

FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

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METIS NATIONAL COUNCIL

Ottawa
March 15-16, 1983

METIS NATIONAL COUNCIL

OPENING ADDRESS TO THE FIRST MINISTERS' CONFERENCE
ON THE RIGHTS OF THE ABORIGINAL PEOPLES

Ottawa, Canada

March 15 and 16, 1983

OPENING ADDRESS

The purpose of our participation in this Conference is to entrench in the Constitution the right of Metis People to a land base and self-government. We believe the realization of these rights is essential to the preservation and development of our aboriginal nationality within the Canadian Federation. We believe we must have these rights entrenched in the Canadian Constitution to fulfill our Metis destiny.

Children of the fur trade, the Metis emerged as a distinct national community in Rupertsland toward the end of the eighteenth century. Our ancestors played a major role in the fur trade economy. They developed a unique aboriginal culture and identity, a new Nation on the soil of the New World. They formed a political consciousness, Metis Nationalism, and expressed this nationalism whenever their collective rights were threatened.

At the time of the Hudson's Bay Company's transfer of Rupertsland to Canada, the Metis already had a land base and self-government. The decision by Riel and his followers to resist the transfer resulted from government agents ignoring the rights of the Metis settlers. When guarantees for the rights to land and self-government were not forthcoming, the Metis acted to safeguard their rights.

Riel's goal in taking control of the Red River and setting up a Provisional Government in 1869 was to firmly establish the rights of the Metis to land and self-government before the actual transfer took effect. The Provisional Government negotiated the entry of Manitoba into Confederation as a province. However, they did not obtain control over the land and resources. When the negotiations resulted in the passing of the Manitoba Act, the Metis believed they had a deal which gave them what they wanted, land and self-government. The Canadian Government, however, had something else in mind. The provisions for the land were exercised in such a manner that in ten years the Metis of the Red River were almost completely dispossessed.

Displaced from the province they had created, the Metis moved west and north settling at Batoche, St. Paul, St. Albert, Battleford, Cypress Hills and in other communities. From their new homes the Metis began to petition for the recognition of their land rights and they began to exercise local government functions over their affairs.

As settlement began to crowd in on the Metis again, they again began to fear for land, for the preservation of their culture and for their right to be self-determining peoples. For twelve years the government had turned a deaf ear to their petitions. In 1884, they again acted in their own defense. The decision made was to bring back Riel to lead them in their fight to have their land and other rights constitutionally recognized. It is not necessary to repeat the story of what happened since it is one of the better-known events in Canadian history. The death and martyrdom of Riel has been a symbol to our people of the injustice they have suffered. Others, who stood up for their rights in Canada, such as Howe, MacKenzie and Papineau, became heroes and influential leaders. Riel was instead branded a traitor.

Even though the government promised to satisfy the Metis land claims in the Northwest, the events of Manitoba were to be repeated. Only a few of our people remained in the possession of their land. The rest were left in abject poverty and despair, dispersed to isolated rural and northern communities, or to the slums of the new towns and cities. Their reward for daring to stand up and fight for their rights has been discrimination in education and training, in employment, in job pay and in the receipt of health and social services. They suffered many problems and acquired an image as a rejected people.

In 1980, when the Government of Canada began to seriously consider steps to patriate the Canadian Constitution, we lobbied long and hard to ensure that the rights of the Metis would be entrenched in the Constitution. We were successful in having the Metis recognized in the Constitution

as one of the Aboriginal Peoples, with a promise that new rights could be negotiated in the future under provisions of Section 37.

We find it a contradiction that the Government of Canada is once again attempting to deny that it has any legal responsibility for the Metis. In particular, we find it difficult to understand why the government would make such a statement at one of the meetings preparatory to this Conference. We had made it clear to the government in 1980 that we were looking for and prepared to negotiate a political settlement. Is the government going to suppress our rights again?

After 100 years we have one more chance to negotiate for our rights. Our main priorities are still land and self-government, as they were 100 years ago. We expect these constitutional discussions to continue until these rights are resolved. The Metis National Council, as the sole and legitimate representative of the Metis in the Prairie Provinces, is here to fulfill the historic mission of the Metis Nation, to secure a place we can call our own.

FEDERAL-PROVINCIAL MEETING OF OFFICIALS
ON ABORIGINAL MATTERS

REVISED CHARTER OF RIGHTS OF THE METIS

The Constitutional Committee of the
Metis National Council

March 8, 1983

METIS NATIONAL COUNCIL

THE RIGHTS OF THE METIS PEOPLES TO BE ENTRENCHED INTO THE CANADA ACT,
1982, UNDER PART II.

- 35.3 NOTWITHSTANDING anything in this Act, the Collective Rights and Freedoms of the Metis Peoples of Canada are guaranteed and shall include the Right to:
- a) Metis lands, waters and resources base, which is owned and controlled by the Collective;
 - b) hunt, fish, trap and gather on Metis, Crown and other lands to which they have right of access;
 - c) self-government, which shall have jurisdiction over political, cultural, economic and social affairs and institutions deemed necessary to their survival and development as a distinct people;
 - d) representation in Parliament and legislative assemblies;
 - e) fair and equitable compensation for Rights that have been infringed;
 - f) adequate fiscal arrangements to fulfill these Rights.
- 35.4 Details regarding these Rights shall be spelled out in a schedule to the Canada Act, 1982.
- 35.5. Every individual member of each Collective is equally entitled to the Rights and Benefits which are guaranteed to that Collective, without discrimination on the basis of religion, sex, age, marital status, or mental or physical disability.
- 35.6 There shall be provided by legislation adequate measures for enforcement of the fulfillment of the Rights identified in this Act, including:

- i) a Metis Rights Commission whose role it will be to monitor and report on progresses in fulfilling the above provisions to the appropriate legislative body;
- ii) a Metis Peoples Court, a Court of Law and Equity, which shall be the Court of final jurisdiction in regard to Metis Rights.

PART IV

37.1 Any Amendments to the Constitution of Canada shall only be made as provided for in this Act, after the Prime Minister of Canada convenes a Constitutional Conference composed of the Prime Minister and the First Ministers of the Provinces and to which he shall invite the representatives of the Aboriginal Peoples to participate in the discussions on such proposed Amendments.

37.2 Such Conferences shall be called once every year for the first five(5) years; and thereafter, every five(5) years as requested by the Aboriginal Peoples.

PART V

38.5 Resolutions of dissent will not apply to Rights provided for under Section 35 of this Act, which will be binding on all Provinces.

METIS NATIONAL COUNCIL

STATEMENT OF PRINCIPLES

Amendments to be Entrenched in the Constitution

PART III

PREAMBLE

35(3) WHEREAS the Metis of Canada, as descendents of Indigenous Peoples of Canada, have an inherent right to a homeland within the Canadian nation with their own national and cultural identities and institutions; and

WHEREAS the Governments of Canada and the people of Canada are desirous of ensuring that the Metis are included as equal partners in the Canadian Federation as full participants in the development of Canada.

THEREFORE, the Metis and the Governments of Canada agree to jointly take such steps as are necessary during the next five (5) years toward the realization of the following principles, which may take the form of a Charter of Rights, spelled out in a separate schedule, for each of the Aboriginal Peoples named in this Act. Such rights shall apply to each of the Aboriginal Peoples regardless of their province or territory of residence.

STATEMENT OF
ENTRENCHED PRINCIPLES

35(4) NOTWITHSTANDING anything in this Act, the Governments of Canada and the Metis are committed to the following principles:

- i) providing the Metis with a land base which they will own and control;
- ii) self-government as the Metis deem necessary for their survival and development as a distinct People;

- iii) the practice of Aboriginal usages, traditions and languages;
- iv) representation in Parliament and legislatures;
- v) that all members of the Metis shall have equal access to the rights and benefits guaranteed to the Metis;
- vi) the recognition of traditional rights to hunt, fish, trap and gather;
- vii) fair and equitable compensation for infringed rights;
- viii) the development of mechanisms for the implementation and enforcement of the provisions of each Charter and to ensure the effective realization of their provisions;
- ix) the development of fiscal arrangements to ensure adequate funding for the realization of these principles.

PROCESS MECHANISMS 35(5) To achieve these principles the Governments of Canada and the Metis agree to the immediate convening of such committees, task forces and work groups as are necessary to achieve the above.

PART V

FOLLOW-UP CONFERENCES AND CONSULTATION

37(4) The convening of a First Ministers' Constitutional Conference provided for in Sub-Section (1-3) above, once every March for the next five (5) years, beginning in 1984 and up to and including 1988, to hear progress reports from the committees, task forces and work groups to be established in accordance with 35(5), to agree on specific constitutional provisions for entrenchment in this Act, and/or to consider proposed amendments to rights guaranteed under Sections 25 and 35(1) of this Act;

- AMENDING PROCEDURE 37(5) Agreed amendments will be made in accordance with amending procedures outlined in Section 38(1-2) of this Act;
- CONSULTATION AND CONSENT 37(6) On the completion of processes under Section 37, to entrench the rights of Aboriginal Peoples, any proposed future amendments to the provisions in the Constitution of Canada pertaining to the rights of the Aboriginal Peoples, will be brought before a First Ministers' Conference as convened in the same manner as provided for in Section 37(1-3) of this Act, before any such amendments are entrenched in this Act. Such a First Ministers' Conference may be called by the Prime Minister of Canada at his discretion, but must be called within one (1) year of a formal request made in writing by one (1) or more of the Aboriginal Peoples named in this Act.

PART VII

Section 54 of this Act is repealed and is replaced by the following:

"Part IV, Section 37, of this Act, shall remain in force for the purposes and in the manner provided for in this Act."

METIS LAND BASE

I. Rationale

- a) The Metis had a traditional relationship to the land in the prairies as early as the 1700's. They shared it with the Indians. They lived on it, they made their living from it, they settled, built homes and carried on agriculture, they being the first permanent settlers of Western Canada.
- b) They fought for and helped defend their territory on a number of occasions. (in Red River, in the Northwest - against American Fenians).
- c) They had a system of land tenure and laws.
- d) Their land rights were recognized in the Manitoba Act of 1870.
- e) Their land rights were recognized in the Dominion Lands Act of 1879 and in the Metis Betterment Act of 1938.
- f) Their land rights were recognized in Orders-In- Council which were intended to implement the land grant provisions of the above Acts.
- g) They had local government structures on their land. (examples: Laws of St. Laurent, Laws of St. Albert, Laws of the Prairie, etc.)
- h) Because the Metis were dispossessed, they are landless and are not able to maintain their land claims by virtue of traditional use and occupancy.
- i) Metis people require a land base if they are to survive as as aboriginal people.
- j) Under International Convention the Governments of Canada must provide this land base in keeping with their commitments under the International Covenant on Civil and Political Rights.

II. Precedents and Experience

The principle of a Metis land base is a key element of self government. This has been recognized in the case of the Aborigines of New Zealand and Australia. For example, Maori

tribal councils are responsible for their members who live on and off the tribal land. Those individuals living off the land base can still exercise the rights they possess as a result of belonging to that tribal council. They can vote, share in tribal benefits and are eligible to receive tribal services in the areas where they live.

The experiences of our people with individual land grants in Manitoba and the Northwest Territories demonstrated that these do not ensure the development of the land for the benefit of those to whom land was allotted. Also, contemporary individual land tenure programs have failed to produce a land base for the Metis. Such individual land grants do not make it possible to identify the lands as aboriginal lands over which the Metis collective has jurisdiction and over which it can develop and exercise self-governing structures.

Although the exact size of the land base will vary with local needs, the land base must be sufficient to guarantee our economic, social and cultural development. The land base in the northern areas of our provinces will likely be much larger than the land base in the southern-developed areas of the provinces. In those areas where only a limited land base can be obtained, other benefits of an equivalent value to the land must be provided. The nature of such equivalent benefits must be negotiated. We accept that it may be necessary to share some aspects of land management such as conservation policies.

III. Principles applying to Metis land base

- a) Metis people have the right to ownership of land and its resources, including surface and sub-surface rights.
- b) The aforementioned lands and resources will be owned collectively and can only be disposed of with the consent of the collective.
- c) The lands and resources, including surface and sub-surface rights, are exempt from taxation from any federal, provincial or municipal government.
- d) The right of Metis local government to raise and collect taxes on community-owned lands and resources.

METIS NATIONAL COUNCIL

METIS SELF-GOVERNMENT

I. Statement of Principles

- A. Constitutional self-government would confirm that Metis People historically governed themselves and still have the right to do so.
- B. Historically, the Metis wanted provincial status in confederation to provide them with political autonomy and guaranteed representation in Parliament.
- C. Today, the Metis still seek political autonomy and guaranteed participation in the larger political system.
- D. Since today the Metis cannot obtain this political autonomy through the exercise of provincial powers, they need their own self-government structures.
- E. Self-government rights would apply both on and off the Metis land base.
- F. Metis self-government, to be guaranteed as a right, must be provided for in the Constitution.
- G. We want self-government in the Constitution so that legislative provisions cannot be changed unilaterally by legislators.
- II. Metis government will be a representative, democratically elected government, accountable to its own electors.

- I. The Metis want as much self-government as is necessary to maintain their political and cultural survival as a distinct people.
- J. The Metis want the right to adequate fiscal arrangements with the federal and provincial governments to ensure the viability of Metis self-government.

These principles will need to be spelled out in more detail in a Metis schedule to the Constitution, in legislation and agreements with governments. The details of governing structures will vary, depending on needs, current circumstances and historical precedents in each of the prairie provinces.

METIS NATIONAL COUNCIL

Position Paper Re: Economic Development

1. Introduction:

The effect on the Metis people of the loss of their rights and of their access to land and resources is most evident in the low-income levels of our people and their lack of access to employment opportunities. The government's solutions to these problems has been some minimal job training programs, some special Native employment services, and an economic funding program called Special ARDA. Final control over all of these programs rests with governments and their bureaucracies. They have allowed only minimal Native participation in the decision-making and implementation processes. In addition, these programs are generally bound up in a good deal of "red tape" and are limited either in scope or in their geographic application. This, coupled with inadequate financing, results in these programs having a minimal impact on the employment problems of our people.

2. Metis Goal:

For Metis to survive as a people and for Metis self-government to be a success, the Metis must also have their own economic institutions. We cannot always depend on the government or someone else to provide our employment for us. Our people need viable options for em-

ployment and viable opportunities to create their own economic opportunities for themselves. In addition, if we are to gain a greater degree of independence from the current welfare systems and a greater degree of self-determination over our own lives, we must have our own economic institutions.

3. Land, Resources and Economic Development:

The primary institutions of economic development should be tied to our land base and our access to resources or resource revenues. If the land is selected with the goal of economic development in mind, it could offer the following possibilities:

- a) both traditional and extensive agriculture in southern lands suitable for this purpose;
- b) primary and secondary manufacturing in agricultural products (food processing, industrial products such as oil, etc.);
- c) primary harvesting of resources such as timber, fish, game, etc.;
- d) secondary manufacturing based on these products (lumber, filleting, tanning, etc.);
- e) the development of tourism industry (guiding, accommodation, food service, recreation leases, etc.);

- f) the development of service industries in our communities and to serve the above economic initiatives;
- g) mining and processing where minerals are available or where oil and gas deposits are present.

4. Development Off Land Base:

In addition, there is a need for economic development initiatives for Metis people not living on the land base but connected to it through their political organizations. These opportunities could include:

- a) processing and manufacturing of above in urban areas;
- b) marketing and retailing of products;
- c) equity positions and job allocations in key industries outside of Metis lands (mining, oil industry, construction, maintenance and services, etc.);
- d) the development of support institutions and services such as Education and Training, certain social, health and recreation services, housing, etc.);

- e) participation by equity and job allocation in high technical industries, etc..

5. Financial Arrangements:

At present financing for such economic development is controlled by governments. To make the development meaningful for us and to give our people the independence they need, the following are necessary:

- a) access to a pool of capital funds which can be used to finance all aspects of projects, including training, planning and development, fixed capital, bridge financing and operating capital costs;
- b) access to funds to buy equity positions in certain key projects or an agreement that we will automatically gain a certain percentage of equity in such projects;
- c) investment funds to invest in infrastructure, housing, etc.
- d) access to a technical and professional resource pool to assist us in research, planning, development, implementation and management of all aspects of projects.

The financing for such economic development could be provided as follows:

- a) a trust fund set up as part of an agreed settlement of outstanding land claims;
- b) a negotiated economic development program through which governments annually provide or earmark a fixed amount of money to be released for capital expenditures for specific projects as directed by a Metis development board or corporation;
- c) a fund built up from a percentage of resource royalties earmarked for Metis people;
- d) borrowing provisions guaranteed by the government;
- e) development of Metis financial institutions such as banks, trust companies, credit unions, etc., which would accumulate some of their own investment funds.

There is no reason why combinations of all of the above could not be used. This would give greater flexibility to the system and enable us to gain a greater degree of independency from direct government funding. The principles for the use of economic development funding are as follows:

- a) the economic and financial institutions will

be under the control and direction of the Metis people;

- b) the decisions as to which projects will be developed and funded will be under the control of the Metis people;
- c) where joint projects or equity positions are being taken in government or private projects, decisions will be arrived at jointly;
- d) economic, training and service priorities will be established by Metis people;
- e) governments will assist by providing technical and professional resource expertise as requested and where appropriate.

Position Paper on Services:

Our people have for many years complained about the services they receive from existing government and non-government agencies. The reasons for these complaints are varied and include the following:

- a) persons providing services have biases and some are prejudiced against Metis people;
- b) the services themselves have biases toward the middle-class needs and values of non-aboriginal people and are, therefore, not geared to the problems or service needs of Metis people;
- c) services are often provided by persons who are unfamiliar with the history, values and feelings of Metis people and, therefore, are insensitive to our people and our people's goals;
- d) persons delivering services and the policy framework within which the services are delivered are extremely paternalistic and have created unhealthy dependency, leading to a whole range of endemic social problems among Metis people and in Metis families;
- e) services are often provided at centres that are not easily accessible to Metis people;
- f) Metis people living in isolated areas often receive few, if any, services;
- g) the costs associated with certain services prevent our people from using these services;
- h) certain facilities such as social-recreational facilities are inadequate to serve the total population and, thus, are not available to our people;

- i) services are provided in fragmented and unco-ordinated ways. Our people need wholistic services which deal with them and their problems in a wholistic way;
- j) some of the kinds of services needed by our people are not available; or if available, are provided in ways which re-inforce rather than resolve problems;
- k) funds which have been earmarked for Aboriginal peoples services, in a number of situations, have been under-utilized, misused, or not used at all because of a lack of planning or realistic programming to respond to Aboriginal needs;
- l) in other situations, funds have been diverted to other uses; or a significant proportion of the funds have been used to support government bureaucrats and consultants, and other expenses from which our people get no direct benefit.

Other reasons for the ineffectiveness of services to our people could also be cited. Various attempts have been made in an effort to correct or overcome these problems. One important initiative has been the provision of services by Aboriginal groups or organizations. Some of these have experienced some success. However, there continues to be a number of problems which mean that results are not what we would desire. These include:

- a) excess control over the use of finances and the kinds of programs which can be offered. The organizations become responsible to government rather than to their own people;
- b) the dictation of policy by funding bodies, which only serve to re-inforce dependency;
- c) a continuation of fragmented services;
- d) no preparation or training of Metis persons to carry out the many duties and responsibilities required in service delivery;

- e) funding levels which are not realistic in relation to the scope and depth of Metis service needs.

Our people have reached the conclusion that the only way they can get control over their lives and resolve their problems is if they have the right to exercise a degree of self-government sufficient to enable them to achieve their objectives. We spend too much of our time and resources begging for resources and in fighting against the unreasonable controls imposed by various bureaucratic government bodies. If our efforts at overcoming these problems and at our own self-development are to be successful, we must be able to exercise control over the implementation of our services as a right. We must also have access to service resources as a right, and be able to decide on the priorities to which we will apply these resources.

Finally, services have been the main tool used by governments in their efforts to assimilate our people. The strategy is to re-educate our people to the non-aboriginal values and forms, and to eliminate the "aboriginal problem" by assimilation policies.

Our survival as a people with our own history and culture is threatened, unless we can integrate service-planning and delivery as part of an overall thrust toward a greater degree of Metis self-government.

Position Paper on Fiscal Arrangements:

The general public tend to view Aboriginal people as a continuing burden to the taxpayer, who refuse to take any responsibility to finance their own needs and who always want more without giving anything in return.

It is true that Indians do not pay municipal taxes on their reserve lands, but it is also true that they get no municipal services from local governments. It is also true that Indians have a special arrangement with the Government of Canada, confirmed by the Courts, which exempt them from paying taxes on income earned on the reserve. It is true that other Aboriginal groups are requesting Aboriginal lands which would be exempt from taxes imposed by another level of government.

The existing Aboriginal lands, plus any additional Aboriginal lands which may be made available, are or will be the homelands of the Aboriginal peoples. They do or would exercise self-government on their lands. Other levels of government would not or do not provide their local services. It is therefore only right, in keeping with Canadian Constitutional principles, that they would not pay taxes to another jurisdiction but that they would have the right to levy taxes on their own lands to meet their own needs.

Since Aboriginal lands would be owned in Fee Simple Title by the Collective, which would include the surface and sub-surface resources, again in keeping with Constitutional principles, Aboriginal people would be able to develop and tax what is within their jurisdiction for their own purposes and needs.

It is, however, not true that Aboriginal people do not pay taxes. They are all subject to the same direct and indirect sales taxes paid by other Canadians. They are subject to tariffs, excise taxes, road tax, licenses fees, plus all the other taxes levied by the Federal and Provincial governments. Aboriginal people, including those Indians

earning their income outside of reserve lands, are subject to Income and corporation tax. Taxes are also paid for C.P.P. and U.I.C. Benefits.

Given this state of affairs and the likelihood that present tax arrangements may not be changed, provisions must be made for fiscal transfers to Aboriginal governments to support their own institutions and to enable them to deliver their own services. Since they are being taxed, they should be able to benefit from the payment of these taxes on the basis of equality with other Canadians.

There are a variety of ways in which fiscal arrangements could be made to channel tax money to Metis governments. These include:

- a) Metis governments could be eligible for those special and general grants or tax transfers that go to all other local governments;
- b) funding could be provided for in specific agreements covering the implementation of agreed services to be delivered by Metis governments;
- c) funds could be provided on a per capita basis to pay for services and/or for specific political (self-government), social, cultural, and economic purposes;
- d) equalization payments could be made to take into consideration the level of development of Metis peoples and the degree of social poverty suffered by them;
- e) specific tax points could be earmarked for or turned over to Metis governments for general purposes.

It is likely that different fiscal arrangements will be necessary for different groups of Aboriginal peoples and to deal with their varying circumstances, in most cases combinations of the above fiscal models will likely be necessary. Whatever form these arrangements take, they must provide for a maximum degree of flexibility, a maximum degree of Aboriginal self-determination and must be channelled in ways which make Aboriginal politicians responsible to their

own people (electors) for the use of these resources.

Also, resource levels must recognize the differences in economic, social, health and demographic needs and circumstances of Aboriginal peoples as compared to the general public. In the past and at present, resource levels were and are often so meager so as to make little impact on the problems of our people. The services are often not even sufficient to cope with new problems as they arise, let alone enable our people to address long-standing problems and needs. We need a level of resources sufficient to enable us to catch up. Otherwise our current poverty in services, incomes, education and cultural development will merely become institutionalized and we will forever remain as second class citizens.