



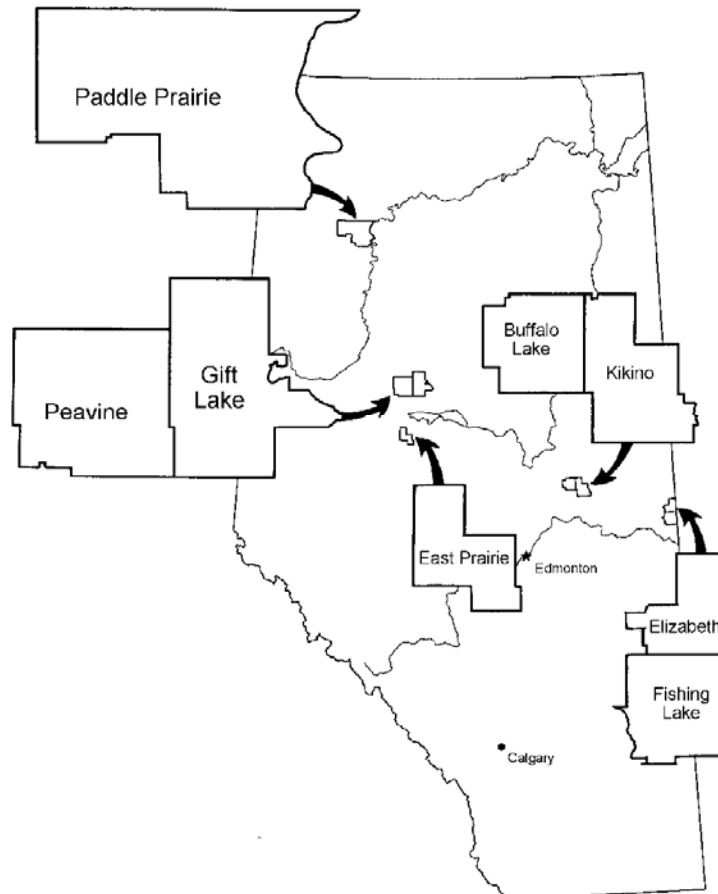
**Advancing Governance of the Metis Settlements of Alberta:
Selected Working Papers**

John Graham

March 31, 2007

The Metis Settlements of Alberta

1.25 million acres
8 settlements
approximately 7,000 resident members



The author gratefully acknowledges the financial support of the Office of the Federal Interlocutor for Metis and Non-Status Indians to undertake this project. The contents of this document are the responsibility of the author and do not necessarily reflect the views of the Institute On Governance or its Board of Directors, the Metis Settlements of Alberta or the Office of the Federal Interlocutor



The Institute On Governance (IOG) is a Canadian, non-profit think tank that provides an independent source of knowledge, research and advice on governance issues, both in Canada and internationally.

Governance is concerned with how decisions important to a society or an organization are taken. It helps define who should have power and why, who should have voice in decision-making, and how account should be rendered.

Using core principles of sound governance – legitimacy and voice, direction, performance, accountability, and fairness – the IOG explores what good governance means in different contexts.

We analyze questions of public policy and organizational leadership, and publish articles and papers related to the principles and practices of governance. We form partnerships and knowledge networks to explore high priority issues.

Linking the conceptual and theoretical principles of governance to the world of everyday practice, we provide advice to governments, communities, business and public organizations on how to assess the quality of their governance, and how to develop programs for improvement.

You will find additional information on our activities on the IOG website at www.iog.ca

For further information, please contact

John Graham
122 Clarence Street
Ottawa, Ontario
Canada K1N 5P6
tel: +1 (613) 562-0090
fax: +1 (613) 562-0097
info@iog.ca
www.iog.ca

[IOG 2007-1181]

Table of Contents

Working Paper # 1: Detailed Description of the Metis Settlements Governance System	1
Working Paper # 2: Interview with Fred Martin on the Development of the Metis Settlement Governance System	20
Working Paper # 3: Comparison of Metis Settlements with other Local Governments	29

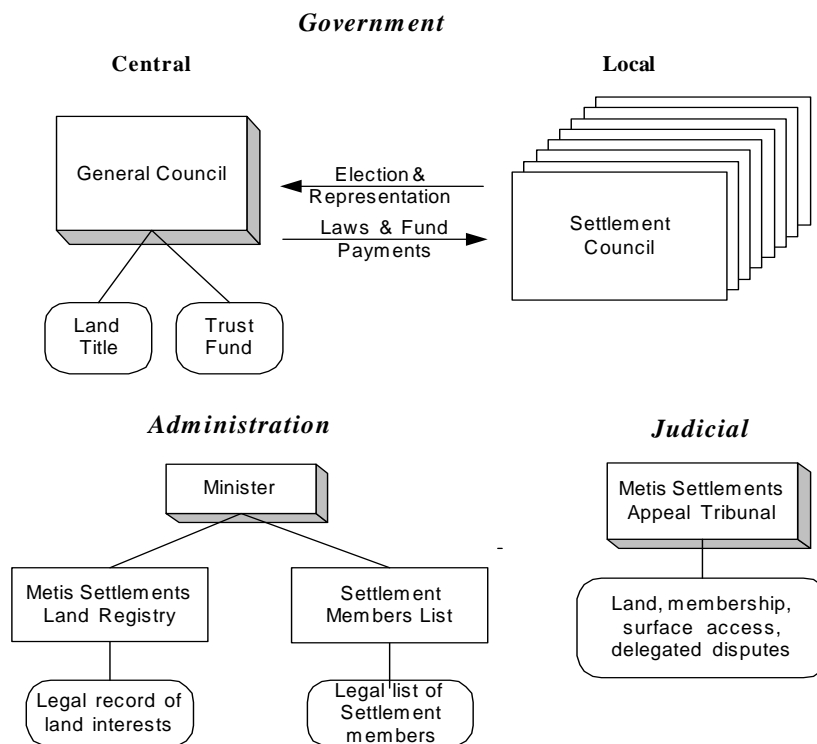
Working Paper # 1: Detailed Description of the Metis Settlements Governance System

Structure Created by Accord Legislation

Structures in the Accord

The fundamental governance structure defined in the Accord was preserved in the *Metis Settlements Act* of 1990. It did two things. First, it created or identified the basic institutions involved in Settlement governance: Settlement Councils, General Council, the Metis Settlements Appeal Tribunal, and the Minister. Second, it established the means for these institutions to carry out the essential legislative and executive functions of government and resolve related disputes. In essence it put power in the hands of the Settlement Councils and then balanced the power with checks by the Settlement members, the other seven Settlements (via General Council), and the Minister.

Accord Legislation Governance Structures



Overview of Governance System

The first component of the new governance structure was local government. The Act set up a new system by creating eight new legal entities—“Metis Settlements”—to replace the existing Metis Settlement Associations. Each Settlement was governed by an elected five member Settlement Council. There was a dramatic change in the Council’s power. Instead of an advisor to the Minister it could now make by-laws effective throughout the settlement area. These by-laws governed members, non-members, oil companies, and anyone else operating in the area. They could only be passed with the consent of the members at a general meeting, however. That put the basic local governing authority in the hands of Settlement members—a dramatic change from the regime in place since 1938 in which all authority lay with the Minister. It also differed from a typical municipal model in which the local council makes bylaws without the need for community consent.

In addition to the general meeting constraint, Settlement councils were also limited by the need to ensure that the bylaws they proposed did not contravene laws made collectively with other Settlements. These were the “General Council Policies” set out in the Accord and the enabling legislation. Otherwise, the powers of a Settlement Council were very similar to those of a municipal council,¹ with some additional powers to make the land and membership system work. The temporary need for Ministerial approval of by-laws disappeared after the first three years.²

The governance structure’s second component was the institution for collective action—the Metis Settlements General Council. It formalized and gave legal power to what had developed over time as “the Federation”. In community meetings developing the Accord, it was described as the “hub” holding together the “wheel” of Settlements. Accord legislation created General Council as a central body that holds the fee simple title to the land, creates new interests in land, creates framework laws that apply to all Settlements, and manages collective interests such as resource development and the consolidated funds of Accord related moneys.³ In short General Council provided the skeleton for the “land, power and money” sinews of self-government.

General Council consists of all the Settlement Councillors and four Officers elected by the Settlements—each Settlement has one vote. Because of its central role in these key areas, General Council’s existence and “Metis-ness” were protected by an amendment to Alberta’s constitution. The eight Settlement Councils, who elect General Council’s officers, control its funding and must approve its laws by at least a six of eight majority.⁴

Judicial Component

The third governance component was the Metis Settlements Appeal Tribunal (“MSAT”). Unlike General Council, this was a new form of body for the Settlements. It was, however, an essential

¹ These powers are set out in Schedule 1 of the Act.

² MSA s.249

³ The current value of these funds is roughly \$107 million.

⁴ The draft legislation in the Accord provided for Policies to be made by approval of 6 of 8 Settlements. The *Metis Settlements Act* in 1990 created two types of Policies with all the important ones requiring 8 of 8. The 2004 amendments to the Act changed back to the original 6 of 8 rule.

part of self-government. How could the Settlements run their own affairs if disputes over land, membership, and other settlement matters were still decided by the Minister? MSAT was the new “Metis court” that took over that job. The Accord provided for its creation by Ministerial regulation. In developing the Act, however, it became clear that to have the necessary court-like powers, MSAT’s structure and jurisdiction would have to be set out in the Act. This was done, and followed up in 2004 by an amendment to the Act that would advance its independence and jurisdiction.

Administrative Components

In addition to these three governance structures, the legislation created two administrative institutions crucial to Settlement operations—a land registry and membership list. The first, the Metis Settlements Land Registry, provided a clear, accessible and legally binding record of all interests in land in the Settlement areas. The second, the Settlement Members List, provided a similar record of who was a member of each of the Settlements. The overall structure is shown in the diagram above. We deal with each of these institutions in more detail below.

Central Government – Metis Settlements General Council

Structure

The core governance structure in the new system is General Council. It provides the framework for the “land, power and money” components of self-government. The framework is essentially as follows:

- **Land:** General Council acquired the Province’s fee simple title to the land and the power to create new interests in that land. The new interests were created in a Land Policy that defined the various interests, who could hold them, how long, etc. A Regulation set up a land registry system to provide a legally certain record of interests in the land.⁵
- **Power:** General Council has the power to make Policies on collective matters (e.g. land interests, shared funds, appeals to MSAT) and on essentially all aspects of local government. These Policies can apply to all Settlements and can include a model by-law deemed as a by-law made by the Settlement. The requirement for Settlement by-laws to fit in the framework created by Policies removed the Minister from direct involvement in local laws. Instead Ministerial involvement focused on the framework of those laws—General Council Policies.
- **Money:** General Council manages two Consolidated Funds created by legislation. One is essentially an operational fund that flows government Accord payments through General Council for distribution to the Settlements. The second Fund—known as the “Future Fund” collected \$5 million annually for the first seven years of the Accord and then was locked in—no spending allowed—until March 31, 2007. The Co-Management Agreement also gives General Council the right to negotiate equity and royalty arrangements with oil and gas developers, which generated millions more dollars for General Council to manage.

⁵ This registry system essentially implemented a model system developed after a ten year effort by land registrars from across Canada, to create a common land registry system to be used everywhere in Canada, outside of Quebec.

In the area of law making, the Act provided three constraints: consistency, consensus, and consultation. General Council Policies have to be consistent with provincial and federal laws.⁶ They have to be supported by a “consensus”—a large majority of the Settlements.⁷ And finally they have to be developed in consultation with the Minister and can be vetoed by the Minister within 90 days of passage. So far the Minister has never used the veto power, although some proposed Policies have been amended coincidentally with intimations that a veto was under consideration.

The Minister also has “on request” law making powers. The 1990 Act allowed the Minister to make regulations on anything General Council could make a Policy on—but only at the request of General Council. With the amendments to the Act in 2004 it is now possible for the Minister to make such regulations without a request, but the resulting regulation is time limited and replaceable by General Council Policy.

Operations

The General Council technically created in 1990 has now been in operation almost 17 years. The General Council created by Accord legislation, however, simply put a new name and legal structure on the Federation that had been providing central leadership and governance since 1975. As a result, the Settlements have had over 30 years of experience in developing a collective governance model. Over the years there have been many complaints by councils, members and consultants about the efficiency of the continuously evolving model.⁸ Whatever its failings, it has produced results.

When the Federation began as a central governance body in 1975 there were about 3,000 people living in the settlement areas. Now there are roughly 7,000. The Federation’s initial annual budget was \$40,000—a contribution of \$5,000 from each settlement. Last year General Council spent over \$21 million. About \$7 million of that was investment in oil and gas projects, but the rest went for programs, services and payments to the Settlements. In addition to this, another roughly \$10 million was spent on the Settlements by SIC, STI and Region 10. These three central institutions, which we will describe in more detail later, were developed by the Federation/General Council working with federal and provincial governments to provide social, economic, and capacity development services to the Settlements.

In addition to enabling this current flow of programs and services, it was the Settlements central government working pragmatically with the Alberta government that negotiated the Accord. That agreement eliminated an oilfield uncertainty for Alberta, but it has also generated over \$460 million for the Settlements since it was signed.⁹

⁶ General Council Policies in “traditional” areas such as hunting, fishing, trapping and gathering can override provincial laws, but only if approved by Cabinet. [MSA s.226]

⁷ As indicated above, the “majority” was 6 of 8 in the Accord, then 8 of 8 in the 1990 Act, then back to 6 of 8 in the 2004 amendments.

⁸ An overview of these issues can be found in “The Alberta-Metis Settlements Accord: Making Progress Sustainable”, the Stage 1 Report of The Transition Assessment And Planning Project, May 2005. This project was a joint effort of General Council and the Alberta Minister responsible for the Settlements. The report is usually referred to as the “TAP Stage 1 Report”.

⁹ It is difficult to determine the total cash flow to the Settlements from Accord funding commitments and oil and gas revenues under the Co-management Agreement. Accord funding according to the TAP Stage 1 Report was a little

Local Government - Settlement Councils

Structure

Although the Accord created a “federal” governance system grounded on General Council’s landholding, funds management, and lawmaking powers, the real power lay at the local level with the Settlement Councils. The Accord framework for Settlement government is retained in the enabling legislation. Each Settlement has a five member elected council able to pass bylaws governing the Settlement Area. These bylaws have to be approved by members at a general meeting and be consistent with existing provincial and federal legislation and with General Council Policies. So while Settlement councils have bylaw making powers similar to other local governments, the need for them to fit into a central framework and to get members approval creates a unique form of local government.

The original election system was also unique. The Accord provided for a five-member council with a staggered system of elections. The goal was to ensure there would always be a small body of experienced councillors. So, the election system called for annual elections of two councillors in which the top vote getter was elected for three years and the person in second place was elected for two years. This ensured, subject to disqualifications, resignations, etc., there would always three members of council with on the job experience.

Two of the unique qualities proved problematic. Some Settlement councils had difficulty getting a quorum of members out to general meetings to vote on proposed by-laws. That made local law making difficult. Holding elections every year also created problems—it contributed to a politicized environment and council instability that made it difficult for councils to plan and implement longer term projects. The amendments to the Act in 2004 changed the election system to a more typical system of elections for all council positions every three years. The need for members to approve by-laws remained unchanged, since not all Settlements view it as a problem.

Operations

In 1975, some Settlements had no office. Today every Settlement has an office that is the center of Settlement activities. Under the direction of the Settlement council it coordinates or delivers housing, social services, training, recreation, infrastructure development and maintenance, Settlement owned companies and most other aspects of Settlement life. The scope of these services exceeds that of most municipal governments in Alberta. During the period from 1999 to 2004 the average annual expenditure for each Settlement was \$4.3 million.¹⁰ That went for municipal functions (40%), housing (23%), economic development and education (9%), and social and cultural functions (28%). Most of the money for these efforts came from Accord funds and oil and gas revenues. Providing a detailed analysis of local government costs is beyond the scope of this paper.¹¹ The purpose here is simply to show the scale of development of Settlement council responsibilities and activities. And the challenge this presents for governance when the mandatory funding specified in the Accord runs out.

over \$386 million. Revenue from oil and gas agreements is much more difficult to determine but based on the report, by the end of 2004 it would have totalled over \$72 million. We have no estimate of the revenue since then.

¹⁰ Working papers of the TAP Stage 1 Report.

¹¹ Details on Settlement council revenues and expenses can be found in the TAP Stage 1 Report.

Assessment

The TAP Stage 1 Report prepared by General Council and the Province found that the Settlements had almost caught up with their neighbours in developing the “hard” assets of their communities—housing, roads, utilities, etc. On the “soft” side, however, there was still a lot of work to do to be done to put in place the education, training, jobs and other things needed for the Settlements to be economically equal to other Albertans. The Report also found that for the immediate future there was likely to be a sizeable gap between what the Settlement councils could raise in local revenues and what it would cost to continue providing services to their communities. The result was a need to reduce costs, increase locally generated revenues (levies, user fees, etc.) and receive some outside “gap filler” funding until local costs and local revenues could be balanced.

In addressing this problem Settlement councils have had to face the problem that they have assumed responsibilities far beyond those of most local governments. For example, they provide:

- Core services – such as water, sewer, roads, fire protection and other municipal services;
- Special services required by Settlements legislation – maintaining membership and land records, managing land interests, participating in General Council, and managing resource development related activities;
- Housing services – building, maintaining, and allocating funds for housing Settlement members;
- Socio-economic development – operating programs for community, cultural and economic development.

Since the legislation no longer requires specific annual Accord payments, the Settlements are currently developing a business case for an approach that will enable these needs to be met.

The Co-management Agreement - Oil and Gas

The Accord

When the Settlements began working together through a central body—the Federation—in 1975, oil and gas development had already started in some Settlement areas. One of the first and most significant acts of the Federation was to actively intervene in hearings on the compensation these developers paid for land access and damages. Over the opposition of the developers, the Federation was recognized as a legal representative of individual Settlements in negotiating compensation. The result of that was, within two years, a close to ten-fold increase in the payments for surface access.

A second, and from a governance perspective more significant, effect was that the Federation had to start developing a “Surface Rights Policy” that provided a common position on the basic terms of access—the process to follow, the amounts to be paid, how the money would be shared, etc. They also, over time, developed guiding principles. For example the 1984/85 policy included as a statement of principle:

Each Settlement has a cultural and financial interest in all Settlement Area lands. Since these lands constitute the only Metis governed land in Canada, each Settlement has an interest in ensuring that the land on all Settlements will be kept in a condition that enables its use for

preserving the Metis way of life. Each Settlement also has a direct financial interest as a sharer in the common trust fund in any consideration paid for the use of land on another Settlement

This principle illustrates the form of collective thinking on land issues that was developing as the Settlements worked out their self-governance system. Also, it was the experience with these common policies that led the General Council's Policy making powers in the Accord. The Federation's experience in oil and gas development issues, and the central role that the lawsuit over oil and gas played in the Accord, meant that oil and gas issues would have to be addressed as part of the Accord.

The Accord included a "Metis Federation – Resolution 18: Co-Management of Subsurface Resources Agreement". This agreement set out as one of its principles that General Council would have the right to negotiate royalty over-rides and participation¹² in future sub-surface resource development. This principle was carried forward into the Co-management Agreement that forms a schedule of the *Metis Settlements Act*.

The Accord Co-Management Agreement also dealt with "Other Subsurface Resource Agreements (Oil Sands, Coal, etc.)" by providing:

... where, in the future, rights for these minerals are disposed of on Metis Settlement lands, the General Council would meet with the Provincial Government and negotiate an appropriate participation agreement, on a case-by-case basis, where development opportunities are identified.

This was reflected in the draft legislation in the Accord that said no one could enter a Settlement area to explore for minerals without General Council consent.¹³ In the implementing legislation, the right to control new mineral developments was broadened to include the Settlement council and deepened by including a ban on extraction as well as exploration.¹⁴

Developing an Operational Framework

The effect of the Co-management Agreement was that General Council could now refuse access to oil and gas developers unless they agreed to pay royalty over-rides or accept it as a partner on new wells, or both. Plans were made in 1989 to set up a Settlements owned oil company to take advantage of these collective rights when the Accord legislation took effect. Guiding principles for the company based on the shared nature of the interest were lifted from the 1984/85 Surface Rights Policy referred to above. It was years before the company was established, however, and by then events had overtaken the plans.

The plan for a jointly owned resource company got sidetracked when the Accord first came in because everyone was too busy trying to get the new system of government up and running. For a while General Council imposed a moratorium on oil and gas development to protect the

¹² "Royalty over-rides" are royalties in addition to the royalty the developer pays to the Province. "Participation" means the right to insist on being part owner of a well.

¹³ S.82, Bill 64.

¹⁴ S.7, *Metis Settlements Land Protection Act*.

resources and give the Settlements and General Council time to organize to take advantage of their new rights. It wasn't until 1994 that right to negotiate overriding royalties and participation was finally used. At first General Council only reserved royalties because it did not have the money to invest in well ownership. Since some Settlements had money, General Council started trying to negotiate a participation right where it could find Settlements ready to invest. The situation got more and more confused because there was no clear General Council position or Policy on how it should exercise its rights. Developing such a Policy was extremely difficult because every Settlement had a veto power and oil and gas development was a big factor on some Settlements and virtually non-existent on others. Because the oil companies came to the Settlement office to talk about access, Settlement councils took the lead in developing royalty and participation options for their Settlement. Having done this they did not wish to let General Council take a lead in future negotiations.

It took until the fall of 1996, for General Council pass a *Mineral Projects Policy* that would provide a more orderly framework for development. Along with the Policy the General Council unanimously endorsed communal interest principles such as the 1984 principle set out above. At that time the Settlements also created an oil and gas company, Resco Oil & Gas, owned by the eight Settlements to manage the collective interest in development.

Operations

Resco hired experienced oil field professionals that brought a new technical expertise to negotiations and to the managing of royalty and participation interests. Unfortunately, it faced two ultimately insurmountable obstacles. The first is that the Settlement councils had established their lead role in negotiations and they were on the spot when the oil companies came to negotiate. Resco was forced into the role of advisor rather than leader. The second systemic problem was that Resco's Board was made up of a director from each Settlement appointed by the Settlement council. This created conflict of interest problems as directors felt their first loyalty was to their Settlement, and the people who appointed them. The conflicts became unmanageable and finally Resco was essentially wrapped up. The royalty accounting expertise moved over to General Council and General Council managed its participation in a very subsidiary role to the Settlement councils.

Although the idea of the Co-management Agreement generating a central fund to support Settlement development did not work out as planned, the rights acquired under the Agreement certainly generated significant revenues—over \$80 million by the first quarter of 2005. The TAP Stage 1 Report showed that from 1994 through the first quarter of 2005, the net revenue going to General Council was roughly \$33.2 million. Some of this pool went back out to Settlements for infrastructure development and some used by General Council to acquire a building and pay operating expenses. Over the same period the amount earned by the Settlements from General Council's rights under the Agreement was estimated at about \$47 million—about 80% to one Settlement.

Assessment

Although the proven and probable oil and gas reserves under Settlement Area lands have largely been depleted, there could still be significant revenue from the Accord provisions for subsurface resources. First, there may be new traditional oil and gas finds. New enhanced recovery

techniques may also provide new production from existing fields. And, there are mineral possibilities outside non-traditional oil and gas areas. As discussed above, the Accord and legislation apply to new types of mineral development—oil sands, coal, diamonds, coal-bed methane, etc.—beyond the Co-management Agreement.

For any new such development to proceed General Council will need to be satisfied with its role and benefits from the project. The project cannot proceed without General Council approval under the *Land Protection Act*. The combination of new production from traditional sources under the Co-management Agreement, and new projects to develop other minerals, mean the mineral related rights acquired under the Accord may still be a significant, if uncertain, source of future income. The challenge for General Council in dealing with the Settlements will be to ensure that these benefits are shared in some manner that reflects the principles first set out in 1984 and unanimously endorsed again in 1996. The challenge for General Council in dealing with the Province will be to see if the potential revenue stream at some time in the future can be converted into a real revenue stream for transition years after 2007.

The Metis Settlements Appeal Tribunal

The Accord

The Accord was intended to create a self-governance framework on the Metis Settlements. In discussions about what that framework would have to contain, it became clear that there would have to be some form of “court” to resolve conflicts arising in the process of self-governance. This “court” should be able to draw on the wisdom and experience of respected community members while operating within a framework of traditional judicial expectations for procedure and fairness.

The Accord did not say how this need would be met, but it did make a commitment to “the establishment of an appeals tribunal for matters related to land or membership”. It also provided in Bill 64 for the Minister to make an appropriate regulation in that regard.¹⁵ In the process of turning the Accord into legislation it became clear that to have the desired “court like” powers, the mandate of the tribunal should be set out in the Act.

The result was the Metis Settlements Appeal Tribunal (“MSAT”), a quasi-judicial tribunal created and empowered by the *Metis Settlements Act*.¹⁶ MSAT was given broad powers to resolve disputes on the settlements. Although technically an administrative tribunal, its role in fleshing out the legislated framework makes it much more analogous to a “Metis court”. In addition to appeals from council decisions on matters of land and membership, the Act went on to enable the Tribunal to, if parties agreed, resolve disputes on a wide range of matters affecting life in the settlement areas.

In addition to dealing with “internal” land and membership disputes, MSAT was also given the power to issue right of entry orders to oil and gas companies to enable access settlement lands and to determine related questions about compensation. Finally, from a governance perspective, MSAT can decide matters referred to it by provincial legislation, General Council Policies or

¹⁵ S.64, Bill 64.

¹⁶ S. 180, *Metis Settlements Act*

settlement bylaws. In fact MSAT must hear matters if instructed to do so in a General Council Policy. This provides a crucial outlet to an independent, but still Settlements representative, third party on contentious issues.

The 1990 *Metis Settlements Act* provided for MSAT to consist of at least seven people. These include a chairman picked by the Minister from a list provided by General Council, three appointees by General Council, and three appointees by the Minister—at least two of whom were not settlement members.¹⁷ Because MSAT had the power to determine compensation for surface access by oil and gas operators, the Act also provided for a Land Access Panel within MSAT that would deal with these issues. This Panel consists of five persons, the chair of the panel being jointly appointed by General Council and the Minister of Energy, two members being appointed by General Council, one by the energy industry, and one by the Minister of Energy.

Operations

MSAT began operations in 1990. In 1999 the Minister and General Council set up a joint task force to review its progress and consider its mandate. The task force consisted of Metis Settlement Elders, administrators, and Settlement councillors as well as a provincial MLA and Judge. It held hearings on every Settlement and issued its report in June of 1999.¹⁸ The cover letter of the report summarized the findings:

In the brief 9-year period that the Metis Settlements Appeal Tribunal (MSAT) has been operating, MSAT has shown itself to be a valuable component of the governance structure of the settlements.

We recommend some expansion of the jurisdiction of MSAT to deal with elections and allegations of improper conduct. We also recommend changes in MSAT's structure and in the way its members are appointed. These changes are designed to satisfy community members that MSAT is a truly independent "judicial" body made up of the best people available for that role. We believe that MSAT can continue to be a pivotal feature of governance of the settlements and that MSAT has a unique opportunity to revive and develop systems of conflict resolution incorporating Metis culture and traditions.

MSAT is a unique "made in Alberta" institution making it possible to bring aboriginal values to the administration of justice and the resolution of disputes. It represents Alberta and the Metis settlements working together to create institutions that bring definition to the words "self-governance" as enshrined in the Constitution of Alberta Amendment Act, 1990. We will never perfect these institutions—they will continue to develop as we learn from our experience and adapt to new realities. What is important is not that ideal institutions are created, but that we all commit to the ideal of continued cooperation in adapting our institutions to meet new challenges.

The Metis Settlements Appeal Tribunal has been a significant success. As a human institution, it is also imperfect. We think our recommendations can help make it better. But we must consider changes in the context of recognized accomplishment and ongoing

¹⁷ s.180(2), *Metis Settlements Act*

¹⁸ Task Force To Review The Mandate Of The Metis Settlements Appeal Tribunal: Final Report; June 30, 1999.

obligation to improvement. We hope that in another 5 years new ideas will come forward for improvements in providing justice in a system of self-reliant, self-governing settlements. Until then, we appreciate the many contributions we received and encourage action on the recommendations contained in our report....

In short, the joint task force found that MSAT was doing a good job, its mandate should be expanded to cover more self-governance matters, and the appointment process needed to be de-politicized. The Report included draft legislation designed to achieve these objectives. With minor modifications this draft legislation was incorporated into the 2004 amendments to the *Metis Settlements Act*. These particular amendments, however, have yet to be proclaimed.

In 2003, four years after the Task Force report, MSAT conducted its own internal review of operations. It found that over its seventeen years of existence the Tribunal had been called upon to resolve everything from builder's lien problems to disposition of estates. The study analyzed the matters brought before it in the previous five years. It found that MSAT had received annually an average of 42 appeals. The vast majority of these (89%) had been about land and membership issues. In the last year, however, 23% had related to other types of issues—often complaints about local governance practices. MSAT's lack of mandate to deal with these governance issues showed the need to implement the recommendations made in 1999 by the Task Force.

The study also pointed out the problems of running a quasi-judicial body in a situation where administrative decisions—budget, hiring, and firing—were made by the Department responsible for the Settlements rather than MSAT. This was seen as a serious obstacle to the independence and “judicial” responsibilities of the Chair. The Province's view appears to be that since it provides the roughly \$1 million annually to fund MSAT it is obligated by the *Financial Administration Act* to maintain authority over the budget and administration.

Since the 2003 study it appears that MSAT has been called on to make fewer decisions—an average of five annually for 2004-2006. There are a number of likely causes for this reduction. First, as MSAT has delivered decisions a “Metis common law” has developed in the sense that persons seeking help from the Tribunal will often find that their situation is very similar to one previously decided by the Tribunal. This makes it much easier to reach a mediated settlement. The greater role of mediation, may also contribute to fewer “tried” cases. Finally, the creation of the Metis Settlement Ombudsman office has likely provided an alternate venue for some complaints, particularly those related to governance practices.

Assessment

There are three basic issues that need to be resolved for MSAT to continue to evolve as the “Metis court” element of self-governance. The first has to do with mandate. The joint Task Force recommended an expansion of MSAT's mandate so that it could deal with self-governance issues such as elections and councillor conduct. The legislation to do that is in place but still not proclaimed. If given effect the result would be a significant increase in self-governance with MSAT taking over the role now reserved to the Courts and the Minister—matters of improper elections and council misconduct.

Proclamation would also further the independence of MSAT by making the appointment process less political. It provides for the Minister to appoint MSAT members on the recommendation of an independent “Selection and Review Committee”¹⁹ chosen by General Council and the Minister.²⁰ This committee would consist of three persons one chosen by General Council, one by the Minister, and then one more chosen jointly by those two. The three person Committee would then review applications and make appointments to a restructured MSAT consisting of a three member Executive Committee and a pool of potential panel members representing all Settlements.

Finally, some form of budget allocation process is needed that will ensure there is no perception of departmental administrators interfering with the independence of the “judiciary”. Currently MSAT’s annual budget of roughly \$1 million comes through the Minister responsible for Metis Settlements. If the “integrated independence” approach were applied to MSAT it might be better if some method were found for slowly transferring this into the Provincial Courts system as part of a long term effort to support MSATs evolution into a broader jurisdiction court for the Settlement Areas.

Office of the Metis Settlements Ombudsman

Origins

In community meetings, the 1999 MSAT Task Force heard many people complain about the conduct of their Settlement councils. The Task Force Report said

We do not consider it appropriate for MSAT to assume responsibility for investigating complaints about the conduct of elected councillors. In our view that would be inconsistent with its primarily “judicial” role. On the other hand, we feel it imperative that there be a system of accountability in place and a willingness to take action if ethical or other good governance standards are not established or maintained.

In our view, the need for MSAT to retain its judicial role, and the need to be able to investigate and report, could be met by creating an independent “Conduct Advisor” office. This office could investigate allegations of misconduct, determine if they had any foundation, and, if so, make a report which could include recommendations for corrective action. MSAT would have the power to order corrective action, but only after a hearing and a finding of misconduct warranting action.

This Report recommendation was implemented, by the creation in 2003 of the Office of the Métis Settlements Ombudsman (MSO).

The MSO was created as an independent and neutral body to look into complaints about Settlement councillors and management. An important part of its job was also to point out when those complaints were unjustified. Initially the MSO’s mandate was based on a delegation of the Minister’s powers under the Act to protect the public interest.²¹ The 2004 amendments to the Act

¹⁹ s.180(2) *Metis Settlements Act*, 2004

²⁰ s.185.1 *Metis Settlements Act*, 2004

²¹ ss.170-179 *Metis Settlements Act*

enabled the Minister to make regulations establishing the office of Metis Settlements Ombudsman²² and providing the office with a more certain mandate to carry out the kinds of investigations referred to in the Task Force Report. Work is still underway on the necessary regulation.

Operations

The MSO receive complaints and to appoint inspectors and investigators as needed. The individuals appointed by the MSO have the authority to conduct independent inspections or investigations, with the powers of a Commissioner, under the *Alberta Public Inquiries Act*. It has an annual budget of roughly \$600,000 to carry out these functions. Details of the MSO's operations can be found on its website at <http://www.metisombudsman.ab.ca/>.

Assessment

The role of the MSO in the future governance system of the Metis Settlements remains an open question. It is an awkward role for the Minister in what is otherwise evolving into a more self-governing approach. This may be addressed, however, in the regulation by establishing a joint body to recommend appointments along the lines of the process proposed for MSAT. A second issue, raised by the 1999 Task Force, is still unresolved. That is the role of MSAT in investigation of complaints. This may be addressed by the regulation currently being developed.

Land & Membership Registry system

Origins

The need for a Settlements' land and membership registry system is rooted in Resolution 18, the unanimous resolution of the Alberta Legislative Assembly that marked the formal beginning of the Accord process in 1985. The Resolution, introduced by Premier Lougheed, resolved that the Legislative Assembly

- (3) Recognize the principle that, as a first step toward the grant of existing Metis settlement lands, it is the responsibility of the Metis to define and propose:
 - (e) fair and democratic criteria for membership in settlement associations and for settlement lands allocation to individual members of settlement associations;

This precondition of fair and democratic criteria for membership and land allocation meant there would have to be a corresponding legally defensible system for tracking membership and land interests. The government's Metis Development Branch kept track of membership and the limited interests that existed in settlement area lands—treated and considered as “Crown land”. With the Accord came the possibility of unlimited new land interests, to be defined by General Council Policy, resting on the underlying General Council fee simple interest. It was important that the new interests be clearly defined, that anyone looking at the record could be sure it showed all the legal interests, that they could rely on that record, and that they could check the record at the Settlement office. This meant creating something like a “Land Titles” system for Settlement lands.

²² s.175.1 *Metis Settlements Act, 2004*

The passage of the Accord legislation coincided with the culmination of over 10 years work by land registrars from across Canada on a model land registry system for use across Canada (outside of Quebec). That model system became, with a few modifications, the land registry system for the Metis Settlements. Computer software was developed that enabled the system to track any unique interests created by General Council Policy and to make those interests accessible in Settlement offices. A corresponding Regulation gave the system the legal certainty required for Settlement members and outside interest holders such as oil and gas companies.

The Accord made an important distinction between land rights and land records. Only General Council could create land rights. It did this by and saying what they were, who could hold them, how long, etc. in a Policy. Was these interests were created, the job of keeping track of them—the record keeping—was assigned to the Minister and appointed Registrar. The Registrar is responsible for making sure that the Metis Settlements Land Registry²³ is a complete and accurate record of all interests in the land. If someone relies on that record and it is wrong, they can look to the Registrar for compensation. The Minister also had the responsibility of ensuring there was an accurate record of the members of each Settlement—the Settlement Members List.²⁴

Operations

The Land Registry, and the computer system on which it is based, was a multi-million dollar project of the Commission. When the Commission wrapped up, the Land Registry was moved to the department responsible for the Metis Settlement matters. Every Settlement office has a computer that shows the land records and enables the office to ensure the Registry is accurate and up to date. The Members List is maintained by the same department. The annual operating cost for both is about \$350,000.

Assessment

Keeping track of land interests, once they have been defined by General Council and allocated by Settlement councils, is purely a record keeping exercise. The record must be completely reliable to be of any value, and there is potential legal liability attached to errors in record keeping. The system is state-of-the-art and there is no obvious reason why the Settlements or members would want to fundamentally change it.

The Minister

The Accord

In the Accord tripod of land, power, and money the Minister's role was a central issue in relation to "power". The drive of the Federation and the government from the MacEwan Commission through Resolution 18 to the Accord was self-governance. That meant ending the Minister's role as the ultimate decision maker for the Settlements. Accord legislation turned government over to General Council and the Settlements and left the Minister with only three basic functions

Legislative - Participation in law making

²³ The details of the registry were set out in the Metis Settlements Land Registry Regulation (AR 361/91).

²⁴ s.96 of the *Metis Settlements Act* makes it the Minister's duty to maintain the List.

- had to be consulted in the development of General Council Policies and could prevent a Policy from taking effect by vetoing it within 90 days;
- could make regulations on her own on some administrative things like setting up the land registry;
- could make regulations on things General Council could make Policies on, if they asked her to;

Protective - Protecting the public interest

- could temporarily fill vacancies on council if necessary;
- could launch investigations into allegations of council mismanagement or wrongdoing, and
- could remove councils and councillors if necessary;

Clerical – Administration of vital records

- land registry
- members list.

While the Transition Commission was in existence it handled the Minister’s clerical responsibilities. When it wound up, the Department assumed responsibility on an interim basis.

Current Operations

The Minister continues to handle the administration of the land registry and members list. The amendments to the Act in 2004 gave the Minister additional powers in the “Regulation in lieu of Policy” area by allowing the Minister to make temporary “Policies” without a request from General Council. The unproclaimed amendments with respect to MSAT would transfer the power to remove councils and councillors to MSAT. The investigative function has been transferred to the Metis Settlements Ombudsman.

Assessment

The future is unclear since it depends on the current business plan exercise aimed at defining how the General Council and Settlements will function in the post 2007 era.

Other Central Metis Settlement Service Organizations

The Settlements have built up a range of governance institutions and development institutions beyond those created by Accord legislation. We will discuss these briefly below. The following diagram provides an overview:

Region 10 Child and Family Services Authority

The Region 10 Child and Family Services Authority is a good example of the principle of “Settlement Controlled Participation” (SCP), which means carving out a spot in provincial services so that the Settlements play a lead role in directing the delivery of those services to the Settlements.

The Ministry of Alberta Children's Services was created in May 1999 under the *Alberta Child and Family Services Authorities Act*. The Ministry's purpose is to provide a range of services and programs for children, families and communities to help create safe and supportive environments for children. A key objective is break cycles of family violence, abuse and poverty.

For the program's purposes, the province is divided into 10 regions. For each region the Minister appoints a Child and Family Services Authority ("CFSA") consisting of community representatives. Each CFSA is responsible for planning and overseeing the delivery of programs and services to children and families in the region. Region 10 consists of the Metis Settlement areas. The CFSA for Region 10 is made up of seven Settlement members and the CEO is also a Settlement member. Most of the staff delivering services in the Settlements are also Settlement members.

The Region 10 CFSA develops and delivers services in consultation with the Settlements and the Ministry. It manages an annual budget of roughly \$5 million provided by the Ministry and is subject to annual financial and performance audits.

Assessment

While part of a provincial agency, the Region 10 CFSA, through its community based leadership and procedures, has functioned effectively as a vehicle of the Settlements to improve life for children, families and the communities in general. Its SCP approach may have possibilities in other areas such as education where it could be implemented by the creation of a Metis Settlements School Board.

Capacity Development: SSC, SIC and STI

Settlement Sooniya Corporation (SSC)

In 1980 the Metis settlements incorporated SSC to promote the economic development of the settlements. By 1984 each settlement had contributed \$75,000 in share capital and were equal shareholders bound by a Unanimous Shareholders Agreement. As the engine for combined economic effort SSC was successful in obtaining financing for a wholly owned subsidiary financial institution, Settlement Investment Corporation (SIC). It also managed training programs common to all settlements. In its first decade of operation it raised, and channelled into settlement economic development, more than \$10 million.

When the settlements began implementing their Accord with the Province in 1990, their focus was on getting a new system of settlement government up and running. They relied on General Council to keep SSC operating. In 1995, as part of a business plan that in which General Council's future focus was to be government, SSC was revived as the engine for combined economic effort. The Settlements agreed that SSC would be the settlements vehicle for joint economic effort. Under the business plan, SSC was to provide overall coordination of these ventures, but operations were to be left to subsidiaries or other structures controlled by SSC.

General Council's role was

- to provide technical and financial help to get SSC going;
- to ensure Policies needed for SSC to operate were in place, and
- to open doors with industry and government.

Currently SSC's only activity is through its wholly owned subsidiary SIC.

Settlement Investment Corporation

SIC began operations in 1985 with a \$4.22 million dollar contribution from the federal Native Economic Development Program (now Aboriginal Business Canada). \$3.5 million was allocated for the loan fund and \$720 thousand was allocated for start up and operating costs for the first three years. Since then, SIC has loaned over \$22.5 million in roughly 1250 small loans—SIC caps loans at \$150,000 for commercial and \$75,000 for agriculture

SIC's current loan portfolio is totals roughly \$4 million, last year lending about \$1.5 million. SIC is a member of National Aboriginal Capital Corporation Association and recognized as one of the top five performers in this national organization

SIC focuses on assisting the development and financing of businesses owned by Settlement residents. By encouraging these local entrepreneurs it seeks to further the employment and community services needed to establish and sustain an economic base for the Settlements. SIC considers any business as eligible if it will advance this purpose. Loans may be used for business expansion, or the purchase of fixed assets, equipment or working capital. At present, SIC does not provide personal loans, loans for household improvements, home mortgaging or any other non-business use. Further information can be found on SIC's website at

<http://www.settlementinvestcorp.com/> - 1

Settlement Training Initiative (STI)

As mentioned above, in the early 1980s SSC began its capacity development mandate by running training programs for Settlement members. A project of similar purpose, but broader scope, began in 1999 under a Strategic Training Initiative agreement between General Council and the federal government. The STI program made funds available for training and educating Metis Settlement residents to help them obtain and maintain viable employment. It is part of the Aboriginal Human Resources Development Strategy (AHRDS) – a federal government program designed to help improve the employment opportunities of Aboriginal peoples and enable them to fully participate in the Canadian economy.

Technically the vehicle for funding is the Metis Settlements Strategic Training Initiative Society. The Officers of General Council form the Board of directors of the Society and federal funds from the federal program flow through General Council via the Society to Settlements to meet local training and education plans that are consistent with the agreement. These funds are used for everything from local capacity building to assisting students in technical schools, colleges and university. Last year the program's budget was about \$3.5 million, but continued federal funding for the program is not assured.

Applicability of Alberta and Federal Law

The Metis Settlements have consistently taken the position that they consider themselves within provincial jurisdiction. This position was stated clearly during the Constitutional debates of the early 1980s. In a 1982 document stating the Settlements position on the jurisdictional issue, the Federation summed up its position as follows:²⁵

²⁵ Statement on Aboriginal Rights In The Constitution of Canada, July 28, 1982, p.19

In short, we are prepared to accept provincial jurisdiction over the Metis Settlements except in matters relating to our aboriginal rights.

This view was continued in Accord legislation in the preamble to Alberta's constitutional amendment:

WHEREAS it is desired that the Metis should continue to have a land base to provide for the preservation and enhancement of Metis culture and identity and to enable the Metis to attain self-governance under the laws of Alberta²⁶

The Metis Settlements Act carried this forward by specifying that all Settlement bylaws must be consistent with General Council Policies²⁷ and that

230 General Council Policies that are inconsistent with this or any other enactment are of no effect to the extent of the inconsistency unless this or any other enactment otherwise provides.

The one exception is in the area of hunting, fishing, trapping and gathering Policies. In these areas a General Council Policy can override provincial legislation, but not federal legislation²⁸, if the Policy is approved by the Lieutenant Governor in Council.²⁹

Another area of federal and provincial jurisdiction, income tax, has never been an issue for the Settlements or their members. The same income tax laws apply to them as to other Albertans.

The diagram below displays the principal elements making up the Metis Settlements governance system.

²⁶ Preamble to *Constitution Of Alberta Amendment Act, 1990*.

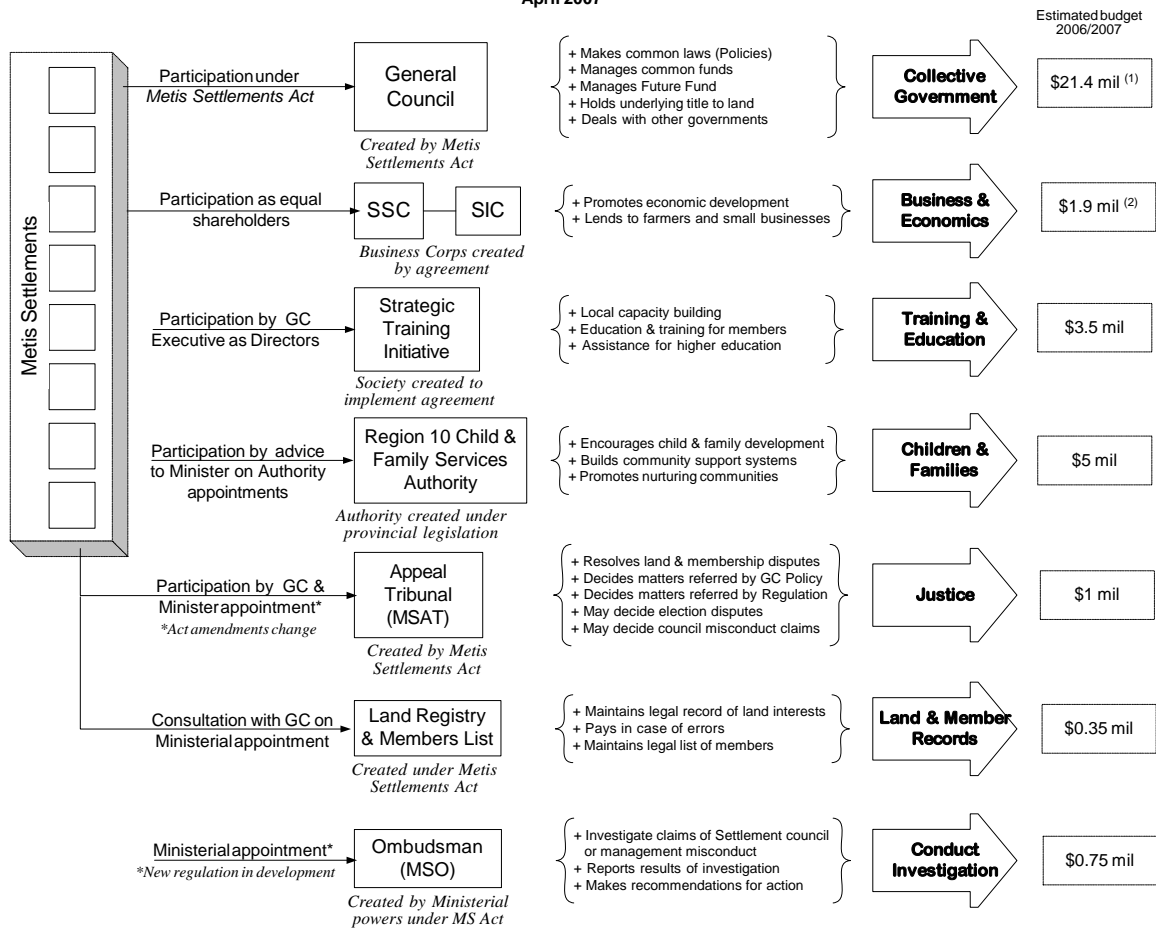
²⁷ s.72(2) *Metis Settlements Act*.

²⁸ s.226(2)(d) *Metis Settlements Act* dealing with Policies on fisheries.

²⁹ s.226(3) *Metis Settlements Act*.

Metis Settlements - Shared Governance Institutions

April 2007



Notes:

- The GC total budget figure of \$21.4 million requires interpretation because it includes a number of capital items, passthroughs, special grants, etc. For example:
 - About \$7 million relates to oil and gas operations
 - About \$8.7 million is payments to Settlements for infrastructure and matching grants agreement funding;
 - About \$1.9 million relates to special purpose grant programs
- This estimate is based on operating expenses of \$400,000 and lending cash outflow of \$1.5 million (numbers approximate)

Working Paper #2: Interview with Fred Martin on the Development of the Metis Settlement Governance System

Introduction

Q *What is your background with the Metis Settlements?*

A I started working with the Settlements as Coordinator of the Alberta Federation of Metis Settlement Associations in November of 1975. Since then I have worked with them in a number of roles—coordinator, consultant, legal counsel, etc.

Q *Were you involved in developing the Accord and subsequent legislation?*

A Yes. We began developing the roots of the Accord in the early 1980s in the McEwan Report and after that in work with Premier Lougheed on Canada's new Constitution and Resolution 18. That Resolution kicked off the formal Accord development process. We worked with the government to develop draft legislation as part of the Accord. Once the Accord was approved in the referendum we worked with the government to develop the Charters, agreements, and legislation needed to implement the Accord.

Q *What about the implementation?*

A Yes. I worked with General Council and related organizations in a number of roles and with varying degrees of involvement from 1990 until November 2005.

Q *In talking about how things developed and what you see ahead for the Settlements, how would you like to go about it?*

A We were pretty tradition oriented in everything we did so it would probably be best to start with the underlying values and principles that shaped our approach, look at how things turned out, and then see whether those values and principles are any help in the challenges facing the Settlements today.

Goals, Values and Principles

Q *In your view, what were the goals of the Accord?*

A First and foremost to protect the land. What we usually said was that the Accord was about land, power and money—protecting the land, getting enough self-governing power to run our own affairs, and getting enough money to put things in place so that the

Settlements could be viable communities for future generations.

Q *What basic values guided the work toward those goals?*

A In my view it was a combination of attitude and approach. Most of the Metis I worked with, starting in the early 1970s, had a basic “can do” attitude. It was a sort of proud independence and resourcefulness that just said “let’s get on with it” no matter how tough things seemed. It was kind of a code of the bush that shaped an approach to life and political action. What was particularly effective was that attitude along with personal qualities of decency, dignity and integrity. That was what most impressed me about the leaders I worked for—their basic belief that people should be treated with respect, that a leader should conduct himself in a dignified way, and that if you said you would do something, you did it.

Q *How did those values affect Accord negotiations?*

A Although never stated as formal guidelines, I think the basic values led to four principles that governed the talks:

Focus on results—what gets done is more important than why it gets done;

Consult continuously—everyone affected has to be involved or they won’t accept the result;

Start with what’s worked—don’t start with a model that’s great on paper, work with what people are used to; and

Get the foundation and tools, then take your time building—with the basics in place you can use experience to help build something that works in your situation.

Q *Who was involved in developing the Accord?*

A The Accord wasn’t just an agreement about land and money—it was about putting in a whole new framework for settlement government. So the talks about what should be in the Accord were not just between settlement leaders and the government. They were also between settlement members and their leaders, and between local leaders and leaders of the Federation.

Q *What were each of these groups looking for?*

A The Federation wanted to be sure all eight Settlements stayed united so that they would be strong enough to get the land, power, and money they needed to survive as a Metis people. Most settlement members went along with that, but they also wanted to protect their individual rights in their own settlement. They wanted to make sure their personal

land was protected, that they had a say in decision making, and that they would get some benefit from any money received under the Accord. At the settlement council level, every council wanted to be sure that in any new deal their settlement didn't get dominated by other settlements or by some new central government.

Q *What was the effect of all these different interests?*

A It meant a lot of talking. The Accord had to cover a lot of issues and for each one we had to develop a position that was acceptable to settlement members, settlement councils, the Federation, and the provincial government. We couldn't have done it without a lot of talk, cooperation and ultimately trust from everyone involved.

Q *I like to go back to the four principles you outlined. The first two seem to be about process and the last two about content. What do you mean, for example, by "focus on results"?*

A Settlement leaders had a tradition of being practical and results oriented. They were more concerned about what the government did than why it did it. So, their negotiating strategy was based more on results than rights. Metis leaders in the 1930s had used the "results" approach successfully to get a land base—they worked with the government to come up with land as a basis for solving some of the problems their people were facing. The Federation leaders 50 years later used the same approach to negotiate the Accord. By focusing on results we were able to get on to the land, power and money issues without tackling a lot of still unresolved aboriginal rights and provincial jurisdiction issues.

Q *What about the principle of "consult continuously"?*

A It took us more than 10 years to negotiate the Accord. In that time we had more than 150 community meetings, more than 100 meetings with community representatives, and hundreds of meetings with government representatives. We wanted to protect the common interest and create a solid foundation for the communities to develop good governments. The only way to do that was to spend time in community meetings looking for guiding principles and then drafting options based on those principles. Then we had to discuss the drafts with government and settlement leaders. And then we had to go back to community meetings to test the drafts, and start through the loop again. The result was a consensus building process that continued through the signing of the Accord and until the package of legislation was finally passed.

Q *What do you mean by "start with what's worked"?*

A Going from "the Minister decides all" to "you'll govern yourselves" was a huge leap.

Settlement members weren't too sure about the whole thing and wanted to be cautious. They didn't want a lot of things changed if they didn't have to be. So we promised only to push for changes where they had to be made to get the land, power and money needed to build communities and preserve a Metis way of life. Given the nature of the old legislation, however, the necessary changes were still far reaching.

Q *What parts of the old system were kept?*

A The draft legislation in the Accord preserved the basic structure of the settlement council—5 elected councilors. They were given staggered terms to ensure continuity. The Federation was kept, but given the name “General Council”. As representative of the common interest, the General Council would hold the fee simple title to all settlement lands, and create land interests for the Settlements and individuals to hold. The practice of looking to the Federation for guideline “policies” for the settlements was continued. In the new structure this meant the General Council would make “Policies” that were actually laws and local bylaws would fit into that framework. Consistent with past practice, each settlement had one vote in selecting General Council officers and in determining Policies. The draft Act also provided that Policies had to be supported by six of the eight Settlements to pass. Finally, to minimize the number of changes, existing Regulations under the old Act were as far as possible carried over into the new system as General Council Policies.

Q *What do you mean by the principle “Get the foundation and tools, then take your time building”?*

A The Accord was pretty much a bare skeleton. The intent wasn't to establish the laws for self-government, but to create a framework in which those laws could be developed. Consequently the Accord provided tools for developing a full body of Metis settlement law—both legislation and “judicial”. Metis legislated law could be created by Regulations made by the Minister at General Council request, by Policies passed by the General Council, or by settlement bylaws. Metis “judicial” law could be created through decisions of the Metis Settlements Appeal Tribunal. This would mean Settlement members sitting on the Tribunal would be bringing their experience to find fair solutions to actual problems that developed on the Settlements.

General Council's Development

The Transition Period – Commission Era

Q *Once the legislation was passed, how did things go for General Council?*

A When General Council came into being as a legal entity on November 1, 1990, the casual consensus approach that had worked for the Federation was no longer adequate. The General Council was not a simply an association of associations like its predecessor. It was a unique legal entity with statutorily defined managerial and legislative powers. As such, it suddenly had to be able to make decisions and pass laws for the Settlements to function. The transition from discussion group to government was not easy.

Q *What was the problem?*

A General Council had difficulty exerting leadership at start up due in large part to confusion, habit and a new third power. The confusion was an inevitable part of getting new systems up and running. Its efforts to exert leadership in the midst of this confusion were undercut by the engrained habit of settlement members and settlement councils to look to the traditional power source, the Minister, for direction and decisions. In addition to these start up and habit problems, GC's leadership was also challenged by a new third power—the Metis Settlements Transition Commission (the “Commission”).

Q *What was the Transition Commission's job?*

A In developing the Accord, the Commission had been designed to manage the transition from the existing situation of total Ministerial power to an end state of self-governance in the framework created by the Act. For that purpose the Accord included “The Alberta-Metis Settlements Transition Commission Agreement”—a brief document that outlined the Commission's purpose, strategy, principles governing the transition process, terms of reference for the Commissioner, and the structure of the Commission. The Metis Settlements Accord Implementation Act translated this agreement into legislation, with some modifications.

Q *What was the Commissioner's job?*

A The *Implementation Act* gave him the power to take charge of the transition. He was a “cop, consultant and clerk”. His “cop” role was to monitor Settlement management practices and the administration of Accord funds. His “consultant” role was to provide advice and technical help so the Settlements and General Council could develop the necessary administrations, policies and by-laws. His “clerk” role was to maintain critical records such as the Metis Settlements Land Registry and the Members Register. He also had the power to make government departments change their policies and programs when it was necessary so that the transition process would work. I don't think he ever used that power, however. To coordinate all this, the Commissioner reported to a Transition Authority made up of himself, the Minister and the President of General Council.

Q *How did the Commission, General Council, and government work together?*

A With the government no longer the key player, and the Commission and GC just getting set up, there was a lot of confusion. Everyone was trying to figure out what their job was in this new system. Eventually the Commission, the government and GC created a Joint Operations Group to coordinate their efforts. This helped a lot, but there was always some uncertainty about who really should be responsible for what.

Q *How was General Council affected?*

A Three things handicapped GC out of the gate—confusion, split center, and habit. I already mentioned the confusion problem—figuring out who’s doing what is a normal start up problem in any new system. The split center problem was a result of both GC and the Commission making decisions at the center. The Commission was intended as an independent body to help General Council and the Settlements make a smooth transition to self-governance. An unintended result of having this additional central institution, however, was that General Council became weakened as a power center. This is where the habit problem came in. To Settlement members and the political realists on settlement councils, the Commissioner was just a “new Minister” and life went on as before. He was the go to guy when you had a problem.

Q *How did the uncertain authority affect General Council operations?*

A Central governance became an endless series of meetings in Edmonton. “All Council” meetings were called by GC or the Commissioner almost every month, sometimes more. There was no single strong central authority, so the only way to sort out problems was for everyone to get together and try to reach a consensus. General Council’s “executive” powers—the power to manage the central government—were hamstrung. All decisions on any common issue of substance had to be made by a consensus of eight councils (40 councillors), four executives, and the Commissioner. The start up, habit, and split center problems handicapped the General Council out of the gate. It was still able to provide leadership by acting as the collective voice in dealing with the Commission and government. But the real power was in the hands of the Settlement councils. They elected GC’s officers, approved its budget, and, until 2004, had to unanimously support any significant new Policy. That meant the power envisioned for the central government in the Accord never fully developed. As a result it was difficult for General Council to carry out joint development efforts that were planned, or as in the case of SSC already started, at the time of the Accord.

Q *Did that mean General Council could do nothing?*

A No, far from it. General Council passed Policies on land, levies, timber, oil and gas, traditional pursuits and a range of other matters. It also took the lead in working with both governments to develop programs such as the Region 10 authority for children and family services, and the strategic training initiative—to name just two. Each of these programs for improving Settlement life delivered millions of dollars in services each year to Settlement members. The problem wasn't that it couldn't get things done, it was more that it took way more time and money than it probably should have because of all the meetings required to develop unanimous support. At the start this didn't seem like such a big problem because the Commission was paying for a lot of it, provided support to GC, and in fact took charge of a lot of things that would otherwise have been GC's responsibility.

Q *Was the Commission an essential part of the governance structure?*

A No. It was supposed to disappear in 1997 when the start up funding dropped from \$30 million per year to more like \$10 million. With the Commission gone, General Council would be the only source of central support and direction.

Q *What did GC do to prepare for no more Commission?*

A In 1995, to prepare for the new era of self-reliance, General Council developed and adopted a three-year business plan. The plan set out how it would go about meeting its management and law making responsibilities after 1997. I have a copy of the plan. It said

General Council must structure itself so that it can do four essential things well—care for the land, manage shared money, create common laws, and provide collective leadership. That is what this plan is about.”

It went on to set out as a “fundamental assumption” that

The General Council's job is governing the collectivity—there are better vehicles for combined social and economic effort

Q *How did the plan reflect this “fundamental assumption”?*

A The plan described things like SSC that the Settlements had already set up to tackle economic and social needs. Looking ahead at how those needs should be dealt with in the future, the plan concluded:

The General Council's primary business is government, and it should stick to that. Although it can provide support, the settlements should look to a revitalized SSC as the engine for common economic development effort, and to their two charitable societies as the vehicles for cultural and educational efforts. Those independent institutions for combined economic and social effort can do the job better because they don't have all the decision making limitations faced by a government like the General Council.

Q *What did GC do to implement the plan?*

A It followed the plan and did a restructuring to replace a whole bunch of ad hoc committees with four standing committees—Inter-Government Relations, Governance, Finance, and Lands & Resources. The idea was for these committees to play a lead role in managing issues and developing Policies in their special areas. As standing committees they would be ongoing, stable and capable of developing expertise in their special area. They would get help on the technical side come from GC staff, Alberta government technocrats and other outside sources as required. The combined technical and political expertise would enable each SAC to develop recommendations on positions and legislation (“Policies”) in its area for Board and Assembly review, modification and implementation. It was basically the approach used by governments all over.

Q *How did the Standing Advisory Committee approach work out?*

A It’s a little hard to make any general statement. Some worked better than others. They tended to get larger than planned and some had trouble keeping the same group together. That meant they didn’t operate as efficiently as they could because of the cost of meetings and because new people would show up for meetings and slow things down because they needed to be brought up to speed on the issues. In spite of those problems some seemed to work OK.

Q *What about other parts of the plan?*

A The basic approach of providing leadership and support for projects that would work on all Settlements seemed solid. Region 10 and STI are probably the two best examples.

Assessing The Structures

General Council

Q *Still, the Act gives General Council a lot of power doesn’t it?*

A The General Council holds the land, manages a fund of over \$100 million, and makes laws that apply to all Settlements, so it seems very powerful, but in my view that power is an illusion.

Q *Why do you say General Council’s appearance of power is an illusion?*

A Because, all real power lies in the Settlement councils. They elect the President and other officers of General Council. No Policy is effective unless supported by six of the eight

Settlements. General Council's funding comes through a Financial Allocation Policy approved by at least six Settlements. Although it can make laws applying to all Settlements, it has no enforcement powers. The result is a central government, in theory, that in practice has none of the powers essential to such a government. And looking forward, there is no obvious reason why the holders of the real powers, the Settlement councils, would surrender any of their powers to create a more effective central government. The situation of the Settlements is similar to that of Canada, where power that flows out to the Provinces is not easily returned to the center.

Q *What should happen to the Future Fund?*

It should stay as one fund to minimize overhead costs. If there is a decision made to recognize each Settlement's "ownership" of a specific piece, this should be done by creating a trust document setting out rights and duties. In addition, if each Settlement has a piece, there should be a piece for General Council to maintain core functions. Finally, consider moving the Fund to a financial institution with suitable trust documents in place to protect Settlement interests.

Working Paper # 3: Comparison of Metis Settlements with other Local Governments

It is useful to note some of the more salient similarities and differences between Metis Settlement governance and other local governance systems, both Aboriginal and non-Aboriginal. We begin with the relative size of Metis Settlement governments, a term that encompasses both the eight settlement governments and the MSGC or the “central” government.

- Metis Settlement governments are large relative to the population they serve, much larger than comparable local governments in Alberta or indeed in the rest of Canada. Local governments in the rest of Canada serving small populations have functions largely confined to local public works – water, sewer, streets and local recreation facilities. The Metis Settlements have these functions but in addition have a range of other responsibilities including housing, economic development, natural resource management and social and cultural activities. They also have statutory responsibilities relating to land and membership, responsibilities not found in other communities of similar size in Alberta.
- While large in Canadian terms, Metis Settlement governments are small compared to First Nation governments under the *Indian Act*, which have even a wider set of functions including policing and administrative aspects of the ‘big three’ - social welfare, health and education. Self-government agreements widen the list of functions even further, venturing into areas like the administration of justice, natural resource co-management and extensive law-making. The table below provides a useful comparison of per capita expenditures of various local governments:

Estimated Annual Per Capita Expenditure Comparisons ³⁰				
All Municipalities in Canada (2004)	All Municipalities in Alberta (2001)	All Municipalities NWT (2004)	Metis Settlements (1999 – 2003)	First Nations under the Indian Act (2004-2006)
\$1,750	\$1,579	\$2,666	\$5456	\$17,142

³⁰ Sources for this data include: Federation of Canadian Municipalities, “Building Prosperity From the Ground Up: Restoring Municipal Fiscal Balance”, June 2006; and Conference Board of Canada, “Mission Possible, Successful Canadian Cities”, January 2007. The Metis Settlement estimate is based on an average expenditure of \$34.7 M for the eight Settlements plus \$2.4 M for General Council taken from the TAP report and assumes 7,000 resident members. The First Nation estimate is derived from a sample of 20 First Nations from across Canada varying in size from 76 to 4698 on reserve members. The data in this sample is primarily from the 2004/05 fiscal year but in some cases from 2005/06.

- Unlike other small local governments in Alberta, the political leaders of the local and central governments of the Settlements are, in practice, full-time or nearly full-time positions. Consequently governance costs in absolute and relative terms are high in the Settlements.
- The Metis Settlements have a two tier system of local government, a situation unique in Alberta, but not in the rest of Canada. For example, the provinces of Quebec and Ontario have had two tier local governments for over 150 years. In comparison First Nations under the *Indian Act* are single tier governments (Tribal Councils and other regional or provincial First Nation organizations are not governments; their functions are principally confined to political advocacy, some delegated service delivery and advisory services.) Many First Nation self-government agreements retain a single tier structure (Sechelt, eleven Yukon First Nations, Tsawwassen, Westbank for example.) Exceptions are the Nisga'a agreement, which establishes a two tier system, and two recent agreements – the Tlicho in the Northwest Territories and the Inuit of Labrador. These latter two agreements establish an Aboriginal regional government with quasi-public local governments.
- The systems of land tenure of the Metis Settlements and First Nations have some similarities but important differences. Fee simple ownership of Metis Settlement lands vests with the central government. In comparison, First Nation reserves, with few exceptions are on federal lands. Modern claims and self-government agreements usually provide for a mixture of land interests – some of the land is held in fee simple by the Aboriginal party; for other lands their interest is less than fee simple. One important implication of the reserves resting on federal lands is that many important provincial laws relating to natural resource management, environmental protection and environmental health do not apply to reserves, resulting in a number of regulatory voids. For example, there are no laws regulating potable water on reserves. There are no such regulatory voids on Metis Settlement lands.
- For mainstream financial institutions in the mortgage business, the land-holding systems of First Nations and the Settlements have the same practical affect of preventing the seizure of land and buildings for potential re-sale in the event of default. The legislation emanating from the Accord, however, enables General Council to make a Policy that would enable a Settlements-owned financial institution to get into the mortgage lending business with Settlement land as collateral.
- In the prairie provinces First Nations reap all of the sub-surface royalties from mining and oil and gas. Such is not the case with the Metis Settlements, which share royalty benefits with the Alberta government. On the other hand Metis Settlements are not constrained in their use of royalty and other revenues as are First Nations, which have to deposit their capital monies with the federal government and seek its permission for any use. The Settlements have the power to issue land use rights less than fee simple in accordance with a General Council land policy. In contrast First Nations must obtain an Order In Council from the federal government for the granting of significant leasehold interests.
- The governance regimes – powers, government structures, election procedures, membership etc. – of First Nations and the Metis Settlements are both laid out in legislation passed by another order of government and in this sense their regimes are both devolved forms of

governance. First Nations may have some additional latitude in having the option to design their own membership codes (but not the determination of who is a Status Indian) and custom election procedures. In contrast, self-government agreements provide the Aboriginal party with the capacity to develop their own constitutions, including governance regimes, subject to certain conditions (the application of the Charter, the continuing application of certain federal and provincial laws, rules about conflict of laws etc.)

- Comparisons surrounding law-making powers are also interesting. The provincial Minister has no power over Settlement Council by-laws and a policy (law) made by the central government takes effect in 90 days unless the Minister vetoes it. First Nation by-laws relating to the use and sale of alcohol are not subject to ministerial approval. Money by-laws including property tax by-laws become law only with the approval of the Minister. And Section 81 by-laws – the principal by-law making powers of First Nations – become law unless the Minister objects within 40 days.
- Members of the Metis Settlements are subject to all federal and provincial taxes. In contrast First Nation members, provided they meet a complex set of tests, do not pay federal and provincial income taxes and in certain cases are exempt from consumption taxes.
- For First Nations, there is nothing equivalent to the Metis Settlements Appeal Tribunal or the Metis Settlements Ombudsperson. Self-government agreements do provide for some Aboriginally controlled judicial systems but progress in establishing them has been limited, due to lack of funding and perhaps capacity. The *Indian Act* makes provision for the appointment of Justices of the Peace but this has had very limited application, in part because the Act does not provide for important measures to ensure judicial independence.
- The by-laws of local Settlement governments (but not the policies of the MSGC) must, pursuant to the Metis Settlements Act, be approved at a general meeting of Settlement members. This requirement is unique to any government in Canada and perhaps the world.

Many other comparisons could be drawn but those above give a flavour of what makes the Metis Settlement governance regime such an interesting initiative with regards to Aboriginal empowerment in Canada.