

**Evaluation of the Federal Interlocutor's Contribution Program
and *Powley*: Management of Métis Aboriginal Rights**

Final Report

**Evaluation, Performance Measurement and Review Branch
Audit and Evaluation Sector
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1. Introduction

This report has been prepared to fulfill a Treasury Board requirement to complete a summative evaluation of the Federal Interlocutor's Contribution Program, including the *Powley* Initiative.

1.1 Program Description

1.1.1 *The Office of the Federal Interlocutor*

The role of the Federal Interlocutor for Métis and Non-Status Indians is to help further the efforts of Métis, non-status Indians and urban Aboriginal people in order to help them realize their full potential economically, socially and politically in Canadian society. The Office of the Federal Interlocutor (OFI) administers three programs. These, together with their allocated budgets for 2007/08, are: Federal Interlocutor's Contribution Program (\$7.2 million) which also includes the *Powley* Initiative (\$12.1 million); Urban Aboriginal Strategy (UAS) (\$13.7 million); and Basic Organizational Capacity, which includes Aboriginal Representative Organizations Program (AROP) (\$4.7 million); and National Aboriginal Women's programs (\$200,000). The OFI is housed within Indian and Northern Affairs Canada (INAC) after moving from the Privy Council Office in 2004.

The Federal Interlocutor's Contribution Program, including the *Powley* Initiative, is being assessed in this evaluation.

1.1.2 *The Powley Initiative*

Since 2003, the role of the Federal Interlocutor has included the provision of leadership in the Government of Canada's response to the Supreme Court of Canada's decision in the *R.v. Powley*, which, for the first time, affirmed a constitutionally protected Métis Aboriginal right (to harvest) in Sault Ste. Marie, Ontario and brought forward a test for the potential of finding other Métis Aboriginal rights bearing communities elsewhere in Canada.

The primary objective of the *Powley* Initiative is to advance whole-of-government management of Métis Aboriginal rights assertions and to better position the Government of Canada over the long-term to manage these issues. The *Powley* Initiative has three key areas of activities:

- To lead a whole-of-government approach to Métis harvesting rights/issues in concert with other federal departments and agencies, including the Department of Justice (DOJ), Environment Canada (EC)/Canadian Wildlife Service (CWS), Royal Canadian Mounted Police (RCMP), Parks Canada Agency (PCA), and the Department of Fisheries and Oceans (DFO).
- To support the MNC and its governing members and CAP and its affiliates in Quebec, Ontario and Labrador in developing harvester and membership registries, conducting

harvest-related research, and communicating with their members about Métis harvesting rights and conservation issues.

- To engage provincial governments in management of Métis Aboriginal rights by developing consistent and cooperative approaches to the management of Métis rights. Activities include developing, where possible, common harvesting regimes, enforcement, joint research, and coordinated information-sharing.

An “Interim Response to the Powley Decision” was funded in 2004, “A Strategic Approach” was funded from 2005-2007, and “Beyond Powley–Management of Métis Aboriginal Rights” for 2007-2008.

2007/08 Budget for the <i>Powley</i> Initiative	
Total Budget:	\$12.1 million
Contribution Budget:	\$ 8.0 million
O&M & Salaries:	\$ 4.1 million
The vehicle for the support to Métis organizations was the Federal Interlocutor Contribution Program Authority. Eleven Aboriginal organizations received funding from 2004 to 2007/08.	

1.1.3 The Federal Interlocutor’s Contribution Program

The objectives of the Program are to build and maintain a relationship based on trust and respect between Métis, non-status Indian, and urban Aboriginal people and the Government of Canada through their representative organizations and be a point of contact with and advance their issues within the federal government. The expected outcome of the Program is to improve Métis, non-status Indian and urban Aboriginal peoples’ socio-economic conditions through practical socio-economic measures and cultivation of organizational capacity within a relationship based upon mutual respect. The Program has existed since 1985 and was last renewed in July 2003 for five years. The Contribution Program has four components: Bilateral Relationships, Tripartite Self-Government Negotiations, Building Capacity and Recognizing Métis Contribution to Canada.

2007/08 Budget for the Federal Interlocutor’s Contribution Program	
Total Budget:	\$7.2 million
Contribution Budget:	\$5.5 million
<i>Bilateral relationships</i>	\$.85 million
<i>Tripartite Negotiation Processes</i>	\$1.70 million
<i>Building Capacity</i>	\$2.65 million
<i>Métis Contributions</i>	\$.30 million
O&M & Salaries:	\$1.7 million

Bilateral Relationships

Bilateral processes provide a forum where the Congress of Aboriginal Peoples (CAP) and the Métis National Council (MNC) can meet federal Ministers and officials to discuss priority issues with respect to the people they represent, help to inform federal policies, raise political awareness of the concerns and interests of Métis and non-status Indians, and support links with a broad range of other activities, such as the federal-provincial-territorial-Aboriginal discussions.

Funding levels fluctuated in the period examined, from a low of \$710,000 in 2003/04 to a high mark of \$1.2 million for 2006/07. For the 2007/08 period, all funding that had been intended for the MNC will cease until the organization has elected a president.

Tripartite Self-Government Negotiation Processes

Tripartite negotiation processes enable provincial, regional and urban Métis and other off-reserve Aboriginal organizations to engage with provincial and federal governments to build partnerships and to participate in negotiations of practical measures to strengthen organizational governance capacity, support their service delivery institutions, and discuss improved access to federal and provincial program and services.

Total funds allocated for the tripartite process ranged from a low of \$1.7 million in 2006/07 to a high of \$2.25 million in 2004/05. All funds provided by OFI were matched by funding from the provinces. For each tripartite table, OFI officials, provincial government officials, and representatives of the respective Aboriginal organizations participate in quarterly meetings of the joint management committee to discuss work plans and priorities.

The OFI has consistently supported seven tripartite processes. In most cases tripartite funding provided only a part of total funding for the recipient organizations. In some cases, tripartite funding was the only funding an organization received. The following organizations received tripartite funding for a least one year in the period 2003/04 to 2007/08.

- In Manitoba: the Aboriginal Council of Winnipeg and the Manitoba Métis Federation
- In Alberta: the Métis Nation of Alberta and the Métis Settlements General Council
- In British Columbia: the Métis Nation of BC, the Métis Commission for Child and Family Services, and the United Native Nations
- In Saskatchewan: the Métis Nation of Saskatchewan and the Gabriel Dumont Institute
- In Ontario: the Métis Nation of Ontario and the Ontario Métis Aboriginal Association
- In the Maritimes: the Native Council of PEI and the Native Council of Nova Scotia

Building Capacity

The Federal Interlocutor provides funding support to Métis, non-status Indian and off-reserve Aboriginal organizations for building capacity and electoral and financial accountability. These activities help these organizations better represent their constituents; become more accountable; develop partnerships; and develop and train their personnel. The OFI funded eighty organizations for capacity-building in the 2003 to 2007 period. Annual amounts allocated ranged from \$5,000 to \$1,482,945. Capacity-building funding has remained relatively constant at \$2.7 to \$2.8 million for the 2003 to 2007 period. The funding often responds to needs identified through the tripartite and bilateral processes or the *Powley* Initiative—but is in some cases the sole source of funds for a given organization. Recipients have included MNC and its affiliates, CAP and affiliates, and other off-reserve Aboriginal and Métis organizations throughout the country.

The OFI also used capacity funds to partner on initiatives with other federal departments and provincial governments. Two examples include joint funding of the MNS election with the province of Saskatchewan and its assistance to Western Economic Diversification Canada in supporting the activities of the Primrose Lake Air Weapons Range Negotiating Committee.

For 2007/08, the OFI split its capacity-building funding into capacity-building generally (\$1.3 million) and targeted efforts in the education and economic development sectors (\$1.35 million).

Recognizing Métis Contributions to Canada

The purpose of the Métis Contributions to Canada is to support activities, cultural products and events that demonstrate the culture and contributions of Métis people to Canada. The initial focus of Métis Contribution funds was on celebrations of Louis Riel. More recently, the emphasis has been on the contribution of Métis veterans. The funding has also supported such cultural activities as festivals, award ceremonies, and the production of children's literature and historical books.

The funding level for this component ranged from \$95,000 in 2003/04 to a high mark of \$462,155 for 2005/06. Seventeen organizations received Métis Contribution funding from 2003 to 2004, with funding levels ranging from \$10,000 to \$127,000.

1.2 Background

1.2.1 Socio-Economic Profile of Métis and Non-Status Indians

In 2006, the number of people who identified themselves as an Aboriginal person reached 1,172,790 or almost 4% of the total population of Canada.¹ Of that number, 355,505 (30.3%) are estimated to be Métis and 133,155 (11.3%) are estimated to be non-status Indians.²

¹ Statistics Canada, *Aboriginal Peoples in Canada in 2006: Inuit, Métis and First Nations, 2006 Census Aboriginal Peoples*.

² Figures based on analysis of 2006 Census information provided by INAC's Strategic Research and Analysis Directorate.

Statistics Canada report that the Aboriginal population has grown faster than the non-Aboriginal population.³ Between 1996 and 2006, it increased 45%, nearly six times faster than the 8% rate of increase for the non-Aboriginal population. Of the three Aboriginal groups (First Nations, Métis, and Inuit), the fastest gain in population occurred among those who identified themselves as Métis. Statistics Canada report that the Métis population almost doubled with a 91% increase in population in the period between 1996 and 2006. This is being attributed, not only to high fertility rates relative to the non-Aboriginal population, but to important political and legal milestones that have encouraged individuals to identify themselves as Métis. This includes significant recognition in the final Royal Commission on Aboriginal Peoples (1996) and important court cases that have been won that have an impact on Métis hunting rights (i.e.: *R. vs. Powley* 2003).

Statistics Canada, using the broader definition of Aboriginal identity to obtain on-reserve population statistics, report that the Aboriginal population is becoming urbanized with 54% of the Aboriginal population living in urban centres in 2006, an increase from 50% in 1996. INAC attributes two-thirds of the total Aboriginal population growth in cities to the growth in Métis population and not a migration from reserves to urban areas.⁴ INAC's Strategic Research and Analysis Directorate will be providing additional analysis of the 2006 Census data over the course of the next fiscal year (2008-09), including socio-economic data to be released by Statistics Canada in March and May 2008 and demographic data that specifically uses registered Indian figures to assess and project the on-reserve population.

The following socio-economic data is therefore based on the 2001 Census and indicates that both the Métis and non-status Indian populations are very young, highly mobile, and lag behind their non-Aboriginal counterparts in socio-economic indicators for school attendance, post-secondary completion, employment and income level, as Table 1 indicates.

³ Statistic Canada, *Aboriginal Peoples in Canada in 2006: Inuit, Métis and First Nations*, 2006 Census Aboriginal Peoples, 2006 Census, Census year 2006.

⁴ Strategic Research and Analysis Directorate, *Aboriginal Demographics: Population Size and Growth*, Presentation to the DG Policy Coordination Committee, January 24, 2008.

Table 1: Comparison of the Métis and Non-status Indian Populations to Non-Aboriginal population on Selected Well-being Indicators (2001) ⁵

Selected Indicators	Métis Population	Non-Status Population	Non-Aboriginal Population
Percent of population aged 15-19, < high school	23	24	15
Percent of population aged 25-44 with university degree	7	6	22
Employment rate (aged 15+)	60	56	62
Unemployment rate (aged 15+)	14	15	7
Average total income (all sources)	\$22,395	\$21,460	\$30,060
Average employment (full-time) income	\$33,822	\$33,978	\$42,619
Percent receiving government transfer payments	15	16	12

Table 2 provides additional socioeconomic indicators comparing the urban Aboriginal population to the Registered Indians on Reserve and Inuit population.

Table 2: Comparison of urban Aboriginal off reserve, Registered Indians on reserve and Inuit on Selected Well-being Indicators (2001) ⁶

Selected Indicators	Urban Aboriginal off reserve	Registered Indians on reserve	Inuit
% with High School Diploma or Higher (15+)	58.3%	41.1%	42.3%
% Employment Ratio (15+)	55.1%	37.4%	48.6%
Total Average Individual Income (15+)	\$21,103	\$14,444	\$19,878
Dwellings in Need of Major Repair	14.1%	36.6%	20.2%

1.2.2 Legal and Constitutional Background

The current legal and constitutional environment for Métis and non-status Indians is one of uncertainty. Three constitutional issues are at play. The first involves the issue of possible

⁵ Statistics Canada, 2001 Census. Tabulations as reported on www.ainc-inac.gc.ca/interloc/mnsi/mnsifs-eng.asp and in “A profile of Canada’s Métis population” and “A profile of Canada’s North American Indian population without legal Indian status.”

⁶ Strategic Research and Analysis Directorate, *Aboriginal Demographics: Population Size and Growth*, presentation to the DG Policy Coordination Committee, January 2008.

federal jurisdiction for Métis and non-status Indians in relation to the interplay of Sections 91(24) and 92 of the *Constitution Act, 1867*⁷; the second involves Métis Aboriginal rights under Section 35 of the *Constitution Act, 1982*; and the third entails the equality rights provisions in Section 15 of the *Charter of Rights and Freedoms* as these provisions might apply to the government's treatment of Métis and non-status Indians compared to the treatment of Indians and Inuit.⁸

Jurisdiction

One uncertain area is legislative jurisdiction. According to Section 91(24) of the *Constitution Act, 1867*, "Indians and lands reserved for the Indians" fall within the exclusive legislative powers of the federal government. The long-standing position of the federal government has been that Métis and non-status Indians, because they are not "Indians" as defined by the *Indian Act*, do not fall within federal jurisdiction. Some Métis and non-status Indian litigants claim that they do. Provincial governments also claim that they do, contending that *all* Aboriginal peoples should be served primarily by the federal government.

At this point, it is important to note that having law-making jurisdiction does not compel a government to act. Indeed, the longstanding position of the federal government is that it has undertaken a long list of programming for on-reserve Indians for policy—not legal—reasons. Nevertheless, the issue as to whether the provinces or the federal government has jurisdiction over Métis and non-status Indians could have substantial implications. Whereas INAC provides comprehensive programming for status Indians living on reserve, federal programming aimed specifically at off-reserve populations remains limited. Provincial governments, taking the position that the off-reserve population falls within federal jurisdiction, have not developed comprehensive policy and programming for that population. The current result is a policy vacuum. Referring to the urban Aboriginal situation in particular, the Canada West Foundation states: "The contemporary policy and programming landscape, which lacks systematic, comprehensive approaches and features instead of inconsistencies, is rooted to a large part in federal-provincial disagreement and failure to accept responsibility."⁹

This situation has held for decades without judicial clarification. The Supreme Court decision *Lovelace v. Ontario* (2000) seemed to recognize non-status Indians as Aboriginal peoples, but left open the question as to whether they are embraced by federal jurisdiction under 91(24). *Daniels v. Canada*—an action commenced by Métis leader Harry Daniels, Leah Gardner, and the Congress of Aboriginal Peoples in 1999—sought declaratory relief on the issue of federal responsibility for Métis, as is the *Manitoba Métis Federation v. Canada and Manitoba*. This

⁷ The Manitoba Métis Federation and Dumont et al. v. Canada and Manitoba case was dismissed by the Manitoba Court of Queen's Bench on December 7, 2007 and was appealed on February 15, 2008.

⁸ Sources for the legal and constitutional background were: Jean Teillet, *Métis Law Summary 2007* (Pape Salter Teillet, 2007); Jason Madden, "The Métis Hunt for Justice in 2007," and Andrew Lkan and Jean-Claude Killey, "The Long Road to the Courtroom: Daniels v. Canada and the Federal Jurisdiction in Relation to Métis and Non-Status Indians," paper presented for a conference on Métis law in Vancouver hosted by the Pacific Business & Law Institute, October 18–19, 2007.

⁹ Calvin Hanselmann, "Ensuring the Urban Dream: Shared Responsibility and Effective Urban Aboriginal Voices," in Evelyn Peters, *Not Strangers in these Parts*, 171.

case was dismissed by the Manitoba Court of Queen's Bench on December 7, 2007, and was appealed on February 15, 2008.

Aboriginal Rights

Another area of legal uncertainty involves Métis Aboriginal rights. In Section 35 of the *Constitution Act, 1982* the Métis are named alongside Indians and the Inuit as Aboriginal peoples. That same section recognizes and affirms “the existing aboriginal and treaty rights of the aboriginal peoples of Canada.”

Prior to the decision of the Supreme Court of Canada in *R. v. Powley*, the Crown took the position that the Métis possessed no Aboriginal rights. If they ever possessed them, one argument goes, these rights had been extinguished when the Métis accepted scrip in the nineteenth century. That argument was rejected in a 1998 decision in Saskatchewan. In *Morin & Daigneault* (2000) the Saskatchewan Court of Queen's Bench held that neither the *Dominion Lands Act* nor the scrip issued pursuant to it had extinguished Métis harvesting rights: both documents were silent on issues of hunting, fishing and trapping. In *R. v. Powley*, the Supreme Court of Canada determined that Métis communities—those that, in addition to their mixed ancestry, had developed their own customs, way of life, and group identity—possessed a Section 35 Aboriginal right to harvest. What the Court left for future determination is the identification of rights-bearing Métis communities and the geographic areas within which these communities are located. It provided a legal test for the determination of Section 35 Métis rights.

Several cases applying the test have progressed through the provincial courts since the 2003 *Powley* decision. Almost all have sought to establish whether the Métis community in question in fact possesses Métis harvesting rights; and if it does, whether the harvesting occurred within the boundaries of the community. At least a dozen such cases have been heard. Métis defendants have won most of them. In the absence of agreements with the provinces accommodating harvesting rights, Métis organizations have now pursued a strategy of intensive litigation.

Future cases will determine whether Métis Aboriginal rights extend beyond harvesting. The most anticipated decision was the *Manitoba Métis Federation v. Canada and Manitoba*. A decision was delivered on December 7, 2007. The judge dismissed the case in its entirety. The case sought a declaration that Canada and Manitoba did not fulfill their obligations to the Métis as outlined in the *Manitoba Act*. The MMF further sought a declaration that the Crown owes the Métis people outstanding obligations as part of the reconciliation process mandated by Section 35. An appeal was brought forth on February 15, 2008. If a court decision favours the Métis, lawyer Jason Madden writes, it will “most likely set a new course for Crown-Métis negotiations and settlements for the next generation.” Such a declaration by the court may require a negotiations policy regarding land claims and compensation for Métis along similar lines for handling claims of Indian and Inuit peoples.

As a final note on Aboriginal rights: in 2004, the *Taku River* and *Haida Nation* Supreme Court decisions found that governments, whether federal or provincial, possess a duty to consult on contemplated resource development in the case of the potential existence of an Aboriginal right or title. This duty applies equally to Métis harvesting rights. Accordingly, these 2004 decisions

compel the Crown to respond to all Aboriginal rights of Métis—whether to the harvesting rights found in *Powley* or to any other Métis Aboriginal rights that might be found in future cases.

Equality Rights

Since 1982, several cases involving Section 15 of the Charter have arisen involving equality rights between Indians living off-reserve and those living on reserve. A critical case in this context was *Misquadis* (2004), in which the Federal Court of Appeal held that the federal government had discriminated against off-reserve Indian communities by having failed to extend the Aboriginal Human Resources Development strategy to these communities. In this case, the trial judge found that Human Resources Development Canada had refused to enter into agreement with these applicants simply because they were off-reserve communities. This decision was upheld on appeal and the trial judge ordered HRDC to negotiate agreements with these off-reserve communities.

A second critical case on equality rights was *McIvor v. Canada*, which challenged the validity of sections 6(1) and 6(2) of the *Indian Act*. Questioning the completeness of Bill C-31, the plaintiff successfully established that the Indian Act continued to discriminate against Aboriginal people born before the passage of Bill C-31 on the “basis of sex and marital status.” The direct effect of this ruling was to allow for a large group of formerly unregistered Aboriginal people—an estimate of 200,000—to register as Indians under the *Indian Act*. A broader effect has been to call existing distinctions between “status” and “non-status” Indian into question.

Some of the relevant cumulative effects of this uncertain legal environment regarding Métis and non-status Indians are as follows:

- The implications of *R. v. Powley* remain unclear. Similar to cases following and arising from the *Calder* decision, the courts are now building up a body of case law after *Powley*, and this process will continue for some years to come. In the absence of provincial willingness to enter into harvesting agreements, Métis organizations are pursuing an intensive litigation strategy to identify and establish recognition for Métis communities and Métis rights.
- If the development of case law continues to favour Métis, the federal government may be required to develop a claims policy for Métis. However, with the Manitoba Métis Federation not being successful at trial in its case in Manitoba, the federal government is currently facing less pressure to respond to Métis claims though this decision is expected to be appealed. The Department of Justice lawyers caution that the courts will be sensitive to how government acts while this case goes through the appeals process.
- The federal government might also face future cases litigated under Section 15 of the Charter. Following the decisions of *Misquadis* and *McIvor*, the government can expect further challenges to distinctions between on and off-reserve Indians in developing policy and delivering programs.

Both Métis and non-status Indians are using the courts as a forum to effect change regarding jurisdictional issues and to assert rights that are in line with Indian and Inuit peoples'. The development of case law in this area indicates an important role by the courts to determine complex legal and policy issues which may get ahead of the willingness of the federal government to respond to the claims of Métis and non-status Indians.

2. Evaluation Methodology

2.1 Evaluation Approach and Scope

In September 2007, INAC's Audit and Evaluation Committee approved a terms of reference for a summative evaluation of the Federal Interlocutor's Contribution Program, including the *Powley Initiative*. The purpose of the evaluation was to provide an assessment of the performance of the OFI, the extent to which there has been progress toward outcomes achieved as a result of the OFI's work, its continued need, and its relevance to current government priorities.

The Audit and Evaluation Sector of Indian and Northern Affairs is responsible for evaluating of the OFI programming and engaged Institute on Governance to conduct evaluation research. The evaluation took place between September 2007 to January 2008. The evaluation did not assess other OFI programming including the Urban Aboriginal Strategy and Basic Organizational Capacity.

2.2 Evaluation Questions

The evaluation addressed the following questions:

1. What has been the impact of OFI on:
 - funded organizations (e.g., governance, capacity development, representativeness, advocacy, electoral reform, etc.)?
 - federal departments (e.g., increased horizontal coordination and whole-of-government approach, increased awareness of responsibilities/responsiveness, improved capacity to address MNSI communities' needs, etc.)?
 - other programs at INAC (prior to and since the transfer of OFI)?
 - provincial programs and policies (e.g., responsiveness re: MNSI issues)?
2. What, if any, unintended consequences have occurred as a result of the work of OFI?
3. Is there still work to be done?
4. Could the same results have been achieved more efficiently?

2.3 Data Sources

The evaluation methodology included the following data sources;

- **Literature review:** academic literature on organizational capacity-building and managing horizontal initiatives.

- **File and Document reviews**, including almost 100% of tripartite, bilateral and *Powley* contribution files from 2004 to the present. The sample for the capacity-building, and Métis contribution components of the Contribution program focused on the larger recipients of funding. In total, approximately 100 contribution agreement files were reviewed. Document review includes information related to OFI policy and operations including Memorandums to Cabinet, policy documents, briefing notes, research publications, and performance data.
- **Key informant interviews** with officials from twenty Aboriginal organizations,¹⁰ six provincial governments,¹¹ nine federal departments and agencies,¹² and seven subject matter experts. In total, 49 interviews were conducted. Evaluators visited four provinces – BC, Alberta, Saskatchewan, and Manitoba. The provincial visits provided the opportunity to hold in person interviews with federal and provincial officials, Aboriginal staff and leaders, and subject matter experts. Other interviews were conducted in the National Capital Region or by telephone including interviews with representatives from the provinces of Ontario and Nova Scotia.
- **Validation Session** of key findings was held with representatives from OFI and Audit and Evaluation Sector in November 2007. The validation session was conducted by consultants from the Institute on Governance.

2.4 Limitations

- As OFI is currently in the progress of refining its performance measurement and reporting framework, the evaluation's capacity to report on results achievement based on intended outcomes was limited.
- Internal struggles within the Métis National Council meant that no interviews were held with this organization. Congress of Aboriginal Peoples did not respond to requests to be interviewed for this evaluation.

¹⁰ Aboriginal organizations interviewed were based on organized samples through the file review process.

¹¹ Provinces interviewed include British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and Nova Scotia

¹² Federal interviews include INAC (various sectors including OFI), Canadian Heritage, Justice, Canadian Wildlife Services, Health Canada, HRSDC, Parks Canada Agency, Royal Canadian Mounted Police, Western Economic Diversification Canada

3. Evaluation Findings

3.1 Relevance

Census data indicate that the Métis and non-status Indian populations are very young, predominantly urban, and highly mobile. Improvements in life-expectancy and education, employment and income levels have occurred since 1981, but the Métis and Non-Status Indian populations still lag behind non-Aboriginal Canadians. The Federal Government of Canada is committed to improving the living conditions and educational and economic opportunity of all Aboriginal Canadians including off-reserve, urban and non-status Indian and Métis.

The present legal and constitutional environment of Métis and non-status Indians remains uncertain. The outcomes of pending and future decisions could have significant implications for the federal government. These include potential pressures to respond to further Métis Aboriginal rights claims and to extend specific on-reserve programming to off-reserve Aboriginal populations. The *Powley* Initiative's strategy of accommodation and engagement remains the appropriate one until further clarification of the extent of Métis Aboriginal rights.

Meeting the objectives of the Federal Interlocutor's Contribution program to help build capacity and maintain a relationship based on trust and respect between Métis, non-status Indian and urban Aboriginal people and the Government of Canada, remains critical in this current environment.

The OFI has a strong relationship with the relevant Aboriginal organizations and provincial governments and possesses substantial expertise in off-reserve realities. Evaluation findings indicate that the Office should continue to play an essential role within the federal government by providing ongoing policy advice to the federal government on off-reserve issues, continuing to build effective relationships with Aboriginal groups and the provinces, and meeting legal obligations stemming from *Powley* and forthcoming court decisions.

3.2 Performance of the *Powley* Initiative

The *Powley* Initiative was successful in developing and implementing a coordinated whole-of-government approach to managing Métis harvesting rights. Its strategy of engaging Métis groups and accommodating Métis rights in enforcement situations contributed to calm and order in the field—a significant accomplishment. The initiative made progress in helping Métis organizations conduct research on traditional harvesting patterns, communicate with their memberships, and develop registry systems. The registry systems in particular have proven central to Métis governance, the eventual identification of Métis rights-holders, and the conduct of relationships with the provinces and stakeholder groups.

The one area where there was limited progress was in engaging provincial governments to develop consistent and cooperative approaches to the management of Métis rights. However, with one exception, provincial officials viewed the federal initiative in a positive light.

Federal litigation experts confirm that a strategy of engagement and accommodation remains the appropriate one in a legal climate that is still highly uncertain. Further, the important communication, research and registration work funded by the *Powley* Initiative is not yet complete.

Key Results of the *Powley* Initiative

Successful implementation of a whole-of-government approach

OFI was pivotal in successfully leading the federal government's response to the *Powley* decision. OFI brought a single point within the federal system for dealing with the management of Métis Aboriginal rights, both externally and as a point of cohesion within the federal family. When asked whether the *Powley* Initiative had succeeded in developing and implementing a coordinated whole-of-government approach to managing Métis Aboriginal rights, officials of the federal departments interviewed uniformly attested 'yes.' One senior enforcement official stated that the initiative marked "probably the best practice in a long, long time in terms of integrating the federal departments."

Cross-departmental coordination was achieved through the following activities:

Coordinated Policy

- **Development of Federal Harvesting Guidelines** emphasizing accommodation of Métis harvesting rights on federal lands throughout the country.

Consistent Enforcement Procedures

- **Information Sessions:** Departments involved in enforcement provided information sessions to front-line personnel at DFO, PC, CWS and Environment Canada. In 2005 the sessions were expanded to include provincial enforcement officers. In 2006 they included representatives from MNC affiliates as subject experts. By late 2007, 597 federal and provincial enforcement personnel had been informed of and trained according to the Federal Interim Harvesting Guidelines.
- **Reference Manual and Pocket Card:** Together with the RCMP, CWS, PCA and DFO, the OFI helped develop a manual instructing enforcement personnel how to deal with harvesters claiming Métis harvesting rights. The manual was accompanied by a pocket card instructing front-line personnel.

Collaborative Research

- **Historical Research:** At the request of affected federal departments, the OFI organized research on traditional Métis harvesting communities to inform decisions as to whether charges should be laid in a particular area of federal land.
- **Legal Assessment:** Based on a one-year historical research project using only primary data only, the Department of Justice contracted neutral historical summaries which were shared with the provinces and the MNC. The summaries identified areas across the country where there are potential rights-bearing Métis communities. Justice conducted a legal assessment of these summaries.

Communication with Métis Groups

- **Workshops and Information Sessions:** Workshops and information sessions were held throughout the country enabled federal officials both to communicate their enforcement and harvesting policies to Métis representatives and to gain reports from Métis organizations on the progress of their harvesting registries and conservation initiatives.

Together with the communications activities of the Métis organizations—also funded by the *Powley* Initiative—the coordinated effort conducted to maintaining peace and order within the field. The communications workshops removed fear and suspicion on the part of both the enforcement officials and the Métis harvesters. There were no incidents of conflict in any province. Recalling the prolonged blockading, fights and vandalism that followed the Marshall decision in 1999 through 2002, respondents noted that this was a significant achievement.

Research on traditional land use, the field manual and the information sessions for enforcement officials helped ensure harvesters claiming a right to hunt without a licence were not falsely charged.

Improved Relationship with Métis Organizations

When asked whether the federal government relationship with Métis organizations had improved as a result of the initiative, almost all Métis organizations interviewed stated ‘yes’ and pointed to a new shared initiative with the Canadian Wildlife Service (CWS) and a relationship with the RCMP as evidence. RCMP and CWS officials corroborated this impression and pointed to two positive impacts as examples:

- **Funding for a harvester monitoring service and data-base:** The Canadian Wildlife Service has allocated funds (\$40,000 yearly for the next three years) to provincial MNC affiliates to develop and maintain a harvester monitoring service. This service will produce data the organizations will then share with the CWS. Because the CWS is not legally entitled to collect data on Métis harvesting activity, funding for the Métis organizations allows it to complete its conservation information.
- **Increased sensitivity to Métis people within the federal government:** The RCMP states that its contact with Métis organizations through *Powley* has led it to reconsider the programs and services of the National Aboriginal Policing Service in favour of including Métis people.

A further example indicating both a positive federal relationship with Métis groups and improved relations between Métis communities and surrounding First Nations involved Parks Canada. An agency official noted that the Initiative has provided Parks Canada with a heightened awareness of Métis culture and an understanding of the duty to consult Métis groups in cases where their interests are bound up with federal park land. Beyond this, Parks Canada has undertaken an initiative involving four Métis communities living around Wood Buffalo National Park.

- **Wood Buffalo National Park:** Since 2005, Parks Canada Agency used *Powley* funding to bring together the seven First Nations and four Métis communities that traditionally

harvested within this large national park. The three facilitated workshops held to date yielded agreement on how the Wood Buffalo Game Regulations should be amended to accommodate all harvesters. The regulations are now being rewritten by a legal drafter.

Successful support to Métis organizations to develop and strengthen membership/identification systems

The membership registry element of the *Powley* Initiative was critical in complying with the Supreme Court instructions. “As Métis communities continue to organize themselves more formally and to assert their constitutional rights,” the *Powley* decision stated, “it is imperative that membership requirements become more standardized so that legitimate rights-holders can be identified.” The evaluation results indicate progress in this regard—although the membership registries are now at varying stages of completion and rigour across the provinces.

The table below indicates the current status of the citizenship registries for the MNC’s governing members. The numbers of members listed are approximate and were obtained from organizations themselves. The second column refers to pre-existing membership lists, whereas the third refers to citizens registered according to the MNC definition of a Métis (or in the case of the MSGC, the definition provided in the *Métis Settlements Act*).

Table 3: Progress of Métis Citizenship Registries in Western Provinces and Ontario

MNC Governing Member	Number of Members	Registered Citizens	MNC definition of a Métis applied?	Registered Harvesters
MNBC	2,500	2,500	Yes	Does not issue cards yet
MNA	45,000	9,000	Yes	Claims all members are harvesters
MSGC	6,500	6,500	MSGC definition set out in Alberta <i>Métis Settlements Act</i>	Claims all members are harvesters
MNS	30–40,000	0	n/a	Does not issue cards yet
MMF	42,000	0	No	1,100
MNO	17–18,000	13,100	Yes	950

As the table above indicates, some of the governing members of the MNC—notably, the Métis Nation of Alberta (MNA), the Métis Nation of BC (MNBC) and Métis Nation of Ontario (MNO)—have applied the stringent criteria set out by the MNC in 2002 and made great strides in developing their registries.¹³ The Métis Settlements of Alberta, not members of the MNC, have their own stringent criteria set out in the *1991 Métis Settlements Act*. Both MNBC and MNO registries are progressing well and officials of these two organizations expect to reach a maintenance stage in five years. The MNA registry passed provincial inspection when the Interim Harvesting Agreement was negotiated and is now considered the best in the country.

The other extreme occurs in the neighbouring province. The Métis Nation of Saskatchewan (MNS) has not yet begun registering Saskatchewan's Métis harvesters or citizens. The disorder that ensued after the fraudulent election in 2004 prompted a withdrawal of all funding from the organization by both the OFI and the Government of Saskatchewan. Funds withdrawn included all *Powley* funding. *Powley* funding for the MNS is to resume following the clean and transparent election (commissioned jointly by the OFI and the Province of Saskatchewan) that was held in July 2007.

The Manitoba Métis Federation (MMF) occupies the middle range of solidification of membership. Rather than culling its regional membership lists on the basis of the MNC definition, the MMF has merely compiled existing regional and local lists into one central database. MMF officials indicated their reluctance to remove members from lists that are in some cases over one-hundred years old. It resolved to take on the issues of adoption and of grandfathering members who do not meet the MNC definition at its last annual general meeting. The MMF applies the more rigorous Supreme Court standard only in issuing its Métis harvester cards.

CAP affiliates in Labrador, Ontario and Quebec also received *Powley* money to help identify potential Métis harvesting rights-holders. Due to internal organizational difficulties, the Ontario Métis Aboriginal Association¹⁴ made no progress in identifying potential rights-holders. The Labrador Métis Nation, also a CAP affiliate, is now in the initial stages of establishing its registry system. The evaluation was unable to assess what progress was made by the Native Alliance of Quebec.

Provincial, federal and Métis officials affirmed the great significance of the citizenship registries—one extending beyond mere compliance with the Supreme Court's instructions. This significance applies in at least three areas.

- **Legal significance:** From a legal standpoint, federal litigation experts suggested that registries will prove important in future cases. If properly developed and maintained, such registries will provide invaluable evidence indicating who are rights-holders.

¹³ The MNC standards require self-declaration as a Métis, genealogical proof of Métis ancestry, acceptance of the applicant as a Métis by the contemporary community, and proof that an applicant is not registered as an Indian.

¹⁴ Ontario Métis Aboriginal Association declared bankruptcy in 2007.

- **Capacity of Métis organizations:** both Métis organizations and OFI officials maintained that possessing a citizenship registry is crucial to the organizations' development as legitimate political organizations. Knowing members is central to good governance—to enumerating voters for example. Further, a membership registry aids in gaining important credibility with the province, the private sector and other stakeholder groups. It has effects at the MNC level as well: a former MNC official stated that the future design of the organization's constitution will depend in part on how many citizens the governing members have registered in each province.
- **Role in lessening pressures in the field:** For the moment, the development of the Métis registry systems has gone far to assuage fears of conservationists about possible depletion of resources. Interviewees emphasized that the registries indicate just how few Métis harvesters could potentially be harvesting within the provinces. This has allowed Métis organizations to answer public misconceptions with facts.

To recapitulate the results on the registry systems, the identification of Métis harvesters and solidification of membership criteria by the relevant Métis organizations is not proceeding uniformly throughout the country. However, all parties agreed that such identification and solidification is crucial and takes time to complete.

Significant investment has been required to upgrade and automate the registries and clear backlogs. This should decline as the systems are brought up to date and on-going maintenance only is required. It is not likely however these systems can become self-supporting.

Successful support to Métis organizations for Research

A proportion of *Powley* funding went to research. The organizations receiving *Powley* funding carried out research to determine whether their province or region contained potential rights-bearing Métis communities. Some also began conducting research on traditional and contemporary land use patterns. In addition, the MNC set up an online database in conjunction with the University of Alberta. Research included several regional mapping projects and searches of historical records to identify traditional land use by Métis.

Litigation experts both within and outside government affirmed the importance of such research. The Métis communities meeting the *Powley* test remain to be identified. The courts have not taken this task on in that identifying the boundaries of a rights-bearing community extends beyond the scope of their individual decisions. This means that solid research on traditional and contemporary harvesting patterns is crucial, especially across the Prairie Provinces. The alternative is a long series of court decisions establishing the locations, albeit not the extent, of Métis rights-bearing communities.

Limited engagement of Provincial governments to develop consistent and cooperative approaches to the management of Métis Aboriginal rights

The provinces largely went their own ways in addressing Métis Aboriginal rights following the *Powley* decision. Provincial governments either appreciated or rejected the *Powley* Initiative

according to their own priorities. To date, the federal government has not exerted any visible influence on provincial management of Métis harvesting rights in the form of helping deliver provincial harvesting agreements on harvesting issues with Métis organizations.

In the wake of the Supreme Court decision, the OFI arranged meetings with its federal partners and all provincial governments at the senior officials' level. At these meetings provincial officials decided to deal with both the federal government and Métis organizations on a bilateral basis.

From that point onward, federal and provincial paths appear to have diverged. For federal lands, the departments developed and implemented a Métis harvesting policy of accommodation. For provincial lands, the response varied greatly from province to province. Some provinces immediately worked out interim harvesting agreements with Métis groups, others pressed charges and left the issue to the courts to determine. To varying degrees, almost all provinces sought judicial clarification of certain issues the Supreme Court decision left unresolved.

When asked to comment on their reception of the *Powley* Initiative, provincial officials were generally positive. One official noted his government's appreciation that the Province could participate as an observer in meetings on Métis harvesting in a situation where it has not officially recognized Métis harvesters. The notable exception was Manitoba, whose officials were critical of the initiative as a whole. In their view, federal funding for the MMF provided implicit support to the organization's position on harvesting rights when this position was at issue in the provincial courts.

Four years after the *Powley* decision, provincial positions on Métis harvesting rights diverge greatly. Newfoundland-Labrador, Quebec, British Columbia and New Brunswick do not admit the existence of rights-bearing Métis communities within their jurisdictions (in the case of New Brunswick, successive judicial opinions have supported this position). In Ontario and the four western provinces, a state of uncertainty prevails. The only agreement now in place is between the Métis Nation of Ontario and the Ontario Ministry of Natural Resources.

The following is a breakdown of the positions of Ontario and the western provinces:

- **Ontario:** The Interim MNR/MNO Harvesting Agreement was reached on July 7, 2004 and has been maintained only through pressure from the court. After the Ontario Ministry of Natural Resources attempted to apply the agreement only to harvesters living north and west of Sudbury, the MNO litigated. *Laurin & Lemieux*, a case decided in June 2007, upheld the original terms of the agreement and maintained that the original MNO Harvesting Agreement is legally binding on the Province of Ontario.
- **Manitoba:** The province of Manitoba and the MMF are polarized on Métis harvesting rights. The former claims restriction of the rights-bearing community to a narrow location or even extinguishment of Métis harvesting rights, whereas the latter claims that the Métis rights-bearing community extends throughout the whole province. The *Goodon* case (judgement forthcoming) will determine first, whether there was an historic Métis

community in the Turtle Mountain area and second, whether all Métis harvesting rights were extinguished by the *Manitoba Act* or the *Dominion Lands Act*.

- **Saskatchewan:** Saskatchewan adopted the policy that Métis must live within the Northern Administration District to exercise Métis harvesting rights. That policy was overturned by the 2005 *Lavolette* decision, which rejected the notion that a provincial administrative district could substitute a “community” in the sense of *Powley*. The 2007 *Bellhumeur* decision reinforced the need for the province to understand community in a broader regional sense. At present, Saskatchewan possesses no legally valid policy for managing Métis harvesting rights.
- **Alberta:** Alberta had entered into an Interim Métis Harvesting Agreement with the MNA in September, 2004. The *Kelley* decision changed things: whereas the Interim Agreement had given Métis who were members of the MNA the right to harvest food without a licence any time of year throughout the province, the *Kelley* decision determined that it purported to assign special rights by allowing Métis to hunt throughout the province. In response to the 2006 decision, the Province terminated the agreement on July 1, 2007.
- **British Columbia:** Officially, the province of British Columbia is silent on Métis rights. Unofficially, a provincial official stated that the province denies the presence of Métis rights-holders in British Columbia. Thus far, British Columbia’s provincial court—in the 2002 *House* decision on appeal and the 2006 *Willison* opinion—has not dislodged that position.

Unintended Consequences of the *Powley* Initiative

There have been a number of unintended consequences as a result of the *Powley* Initiative. They include the following.

Use of the registries unrelated to Powley: For the citizenship registries that have already been established, both federal and provincial departments have in some cases used them to track recipients of their programs. This was the case with at least two provinces, which used the citizenship registries to understand Métis demographics and the possibility of programming uptake. As these registries solidify and become better known, both federal and provincial governments will continue to rely on them for data and vital statistics for the Métis citizens they profile.

Heightened expectations of Métis organizations: Some federal officials expressed concern that the *Powley* Initiative has raised expectations in the Métis organizations for ongoing funding of their registries.

Occasional Tensions with the Provinces: Federal funding of the communications campaigns of Métis organizations, can at times, risk appearing to endorse the message those communications put out. A similar observation was made for enforcement situations—particularly in cases where the protocols for handling Métis rights-assertions were in some cases diametrically opposed. Both CWS and RCMP officials noted that the federal policy occasionally complicated relations

between federal and provincial enforcement officers, who occasionally delivered contradictory messages to harvesters. This result was most pronounced in cases where enforcement policies were diametrically opposed, in Manitoba and British Columbia, for example.

Potential Conflicts with First Nations and External Stakeholders: The heightened potential for conflicts with First Nations over Aboriginal harvesting rights for Métis flowed more from the *Powley* decision itself than from the initiative that responded to it. That said, the federal accommodation policy resulting from the initiative may well have underscored the potential threat to First Nations, which have been required to make way for another Aboriginal population with harvesting rights. The confirmation of Métis as bearers of Aboriginal rights also threatens to disrupt some First Nations land claim negotiations in that Métis communities might prove to possess Aboriginal rights on lands that form part of the negotiations.

OFI and Parks Canada officials stressed that the *Powley* Initiative has developed a means to address such situations. The facilitation sessions between seven First Nations and four Métis communities now occurring at Wood Buffalo National Park have shown admirable progress in getting the groups at the same table. In their view, the sessions can serve as a model for future potential conflicts. What is more, such conflicts promise to increase if the courts were to identify further Métis Aboriginal rights.

As an additional source of potential conflict, there were reports of a backlash against Métis harvesting rights within at least three Western provinces involving hunting and fishing interest groups as well as general publics.

Remaining Tasks and Challenges of the *Powley* Initiative

Citizenship and Harvesting Registries: As indicated earlier, progress on the membership and harvester registry systems remains uneven. The MNA still requires two to three years before it predicts reaching the maintenance phase. The MNBC expects to require four to five years to register the bulk of its membership, with an ongoing cost to maintain the registry estimated at \$385,000. The MMF is still at the early stages of solidifying its citizenship registries and the MNS and Labrador Métis Nation are only now developing plans for their central registries.

Beyond establishing the registries themselves, the Métis organizations will also require mechanisms by which to enhance their accuracy and legitimacy: historical databases, appeal mechanisms, and evaluation schemes. The Alberta Métis Settlements and the province of Alberta have devised an Appeals Tribunal and the MNBC, a Senate to address membership issues. Most organizations, however, have not developed an arbitrator of this kind.

The completion of centralized registries that are consistent across the provinces promises to be a long, costly, and possibly disputed enterprise. When asked about the sustainability of the registry systems, provincial and federal as well as Métis officials stated that it is unlikely that Métis organizations will be able to sustain the registries on their own. Some suggested that on-going funding should come from three sources: the federal government, provincial governments and the Métis organizations themselves.

Research and Data-Sharing: The evaluation results indicated that solid research on traditional and contemporary harvesting patterns is crucial, especially across the Prairie Provinces. Such research would go a long way in helping to avoid the present litigation stalemate between the provinces and the Métis organizations. Collaborating on this research would make a good starting point for federal coordination with the provinces on managing Métis rights in the coming years.

On the conservation side, the monitoring system for Métis harvesters has only now begun to be implemented. Canadian Wildlife Service officials state that they require at least five years of collaboration with Métis groups to get the data they seek on Métis hunting practices. Where they are not legally entitled to collect such data, they depend on Métis organizations to collect and share it.

Communications and Consultation with Membership: With the notable exception of the province of Manitoba, most respondents believed that the communication work funded by the *Powley* Initiative should be ongoing. The fluctuating legal situation in all the provinces with substantial Métis populations has meant increased queries from members and non-members alike. Métis representatives also noted a palpable backlash to Métis harvesting in the past year and expressed the need for ongoing public information and education efforts.

3.3 Performance of the Federal Interlocutor's Contribution Program

3.3.1 Bilateral Relationships

The Canada-Métis Nation Framework Agreement between the MNC and the Government of Canada signed in 2005 and the Accord on Cooperative Policy Development signed in 2005 between CAP and the Government of Canada marked major progress in those organizations' relationship with the Crown. Since that time, neither progress nor regress has occurred in terms of formal relationships resulting from the bilateral process itself.

The evaluation revealed three major challenges to the bilateral component. These included the fragility of the organizations funded, the dependence of results on the cooperation of other departments, and the level of core funding provided to recipient organizations.

Fragility of the organizations funded: Evaluation findings indicated that the situations of both CAP and the MNC are precarious, arguably to an extent beyond that of their component regional members. For example, the MNC is governed directly by its five member organizations, and its overall health and function is endangered by disputes among its parts. The inability to elect an MNC president in October 2007 indicates the potential repercussions of such a dispute. As for CAP, although the organization proved more stable in the 2004 to 2007 period, federal officials indicated that its health was endangered by the collapse of affiliate organizations in Ontario and Quebec.

From the standpoint of the OFI, the vulnerability of these two organizations entails vulnerability for the bilateral program component as a whole. If these representative organizations collapse, as the MNC did in October 2007 after the withdrawal of all federal funding due to the organization's lack of a president, the OFI effectively loses its bilateral dialogue partner.

Dependence of results on the cooperation of other departments: An immediate outcome of the bilateral processes as stated in OFI Strategic Outcome Plan is government support from federal departments through direct involvement, policy development, and financial support due to advocacy initiatives.¹⁵ The bilateral processes have not functioned as such a forum to which the OFI brings other line departments to target initiatives at MNC and CAP constituencies.

Core funding Levels: When organizations lack the core funding they need for staff and basic operations, they are forced to draw from their project-based programs. Insufficient levels of core funding do not allow organizations to respond to government's requests and initiatives and may result in accountability issues.

3.3.2 Trilateral Self-Government Negotiations

The tripartite processes have succeeded as a means for developing partnerships. Above all, they have provided federal and provincial governments with a venue where they can set aside jurisdictional issues in order to address concrete socio-economic ones. This is a significant achievement. Evaluation results found however that the tripartite tables achieved stated objectives of improved access to programs in only a few cases. In terms of improving organizational governance, the success of most tripartite funding has been to improve the core capacity of the Aboriginal organizations involved. The tripartite component originally was intended to advance self-government negotiations among the three partners at the table. In application, however, the focus has become increasingly pragmatic, emphasizing the development of practical arrangements to address sectors including family services, education, health, economic development, housing, justice and youth.

Relations between the Aboriginal organizations and the other partners are generally good, although the ambiguity surrounding self-government negotiations remains a problem for the Métis organizations interviewed. Although the Métis organizations have accepted the evolved focus on improving socio-economic conditions rather than negotiating self-government agreements, they have also developed a rigorous strategy for seeking definitions of Métis Aboriginal rights in the courts.

Certain abiding challenges face the tripartite processes. Both OFI and federal respondents noted that the OFI has little to offer line departments to encourage participation at the tables. Aboriginal and provincial respondents submitted that the OFI's vision for the end-point of the process is unclear. All parties believe that the tripartite process remains relevant, but are seeking ways to make it more productive.

¹⁵ OFI, Strategic Outcome Plan for the period 1 February 2007 to 31 March 2010

Key Results from the tripartite tables include:

Access to Programming: Access to programming through the tripartite processes, involved primarily provincial rather than federal programs and initiatives. Manitoba Métis Federation officials credited the tripartite table for having alerted them to a joint project of Service Canada and Manitoba Hydro. This resulted in an agreement with Manitoba Hydro that provided \$2,000,000 for community development and 100 jobs for Métis in the province's northern regions. Manitoba provincial officials attested that continual contact with their Aboriginal partners at the tripartite tables has given the province input for programming of its own. Alberta provincial officials reported that other provincial departments routinely come to its tripartite tables.

Although Aboriginal organizations accessed new federal programming for their constituencies through HRSDC, Aboriginal Business Canada, and Health Canada, they did so independently of the tripartite process.

Improving Organizational Governance and Capacity: The main achievement of the tripartite process in terms of organizational governance and capacity was that it funded a long-term policy-oriented staff member. This staff member accumulated experience through the table and then became a crucial repository of corporate memory for the organization. Thus, as with the bilateral processes, enhanced capacity resulting from the tripartite process funding generally resulted more through the stable, multi-year agreements themselves than through any particular project taken on at the tables.

It should be noted that the MMF tripartite table appears to have been the most productive one since the inception of the process. As one of the oldest tripartite tables, the MMF table created the Louis Riel Institute in 1995 and oversaw the devolution of Child and Family Services from the province of Manitoba to the Métis Child and Family Services Authority from 2004 to 2006. It appears to be more the exception than the rule in terms of building institutions through the tripartite process.

Developing Partnerships: The most striking success of the tripartite tables was their ability to develop lasting, positive relationships among the partners. This observation applies especially to the federal/provincial relationships, which allowed these two partners to sidestep jurisdictional issues that have traditionally prevented federal and provincial governments from cooperating on off-reserve issues. This marks a significant achievement.

Where the tripartite process encourages cooperation among federal and provincial governments on issues of direct concern to off-reserve Aboriginal people—housing, education, justice, economic development, and health—it moves past the long-standing dispute over which government has jurisdiction over off-reserve Aboriginal groups. The shared commitment to the process gains a tangible symbol with the cost-matching element. At least four provinces—Ontario, British Columbia, Manitoba and Saskatchewan—attest to the program's success in this regard. Without federal funding, most of these provinces would not have engaged with off-reserve groups. All provincial partners realize that the OFI's funding and influence is limited, but

appreciate its presence at a table discussing issues that would previously have been considered purely provincial.

In the view of provincial officials consulted, the cost sharing between federal and provincial governments allows the dollars to go further and ultimately makes for better projects and programs developed at the negotiating table. One official summed up the tripartite process as good value for the money and certainly a program worth retaining in its present multi-year form. Others emphasized the need to recognize that the true outcome of the tripartite process is the process itself: one that builds key relationships which then furnish the basis for further progress on thorny and long-standing issues of mutual concern.¹⁶

The evaluation revealed the following challenges to the tripartite process:

Insufficient levels of Core Funding: As with the bilateral relationships, organizations lack the core funding they need for staff and basic operations. They are forced to draw this funding from their project-based programs—at the expense of progress on the projects themselves.

Funding Levels and Stability: One key challenge cited was the level of funding provided for the process compared to the results expected of it. Almost all Aboriginal organizations stated they need more funding if they are to address all priorities every year. Similarly, they expressed a sense of futility when institutes are set up through the process and then one or more funding partner backs out because they deem its work no longer a priority.

Self-Government Negotiations: A significant challenge to the process in its current form is reflected in its name. Having originated with the Inherent Right policy, the “Tripartite Self-Government Negotiation Process” was established as a forum for negotiating self-government agreements. By 2007, the process no longer appears to involve self-government negotiations. This element survives in name, however, and in the understanding of some of the larger organizations receiving tripartite funding.¹⁷

The Capacity of all Three Partners: One provincial official noted that the success of the tripartite process as a whole depends on the relative health of all partners involved in it. An issue internal to any one organization—whether governance difficulties, personnel tied up in litigation proceedings, an election or even a new reporting template—can slow progress down for the entire process. Difficulties can result from events as dramatic as the implosion of an Aboriginal organization, as indeed occurred within the period under review. They can also result from such events as the transfer of the OFI to the Department of Indian Affairs or a change in government and its priorities.

¹⁶ It should be noted that the Policy and Strategic Direction Sector of INAC is also pursuing partnerships along similar lines. Its newly developed “Strategic Regional Partnerships” are entered into by INAC, willing provinces and territories, and regional Aboriginal partners. These agreements also attempt to downplay jurisdictional quarrels in identifying how the various partners will work together towards achieving defined results.

¹⁷ Notably, the goal of self-government agreements also survives in the logic model for the Office of the Federal Interlocutor. As an intermediate strategic outcome, the Office seeks “agreements furthering self-government for Métis and Non-status Indians.” See Indian and Northern Affairs Canada, *Report on Plans and Priorities*, section “Strategic Outcome: Office of the Federal Interlocutor.”

Reluctant Players within the Federal Government: A crucial element of the success of the tripartite process lies outside the power of all parties involved. The entire process, including the limited funding provided compared to the outcomes expected, assumes that both the OFI and the provincial partners will bring the relevant line departments to the table for initiatives they potentially could fund. Yet all respondents indicated that the OFI, at least, has had limited success in doing so.¹⁸ Beyond a few exceptions, federal officials noted little interaction between the OFI and such line departments as HRSDC, Canadian Heritage and Health Canada.

Federal Government Objectives for the Tripartite Processes: All respondents outside the federal government—not only Aboriginal organizations, but provincial officials and subject experts—called for more clarity on where the federal government sees the tripartite processes going.

3.3.3 Capacity-Building Support

With proposals often flowing from activities at the tripartite and bilateral tables or the *Powley* Initiative, capacity-building funds supported a wide range of activities. Both file reviews and interviews indicated few patterns or overarching priorities in the OFI's dispensing of capacity funds.

In situations requiring a quick and flexible response, the rationale behind the provision of funding was clear. In less critical situations, the rationale was less evident. Some organizations reported having benefited from one-year projects infusing funds into their staffing and infrastructure. Others regretted having begun initiatives only to be forced to stop due to lack of funding in subsequent years.

The evaluation was unable to provide a general assurance that the capacity funding has resulted in an improved ability of Aboriginal organizations to represent and advocate on behalf of their memberships. Results indicate no real pattern, priority or underlying rationale to the OFI's decisions for capacity funding. Particular concerns arose around sustainability, where funding for capacity-building projects was usually granted for only one year.

Some organizations indeed gained capacity in the period evaluated, whereas others only began to do so only to drop off again. For larger groups, much of the capacity-building complemented the work done through other components of the program—the bilateral or trilateral processes or the *Powley* Initiative. For the smaller organizations reviewed, capacity funds were all they received.

The Office did set priorities for its capacity funding in a few cases. In 2007/08, for example, it targeted education and economic development as areas where it would like to receive proposals

¹⁸ Note: the Joint Management Committee for the Manitoba-Canada-Manitoba Métis Federation tripartite table commissioned an evaluation that appeared in March 2007. That evaluation noted a similar problem obtaining horizontal cooperation within both the federal and provincial governments: “unless they are directly involved with an MMF project or initiative, line departments have little awareness that the MMF Tripartite table exists.” See Myers-Norris Penny, “Final Report on the Manitoba Métis Federation Tripartite Self-Government Negotiations Evaluation” (March 2007), vi. The evaluation recommended better communication with other departments on the tripartite table, so that those with a clear mandate to deal with Métis issues could use the tripartite table as a resource to meet their department's objectives.

from the Aboriginal organizations. Yet some Aboriginal respondents questioned the rationale of submitting economic development proposals for projects with limited funding.

As a means to remedy the short-lived nature of capacity funding, some Aboriginal organizations called for multi-year funding on an on-going basis as an assurance that the institutions they start up will be able to stay in existence. The literature on effective capacity building supports this point. True progress in capacity building occurs on the basis of multi-year plans and a comprehensive assessment of needs. Above all, capacity-building takes time.

The organizations supported by OFI funding require improvements in capacity-building. Some of the mature organizations face the same issues that plague all smaller organizations. For example, they tend to lose talented staff to better-paying positions elsewhere. Beyond this, Aboriginal organizations are still challenged by the governance capacity of regional and local chapters as well as insufficient communication with members. In the views of some larger MNC governing members, strengthening the governance practices of regional and community chapters should be a priority.

In some cases, the organizations that OFI funds were shown to require significant improvements to their basic governance and financial management practices. Within the 2004 to 2007 period alone, no less than five MNC and CAP affiliates faced institutional collapse. The turmoil also threatened service delivery. The weaker organizations the OFI funds were said to need substantial investment in capacity in all areas, including new legislation, new constitutions, and governance training for board members and regional directors in basic governance roles and institutions.

3.3.4 Recognizing Métis Contributions to Canada

Métis organizations interviewed were unanimously positive about the Métis Contribution funding, which allowed them to undertake proposed projects ranging from cultural festivals to veterans memorials. Interviews with Métis organizations indicated that a relatively small investment on the OFI's part has generated a great deal of good will towards both the Office and the Government of Canada more generally. Whereas Métis people and the Canadian government have had a difficult relationship historically, this tangible support to Métis cultural products and veterans' memorials provided tangible evidence to recipient groups that the federal government values the contribution of Métis people to the Canadian federation.

3.4 Design and Delivery

The following details design and delivery issues that were identified through the evaluation process.

Core versus Project and Program Funding

The level of core funding for Métis and non-status Indian organizations through the Basic Organizational Capacity component, formally administered by Canadian Heritage and passed over to the OFI in 2007, has not increased since the mid 90's. According to the consensus of

interviewees both within and outside the federal government, it now bears no relation to the actual core needs of the Aboriginal recipient organizations. Aboriginal organizations have adjusted by allocating some of the project funding from OFI and other federal departments for core funding.

Provincial affiliates of MNC and CAP indicate that a similar situation prevailed for them as well. Respondents indicated that this practice has produced a myriad of problems, including:

- An inability to retain personnel in key positions because of project funding uncertainties
- An inability to hire the required expertise (e.g. a finance officer with proper accreditation)
- The difficult ethical position for both federal officials and their Aboriginal counterparts in having to report results on what is essentially core funding.

There is a need therefore to rationalize core funding on a sound basis—one built on a realistic assessment of the core needs of these organizations.

Flow of Funding

Almost all Aboriginal organizations interviewed stated that they had difficulty obtaining funds from the OFI on time. Throughout the country Aboriginal organizations reported the same scenario: long delays in signing agreements and processing funds, which led in some cases to overdrafts and interest on overdrafts due to financing by banks. In cases where the organization had no bank to turn to, they simply did not achieve planned work. In some instances, the delays incurred threats to the organization's stability and credibility—such difficulties as missed payrolls and bad credit with banks.

The cause of the delays lay in many cases with late reports coming in from the recipient organizations. Based on reporting requirements for “non-essential funds,” the OFI is not permitted to release payments until all required reports are in. In other cases, funds were postponed due to difficulties with audited statements.

The delays endanger an organization's stability and credibility with other governments and stakeholders. They therefore undermine one of the OFI's key objectives: that of increasing the capacity and stability of these representative Aboriginal organizations and service delivery agents. Moreover, quality understandably suffers if the implementation phase is compressed due to funding delays.

Stability of Funding

Consistently, Aboriginal organizations requested multi-year funding agreements as the means to facilitate long-term planning. They were not alone in this recommendation, as several provinces made the same suggestion. Respondents stressed that more multi-year funding would also save time and administrative costs for the OFI. Presently, only the bilateral and tripartite process agreements are multi-year.

Reporting Burden

Funds from the OFI to MNC and CAP represent only a portion of federal government funding for the various Aboriginal organizations. Of these funds alone, a single organization can have several files for one year, each with its separate reporting requirements. Taking two sample organizations from British Columbia: the United Native Nations stated that it produces over thirty-eight reports per year in addition to work plans for upcoming years; the MNBC reports producing eighty reports annually. If a new reporting template is introduced, as it was recently, organizations sometimes have to resubmit a report three or four times before the OFI will disburse funds.

This administrative issue, undoubtedly also stemming from the OFI's limited capacity, has had a negative effect on the Office as well. According to senior OFI officials, too much senior staff time is consumed with administering contribution agreement files.

OFI Role within INAC

Senior officials within the Department of Indian Affairs viewed the OFI's move to INAC as a positive step for both players. The OFI's presence within INAC means that the Office is informed when INAC announces new programming and can ensure that off-reserve issues are taken into account. In addition, the OFI's Assistant Deputy Minister and Director General are involved in the department's senior policy committees.

Officials in both INAC and the OFI noted that the two do not yet act as one department. The two bodies do not share a common view on how proactive the federal government should be on off-reserve issues and have different roles vis-à-vis their clientele. OFI officials stressed that the Office's best point of coordination with INAC to date is with the Litigation Services Branch—in other words, the one branch that has been forced by the courts to deal with Métis and Non-Status Indian legal issues. INAC officials agreed that more work is required in the Department to recognize off-reserve issues.

All officials interviewed stressed that the form of the future integration of INAC and the OFI depends on the direction the government as a whole takes on Métis and non-status Indian issues. The OFI is a small player within a very large government and department. The Office's budget comprises 0.5 percent of INAC's budget and its personnel 1.4 percent of the total for INAC.. The Office bears a significant load in administering contribution files as well as high expectations from the department as a whole in dealing with off-reserve issues. Without increased capacity, the Office has difficulty achieving the work expected of it for INAC policy discussions. This problem is compounded by the lack of stability in the A-base funding of OFI which has the potential to affect the achievement of program results and program effectiveness. In April 2005, the OFI's A-Base funding for operations and maintenance dropped from \$825,000 to \$23,000 requiring the Office to rely on temporary funds to cover the shortfall.

3.5 Program Effectiveness

Findings from the evaluation suggest there are a number of areas in which OFI can improve program effectiveness.

Realistic expectations on interdepartmental coordination

The OFI led a highly successful collaboration of federal departments and agencies for the *Powley* Initiative to bring about an integrated whole-of-government response to the Supreme Court decision. In comparison, the bilateral and tripartite processes presented few instances where the OFI succeeded in bringing federal departments to the table to discuss funding for Métis and non-status Indians in areas of priority to their organizations.

The literature on successful horizontal initiatives indicates that one precondition for success is a clear and established leadership provided by a lead department or agency. Another is support of ministers, senior level officials and central agencies. A third is the need to provide clear incentives for participating departments to get involved, whether through the promise of funding or increased influence.

OFI officials corroborated the literature in commenting that horizontality was difficult for the bilateral and tripartite processes in absence of either a strong ministerial mandate or significant funds to bring to the table. The same officials contrasted the results with those of the *Powley* Initiative. In this case, the OFI offered a) a clear ministerial mandate to lead the other departments, b) an opportunity for departments to access new funding for participation in the initiative and finally c) expertise which helped the other departments deal with potential enforcement issues. In order to improve program effectiveness, more realistic expectations about what the trilateral and bilateral tables can achieve need to be developed and communicated.

Focus capacity building efforts

The evaluation findings indicate that the OFI's approach to capacity-building did not appear to be based on any well-conceived strategy. In general, capacity funding was scattered across dozens of Aboriginal organizations and often supported a new initiative or institution only briefly. By contrast to this, the capacity-building literature suggest that capacity-building efforts should be based on a comprehensive assessment of need and be multi-year in nature. Given the limited budget for capacity-building, program effectiveness could be enhanced by reducing the numbers of organizations OFI funds for capacity building and focus funding on projects that would achieve clearly defined results.

Develop new funding arrangements for high performing organizations

The evaluation findings indicate great diversity in the governance and financial management practices of the Aboriginal organizations interviewed. Improve effectiveness could be achieved by following the department-wide effort to develop a new multi-year community grant program for high performing First Nations—entry into which will depend on third-party certification. Certification would be granted either through a new certification program or use of an existing

program like the ISO 9000.¹⁹ Annual monitoring of the organization by the third-party certifier (a condition of continued certification) would determine on-going qualification for a similar type of arrangement. Initially, only a few of the organizations the OFI funds would be able to qualify. In time, however, the benefits of this funding arrangement would provide incentive to the others to gain the financial management and governance practices required to qualify.

The benefits of such an arrangement for organizations receiving the funds would be substantial: funding via grant rather than reimbursed contributions, flexible allocation among programs based on a long-term corporate plan, and reporting requirements reduced to one annual report. The annual report would inform both the organization's membership and the Government of Canada on the expenditures and activities of the past year. The arrangement would also provide a crucial incentive to those organizations that do not yet meet the accreditation standards to take the actions required to meet them. The net result would be an overall increase in the stability and sustainability of the organizations the OFI funds.

¹⁹ Notably, at least one organization the OFI funds is on its way to certification: the MNA Labour Market Development unit is now in the process of securing ISO 9000 certification.

4. Conclusions and Recommendations

4.1 Conclusions

The evaluation findings support the following conclusions regarding relevance, performance, design and delivery, and effectiveness.

Relevance

The evaluation found that the Office of the Federal Interlocutor Contribution Program, including the *Powley* Initiative, remains relevant as a result of the growing size and importance of the off-reserve population, the persistent gap in socio-economic well-being among Métis and non-status Indians compared to the non-Aboriginal population, and the fast evolving legal situation regarding Métis rights with its potentially significant policy and jurisdiction implications. Evaluation findings indicate that the *Powley* strategy of engagement with other federal departments, Métis organizations and provincial governments is the appropriate response in a legal climate that is still highly uncertain.

Performance

OFI has been successful in moving forward on implementing a co-ordinated whole-of-government approach to the management of Métis harvesting rights. The strategy of engaging Métis groups and accommodating potential Métis harvesting rights in enforcement situations on federal lands contributed to maintain calm and order on the ground. The *Powley* Initiative has made progress in helping Métis organizations conduct research on traditional harvesting patterns, communicate with their membership, and develop registry systems. Provincial officials view the federal initiative in a positive light though more work remains to be done to secure the engagement of provincial governments to develop a consistent and cooperative approach to the management of Métis Aboriginal rights.

The Federal Interlocutor's Contribution Program has shown results providing a forum for maintaining relationships between the OFI and the MNC and CAP through the bilateral process, in developing partnerships through the tripartite process and the development of good will through the Métis Contribution to Canada funding. Capacity building funds supported a wide range of activities. Key factors identified that have hampered program success include the fragility of organizations funded, lack of multi-year funding, core funding issues, and lack of clarity regarding intended results. These factors have limited the Program's ability to fully meet its stated objectives.

Design, Delivery and Effectiveness

A number of design and delivery issue hampered the effectiveness of the programming. Key issues included the flow and stability of funding, reporting burden level of funding provided for core funding needs of Aboriginal recipient organizations, late reporting from Aboriginal

organizations, the requirements of the INAC financial system, and a lack of focus and clarity of expected results.

4.2 Recommendations

It is recommended that INAC:

1. Clarify OFI mandate and role within INAC and the federal government, and develop expected outcomes and performance indicators that are measurable and an accurate reflection of the scope and work of the OFI.
2. Maintain the current approach to the management of Métis rights assertions including enhance work with other federal departments, provinces and Aboriginal organizations on joint research efforts to further understand rights-bearing Métis communities, and strengthening and sustainability of membership and identification systems.
3. Strengthen and focus capacity building efforts to provide stability and sustainability to relevant Aboriginal organizations.
4. Examine the weakness in the level of core funding provided to recipient organizations
5. Improve contribution program management to ensure timely processing of contribution agreement and payments.

Recommendation 1:

Recommendations	Actions	Responsible Manager	Planned Implementation Date
1. Clarify OFI mandate and role within INAC and the federal government, and develop expected outcomes and performance indicators that are measurable and an accurate reflection of the scope and work of the OFI.	a) INAC will continue to communicate OFI's mandate and role, both within the department and to all interested stakeholders. b) OFI will update its performance measurement and reporting framework and implement a performance measurement strategy as per OFI's Results-based Management and Accountability Framework. The principles of the department's SMART reporting initiative will be applied to this exercise. c) OFI will continue to communicate programming objectives to its stakeholders and ensure this is reflected on OFI's website.	Director General, Office of the Federal Interlocutor	a) April 2008 b) April 2008 c) April 2008

Recommendation 2:

Recommendations	Actions	Responsible Manager	Planned Implementation Date
2. Maintain the current approach to the management of Métis rights assertions including enhance work with other federal departments, provinces and Aboriginal organizations on joint research efforts to further understand rights-bearing Métis communities, and strengthening and sustainability of membership and identification systems.	a) OFI will continue to seek opportunities for joint research with provincial governments, and where possible, by the relevant Métis organizations. b) OFI will conduct a third-party review of the membership/harvesters systems funded by OFI.	Director General, Office of the Federal Interlocutor	a) April 2008 b) August 2008

Recommendation 3:

Recommendations	Actions	Responsible Manager	Planned Implementation Date
3. Strengthen and focus capacity building efforts to provide stability and sustainability to relevant Aboriginal organizations.	<p>a) OFI will develop a strategy to focus the capacity building efforts on key client groups.</p> <p>b) OFI will work with key Aboriginal organizations to develop and implement long-term capacity building plans.</p>	Director General, Office of the Federal Interlocutor	<p>a) July 2008</p> <p>b) March 2009</p>

Recommendation 4:

Recommendations	Actions	Responsible Manager	Planned Implementation Date
4. Examine the weakness in the level of core funding provided to recipient organizations.	a) OFI will participate in the policy work being conducted in the department involving core funding issues.	Director General, Office of the Federal Interlocutor	a) currently underway

Recommendation 5:

Recommendations	Actions	Responsible Manager	Planned Implementation Date
5. Improve contribution program management to ensure timely processing of contribution agreement and payments.	<p>a) OFI will conduct a review of the processes in order to identify any efficiency that can be realized.</p> <p>The principles of the department's SMART reporting initiative will be applied to this exercise.</p>	Director General, Office of the Federal Interlocutor	a) May 2008