

DISCUSSION PAPER # 1

August 12, 1991

METIS NATION

The Metis people of Western Canada are Aboriginal people who evolved from several Indian Nations. The Metis formed a new Nation of Aboriginal peoples in what is now known as Northwestern Ontario, the prairie provinces of Manitoba, Saskatchewan and Alberta, Northeastern British Columbia, and part of the Northwest Territories. This area is known as the Metis Homeland, which also extends into the northern parts of the States of Montana, North Dakota and Minnesota in the United States.

As Metis, we have a distinct culture, heritage and language. Many of our people speak Michif, while many also speak Cree, Saulteaux or Dene. As Metis, we have expressed solidarity and political consciousness by forming our own governments, and defending our territory and rights. For example, our people fought the Battle of Seven Oaks in 1816, the resistance at the Red River in 1870, and the war of resistance at Batoche in 1885.

It is generally accepted that a "nation" is a people who have a common history, racial ties, cultural or linguistic ties, a common territory and a sufficient number of people. The Metis people fit all of these criteria.

As a nation, we must consider who is to be included as a "Metis".

The Metis National Council (our national political organization) uses the following criteria:

1. The Metis are:
 - an Aboriginal people distinct from Indians and Inuit;
 - descendants of the historic Metis who evolved in what is now Western Canada as a people with a common political will;
 - descendants of those Aboriginal people who have been absorbed by the historic Metis.
2. The Metis community comprises members of the above who share a common cultural identity and political will.

*** Consider these questions for Area Hearings:

Do the Metis of Western Canada form a Nation?

Is the MNC criteria of Metis accurate?

Are the Metis part of the "First Nations"?

Are Metis in fact an Aboriginal people?

Is the description of the Metis Homeland accurate?

DISCUSSION PAPER # 2

BACKGROUND

In 1981 the federal Minister of Justice agreed to include a section in the proposed new Constitution which would recognize the Aboriginal and Treaty rights of the Aboriginal peoples of Canada. He further agreed to include a definition of Aboriginal peoples which would include the Indian, Inuit, and Metis peoples.

However, at the First Ministers' Conference in September 1981, this section was dropped. It was later re-included with the addition of the word "existing". The section now reads:

s. 35(a). The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(b). The aboriginal peoples of Canada includes the Indian, Inuit and Metis peoples of Canada.

This Constitution came into effect on April 17, 1982. It also contained a section providing for a conference on Aboriginal rights to which the representatives of the Aboriginal peoples, were to be invited. That conference was held in March 1983 and resulted in several changes, including: a provision that the Aboriginal rights guaranteed in 35 (a) were guaranteed equally to male and female persons; that modern land claims agreements were treaties for the purposes of s. 35 (a); and before changes can be made to the sections of the Constitution dealing with the Aboriginal peoples, their representatives must be invited to discuss those changes.

That 1983 conference also provided for three more conferences. They were held in 1984, 1985 and 1987 but no agreements were arrived at. Since 1987, the Aboriginal peoples have not been involved in the constitution process.

In June we were finally re-included in this process. These consultations/hearings are part of the new process.

In Saskatchewan, the Metis have been excluded from tripartite talks on Metis self-government since 1987. But these discussions have continued in Manitoba. The Saskatchewan government is reluctant to get involved with the Metis until the federal government accepts responsibility for passing Metis self-government legislation, and financing Metis self-government. But, the federal government takes the position that the Metis are a provincial responsibility.

As you can see, we are in a very difficult position. Hopefully, we can get an agreement soon to restart the tripartite process.

DISCUSSION PAPER # 3

JURISDICTION

The issue of jurisdiction (which level of government - federal or provincial - has the necessary legal/constitutional authority to deal with the Metis) is one of major significance to our people.

The Constitution Act, 1867 by section 91 (24) identifies the federal government as having the power (jurisdiction) to deal with "Indians and lands reserved for the Indians". But, there is no mention of the Inuit or Metis in that 1867 document. The Supreme Court of Canada in 1939 ruled that the Inuit (Eskimos) are Indians for the purposes of s. 91(24). The Indian Act was subsequently amended to exclude Inuit from the definition of Indian in the Indian Act. Inuit are therefore "Constitutional Indians", but not "Indian Act Indians". However, the Supreme Court of Canada has not dealt with whether the Metis are covered by s. 91(24) or not.

The federal government takes the position that the only peoples covered by s. 91(24) are the Status Indians, Inuit and Non-Status Indians. They maintain that the Metis fall under provincial jurisdiction, like every other Canadian resident. All the provinces, except for Alberta, take the position that the Metis are under federal jurisdiction.

As a consequence of this federal position, the Metis are excluded from a number of Native programs offered by national departments, such as the National Native Alcohol and Drug Abuse Program (NNADAP). As seen in discussion paper # 2, Backgrounder, this also affects our ability to re-engage in the tripartite talks on Metis self-government.

Another impact that this has is that by denying that the Metis fall under federal jurisdiction, the federal government is attempting to deny its trust relationship and fiduciary duty to the Metis. The Supreme Court of Canada has ruled that the federal government has a fiduciary duty to Aboriginal peoples because of Aboriginal rights and s. 91 (24).

It is argued by most academics and lawyers that "Indian" in 1867 has the same meaning as "Aboriginal peoples" in 1982.

QUESTIONS: Are the Metis under federal or provincial jurisdiction?

Is this an issue of importance to you?

Are Metis "Constitutional Indians", as opposed to Indian Act Indians?

DISCUSSION PAPER # 4

METIS LAND RIGHTS

In the late 1800's and early 1900's the federal government used what is known as the scrip system to do away with (extinguish) the land rights of the Metis in Saskatchewan. This basically entitled every Metis person to 160 or 240 acres of land in outright ownership. But, it was not protected in any way.

Over 90 percent of these lands fell into the hands of speculators (land dealers). As a result, the Metis were left with no land or resource base. The government argues that we also lost our right to hunt and fish, even for food.

As a consequence of this scrip system, the government now maintains the Metis have no Aboriginal rights. In this sense, the Metis are distinguished from the Indian people, who still have a landbase (Reserves), and still enjoy the right to hunt and fish for food.

The constitutional talks (including national unity) provide an opportunity for a political solution to the land and resource base issue. All Aboriginal peoples should be able to enjoy their inherent (natural) rights to their land. This is something that every people, in every corner of the world claim for themselves.

If we cannot achieve a political solution in the constitutional talks process, and as we are frozen out of the land claims forums, our only other alternative would be to go to court. We have already begun. For example, court action is underway with the Manitoba Metis Federation (under the Manitoba Act 1870 land provisions) and the Green Lake Metis land case in Saskatchewan.

QUESTIONS: Is land important to the Metis?

Was the land scrip process legitimate?

Should land rights be part of the Metis position in this new round of constitutional discussions?

Should the Metis right to hunt and fish be recognized in Canada's Constitution? (Is this solely an issue for northern Saskatchewan Metis?)

Should compensation or other form of settlement for land rights be sought for Metis in urban areas or southern Saskatchewan?

Should we be looking at other alternatives to land ownership, such as co-management of resources?

DISCUSSION PAPER # 5

METIS SELF-GOVERNMENT

In 1984, 1985 and 1987, the issue of Aboriginal self-government was debated extensively at the First Ministers' Conferences on Aboriginal Constitutional Matters. At the 1985 conference, there was agreement by the First Ministers on a self-government amendment which could have gone into the Constitution. However, the Assembly of First Nations and the Inuit Committee on National Issues insisted it was too weak.

These organizations felt that self-government would be only recognized by the Constitution, and it would only be enjoyed or brought to life if there were subsequent self-government agreements negotiated by the provinces, the federal government and the specific Aboriginal peoples. It was therefore contingent on negotiating agreements. The Indian and Inuit people maintain that Aboriginal peoples have an inherent/natural (we are descendants of the original owners of this land) right of self-government which must be recognized in the Constitution. The Metis National Council agreed with this position at the 1987 conference.

In dealing with self-government, we must have land, money, and a system in place to govern ourselves. These are critical issues which must be addressed. We also have to address areas of justice, education, traditional resource use, taxation, financing, child and family services, tourism, and so forth.

Because we live in cities, in small communities in southern or northern areas, it may be necessary to adapt self-government agreements which reflect these peoples' lives, while at the same time maintaining a similar general self-government right. This could be accomplished by areas of self-government which are applicable on a local, regional, Provincial or Metis Nation scope.

- Questions:
- Do you understand self-government?
 - Do you support Metis self-government?
 - Is Metis self-government an inherent right?
 - What areas of jurisdiction should be looked at?
 - Should it be flexible, depending on location?
 - How should Metis self-government be financed?
 - What areas of jurisdiction should the Metis exercise?
 - Should Aboriginal government be a third order of government?

DISCUSSION PAPER # 6

GUARANTEED REPRESENTATION IN PARLIAMENT

During the past 2 years, guaranteed Aboriginal representation in Parliament has received a lot of attention.

When we were still members of the Native Council of Canada, the issue of guaranteed representation was promoted, at least since the mid-1970s. The idea for this came from New Zealand where the Moari people (Indigenous to that country) have been participating in Parliament through guaranteed representation. The Moari have four seats in Parliament, and are elected by their own people, through a separate voters list. The Moari have a choice of either voting in the general election, or their own election. However, they cannot vote in both.

The Royal Commission on Electoral Reform is nearing the end of its mandate. It will be making its report to Parliament this fall. The Commission has received quite a number of submissions dealing with Aboriginal guaranteed representation in Parliament. In addition, Senator Marchand (an Indian from British Columbia) has been actively working to convince the Royal Commission to recommend guaranteed representation. He now has four other Aboriginal Members of Parliament and Senators working with him on this.

In the meantime, New Brunswick and Nova Scotia have made statements with respect to guaranteed Indian representation in their provincial legislatures. In New Brunswick, the Premier suggested an Indian seat with full participation in the legislature, except the right to vote. He is modelling this on the system adopted in the State of Maine in the USA. The difference in Maine is that the Indian people rejected the right to vote.

In Nova Scotia, the Premier is suggesting the creation of one Indian seat, with full privileges, including the right to vote on all matters.

The province of Quebec is considering the creation of a northern Inuit riding, so that the Inuit can represent themselves.

Guaranteed representation can be done through simple legislation, or by constitutional amendment. If it is through simple legislative changes, it cannot go as far as creating special ridings where the population is small, such as Northern Saskatchewan. If it is a constitutional change, then it can reflect whatever is agreed to.

Questions: - Should there be guaranteed representation?
- Should it be a legislative or constitutional change?
- Will this affect Aboriginals?

DISCUSSION PAPER # 7

INTERNAL MODELS OF SELF-GOVERNMENT

While the Metis negotiate the entrenchment of the right of self-government in the Constitution, we (MSS) have been developing our own organizations and infrastructure. In Saskatchewan, we have Locals, Regions and a Provincial Board, known as the Provincial Metis Council. We also have Affiliates which are owned by and are accountable to the Metis within Saskatchewan, through the Metis Society of Saskatchewan.

The Metis within Saskatchewan are also members of the Metis National Council which is the organization that represents the Metis nation.

By this system, we have been exercising a form of self-government. In the absence of constitutional change, we can begin strengthening our own internal forms of self-government. Our basic unit is the Local. We have to examine ways to strengthen the Locals and have them play a greater role, and gain recognition by governments.

In terms of the Affiliates, which enjoy a great degree of autonomy, perhaps there are ways that a more streamlined and coordinated approach can be adopted to move the Metis rights agenda forward. For example, we could have monthly meetings of Affiliate Chairmen, Program Heads and MSS Executive.

We also have to address the issue of the Metis Nation as described in Discussion Paper # 1. Are we going to develop a strong national organization in the Metis Homeland? Should we be looking at some form of Metis Parliament? We don't need constitutional changes or recognition in order to start acting as a Nation of People, with our own Parliament.

Presently, the Metis National Council (MNC) is operating as four provincial organizations. This means that the Nation is not "whole"; it is broken up into provincial units. There are also some parts of the Metis Homeland that are not included in the MNC. This includes the Metis of the Northwest Territories and Northwestern Ontario. The Metis of the Northern United States are also not included, although there has been some discussion about forming an international organization so that all the members of the Metis Homeland will be represented.

Questions: How should the Locals be made stronger?

Should we tie the Affiliates more closely to the provincial body?

Should the MNC be restructured?

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MSS CONSTITUTION PLAN OF ACTION

I. CONTEXT

A. INTERNAL - METIS NATION

In order to be able to move our Metis rights agenda forward we have to organize whatever resources we possess as a people, including our Organizations and communities.

1. MNC

- resources
- staff

* final report by
beginning of January

At the current time, the MNC has been allocated financial resources in order to enable the Metis Nation to fully participate in constitutional developments. This financial resource is being allocated to the member organizations and the national body on an equal basis: each is receiving one-fifth.

The MNC has a number of resource persons available on a consultative basis. Mr. Ron Rivard the Executive Director has been assigned the task of coordinating these resource persons, and the constitutional work generally.

In addition to this, there is a constitution committee composed of one representative/technician from each member organization, along with Mr. Rivard. It is the task of this committee to prepare the national position, based on provincial hearings, along with advising the MNC Executive on constitutional matters.

It is expected that the final report, based on the community consultations by province, will or should be ready by the beginning of January 1992. This deadline is crucial so that the MNC Executive can bring the national position to Mr. Clark, the Premiers and the Special Committee of Parliament and the Senate. The Special Committee is directed to have its report to Parliament by the end of February 1992. If we want to influence the section dealing with Aboriginal rights or Metis rights specifically, we have to have our reports in place.

2. Other provincial organizations

In order to ensure that we develop a cohesive national report or position, we have to work closely with the other member Organizations of the MNC. This can be accomplished through the work of the MNC constitution committee, and through various national meetings.

3. MSS

We can best organize ourselves by adopting a plan of action that will involve all sectors of our people, including our Affiliates. It is important that more emphasis and activity take place at the community and regional levels. It is also critical that we involve our Elders, women and youth.

The MSS will also have to seriously pursue reaching the Saskatchewan public, so that we can have as much support as possible. This is outlined further on in this document.

4. Communities

- Locals
- Areas

As mentioned above, we have to fully involve our people at the grass-roots level. This is best accomplished by involving our Locals and Areas. We must ensure that our people are fully aware of the goals and objectives which we are seeking. In this way, they should be in a position to give their support. It is suggested that information sessions and workshops should be held at the community level as much as possible.

5. Organize

The MSS - PMC can best begin to organize the necessary work by adopting a plan of action, and sticking to it. The next 12 - 16 months are very critical, and constitutional issues should be made a priority.

B. EXTERNAL - Aboriginal organizations and committees.

1. AFN

- need to monitor their hearings for information

The AFN has decided to approach their consultation through the creation of a constitution committee which will be holding hearing across the country. The first hearings began last week. In addition to the hearings, the AFN proposes to hold four constituent assemblies: one each on women, Elders, youth and Urban Indians.

While these hearings do not directly affect our rights, it is considered important that we monitor their hearings and give this information back to the member organizations of the MNC. Because this is a national initiative, it would make sense that the MNC carry out this task. The member Organizations could contribute by monitoring the hearings when they come to their respective provinces.

It must be remembered that the AFN may end up being in a position to kill any amendments to the the constitution as they

relate to Aboriginal peoples. In order to work around this, or prepare for that possibility we should keep track of what the feelings of their people are.

2. NCC

MNC should keep in contact, or at least follow what they are doing.

3. ITC

As with the NCC, the MNC should follow developments by the Inuit.

4. Royal Commission

- how to use it with respect to Constitution

While this does not relate directly to constitutional developments, it is important that we examine how the work of the Royal Commission can be of assistance, or perhaps how it may be used as an excuse not to address certain issues, such as the jurisdiction issue for the Metis.

5. Provincial Indian organizations (FSIN - AMC)

At the provincial level it is important that we attempt to arrive at a working relationship with our provincial Indian counterparts on the constitution. In Saskatchewan, this should be relatively easy as we have a Protocol agreement with the FSIN.

While this would not mean any kind of joint action on the constitution, it would mean that we could potentially agree on a strategy to win the support of the Saskatchewan public and/or the Saskatchewan government.

C. EXTERNAL - Governments

1. Federal government

- government (Joe Clark)
- Special Committee

As noted above, it is important that we sell our national position to the government and the Special committee. Clearly, Mr. Clark will continue to play a key role in trying to influence the Premiers and the federal government to adopt certain positions. It is also certain that he will seek to influence the Special Committee. It is in our best interests that we influence the government, through Mr. Clark. (We have been informed by the MNC that Mr. Clark would like to meet with the MNC at least every 3 weeks.)

- 4 -

The Special Committee, which is made up of 20 Members of Parliament and 10 Senators, is currently holding hearings across Canada. It has adopted the practice of holding a hearing in the capital of the province, then sending out smaller teams to various parts of the province. By taking this approach they hope to reach as many people as possible. We have to take advantage of this. In order to make an impact on the Committee we will have to hold workshops to prepare our people for appearances before that Committee. The more Metis people the Committee hears from, the greater will their impression be that the Metis indeed want our rights entrenched in the Constitution.

2. NDP threesome (Ont., B.C., Sask) & Yukon
- ASAP

It is important that the MNC, and its member Organizations begin forming relationships with the NDP Premiers. With the recent elections in B.C. and Saskatchewan, the NDP form governments that represent slightly more than 50% of the Canadian population. Those three governments will definitely have a major role to play in future changes to the Constitution.

It must also be remembered that Premier Rae of Ontario has already gone on record as supporting the inherent right of Aboriginal self-government.

While we do not have membership in Ontario, the MNC and/or MSS must meet with Premier Rae as quickly as possible, and retain a liaison with that government.

3. Quebec
- Quebec Commission

Quebec will play a key role in further progress on the Constitution. The MNC and/or MSS must monitor what is happening with the work of the Quebec Commission. In fact, the MNC and/or MSS should seek to appear before that Commission.

In addition, the MNC and/or MSS should seek a meeting with Premier Bourassa or Minister of Inter-governmental Affairs, Mr. Remmiard. An on-going working relationship should be struck with the Quebec government.

4. Provincial committees
- organize support before each hearing.

Where there are provincial committees holding hearings, MNC and/or MSS should ensure that our people are prepared to make appearances at those hearings.

In Saskatchewan, the Task Force on Saskatchewan's Place in Confederation is currently writing its report. While we did not take full advantage of it, perhaps there are ways that we could still influence its outcome. If not, perhaps we can get the new provincial government to set it aside, as it does not truly represent the real views of the people of Saskatchewan.

D. EXTERNAL - Non-Aboriginal Organizations

1. Political parties
 - federal level
 - provincial level

As political parties either form the governments, or act in opposition, it is in our best interests to educate and lobby those parties. At the federal level, it would be useful to engage in such an exercise with the Liberals and the NDP.

Provincially, we should be meeting with Ms. Haverstock of the Liberals as she is a new voice in the legislature, as well as being in a position where she meets with the federal leader on a monthly basis. Ms. Haverstock had already committed herself to taking our issues forward to the the federal leader on our behalf.

2. Equality groups
 - Vision (coalition of organizations)
 - COPOH/CDRC (umbrella groups for the disabled)
 - NAC (Womens' organization)
 - Franksaskois (French organization in Saskatchewan)
3. Unions / Environmental groups / churches
4. Public
 - support decreasing?
 - split between recognition of rights for Indians and Metis
 - more support for land claims

It appears from the hearings of the provincial Task Force that the public support within Saskatchewan for Aboriginal peoples' rights has been decreasing. It is anticipated that tough economic times may be a contributing factor for this decrease in support. As well, it appears that while many people still support Treaty Indian rights, they do not necessarily support Metis rights. Apparently, many of those people feel that the Metis don't have rights, and should be no different than the rest of the Saskatchewan citizens. However, they feel obligated to the Indian peoples because of the Treaty agreements.

II. GOALS

A. Final entrenchment

1. Self-government
 - define
 - on and off a landbase
2. Landbase
 - in relation to self-government

B. Interim goals

1. Programs and services
 - provincial opportunity

C. Provincial activity

III. MEDIA

1. Northern and Aboriginal
2. National media
3. Provincial media

IV. INFORMATION

1. Pamphlets
2. Statement of Principles
 - simple language
 - short
 - eloquent

*** See attachment A for draft Statement of Principles.

3. Core / thread
 - affects daily lives of Metis people

In order to make Metis at the grassroots comfortable or supportive of our initiatives, we have to show that it affects their daily lives. This is also true for those Non-Aboriginal peoples who do not believe that the Metis have or should have any

recognized rights.

This has to be a common theme which runs through our message.

4. history

- full discussion of past, present and future (to tie together rights of Metis based on Aboriginalness, as a member Nation of the "Original Nations")

V. ACTION

A. Offensive

1. Positive messages

- our children
- history
- diversity

(target at least 7 provinces - 3 NDP & 4 Maritime Provs)

In our reaching out, we have to put forward a positive message. That we are not doing this out of personal or self-interest, but that it is for our children, and their children: that its for future generations.

We have to draw upon our history. That we enjoyed our rights, until they were stripped from us, etc.

We also have to remind people that Canada is better off as a country of diversity, that we can't be a melting-pot country like the United States.

B. Defensive

1. 3 NDP

2. Response to provincial initiatives.

Where necessary, we will have to go on the defensive. If provincial reports, or other reports are negative to our people's rights, we will have to try to counter them. This includes the Saskatchewan Task Force as mentioned above.

In this connection, we can perhaps draw on the three

will agree to certain changes. Access our rights are also accommodated.

VI. SUBSTANCE

We have to fully analyse the federal proposals, as well as give some meaning or substance to the rights we are seeking so that we can be comfortable in explaining what it is that we mean by landbase or self-government, etc.

VII. PROCESS

We have to set in place a plan of action and a process to carry it out. We also have to make a firm commitment that this will be made a priority.

RECOMMENDATION ON PROCESS:

That the current MSS Commission on the Canadian Constitution be disbanded after the Final Report is presented to the Provincial Metis Council and the Metis National Council.

It is proposed that a five person Metis Constitution Committee be established. This Committee would consist of the three Executive and one appointment each by the Metis Elders Council and the Provincial Metis Women's Committee. The Committee would meet once a month to oversee the work of the resource/technical people who will be engaged on an as needed basis, under the direction of a constitutional coordinator.

The emphasis of the work will be at the Local and Area Levels, fully involving the Area Directors in their respective regions.

Handwritten calculations:

$$\begin{array}{r} 11705 \\ \underline{124} \\ 46820 \\ \underline{13410} \\ 180920 \end{array}$$

$$\begin{array}{r} 260 \\ \underline{43} \\ 1303 \\ \underline{1040} \\ 11705 \end{array}$$

$$\begin{array}{r} 260 \\ \underline{16} \\ 2080 \\ \underline{16} \\ 48 \end{array}$$

DRAFT

METIS SOCIETY OF SASKATCHEWAN

Statement of Principles

The following principles capture the essence of our people's inherent rights as members of the Metis Nation, one of the many Original Nations within North America.

1. The right to a landbase.
 2. The right to self-government.
 3. The right to determine our membership.
 4. The right to represent ourselves.
 5. The right to our culture, language and heritage.
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