on this set of issues – and they are hardly unique to Métis organizations – are contained in Annex III.

One initiative that could be implemented is ensuring all newly elected or re-elected Métis leaders go to a leadership training "boot camp". Similar to what newly appointed federal Ministers go to, this type of session could provide Métis leaders with information on what their political roles and responsibilities are versus administrative issues, how to interact with staff, dispute resolution techniques, how not to expose the organization to legal liability (e.g., labour law issues, harassment, etc.) as well as team building with other elected colleagues.

An equally important challenge facing the Métis Nation is building a strong and productive civil service. Interviewees identified numerous challenges vis-à-vis recruitment and retention of competent staff:

- An inability to offer competitive compensation packages to qualified candidates (*e.g.,* the federal and provincial governments being able to offer significantly more money in salaries, a lack of pension plans, a lack of defined grids for salary reviews, etc.);
- An inability to offer long term employment contracts to qualified candidates due to the project-based nature of funding received from other governments;
- A lack of effective and ongoing training for staff in order to upgrade skills throughout their career;
- Due to the political nature of these organization there is often a lack of job security (*e.g.,* elections every 3-4 years, political factions on provincial boards, etc.);
- A lack of clearly defined organizational structures, job descriptions, expectations and career planning within the organizations.

These issues contribute to some qualified individuals not seeing a 'career' with the Métis Nation as a long-term option. With this comes high 'churn' within the organizations, often leading to a lack of stable corporate knowledge as well as sustainable strategy development and implementation.

One suggested initiative is having one of the Métis Nation's educational institutions assume the role of developing training modules to address a variety of these governance and administration areas (*e.g.,* a Métis Nation Centre or Excellence in Governance and Administration). An

advisory board which would include representation from each provincial Métis organizations would provide direction to the Centre. Courses in finance, governance, reporting, skills upgrading, dispute resolution, etc. would be developed and incorporate a Métis-specific perspective. Further, a 'Métis Nation 101' course would be helpful for new employees and leaders to better understand the Métis Nation's history, overall organizational structure and political agenda. Ideally, this Centre could become a forum where best practices in governance and administration could be shared rather than each provincial Métis organization having to invest the time and resources to develop their own approach to these issues.[75]

While this Centre would be a helpful, before embarking on such an initiative, it might be useful to have a more in-depth analysis of the Métis Nation's capacity building needs completed. Often the emphasis is placed on training individuals when the real problems lie at the organizational or systems levels. Further information on how Métis organization might develop a capacity building strategy for better governance and administration is outlined in Annex IV.

One final comment on the timing and nature of the Métis Nation's self-government agenda is in order. To date, First Nations and federal and provincial governments have pursued self-government in what some have called a "big bang" approach – that is, negotiate a full range of jurisdictions and then implement. Such an approach entails lengthy negotiations.[76] In addition, and perhaps more seriously, many First Nations have assumed jurisdiction in areas where they had little or no capacity or governance experience. The suite of regulatory functions relating to safe water comes to mind. The Métis Nation may wish to learn from this experience by taking a more evolutionary approach to self-government by ensuring that governance and administration capacity and experience are in place prior to assuming formal, jurisdictional responsibilities or by taking on jurisdiction a sector at a time. A notable example of this is the best practice of devolution of child and family services to the MMF. The MMF had to marshal much of its resources and attention to this sector in order for the negotiations and transfer to be successful. It is questionable whether the transfer would have succeeded had the MMF attempted to build institutional capacity and human resources on a multitude of fronts at the same time. We suggest that this type of methodical and measured assumption of jurisdiction may be a more effective means for the Métis Nation to achieve success.

ISSUE: STRENGTHENING MÉTIS GOVERNANCE AND ADMINISTRATION

Are the governance and administration issues canvassed in this section the principal problem areas?

What kind of a capacity building strategy might be useful in dealing with them?

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[75] For example, finance staff from Ontario west could compare the pros and cons of existing financial practices and software to develop a system that fits the needs of the Métis Nation.

[76] For example, the United Anishnaabeg Councils began their self-government negotiations in the late 1980s and reached a final agreement only last year, an agreement which was subsequently rejected by two of the four communities.

F.   The Place of the Métis in the Canadian Federation

It has been the long-standing position of the Métis Nation that s. 91(24) of the *Constitution Act, 1867* includes Métis in assigning legislative jurisdiction to the federal government for "Indians and lands reserved for Indians". The federal government maintains the position that Métis are not included in s. 91(24) and that provinces have primary responsibility for Métis. Provincial governments take an opposing view and assert the federal government has responsibility for all off-reserve Aboriginal peoples. Many well-regarded academics and legal commentators agree with the Métis Nation's position.[77]

Unfortunately, litigation of this issue has proven to be costly, time-consuming and open to delays and stall tactics, by both levels of government.[78] Contrary to bold political statements of wanting to "tackle jurisdictional issues head on",[79] both levels of government often resort to a "wait-and-see" approach on this significant issue.[80] As a result, Métis find themselves as the proverbial 'political football' being volleyed back and forth between levels of government. Métis see federal acknowledgement of jurisdiction as key to moving forward on their agenda for the following factors:

- Only the federal government has the jurisdictional competency to enter in treaties with peoples and this is what the Métis Nation seeks to negotiate with Canada.

- Section 91(24) recognition would break the current 'log jam' in that neither the federal or provincial governments are currently willing to negotiate seriously with the Métis on issues relating to land and self-government for fear of compromising their constitutional positioning.

- The federal government would have clear authority for legislation vis-à-vis Métis and could no longer use the jurisdiction uncertainty as an excuse for inaction.

- It would make it more difficult for federal government departments to deny Métis access to much needed programs and services that are provided to other Aboriginal peoples on a policy basis.

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[77] Peter Hogg, *Constitutional Law of Canada (4th Ed.)* (Carswell: Toronto, 1996) at p. 540; Clem Chartier, "Indians: An Analysis of the Term They Used in s. 91(24) of the British North America Act, 1867" (1978-1979) 43 *Saskatchewan L.R.*, 39; Catherine Bell, "Who Are the Métis People in Section 35(2)?" *Alta. L.R.* 29 (1991), 35; Bradford W. Morse and John Giokas, "Do Métis Fall Within Section 91(24) of the Constitution Act, 1867?" in *Aboriginal Self-Government: Legal and Constitutional Issues* (Ottawa: Canada Communication Group, 1995); Don McMahon and Fred Martin, "The Métis and 91(24): Is Inclusion the Issue?" in *Aboriginal Self-Government: Legal and Constitutional Issues* (Ottawa: Canada Communication Group, 1995).

[78] For example, in Métis rights litigation in Saskatchewan, at trial, the Saskatchewan Crown admits that Métis are "Indians" for the purposes of s. 91(24) and then argues that Métis claimants cannot introduce evidence on s. 91(24) in order to obtain a decision on the issue because the question is moot and uncontroversial between the parties. This tactic seems to contradict Saskatchewan's political assertions on s. 91(24) because it forestalls obtaining certainty on Canada's jurisdiction vis-à-vis Métis. See *R. v. Laviolette* [1996] S.J. No. 378 (Sask Q.B.).

[79] Prime Minister Paul Martin, *Response to the 2003 Speech from the Throne in the House of Commons* (February 2003).

[80] For example, the MNC has consistently requested that Canada refer this issue to the Supreme Court of Canada as a reference questions to no avail. Similarly, provinces from Ontario west have refused to refer the question to their respective Courts of Appeal.

- Such recognition would serve as a unifying factor among the five provincial Métis organizations that make up the Métis Nation and focus relationship efforts federally.

- Métis would have a door to knock on within the Canadian federation to have their issues addressed without hearing the excuse of the federal government having "no mandate" to negotiate with them.

- One level of government must have jurisdiction to deal with the Métis and it is logical that all three constitutionally recognized Aboriginal peoples are within federal jurisdiction.

- Inclusion would place the Métis on the same footing with Canada's other Aboriginal peoples and create equity in relations between the Métis and the Canadian federation.

- In recent times, the federal government has been in a financial surplus position and more able to make financial investments in its areas of jurisdiction in comparison to most provincial governments.

- Recognition would have important symbolic value to the Métis, who are often referred to as Canada's 'forgotten people'.

It is very likely that Métis will ultimately be legally successful on the s. 91(24) issue;[81] however, there are some severe, on-the-ground realities and four specific factors that make a review of the current positioning, on the part of all parties, a recommended course of action.

- Governments remain reluctant to engage too much or make Métis-specific investments for fear of compromising their positions; nonetheless, the socio-economic needs of Métis individuals and communities are pressing.
- Métis leadership are reluctant to be seen as too willing to focus on practical arrangements which puts jurisdiction aside. Programming arrangements, however, can address the pressing socio-economic needs of Métis individual and communities.
- Obtaining a Supreme Court of Canada decision on the s. 91(24) issue is at least a decade away. But being legally vindicated that far in the future will not address immediate needs.
- Having the "stars align" politically in order for the federal government to acknowledge jurisdiction for Métis does not seem likely any time soon.

In light of these factors, a case can be made for a possible different political approach over the next decade while the litigation proceeds, one that eschews recognition of Métis people under either 91(24) or 92 (the heading on powers for provinces), but rather calls for new constitutional space to be created for Métis Nation based on its own inherent jurisdiction.

What are the arguments for such a new approach? There are several, some principled and some pragmatic. On the principled side, the Métis Nation's argument for occupying its own unique constitutional space rests squarely within s. 35 of the *Constitution Act, 1982*. If s. 35 recognizes the inherent right to self-government for Métis and other Aboriginal peoples, what is the logic seeking either s. 91(24) or s. 92 recognition? The inherent right suggests that eventually the Métis people and their governments should have their own jurisdictions recognized (as a third order of government) with intergovernmental relationships and arrangements with both the

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[81] Current litigation on this issue includes *MMF v. Canada* (Manitoba Queen's Bench) which is set for trial in April 2006 and *Daniels et al v. Canada* (Federal Court Trial Division) which is still in the case management stage.

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federal and provincial governments to solidify this. While ideally, the Métis Nation would like one level of government to take the lead on this, is it not a possibility that through bilateral, trilateral and multilateral processes, Métis jurisdiction could be carved out?

Similarly, it is becoming increasingly evident that, in this complicated world where "everything is related to everything else", the notion of water tight, jurisdictional compartments in a federal state makes less and less sense. Indeed, it is difficult to imagine a major policy undertaking by either level of government that doesn't require considerable intergovernmental cooperation. And for this reason, ongoing federal provincial committees of Ministers with corresponding shadow committees of officials abound in just about every major policy domain. The same intergovernmental co-ordination challenge would face any self-government arrangements negotiated with the Métis. Thus, this argument suggests Métis recognition under both 91(24) and 92 or alternatively under its own heading.

On the practical side, time is of the essence to address many of the socio-economic challenges facing the Métis such as a burgeoning youth population and a health crisis in Métis communities. Irrespective of how s. 91(24) is finally decided, Métis desire, and in fact need, intergovernmental relationships with both levels of governments. Starting to build those relationships now, based on the Métis Nation's jurisdiction to do so, make senses and will most likely not prejudice by any future decision on s. 91(24). For example, it is unlikely that the federal government will attempt to set aside an existing Métis-provincial self-government arrangement because they are found to have jurisdiction for Métis. In fact, a future finding of federal jurisdiction could be helpful to enhance existing Métis-provincial partnerships by adding federal contributions. Eventual 91(24) recognition may also provide an excuse for provincial governments to reduce if not minimize their involvement with the Métis. This would indeed be unfortunate, especially in light of current statistics. For example, in 2003/04, provincial investments to the Métis Nation accounted for close to 40% of total funding received by provincial Métis organizations.[82] The current ambiguity allows for both federal and provincial governments to work with the Métis for socio-economic policy reasons. So, far from breaking the current 'log jam', 91(24) recognition might serve only to rearrange the logs.

Yet another practical argument would question whether it is in the best interests of the Métis to emulate the 91(24) status of Indians and Inuit. Certainly for First Nation communities, a strong argument can be mounted that 91(24) status is a major impediment to realizing effective, self-governing entities. Why is this so? The answer is that the federal government does not have in place the 'governance infrastructure' for many of the key jurisdictions that First Nations want to assume. Take, for example, something as basic as drinking water. There is no federal "Safe Drinking Water Act" or any of the regulatory machinery to ensure that First Nations have drinking waster regimes comparable to those which exist in the provinces. Building this capacity 'from scratch' for a group of First Nations, let alone single entities, is an enormous undertaking.[83] And safe water is only one of a dozen or jurisdictions ranging from waste management to environmental protection to health and education systems in which the federal

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[82] *Snapshot of the Nation, supra.*
[83] An example of the effort involved to create such a regime can be found with the Navajo, a tribe of over 120,000 occupying a reserve the size of West Virginia. The US Environmental Protection Agency worked with the Navajo over a seven year period to develop their own EPA so as to have the capacity to administer the US safe water acts.

government has only limited capacity or involvement. The First Nation experience is clear: effective self-government regimes can be built only with the active involvement of both the federal and provincial governments and that the lack of comparable provincial regimes on Indian reserves represents a significant capacity building challenge.

ISSUE: APPROACH TO JURISDICTION

While s. 91(24) litigation is ongoing, should the Métis Nation consider adopting a different political approach that focuses on the recognition and assumption of Métis jurisdiction through negotiating intergovernmental arrangements with both levels of government?

G.   *Crafting a Sound Government-to-Government Relationship*

Whatever the outcome of the jurisdictional status of the Métis, it is evident that the MNC and provincial Métis organizations will need to work co-operatively and effectively with both federal and provincial governments. So this leads to the next important set of issues: what constitutes sound intergovernmental relationships in a federal state like Canada?

A possible answer to this question might be found by looking to the principal elements encompassed in the Social Union Framework Agreement (SUFA)[84], which was signed in 1999 by Canada's federal, provincial and territorial governments (with the exception of Quebec) after two years of negotiations. Some of these elements worthy of emulation might be the following:

- **Developing a common vision to which governments are committed** – In the opening paragraphs of the Agreement the SUFA signatories provide a compelling vision of what they intend the partnership to achieve:
  - to treat all citizens equally;
  - to meet citizens' needs equally and effectively with social programs and services of reasonably comparable quality anywhere in the country
  - to promote the full and active participation of all in the country's social and economic life
  - to work in partnership with stakeholders, and to ensure opportunities for citizen input
  - to ensure adequate, affordable, stable and sustainable funding for social programs; and
  - to respect Aboriginal, treaty, and self-government rights.

- **Establishing principles on how the relationship is to be conducted** - SUFA, for example, commits the partners to joint planning and the sharing of information; respecting each others' constitutional jurisdictions; collaborating on the implementation of joint initiatives; treating all of the partners in an equitable fashion; and providing advance notice of new initiatives

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[84] A copy is available at www.socialunion.gc.ca/news/020499_e.html.

- **Reviewing the relationship after a set time period** – on this point the SUFA provides for leaders to participate in a full review of the agreement after three years and to ensure input and feedback from citizens and stakeholders

- **Establishing ongoing machinery to manage the relationship** – the SUFA provides for a Ministerial Council mandated to "support sector Ministers by collecting information on effective ways of implementing the agreement and avoiding disputes and receiving reports from jurisdictions on progress on commitments".

- **Ensuring transparency in the relationship** – In the Agreement, governments agree to i) "Publicly recognize and explain the respective roles and contributions of governments"; ii) "Make eligibility criteria and service commitments for social programs publicly available"; iii) "Report publicly on citizens' appeals and complaints, ensuring that confidentiality requirements are met"; iv) "Monitor and measure outcomes of … social programs and report regularly to … constituents on the performance of these programs"; and v) "Share information and best practices to support the development of outcome measures, and work with other governments to develop, over time, comparable indicators to measure progress on agreed objectives".

- **Developing an approach for dealing with disputes** - Throughout the SUFA there are commitments which should reduce the likelihood of disputes including agreements to provide for "information sharing, joint planning, collaboration, advance notice and early consultation, and flexibility in implementation. In the event of a dispute, the Agreement states that the parties will utilize "joint fact-finding" as a dispute resolution device; that a written fact-finding report will be submitted to the governments involved; and that governments may seek the assistance of third parties "…for fact-finding, advice or mediation".

- **Ensuring high quality collaboration among the partners** – The SUFA enshrines a number of important practices including the following:
  - Undertake joint planning
  - Collaborate on implementation of joint priorities through developing joint objectives and principles, clarifying roles and responsibilities and being flexible
  - Give one another advance notice prior to implementation of a major change in a social policy
  - Offer to consult prior to implementing new social programs and programs that are likely to affect the other parties, and
  - Ensure some degree of funding predictability by having the federal government consult with the other parties at least one year prior to renewal or significant funding changes.

In a Métis Nation context these elements of the SUFA would need to modified to take into consideration the special constitutional status it enjoys within the Canadian federation. For example, any government-to-government relationship would need to recognize Aboriginal and Treaty rights protected by s. 35 of the *Constitution Act, 1982* and the fiduciary relationship that exists between the Crown and Aboriginal peoples.

One type of forum to initiate these types of discussions could be a Métis Nation multilateral process which would include participation from the MNC, all 5 provincial Métis organizations, the federal government and the provinces from Ontario west.[85] This type of Métis Nation multilateral process already exists to some extent, but it is focussed on harvesting and has been fledgling. A re-mandated multilateral process with clear mandates from all parties could provide an effective means to address government-to-government relationship issues in a Métis context. The Métis Nation multilateral process could also be expanded to include additional subject matters for negotiations that were agreed to by the parties (e.*g.,* health, justice, etc.). Further, these sectoral specific discussions could link into federal-provincial processes to ensure Métis perspectives are heard at existing federal-provincial tables.

ISSUE: CRAFTING A GOVERNMENT-TO-GOVERNMENT RELATIONSHIP

Do the principal elements of the Social Union Framework Agreement, suitably modified to take into account the special place of Aboriginal peoples in the Canadian federation, provide the basis for crafting sound government to government relationships with the Métis Nation and its federal and provincial partners?

Does a Métis Nation multilateral process sound like an effective means to engage these types of discussions? What other forums or models could be used?

H.   Métis Government Revenues

Effective governments require revenue sources that match their responsibilities and Métis governments would be no exceptions. So what might these sources be?

The starting point is international experience that strongly suggests the importance of governments taxing their own citizens in order to achieve high levels of accountability and performance. This relates to the fact that citizens' sense of 'ownership' of their government is built on paying part of their incomes to it and developing expectations of what they should get in return. Indeed, one expert in public finance, Professor Emeritus Robert Bish of the University of Victoria and the former Co-Director of its Local Government Institute, is emphatic on this point. He points to Norway as the only country he knows that receives a large share of its revenue from a source other than taxes (in this case oil revenues) and whose government services have not deteriorated.[86]

Métis people, of course, already pay considerable taxes to their local, provincial and federal governments. One estimate based on 2001 census figures is that Métis Nation citizens paid $550

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[85] This Métis Nation multilateral process is proposed in the signed Canada-Métis Nation Framework Agreement. A copy is available at www.metisnation.ca or www.ainc-inac.gc.ca/nr/prs/m-a2005/2-02665_e.html.
[86] Robert Bish as quoted in the Institute On Governance report "Workshop on Tribal Councils, Scale and Aggregation, Summary Report", Ottawa, August 27, 2003

million in federal tax in 2001.[87] This number does not include provincial taxes, G.S.T or corporate and business taxes from Métis-controlled companies. Following negotiations with federal and provincial governments, likely in the context of a self-government agreement, it is conceivable that a portion of the federal and provincial income taxes of Métis people collected by the federal government through the personal income tax system could be paid to Métis governments.[88] This would follow current practice of the federal government collecting provincial taxes and handing these to the provinces and would be a condition of Métis citizenship – hence yet another reason for having in place a Métis registry system of unquestioned integrity.

It is important to be clear that this portion of income tax paid by Métis citizens would not be a grant from the federal government for which Métis governments would be accountable to the federal government. Rather, the accountability relationship would be from the Métis governments directly to their own tax paying citizens. Again the parallel here is with the provinces and their direct accountability to their citizens for how they spend revenues from their tax points.

This leads to the first issue under this section that requires further debate among Métis citizens:

ISSUE: MÉTIS GOVERNMENTS TAXING THEIR OWN CITIZENS

As a condition of Métis citizenship, should some portion of personal income tax now collected from Métis citizens by the federal government for federal and provincial purposes be directed to Métis governments, once they have been properly constituted?

There are other potential means for Métis governments to collect own source revenues. For example, should Métis governments acquire land as part of a claims settlement, then rents from natural resource use or extraction could be an important revenue source. User fees might be another possibility especially under the following circumstances:

- Services have characteristics of a 'private good' - that is, one that could be bought and sold in the market place (examples include drinking water, public transit, use of national parks etc.);
- Individual beneficiaries are easy to identify;
- There are no significant effects (spill-overs) on other citizens who do not receive this service;
- Operating and capital costs can be measured; and
- The user fee is easy to administer.

Another own source revenue might be dividends paid by a Métis own commercial business. Several such businesses already exist – for example, an oil drilling business in Alberta referred to

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[87] Métis National Council, *Canada-Aboriginal Peoples Roundtable: Accountability Policy Paper* (Métis National Council: Ottawa, January 2005). Available at www.metisnation.ca.
[88] Should the Métis Nation achieve a land base, collecting property tax would be another possible source of revenue.

in the best practices subsection of this paper. In addition, Métis governments could be recipients of a portion of provincial revenue from gaming operations such as now occurs in Saskatchewan or alternatively, be issued gaming licences.

Finally, as in the case with provincial and local governments, Métis governments would need to rely on transfers from other governments. Métis organizations are already significant recipients of federal and provincial program funding. With few exceptions, however, these funds are directed to specific delivery organizations incorporated under provincial, not for profit legislation with their own board of directors. Furthermore the funding is accompanied by strict conditions.

The long term direction of these transfers should move from one of a government department transferring funds to a specific, program delivery organization to that of a government transferring funds to another government, much like federal-provincial transfers. The box below indicates the nature of the evolutionary change.

CURRENT	FUTURE
▪ Multiple departments transfer funds to program delivery organizations, each governed separately	▪ Single government-to-government transfer
▪ No opportunity to set own priorities or move funds between programs	▪ Métis governments can determine funding levels among programs subject to some constraints
▪ Funding is highly conditional	▪ Métis governments would need to meet certain broad standards
▪ Significant reporting burden with many reports	▪ Single annual report
▪ Single year time horizon	▪ Multi year time horizon

Some First Nations, especially those that have entered into self-government arrangements, have funding relationships with the federal government with characteristics similar to those in the future column. And Métis governments at some future point should enjoy similar relationships with both federal and provincial governments. That said, the importance of the Métis developing sound governance practices and having their own accountability mechanisms, such as an auditor general and other checks and balances can not be understated.

One option Métis people might wish to consider is establishing their own certification system for sound governance and management of all Métis entities. Developed in partnership with federal and provincial governments, the certification system might result in a variety of benefits for those organizations obtaining certification such as a reduction in the reporting burden or eligibility for longer term agreements. Further, certification would boost the confidence of the private sector and government agencies in working with Métis entities and pinpoint weaknesses

that required attention[89]. Finally, by focusing on the positive (an ever increasing percentage of Métis entities meeting the certification standards) rather than the negative findings of audits, such a system would help boost public confidence.

In summary, a second issue around Métis government revenues is the following

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ISSUE: FUTURE SOURCES OF MÉTIS GOVERNMENT REVENUE

Is there agreement among Métis people on the following points:

(a) that Métis governments should rely on a wide variety of revenue sources – own source revenue such as taxes and user fees; rents from natural resources; dividends from commercial organizations; and intergovernmental transfers; and

(b) that Métis governments should place high priority in ongoing efforts to improve checks and balances and accountability mechanisms?

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[89] For more details on how such a certification system might work in an Aboriginal context, see John Graham, "Policy Brief #8: Getting the Incentives Right: Improving Financial Management of Canada's First Nations", May 2000, www.iog.ca. It is noteworthy that the *First Nations Fiscal and Statistical Management Act*, recently adopted by the federal Parliament, authorizes the newly created First Nation Financial Management Board to develop a voluntary certification system for the financial management of First Nations.

IV. Conclusions: The Way Ahead

These are propitious times for the Métis Nation. For a variety of reasons there are now and will continue to be significant opportunities to make progress on the Métis self-government agenda and on improving the well-being of the Métis people. Nonetheless, to make the most of these opportunities, the Métis people will need to grapple with some critical governance issues.

The purpose of this paper has been to identify and analyze the most important of these governance concerns. It has not been our intention to be prescriptive. Rather, our objective is to provoke discussion both by the Métis themselves and within various governments as a way of making progress. Unlike First Nations, there has been little written on Métis governance issues. This paper is a modest attempt to begin filling this gap. That said, much remains to be done in terms of further analyzing and debating most of the issues canvassed in this paper. For many of these, we admit to have only touched the surface of some complicated questions.

A number of priority areas emerge from the analysis in this paper. First among these is the need to make progress on Métis identification and registration. This includes identifying the scope of the Métis Nation and its rights-bearing communities as well as the registration of Métis individuals. The authors believe that establishing this area as a high priority will be key to realizing Métis self-government in a real way because so much will depend on having credible registries in place (i.e. who does the Métis Nation represent and negotiate on behalf of, credible elections results, being able to identify Métis socio-economic needs based on data, etc.). With this in mind, we proposed several initiatives for further discussion:

- The establishment of a national panel on identifying the extent of the Métis Nation homeland to make recommendations to the Métis Nation's political bodies;
- The establishment of a National Métis Citizenship and Elections Commission, headed by a National Commissioner; and
- Regular audits on the system for registering members of the Métis Nation by an independent Métis Nation Auditor General.

A second set of priorities revolve around constitutional development. Such initiatives would need to address the following issues, among others:

- Roles and responsibilities of the various levels of Métis government –national, provincial, regional and local;
- Leadership selection issues, especially at the national level;
- The Métis Nation's vision for its place within the Canadian federation; and
- Generating revenues for Métis governments.

To make progress on some of these constitutional issues the Métis Nation should develop some consultation process to engage all levels of the nation (i.e. individuals, local communities, provincial leaders, etc.). These consultations must be transparent, broad based and driven by a political willingness to listen to take into account the results, even if they reflect a redistribution of power and authority.

A third priority area is to continue the development of the Métis Nation's governance and administrative capacity. Much has been accomplished over the past decade and Métis organizations can point to many exemplary practices. Nonetheless, much remains to be done and further work on developing a longer-term capacity building strategy or Métis-specific training approaches would produce important dividends for the future.

Finally, continuing to develop effective intergovernmental relationships with the federal and provincial governments remains an ongoing priority. The authors suggest the Métis leadership review other intergovernmental models, such as Social Union Framework Agreement, in order to craft sound government-to-government relationships that meet the Métis Nation's unique needs. As a part of this exercise, the Métis Nation's desired place within the Canadian federation should be debated and a strategy, which includes addressing issues such as jurisdiction, should developed and implemented in order to achieve the Métis Nation's goal. In the interim, building upon the recently signed Canada-Métis Nation Framework Agreement provides a vehicle for progressing in this critical area. For example, the Métis Nation's proposal for a Métis-specific multilateral process with both the provinces from Ontario west and the federal government will be an important forum for developing more effective intergovernmental relations.

The above four priority areas represent an ambitious agenda, one that will require considerable political will and energy to launch. We hope this paper is a useful tool for the Métis Nation and other governments to make substantive progress on these challenging governance issues.

Annex I: List of Interviewees

Clément Chartier, President
Métis National Council

Kathy Hodgson-Smith, Chief of Staff
Métis National Council

Lorne Gladue, Director of Labour Market Programming
Métis Nation of Alberta

Irene Collins, Director of Governance and Registry
Métis Nation of Alberta

Oliver Boulette, Executive Director
Manitoba Métis Federation

Gary Lipinski, Chair
Métis Nation of Ontario

Peter Lefebvre, Executive Director
Métis Nation of Ontario

Marc LeClair, President
Marc LeClair Infocom Inc.

Bradford Morse, Law Professor
University of Ottawa

Cameron Henry, Director
Governance and Program Initiatives
Alberta Aboriginal Affairs and Northern Development

Paul Heighington, Senior Policy Advisor
Métis Nation of Ontario

Keith Henry, Executive Director
Métis Provincial Council of British Columbia

Annex II: Métis Nation's Proposed Acceptance Process

1.0   Definitions

1.1   "Métis" means a person who self-identifies as Métis, is distinct from other Aboriginal peoples, is of Historic Métis Nation ancestry, and is accepted by the Métis Nation.

1.2   "Historic Métis Nation" means the Aboriginal people then known as Métis or Half-breeds who resided in the Historic Métis Nation Homeland.

1.3   "Historic Métis Nation Homeland" means the area of land in west central North America used and occupied as the traditional territory of the Métis or Half-breeds as they were then known.

1.4   "Métis Nation" means the Aboriginal people descended from the Historic Métis Nation which is now comprised of all Métis Nation citizens and is one of the "aboriginal peoples of Canada" within the meaning of s.35 of the Constitution Act 1982.

1.5   "Distinct from other Aboriginal peoples" means distinct for cultural and nationhood purposes.

1.6   "Acceptance Process" means the process to accept applications for registration on the Métis Nation Register, as established herein, and administered by the respective MNC Provincial Governing Member jointly with the MNC, all as amended from time to time.

1.7   "Métis National Council" or "MNC" means the governing body that represents the Métis Nation.

1.8   "MNC Provincial Governing Member" means the provincial or territorial entities who jointly form the MNC.

1.9   "Métis Nation Citizen" means a person whose name is on the Métis Nation Register.

1.10   "Métis Nation Register" means the national list of Métis Nation Citizens and includes the lists maintained by the MNC Provincial Governing Member, all as amended from time to time.

1.11   "Registrar" means a person appointed by a MNC Provincial Governing Member who is responsible for maintaining the Métis Nation Register within its respective jurisdiction and includes the person appointed by the MNC as national Registrar.

2.0   Enrolment Criteria for the Métis Nation Registry

2.1   A person is eligible to be enrolled as a Métis Nation Citizen on the Métis Nation Registry if that person:

    a. is Métis within the meaning of 1.1; or
    b. was adopted as a child, under the laws of any jurisdiction or under any Métis custom, by a Métis within the meaning of 1.1.

2.2   An application for enrolment on the Métis Nation Registry must include the following: a signed and witnessed written declaration that he or she self-identifies as Métis and is not registered on another Aboriginal register; and

    a. evidence that he or she is Métis; or
    b. evidence that he or she was adopted by a Métis within the meaning of 1.1.

2.3   A parent, guardian or legal representative who provides proof of his or her lawful authority to represent a minor or a person who is legally incompetent, may submit an application for that minor or legally incompetent person.

2.4   A person is not eligible to be enrolled as a Métis Nation Citizen while that person is enrolled under another Aboriginal registry.

3.0   Acceptance Process

3.1   Each MNC Provincial Governing Member shall establish an Acceptance Process which shall operate according to the principles and rules set out herein and any procedural rules including the appeal process shall be in accordance with the principles of natural justice.

3.2   Notwithstanding section 3.1, efforts should be made to have the Acceptance Process as uniform as possible with all MNC Provincial Governing Member.

3.2   A copy of each application and declaration submitted to the MNC Provincial Governing Member must be provided to the MNC Registrar, along with that person's name for the Métis Nation Register.

3.3   Registration on the Métis Nation Register constitutes acceptance by the Métis Nation that the person is a Métis Nation Citizen and shall be accepted by all MNC Provincial Governing Members.

3.4   Evidence for the purposes of 2.2 (b) and (c) may include, but is not limited to, one or more of the following:

    a. vital statistics records issued by governments such as birth certificates, marriage, divorce and death certificates, adoption records or census rolls;

b. scrip or land grants issued to an ancestor pursuant to the Manitoba Act, 1870 or the Dominion Land Acts or entitlement to such scrip or land grants;

c. memorials, addenda or other such documents associated with the scrip or treaty process which identified Métis of Half-breed communities in the Historic Métis Nation Homeland and the members of those communities;

d. proof in the form of diaries, notes or other documents that a Métis ancestor participated in activities of the Historic Métis Nation;

e. church records in the form of baptism, confirmation, marriage, annulment or death records;

f. a written or oral statement by an Elder who is a Métis Nation Citizen; and

g. any other proof which the Registrar may consider valuable in assisting an applicant to prove his or her Métis ancestry or adoption by a Métis within the meaning of 1.1.

3.5   The Registrar shall give notice in writing of the reasons for any decision to refuse enrolment or to remove a name from the Register and of the right to appeal, including the period for making an appeal. Any person whose application for enrolment on the Métis Nation Register is refused or whose name is removed may, within 60 days of notice of such decision, appeal in writing to the Registrar.

3.6   Each Métis Nation Citizen shall be provided proof of enrolment on the Métis Nation Register.

Annex III: Governance Issues for Councils and Boards

Since a large number of the Métis institutional models involve some form of Council or board of directors as the critical governance component, it is useful to briefly summarize some of the issues involved in this form of governance. In this Annex, we look at three: the roles of a Council or board and the resulting implications in terms of composition, selection and training; the relationship between Councils, boards and their staff; and new policies and practices being adopted by many boards.

Council and Board Roles

High performing organizations are not created by accident. They depend to a significant extent on having a shared vision of what their key roles are – a vision that is shared among Council or board members and between them and senior staff.   Furthermore, there is no magical formula that dictates the level of involvement to which a Council or board should aspire.

The table below lays out the key roles for one Aboriginal board as an illustrative example of the type of roles a Council or board usually plays and the degree of involvement that appears to suit its mandate and operating environment. For other boards in other contexts, the choices might well be different.

Council or Board Roles	*Level of Engagement*				
	None	Low	Moderate	High	Exclusive
1. Strategic Direction				X	
2. Operations					
• Day to day decisions	X				
• Monitoring performance				X	
• Yearly plan & annual report				X	
• Operational Policies		X			
3. Human Resources & Organization					
• Leadership development			X		
• Non-President compensation		X			
• Organization				X	

• Corporate culture			X		
4. Financial Management					
• Financial strategy				X	
• Ethical performance			X		
• Financial reporting				X	
5. Risk Management					
• Audit					X
• Risk Strategy				X	
6. External Relations				X	
7. President Effectiveness					X
8. Corporate Governance					
• Board effectiveness				X	
• Director selection					X
• Corporate Policies				X	

A clear understanding of board roles will have important implications for the selection criteria of board members (unless they are elected at large), orientation and training requirements of the board, the number and composition of board committees and areas requiring board policies to name a few.

Staff Relationships[90]

An issue that many boards have found troublesome is where the border between board and staff responsibilities related to governance should be drawn. At one extreme is the view that governance is the unique province of the board, and that the board should focus solely on "ends" and on the formulation of governance policies. The role of staff is to deal with "means" or implementation. According to this view, very clear lines of demarcation must be set between board and staff work.[91]

Others, including the IOG, have serious reservations about this approach. "Does a one-size-fits-all approach to corporate governance make sense? … We think the answer is probably not."[92] Governance is not a role conferred uniquely upon the board. Rather, sound governance requires

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[90] Much of the material in this and the next section is taken from Tim Plumptre, *The New Rules of the Board Game*. Institute On Governance, February 2004, www.iog.ca/publications.

[91] The most vigorous proponent of this view is consultant and author, John Carver, whose model-based approach to board governance has been widely promoted, particularly in North America. Carver argues that his is the only conceptually coherent, universally valid theory of board governance.
Carver, John, *Boards that Make a Difference,* (2nd ed.), Jossey-Bass, 1997.

[92] Conger, Jay, Edward E. Lawler III, and David L. Finegold, *Corporate Boards - New Strategies for Adding Value at the Top,* Jossey-Bass, 2001, p.165. See also the OECD Principles: "There is no single model of good corporate governance."

a partnership between board and staff. Most boards cannot function effectively without staff support, and a number of the tasks described above will of necessity implicate staff. As new issues and new governance-related demands arise, it is important that the border between board and staff be watched with care so that priorities are met, areas of controversy reviewed (in all likelihood, between the senior staff executive and the board chair), and harmony maintained.

> [E]ffective organisations depend on an effective partnership between governance and management, which in turn depends on clarity and differentiation of roles and functions between the two. The challenge … is in finding the right balance where board members are actively and usefully engaged but never moving into the area of duplicating or even micro-managing the work of the managers…. [T]he board and management must both break out of traditional habits - habits that have management obscuring issues for the board, and the board delving into operational matters….[93]

New Policies and Practices for Boards

As governance tasks have become more clearly defined, many boards have adopted new measures to try to make their work more efficient, and to establish a clearer separation between the responsibilities of governance and the role of management. The following are examples of such measures:

> Role descriptions for boards that are distinct from staff responsibilities.
> Private board meetings where staff do not attend, allowing for more open discussion.
> New rules requiring that a certain proportion of directors be "independent" or outside the corporation, to ensure more objective judgement is brought to bear on key governance and accounting issues.
> Agendas for board meetings that are set by the chair or an executive committee composed of board members, in lieu of agendas developed by staff and meetings run according to staff priorities.
> Explicit authority for boards to retain independent outside advice if necessary.
> Better preparation for board meetings; shorter, more focused background documentation distributed in a timely manner.
> More careful definition of the qualifications and appointment processes for board members, and more priority to the orientation and training of new board members.
> Procedures for the routine evaluation of board performance, and sometimes, for evaluation of the performance of individual board members.
> Better management of board meetings, more effective chairmanship and tighter time management.
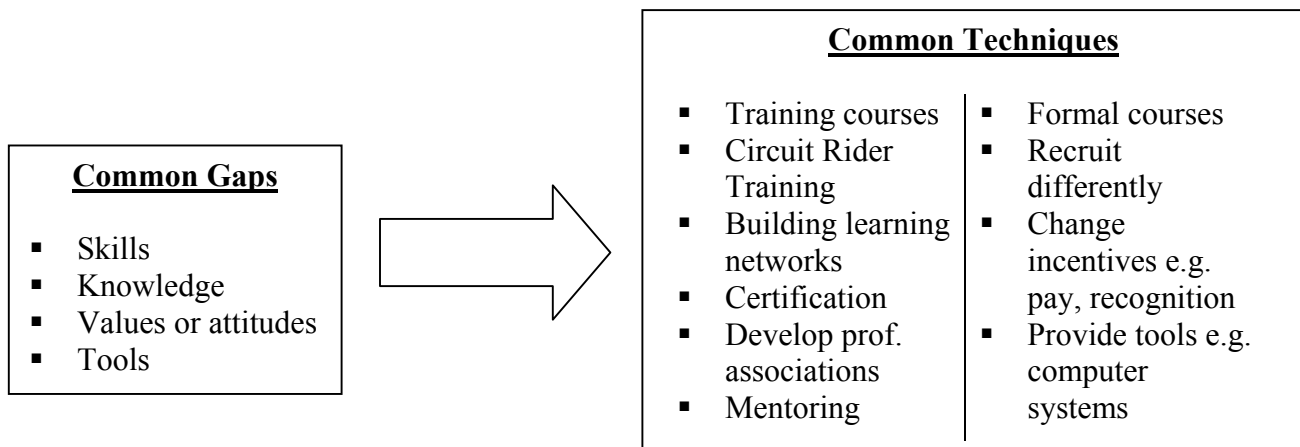
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[93] *Issues, Concerns and Best Practices in Governance in the Non-Governmental, Public and Corporate and Intergovernmental Sectors,* Campbell P. and J. Hushagen, (Working document for World Food Program), January, 2000, 2-4.

Annex IV: Building Governance and Administrative Capacity

It is useful to be clear on the concept of capacity building - whose capacity is being developed and with what tools or approaches. The United Nations Development Program (UNDP), an acknowledged leader in this field, defines capacity building as "the process by which individuals, organizations, institutions and societies develop abilities (individually and collectively) to perform functions, solve problems and set and achieve objectives". It is an approach that builds independence by increasing competencies.
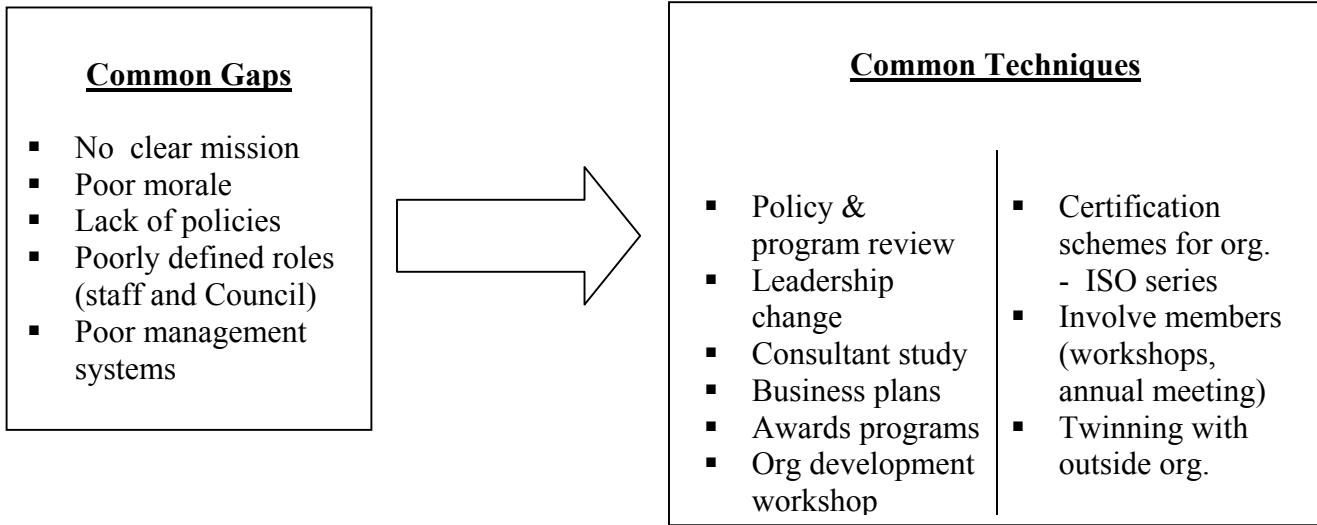
Building on its definition, the UNDP distinguishes three broad strategies for building capacity. The first strategy focuses on *individuals*. Likely participants in such an approach would be the staff of the various departments or members of the community (for example, to improve home maintenance skills) or individual members of a governing body. Such approaches tend to be short term, low cost and often low risk because they have little or no impact on the politics of the community. For these reasons, this type of capacity-building strategy tends to be popular. (Indeed, when many people refer to capacity building, they often have in mind training courses aimed at staff.) The diagram below illustrates the type of common problems or gaps and some of the approaches or techniques to deal with them.

Common Techniques Directed at Individuals

Common Gaps

- Skills
- Knowledge
- Values or attitudes
- Tools

Common Techniques

- Training courses
- Circuit Rider Training
- Building learning networks
- Certification
- Develop prof. associations
- Mentoring
- Formal courses
- Recruit differently
- Change incentives e.g. pay, recognition
- Provide tools e.g. computer systems

A second broad strategy might be to focus on the performance of the institution's key *organizational components* - the political leadership as a collectivity, various departments, and the rest of the Métis administration. This approach would take longer than the first strategy, would be costlier and would entail higher risks because it could affect the political life of the community. Potential benefits, however, are correspondingly higher. The diagram below illustrates common problem areas and techniques to deal with them.

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Common Techniques Directed at Organizations

Common Gaps	Common Techniques
- No clear mission - Poor morale - Lack of policies - Poorly defined roles (staff and Council) - Poor management systems	<table><tr><td> - Policy & program review - Leadership change - Consultant study - Business plans - Awards programs - Org development workshop </td><td> - Certification schemes for org. - ISO series - Involve members (workshops, annual meeting) - Twinning with outside org. </td></tr></table>

Focusing on the *system* as a whole - that is, on the nature of the relationships among the principal actors both within and outside the Métis Nation - might be a third broad strategy. Time requirements, cost and risk would all increase. The potential payoffs, however, might be higher than either of the first two strategies. The diagram demonstrates commonly identified problems that drive this choice of strategy and approaches to deal with them.

Common Techniques Directed at Systems

Common Gaps	Common Techniques
- Poor legal & regulatory system - Poor service from outside org. - Inadequate system resources - Poor relationships among key players	<table><tr><td> - Planning meeting involving all players - System-wide Research & advocacy - Dispute resolution systems </td><td> - System watch dogs and facilitators e.g. BC treaty Commission - Co-ordinating machinery & agreements </td></tr></table>