

Aboriginal Governance Project

by the Metis Settlements General Council
Edmonton, Alberta

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Executive Summary

The Aboriginal Governance Project of the Metis Settlements General Council was based on a series of interviews conducted with members of the Metis Settlements General Council executive, members of the General Council, settlement administrators, individuals involved in the framing of the Metis settlements legislation, and selected settlement members.

The focus of the report is on the structure and functions of the General Council, a body established by the Metis settlements legislation enacted by the Alberta legislature in 1990 to serve as a co-ordinating and governance body for the eight Alberta Metis settlements in areas of common concern.

One of the most salient features of the General Council is that it is a federation of Aboriginal governments. It is constituted by all the members of each of the eight Metis settlement councils. These bodies consist of five democratically elected councillors elected for staggered terms. Together, all these councillors represent their settlements in the General Council. In turn, the members of the General Council elect the General Council's four-person executive for a term of three years.

In Part 1 of this report, the structure and powers of the General Council are analyzed in some detail. The structure of the General Council is reviewed, as are the functions of the General Council Board, which consists of the chairmen of the eight settlement councils and the General Council executive. The various committees that have been established for the conduct of specialized tasks are also reviewed.

Following this discussion, the powers given the General Council in the 1990 Metis settlement legislative package are analyzed in some detail. Five major areas are considered.

The first is the power of the General Council to make policy in areas of public concern that are common to all the settlements. This is the single most significant legislative power given to the General Council, and the ways in which this power has been exercised to date are considered.

The second area examined is the General Council's function as fee simple title holder of all land contained in the eight Metis settlements.

The third major area of analysis is related to the second, in that it concerns the role played

by the General Council in the natural resource development that occurs on all the settlements. This role is mandated by various provisions of the 1990 Metis settlements legislation, by General Council policies, and as a result of the General Council's ownership of the fee simple title to settlement lands.

The fourth area considered is the power of the General Council to invest, on behalf of the settlements, some \$35 million of transition funding made available over seven years for the benefit of the settlements and their members as part of the 1990 Metis legislative package.

The final topic considered in Part 1 is the eventual assumption of responsibility by the General Council for common settlement institutions such as the Metis Settlements Land Registry. This is part of the larger transition process to Metis government, and various aspects of the General Council's role in this process are also considered through questionnaires and community surveys. The responses obtained from these surveys are presented and analyzed in the report.

Part 2 of the report deals with the perspectives of those interviewed on the roles and responsibilities of the General Council described in Part 1. Six major themes were selected for discussion.

The first theme analyzed is the role of the General Council as spokesperson for the settlements with regard to areas of common settlement concern. The survey results indicated general support among most respondents for the General Council performing this function, although there were some differences about how aggressively the General Council should discharge this role.

Responses to the General Council's role of fee simple title holder to all Metis settlement land are then analyzed. Although there was general support for giving this responsibility to the General Council, some respondents felt that current statutory expressions of this power might give the General Council too much authority over the decision making of individual settlements. The community surveys found that considerable work needs to be done so that more members will be both fully informed and more satisfied with the balance between the powers of individual settlement councils and those held collectively by the General Council.

Many of the same concerns arose with regard to the General Council's role in the management of settlement resources. Again, the principle that there must be some protection of the common interest of all eight settlements in the disposition of the resources of individual

settlements found widespread acceptance. Differences arose only with regard to the proper means of giving concrete expression to this protection, either through administrative decision making on the part of the General Council and individual settlement councils, or through the exercise of the General Council's policy-making power in the areas of resource management.

The policy-making role of the General Council was surveyed extensively and produced considerable comment. A number of concerns were raised with regard to General Council powers in this area. Some respondents felt it was too great and improperly constrained the powers of the settlement councils. This was not, however, the majority view. There was widespread acceptance that the General Council should have some power, but a number of respondents felt that the exercise of this power was exercised at too great a remove from the settlement membership. Several measures were suggested to overcome this difficulty, from having more workshops on the settlements concerning policy formulation to increasing the amount of information made available to the membership with regard to policies adopted by General Council.

Generally, the surveys revealed that there was no widespread discontent with the policy-making powers assigned to General Council. Such concerns as were expressed tended to focus on how this function might be discharged more effectively or responsively.

In this regard, two major points were made by respondents. Almost uniformly it was felt that the veto power over General Council policy making held by the member of the Alberta government responsible for the Metis settlements legislation was anachronistic and inappropriate and should be ended.

Second, a number of respondents felt that the requirement in the Metis settlements legislation for unanimous agreement by all eight settlement councils before most major policies could be adopted by the General Council was a detriment to effective decision making and should be replaced by simple majority decision making or the support of six of the eight settlements.

However, there was no uniformity of opinion on this last point, and it is apparent there will have to be considerable further discussion of this issue before any change can be implemented.

The relationship between the executive of the General Council, which is elected by the 40 settlement councillors in their capacity as members of the General Council, and the members of the eight Metis settlements was also reviewed in the survey. There was some feeling that the

perception did exist that the General Council was somewhat remote from the concerns of the settlement membership, and a number of suggestions were offered for changing this. These ranged from more contact between the settlement membership and the General Council executive to the selection of a new means of choosing the executive.

Finally, the views of respondents on the evolving relationship between General Council and settlement councils, and between the General Council and provincial and federal governments were surveyed. With regard to the relationship between the General Council and settlement councils, it was generally concluded that it is still too early in the experience of Metis settlement government to say what this relationship will become. The General Council will assume responsibility for common settlement institutions such as the Metis Settlements Land Registry as the transition to Metis government continues, but it is not certain whether this will be accompanied by an expansion or contraction of General Council powers.

The relationship between the General Council, as representative of the eight Metis settlements, and the governments of Canada and Alberta is also, in the view of survey respondents, in the process of evolving. Whatever the particular incidents of this evolving relationship, however, one fundamental point was made by almost all respondents. This was that the settlement councils and the General Council represent autonomous Aboriginal governments whose ultimate sanction lies in the consent given them by the members of the Metis settlements. As a result, it was the view of respondents that the relationship between settlement governments, including the General Council, and the governments of other jurisdictions in Canada is a 'government-to-government' one. Although legislation and judicial doctrine may not yet acknowledge this, for all respondents to the survey, the governments of the Metis settlements are already an effective third order of government in Canada.

Aboriginal Governance Project

by the Metis Settlements General Council
Edmonton, Alberta

In November 1990, the eight Metis settlements of Alberta — Buffalo Lake Metis Settlement, East Prairie Metis Settlement, Elizabeth Metis Settlement, Fishing Lake Metis Settlement, Gift Lake Metis Settlement, Kikino Metis Settlement, Paddle Prairie Metis Settlement and Peavine Metis Settlement — began to implement a new type of governance, expressed in four Alberta statutes proclaimed that month. The *Metis Settlements Accord Implementation Act*, S.A. 1990, c. M-14.5, the *Metis Settlements Land Protection Act*, S.A. 1990 c. M-14.8, the *Metis Settlements Act*, S.A. 1990 c. M-14.3, and the *Constitution of Alberta Amendment Act, 1990*, S.A. 1990, c. C-22.2, mandated a number of new departures for the only Metis communities in Canada, other than those that are participants in land claims agreements in the Northwest Territories, that possess a land base of their own.

The Metis settlements legislation not only established the basis for the greater exercise of power by settlement governments, it also had other important features. A financial settlement over a 17-year period was provided to allow for the enhancement of the physical and administrative infrastructure of the settlements, so that these might reach levels comparable to those available in Alberta rural communities generally. Although resources located beneath settlement land remained under the control of the provincial Crown, as they had from the establishment of the settlements in 1938, the settlements legislation did establish a resource development co-management regime between the settlements and the province, under which the settlements have been able to share in some of the benefits derived from the development of subsurface mineral resources. Further, the legislation provided for a seven-year transition process to assist the settlements in the effective assumption of greater powers. It also established an independent public agency, the Metis Settlements Transition Commission, to be the vehicle for providing assistance with the transition.

A number of other initiatives were contained in the settlements legislation. The land base of the settlements, consisting in 1990 of some 505,425 hectares located across northern Alberta,

was given statutory protection intended to make it impossible for the provincial legislature to terminate a settlement unilaterally, as had happened in the past. Absent constitutional protection for the settlement land base, such protection may offer the best assurance available that settlement lands will not be removed from settlement control without the consent of the settlement membership.

These were all significant achievements and provide major components of the Metis settlements legislative package. However, one of the most dramatic features of the legislation was the establishment of greater authority for settlement governments and an expansion of the powers exercised by settlement governments within their communities.

This expansion has taken several forms. Settlement governments, consisting of popularly elected five-member councils, now have greatly enhanced by-law making and other regulatory powers. Subject to the requirements of the legislation and to the Metis Settlements Appeal Tribunal — a quasi-judicial administrative tribunal also established under the settlements legislation — settlement councils have the power to determine who will become settlement members and what interests settlement members and others will be given in settlement lands.

The settlement legislation not only gave statutory expression to new powers for settlement governments, it also established a federative body designed to represent and further the common interest of all eight settlements. This body, known as the Metis Settlements General Council, is in many ways the successor body to the Alberta Federation of Metis Settlement Associations. The Federation, established by the eight settlements in 1975 and incorporated as a non-profit society under provincial legislation, was designed to provide settlement councils of the day with a mechanism for sharing information and co-ordinating such efforts as were required to advance the common interests of the settlements.

The newly established General Council, although resembling the Federation in a number of ways, is in other ways very distinct from its predecessor. The General Council, like the settlement councils under the 1990 legislation, was also given a significant role in the governance of the settlements. This role, its implications for Aboriginal government in the context of the Metis settlements, and community reactions to the way the role is being discharged, provide the focus for this paper.

The structure and functions of the General Council, as mandated in legislation and policy, are examined in Part 1 of the paper. In Part 2 the reactions of settlement members and others to

the conduct and functioning of the General Council in the three years of its existence are presented. These reactions were obtained from interviews conducted by the General Council as part of the Royal Commission on Aboriginal Peoples research program. The questions on which the interviews were based are set out in Appendix 1.

The Metis Settlements General Council offers one of the most highly developed examples in existence to date of a federation of Aboriginal governments. The General Council is a working model of a type of Aboriginal federalism whose operation may provide some useful examples for other Aboriginal jurisdictions that might be interested in adopting federative political arrangements.

Part 1 The Structure and Powers of the Metis Settlements General Council

Structure

Section 214 of the *Metis Settlements Act* establishes the Metis Settlements General Council as a corporation and states that the General Council consists of the councillors of all the settlement councils as well as the officers of the General Council. As noted earlier, the settlement councils are the governing bodies of the settlements, consisting of five members who are popularly elected by the settlement membership. There are 40 councillors in all, and these councillors, together with the president, vice-president, secretary and treasurer who as officers of the General Council are elected by settlement councils, constitute the Metis Settlements General Council (see Figure 1).

Each settlement council has only one vote in the election of officers for the General Council, as they do in all other General Council deliberations. (*Metis Settlements Act*, s.216(2), 219(1)). As a result, there are only eight votes to be cast at all General Council meetings. Settlement councils must decide how they will vote as a unit before casting any vote at General Council. The officers of the General Council may attend and participate in General Council meetings but do not have the right to vote (*Metis Settlements Act*, s.216(3)).

The officers of the General Council, all of whom are currently elected together for three-year terms, must be settlement members but may not be members of settlement councils at the time of their election to General Council executive positions (*Metis Settlements Act*, s.216(2)). This provision has been the subject of some critical comment, but the reason for such a

requirement would appear to be a desire to recruit leadership for Metis settlement institutions as widely as possible. This is an important consideration for a community that has, across eight settlements, a total membership of some five to six thousand people.

The General Council has the right to regulate its own internal management and affairs (*Metis Settlements Act*, s.217(1)) and has done so by adopting a *Rules and Procedures Manual* (see Appendix 2). The organization may also establish an executive committee and delegate to it any of the General Council's powers, duties or functions, except the power to make General Council policies, a power given specifically to the General Council under the Act (see *Metis Settlements Act*, s.218).

The executive members and the chairmen of the eight settlement councils, who are referred to collectively as the General Council Board, meet regularly to plan General Council business and deal with issues of common concern. They also establish committees and give them a mandate and budget to deal with a variety of common issues. Further, the board performs a critical function in developing agendas for General Council meetings and assigning priorities to issues requiring a decision by the General Council. This is done by way of making recommendations to the General Council.

Powers of General Council Under Metis Settlement Legislation

Various components of the Metis settlements legislative package establish a range of powers to be exercised by the General Council. These powers are discussed in turn.

Policy making

Sections 222 and 223 of the *Metis Settlements Act* set out a number of public policy areas in which the General Council may make policy. This is the single most important role played by the General Council and the chief aspect of its legislative power. Section 222 states that

- 222(1) The General Council, after consultation with the Minister, may make, amend or repeal General Council Policies
- (a) respecting the prohibition or the regulation and control of the sale, lease or other disposition of timber in settlement areas;
 - (b) respecting the co-management of the subsurface resources of settlement areas and the distribution of the proceeds from exploration for, and development of, those resources;
 - (c) respecting the means by which any right or interest in patented land may be created, the person or persons having authority to create it, the person who may

- acquire the right or interest, and any conditions or restrictions attached to its creation, use or disposal;
- (d) respecting a financial allocation policy for the settlements, which may include a requisition on settlements to fund the General Council;
- (e) respecting whether and, if so, under what conditions the General Council may
- (i) engage in commercial activities,
 - (ii) make investments other than those described in Schedule 2 [of the *Metis Settlements Act*]
 - (iii) lend money,
 - (iv) make grants of money,
 - (v) guarantee the repayment of a loan by a lender to someone other than a settlement, or
 - (vi) guarantee the payment of interest on a loan by a lender to someone other than the settlement;
- (f) authorizing a settlement council to engage in some or all of the activities described in section 3(2) [of the *Metis Settlements Act*];
- (g) respecting the consent of the General Council under section 7 of the *Metis Settlements Land Protection Act*, and any terms and conditions that must be met before consent is given;
- (h) providing for a levy to be imposed by settlement by-law on the General Council in such form and manner as the Policy provides;
- (i) respecting the assessment or taxation, or both, of land, interests in land or improvements on land, in the settlement area, including rights to occupy, possess or use land in the settlement area;
- (j) permitting settlement by-laws to be made respecting assessment and taxation of the fee simple or any lesser interest in patented land held by the General Council;
- (k) respecting the means by which the General Council may maintain, create, terminate and grant rights and interests in patented land;
- (l) respecting the allocation of patented land;
- (m) respecting the issuance of rights or interests in patented land and the reservations, exceptions, conditions or limitations in respect of the issuance of the rights or interests;
- (n) respecting the rescinding or termination of rights or interests in patented land;
- (o) respecting the eligibility of persons to be allocated rights or interests in patented land;
- (p) respecting appeals relating to the allocation of rights or interests in patented land;
- (q) respecting the circumstances under which an allocation can be refused;
- (r) respecting the disposition of rights or interests in allocated patented land;
- (s) respecting the disposition of rights or interests in patented land that is not allocated;
- (t) governing the location of utilities and public rights of way in a proposed subdivision and the minimum width and the maximum gradient of public rights of way;
- (u) respecting the devolution of estates and interests in patented land held by a settlement member on the death of the member whether the member dies testate

or intestate;

(v) providing that one or more of the *Administration of Estates Act*, the *Devolution of Real Property Act* and the *Wills Act* do not apply to specified interests in patented land that are held by settlement members;

(w) describing the persons who are permitted to reside in settlement areas in addition to the persons described in section 92 [of the *Metis Settlements Act*];

(x) respecting the entities in which a settlement or the General Council may establish accounts in addition to those permitted by this Act.

(2) General Council Policies under subsection (1) or any amendment or repeal of them

(a) must be approved by all 8 settlement councils, and

(b) are subject to a veto by the Minister under section 224.

(3) A General Council Policy described in subsection (1) can be made, amended or repealed in accordance with section 223(2) if all the settlement councils agree that the policy is to be passed, and subsequently made, amended or repealed, in accordance with section 223(2).

It is important to note that in order to make a policy under this section of the legislation, all eight settlements must approve the policy, and it is subject to ministerial veto, which must be exercised within 90 days of the receipt of the policy by the member of the Alberta government responsible for the settlements. If no veto is exercised within that period, the policy automatically comes into force (*Metis Settlements Act*, s.222(2); 224(1)). From time to time the General Council has requested that ministerial approval be given before the 90-day period has elapsed, in cases where the enactment of a policy is of an urgent nature.

Section 223 provides that

223(1) The General Council, after consultation with the Minister, may make, amend or repeal General Council Policies

(a) respecting membership in settlements;

(b) respecting the taking of a census of settlement members or the population of settlement areas;

(c) respecting the notice required and procedures for General Council meetings or public or special meetings called by the General Council;

(d) describing what is or what is not considered to be a financial interest for the purpose of explaining when a conflict of interest may exist;

(e) providing for planning, land use and development of settlement areas, including the prohibition or regulation and control of the use and development of land and buildings;

(f) respecting the occupation or use of patented land that is not allocated to a person or in respect of which no person has exclusive right of possession;

(g) respecting the right of non-settlement members to reside in a settlement area and the duties associated with being a resident;

- (h) respecting those matters that may, by this Act or any other enactment, be subject to a General Council Policy;
 - (i) respecting such other matters as are considered by the General Council to be for the benefit of the settlements or settlement members;
- (2) General Council Policies under subsection (1) or any amendment or repeal of them
- (a) must be approved by at least 6 settlement councils, and
 - (b) are subject to a veto by the Minister under section 224.
- (3) A General Council Policy described in subsection (1) can be made, amended or repealed in accordance with section 222(2) if all the settlement councils agree that the policy is to be passed, and subsequently made, amended or repealed, in accordance with section 222(2).

Policies made under section 223 need the approval of only six of the eight settlement councils, but they are also subject to veto by the minister, exercised under the same conditions as apply to section 222.

The policy areas included under both section 222 and section 223 of the *Metis Settlements Act* relate to public policy areas such as the regulation of resource use by the settlements, the conduct of commercial activities by the settlements, the granting of various types of legal interest in settlement lands, the taxation of interests in settlement lands, membership in the settlements, and land use planning matters that are common to all settlements. The perspective of the legislation is that the most effective and efficient way to deal with common problems is through decision making at the General Council level.

One policy area of special significance is the allocation among the settlements of the transition funds provided each year to the settlements by the Alberta government under the provisions of sections 3, 4 and 6 of the *Metis Settlements Accord Implementation Act*. Authority for making this policy is conveyed by section 222(1)(d) of the *Metis Settlements Act*. Since these funds amount to some \$25 million per year for the seven years following the proclamation of the legislation (from April 1, 1990 to March 31, 1997) and some \$10 million per year for the ten years thereafter, this is a significant power with major effects on the day-to-day operations of every settlement.

Over the past three years, the General Council has exercised its policy-making power in a number of areas. It has made a Hunting, Fishing, Trapping and Gathering Policy, a Timber Policy, a Census Policy, a Levies policy, a policy allowing settlements to engage in commercial

activities, and a policy describing what is to be considered a financial interest for the purposes of establishing when a conflict of interest may exist for settlement councillors. Of all the policies made to date, the most ambitious has been the Land Policy. This is designed to provide a framework for the ownership and management of interests in settlement land and states in detail how such interests are to be established.

Currently, policies are under consideration that would provide for the assessment and taxation of interests in land in the settlement areas and for the co-management of subsurface resources taken from settlement areas and for the distribution of proceeds obtained from the exploration and development of these resources. The latter two policy areas rival the Land Policy in both significance and complexity, and the task of defining the common settlement interest in these subjects is very demanding.

General council as fee simple title holder of settlement lands

One of the greatest concerns that the settlements attempted to address through the Metis settlements legislation was the maintenance of the settlement land base. When the settlements were established in 1938, this was done by order in council on provincial Crown land. The province continued to hold the land, and if a decision was made to abolish a settlement, it was done by simply issuing a further order in council to that effect. This did happen on four occasions before the 1990s, and in negotiating the legislative package, the settlements were concerned to guard against the possibility of this happening again.

As a consequence, fee simple title to all the land contained in the eight existing Metis settlements was conveyed to the Metis Settlements General Council by the provincial Crown through letters patent. The General Council thus holds the title to all Metis settlement land in Alberta.

Under the laws of Canada and Alberta, this imposes certain legal obligations upon the General Council. It also ensures that no portion of the land base of any settlement can be alienated without obtaining the consent of the General Council, as well as other parties. Section 4 of the *Metis Settlements Land Protection Act* specifies the conditions that must be met before settlement land can be alienated. The section states that

The fee simple estate in all or any part of a parcel of patented land may be alienated only with the consent of

- (a) the Crown,

- (b) the General Council,
- (c) a majority of all the settlement members of the Metis Settlement in which the parcel to be alienated is situated, and
- (d) a majority of all settlement members of all the Metis Settlements.

Absent a constitutional amendment protecting the settlement land base, this legislation appears to offer the best protection available against involuntary taking of settlement land. Further, the provision that the General Council holds title to all settlement land establishes the important principle that the land in question is the common possession of the entire Metis settlement collectivity, to be held for the use of each generation of settlement members. It is ultimately a communal possession, and the General Council's responsibility is to maintain and protect that communal interest.

General council involvement in resource development on settlement land

The General Council's position as fee simple title holder also gives it an important role concerning resource development on settlement lands. As noted earlier, when the title to these lands was conveyed to the General Council, the subsurface mineral resources were not conveyed with it. These remain in the hands of the provincial Crown, as do most of the benefits obtained from the exploitation of these resources.

However, the settlements and the provincial government did agree on the establishment of a co-management regime for the development of these resources. Since the settlements, collectively through the General Council, are the owners of the surface of settlement land, the settlements are entitled to compensation with regard to the access required by operators for the development of subsurface resources, such as oil and gas. The means by which such compensation is to be provided is set out in the Co-management Agreement, included in the legislation as Appendix 3 to the *Metis Settlements Act*.

The Co-Management Agreement provides that the settlement councils and the General Council may participate in any oil and gas development occurring on the settlement up to a maximum of 25 per cent. Further, a royalty override can be affixed for the benefit of the settlement beyond that charged by the provincial government. Both the opportunity to participate and the attached royalty override form part of a development agreement negotiated between the operator of a development and the affected settlement council and the General Council. (The Co-Management Agreement is attached as Appendix 3 to this report.)

As the title-holder of all settlement lands, the General Council has certain obligations with regard to any resource development that any settlement council may wish to undertake. The terms and conditions under which entry to settlement lands for the purpose of subsurface resource development may be permitted are established by the provincial minister of energy on the basis of recommendations from Metis Settlements Access Committees, one of which exists for each settlement. The General Council must, under terms of the legislation, have a representative on each of these committees.

Further, section 7(2) and (3) of the *Metis Settlements Land Protection Act* states that

(2) No person may conduct operations in or under patented land to determine geologic or other conditions underlying the surface of land or water without

(a) the consent of the settlement council of the settlement area in which the operation is proposed, and

(b) the consent of the General Council.

(3) A person who, after the coming into force of this section, has obtained from the Crown a right to work or develop a mineral in or under patented land, or anyone authorized by that person, may not, without the consent

(a) of the settlement council of the settlement area for which the right has been obtained, and

(b) of the General Council,

enter on patented land and conduct operations in order to obtain information about a mineral, including its existence or non-existence, or to extract a mineral.

Finally, the policy-making powers of the General Council continued in section 222(1) of the *Metis Settlements Act* provide the authority for the General Council, in consultation with the minister, to make a policy "respecting co-management of the subsurface resources of settlement areas and the distribution of the proceeds from exploration for, and development of, these resources."

Should the General Council adopt such a policy (as it is currently in the process of doing), it can allocate proceeds obtained from the exploration and development of subsurface resources between the settlement council under whose land the resource is located and the General Council in such proportions as obtain the consent of the General Council. Although this is one of the policies that require unanimous consent by the General Council, such a policy can, if sufficient common ground is identified, give the General Council an effective role in the management of settlement subsurface resources.

The provision of a role for General Council in the resource management of individual settlements emphasizes once again the collective interest of the settlements in the land and resources of each of them. As in other areas where such a collective interest is articulated, finding the proper balance between protecting that interest and at the same time furthering the wishes of individual settlements can prove a challenge. As in any federation, this is a challenge that the General Council is constantly being called upon to meet.

Investment of money in authorized investments

Schedule 2 of the *Metis Settlements Act* permits the General Council to invest money in a list of financial instruments specified in the schedule. This power has been given significant application, because some \$35 million over seven years is to be made available to the settlements from the financial settlement provided by the province for "the benefit of the settlements and their members" (*Metis Settlements Accord Implementation Act*, s.3(b)). These revenues have been held by the General Council on behalf of all the settlements and invested as authorized in Schedule 2.

In an effort to manage this fund efficiently, the General Council has created an Investment Committee made up of a representative from each settlement and the General Council treasurer. The Committee has been charged with the management of the fund pursuant to guidelines established by the committee and approved by the political leadership of the General Council.

*Assumption of transition institutions
at the termination of the transition process*

All parties involved in designing the Metis settlements legislation agreed that some institutional provision had to be made to assist the settlements as they assumed increasingly greater powers in the governance of their communities. As discussed briefly earlier, the Metis Settlements Transition Commission, headed by a commissioner, was established to perform this function. This agency exists at arm's length from government and is currently mandated by the legislation to last for seven years, with a termination date of 31 March 1997.

When the Transition Commission was established to assist in implementing the provisions of the Metis settlements legislation, the framers of the legislation recognized that a body was needed to guide the Transition Commission in the discharge of its mandate. The Metis

Settlements Transition Authority was established to do this. Under section 39 of the *Metis Settlements Accord Implementation Act*, the Authority is constituted by the Metis Settlements Transition Commissioner, a representative of the Metis Settlements General Council (the president currently fills this role), and a representative of the provincial government (the minister charged with responsibility for the Metis settlements legislation currently plays this role; see Figure 2).

The Transition Authority, whose administrative arm is the Metis Settlements Transition Commission, was given its mandate by an agreement reached between the provincial government and the General Council on 10 November 1991. Under the terms of this mandate, the Transition Authority is charged with providing direction to the Transition Commissioner in the discharge of his statutory responsibilities, as specified in section 12 of the *Metis Settlements Accord Implementation Act*. The Transition Authority plays a crucial role in thus ensuring that implementation of the provisions of the Metis settlements legislation is conducted under the joint direction of the Metis Settlements General Council and the provincial government. Funding for the work of both the Transition Authority and the Transition Commission is provided directly, through a separate legislative vote, by the provincial treasury. (The 10 November 1991 agreement and section 12 of the *Metis Settlements Accord Implementation Act* are provided in Appendix 4 and Appendix 5 respectively.)

A further important responsibility of the Transition Commission is the provision of a systematic plan to ensure the orderly transfer of all powers, functions and responsibilities from the Commission to settlement councils and the General Council by the end of 1997. The Transition Authority has determined that this plan should be devised by the end of 1993 to allow sufficient time for systematic devolution. Ministerial approval was received in October 1993, and cabinet approval was expected by the end of 1993. The devolution plan is based on the principle that powers are to be transferred according to the capacity of settlement councils and the General Council to assume them.

Further, the plan calls for the creation of a Metis Settlements Local Government Division as a separate agency of the provincial government. This agency will assume functions now discharged by various provincial government departments with regard to settlement affairs. This division, which would report directly to the minister responsible for Aboriginal affairs, would consist of three to five staff chosen from the membership of the settlements.

When the Transition Commission comes to an end, several of the programmes it administers will be transferred to the General Council. One of the most significant examples is the Metis Settlements Land Registry, established to record or register all interests granted in Metis settlement land pursuant to the Metis Settlements Land Policy. Although the transition period may be lengthened beyond its current expiry date of 1997 by mutual agreement between the provincial government and the General Council, at some point the General Council will assume authority for a number of autonomous institutions whose responsibility it is to manage various matters of common concern to the settlements.

Part 2 Community Perspectives on the Metis Settlements General Council

The Aboriginal governance survey was conducted with a wide range of participants — members of the General Council executive, settlement councillors, settlement administrators, members of the Metis Settlements Transition Commission, and groups of settlement members. Responses on the issues covered were by no means uniform, but a representative range of opinions was expressed, making it possible to present community perspectives on a number of issues.

General Council as Spokesperson for the Views of the Settlements of Areas of Common Concern

With regard to the functions that the General Council is currently discharging, as well as functions perceived to be within the General Council's mandate, there was virtual unanimity among all respondents that it was the General Council's task to represent the views of the settlements on issues of common concern. Although there was a wide range of opinion among respondents about other aspects of the General Council's role, no one disagreed with the principle that the settlements needed some type of supra-settlement mechanism to articulate shared settlement concerns.

This was a major part of the function discharged by the Alberta Federation of Metis Settlements Associations, and it is a role both familiar to and accepted by all respondents with regard to a central settlement organization. Our respondents emphasized repeatedly that the eight settlements require a common body to represent the shared interests of the settlement membership in dealing with such parties as the provincial government or other Aboriginal groups.

Further, a number of respondents emphasized that it was only in a forum such as that

provided by General Council that common approaches to issues affecting all settlements could be devised. One of the principal functions identified for the General Council by most respondents was the provision of a forum within which settlements could meet to develop such approaches.

Our respondents also drew some implications from the discharge of this function. Representing settlement views and concerns to government is an obvious implication, but the further view was frequently expressed that the existence of a common spokesperson made it more difficult for the provincial government to try to "divide and conquer" the settlements. In addition, a common central body was seen as playing a crucial mediatory role between government and the individual settlements.

In the interviews respondents also assessed how effectively the General Council had discharged this role to date. If there was general consensus on the necessity of such a function, there was also some agreement that the General Council was making a good effort in the conduct of its responsibilities in this area.

However, some respondents indicated that they felt the General Council should be prepared to play a more aggressive role as a political spokesperson than it has done to date. From this perspective, the role of the General Council in representing the interests of the settlements to a wider world should take precedence over the discharge of administration functions, such as assisting in the delivery of programs to the settlements.

Other respondents disagreed with this, saying that the General Council should become more involved in program areas. Whatever the range of views on this matter, it is inevitable that with the dissolution of the Transition Commission in 1997 or subsequently, the General Council will have to assume responsibility for some program areas, such as the Land Registry, now borne by the Commission.

These issues led to a wider discussion about the evolution of the role of the General Council in the future. What can safely be said is that all respondents agreed with the view that some form of common spokesperson was required to articulate settlement perspectives on common problems regardless of what further responsibilities they did or did not wish to see vested in the General Council at some point in the future. Whatever their views on other aspects of General Council's performance and function, none of our respondents disagreed with the principle that a common representative body for the settlements was required. No argument was

made by any respondent that the existence of the General Council was an unnecessary burden on the discharge by individual settlements of their own governance obligations.

The General Council as Title Holder to All Metis Settlement Land

As noted earlier, this function is a feature of the 1990 Metis legislative package and was not part of the responsibility of the Federation of Metis Settlement Associations. As a result, the discharge of this role is not as familiar to settlement members or to the members of the General Council as is the role of spokesperson for common settlement concerns. Further, the role of land holder involves real power over the disposition of vital settlement interests, concerning as it does the use of land and resources on individual settlements. Perhaps as a result, there was a considerable divergence of opinion among respondents concerning this General Council function.

There was general support for the view that making the General Council the ultimate title holder of all Metis lands did offer the best means, short of a constitutional amendment, of ensuring that settlement land would be held in perpetuity for the benefit of the Metis settlement community. Among those respondents who embraced this position most enthusiastically, there was the related view that the role of the General Council was to ensure that decisions concerning day-to-day land use on all settlements should also reflect the needs and interests of the wider settlement community, not simply those of the individual settlements in which the land was located.

In addition to the use of its power as fee simple title holder, the General Council could realize that objective through the policy-making powers given it under the *Metis Settlements Act*. Numerous provisions of that Act enable the General Council to determine what type of interests are to be created in settlement lands and the means by which such interests may be created. Moreover, the General Council has exercised this power by making the Metis Settlements Land Policy, the most ambitious policy made to date by the General Council.

Respondents did not offer specific criticisms of the Land Policy, and most of them expressed no practical disagreement with the way the General Council has been involved to date in the management of settlement lands. From the perspective of some respondents, however, the provision of such authority gives all the settlements, acting collectively through the General Council, too much potential power over the land and resources of individual settlements. From

this perspective, individual settlements are best placed to make decisions concerning these subjects, and such decisions should not be open to interference by other settlements, even though they are acting through their common body.

Such concerns are at the heart of all federalism arrangements. Maintaining a balance between the needs of individual communities and the common needs of the wider entity is the most challenging political demand imposed upon leaders of a federation. The fact that such complaints were not widely heard from respondents may indicate that the General Council has managed this balance effectively to date, at least with regard to its share in the management of land in individual settlements.

The general lack of such criticisms may also reflect the fact that all General Council policies relating to settlement land must be made unanimously, so that any one settlement can veto the adoption of such a policy if it is dissatisfied with it. A number of complaints were made by respondents concerning the requirement in the legislation for unanimous General Council decision making, but the question must be asked whether the General Council would have been given the powers it now has in the absence of such provisions. Our survey suggests that the answer is that it would not have been given such powers, and that there is no consensus among the settlements at present that such powers should be given.

General Council Role in the Management of Settlement Resources

The position of the General Council as the fee simple title holder of settlement lands also involves the General Council in the development of natural resources on the settlements. As discussed in Part 1, the General Council has been charged with protecting the common settlement interest with regard to resource extraction on the settlements. The Metis settlements legislation offers the General Council several means of doing this. The General Council is represented on each settlement's Access Committee, which recommends to the provincial minister of energy the terms and conditions, including financial compensation to the settlements and the General Council, that should be attached to the right to develop subsurface resources.

Further, the General Council has been granted the power under the *Metis Settlements Act* to make policy respecting the co-management of subsurface resources and the distribution of the proceeds from exploration for and development of these resources. The General Council has already made an interim policy under this provision of the Act and is currently developing a

permanent policy to deal with this matter.

Since no constraints are imposed by the legislation on the nature of the General Council's role in this area, the policy may mandate a very active role and the exercise of a broad range of authority to the General Council on these issues, or it may assign much more limited functions. There has been general acceptance by settlement councillors that some provision must be made in the policy for General Council involvement in decisions concerning settlement resource development. It appears as well that consensus is emerging that some share of the revenues obtained from resource development should also be retained by General Council, to provide for such possibilities as penalties assessed against the title holder to the land for infringement of environmental statutes or for other shared settlement needs with regard to resource development.

A draft resource policy incorporating these provisions, among others, is currently under consideration by the General Council and will be brought forward for third reading in the winter of 1994-95. As discussion of this policy on the settlements has shown, defining an active interventionist role for General Council in areas that impinge directly on the disposition of settlement resources does generate concern on the part of some settlements. To date, however, these concerns have not been so great that they have outweighed the recognition that the General Council does have a legitimate function to discharge in this area and must be given adequate power to discharge it with respect to any policy that might be adopted.

The Policy-Making Role of the General Council

The policy-making role of General Council is its principal legislative function. When a General Council policy is made in areas mandated by the legislation, that policy is binding on every settlement, and no settlement council can pass a by-law or take any action or authorize or undertake any activity that is inconsistent with the policy (*Metis Settlements Act*, s.228).

Further, the settlements may give particular expression to General Council policies by adopting by-laws that apply the policy to the specific circumstances of the settlements. In some ways, by-laws made in this regard provide the greatest degree of contact many settlement members have with General Council policies, which at times seem somewhat remote from the day-to-day concerns of settlement members.

Given the significance of this policy-making function, it is not surprising that it evoked extensive and conflicting responses from the groups surveyed for this project. Some respondents

were hostile to the assignment of such a function to the General Council at all, stating that it was improper to vest in it such control over the legislative decision making of the settlements. The view was also expressed that giving the General Council extensive policy-making powers improperly constrained the settlements in the exercise of their own governmental power.

Other respondents, while not criticizing the allocation of a policy-making function to the General Council, felt that the function was conducted at too great a remove from settlement members. The suggestion was made that more workshops concerning policies, both during their formulation and following their adoption, should be held on the settlements so as to acquaint settlement membership more adequately with them.

Several responses might be made to these comments, but it should be noted first that the views just reported were generally not representative of the views provided by our respondents on this topic. Many noted that the General Council was most responsive to settlement viewpoints when formulating policy and tried constantly to attend to settlement concerns.

What the more critical comments reflect is a perception that the General Council's policy-making power represents the imposition of the views an external body upon the settlements. This perspective often derives from a feeling that the General Council is constituted essentially by its executive officers and their small administrative staff in Edmonton.

In fact, this perception is incorrect and is clearly inapplicable to the General Council's discharge of its policy function. The General Council is, after all, composed of all settlement councillors, and each of the eight settlements has an equal vote in the deliberations of the General Council. Further, most policy areas, especially those relating to such matters as land and resource use, require unanimity on the part of the settlement councils voting in General Council before they can be adopted. Any settlement council that judges that a proposed policy is inimical to the interest of its settlement can simply vote against the policy.

Critical comments about the policy-making function of General Council do not reveal a difficulty with the function of General Council, but a difficulty with the broader concept of an authority external to the settlement having the capacity to affect the disposition of any aspect of settlement affairs. This is a difficulty common to all federations, even those as susceptible to the control of individual members as is the General Council. How such difficulties are to be overcome poses a major challenge to the leadership of the General Council.

That such criticisms are made points to problems with another much criticized aspect of

General Council decision making, and that is the need for unanimity. A number of our respondents urged that this practice be ended, since it makes reaching decisions on difficult or contentious issues frequently impossible.

A particularly significant instance of this has been the frequent inability of the General Council to adopt an annual financial allocation policy concerning the division among the settlements of the transition funding provided each year by the provincial government. In those years when the settlements have not been able to agree on an acceptable formula for the distribution of this money, the Transition Commissioner has had to exercise his authority under section 33(2) of the *Metis Settlements Accord Implementation Act* to make the distribution.

As a result of being unable on some occasions to obtain consensus on this issue, the General Council has been unable to discharge regularly this very important function of governance. Because of this experience and others, many respondents suggested that a preferable alternative to unanimity would be a requirement that General Council decisions be made with the support of six of the eight settlement councils.

As desirable as this might appear to some, our surveys suggest that the settlements are not all sufficiently supportive of this approach to make its adoption possible. If some are critical of policies adopted under the current regime, it is hard to see how policies affecting important areas of settlement activity, adopted over the strong opposition of some settlements, could have any practical significance. Rather than strengthening the General Council, such an approach might significantly undermine whatever authority it currently possesses.

One aspect of policy making that was criticized by all respondents was the veto power of the member of the Alberta government responsible for the Metis settlements legislation. Opinion was virtually unanimous that this was unacceptable and should be removed from the legislation, even though, to date, this veto power has never been exercised.

However, several respondents who had been involved in framing the legislation observed that without provision for a veto, the General Council might not have been given such extensive policy-making powers as it currently possesses. For instance, reference was made to the right of settlements under the legislation to make by-laws regulating hunting, fishing and trapping in settlement areas, if there is a General Council Policy in effect (*Metis Settlements Act*, Sch. 1, s.19). The opinion was offered that without some requirement that reference be made to the provincial cabinet in connection with the provisions of any such by-laws, the power to make

them might not have been given. The possibility of a ministerial veto of the General Council policy upon which such by-laws are based provided such a reference, and thereby gave the provincial government sufficient reassurances to agree to the exercise of the power.

If this perception is accurate, it illustrates one of the fundamental difficulties inherent in any scheme of formally delegated Aboriginal government. The jurisdiction that considers itself the delegator often requires reassurance that the power being delegated will be exercised only in certain ways. Absent such reassurance, it will not co-operate in the scheme. The presence of a ministerial veto power over General Council policies provides this assurance, although it is universally unpopular with settlement members. To date, this has not proved to be a practical problem, since the veto has never been exercised. However, its presence is an obvious irritant and one that the settlements will continue to attempt to have changed.

Some respondents pointed to a further difficulty with the policy-making provisions of the Metis settlements legislation, and that is the absence of any enforcement power on the part of General Council. Although the *Metis Settlements Act* does state that General Council policies are binding on every settlement and settlements may not take actions or make by-laws that are inconsistent with General Council policies, the legislation provides no means of enforcing such provisions, short of General Council initiating legal proceedings against the offending settlement.

The Metis Settlements Appeal Tribunal does have the power either to set aside a by-law that is inconsistent with General Council policy or to amend a by-law to make it conform to General Council policy, but the Tribunal may do this only in respect of any matter that is before the Tribunal. If the Tribunal's jurisdiction is not invoked, presumably an offending by-law will remain in place. Further, no penalty is established by the legislation for failure to abide by General Council policies.

This has not become a real problem as yet, but it does raise the larger question of the fundamental nature of the General Council's authority. All governments must have some ultimate power to ensure that their decisions can be made effective. As long as the General Council lacks such ultimate authority and can rely only on consensus and voluntary compliance to effect its will, its fundamental capacity as a government will be open to question.

The General Council Executive and Its Relationship to the Settlement Membership

One of the most significant results of our survey was the perception, which seemed to be shared

among a number of our respondents, that the General Council consisted of the executive and the administrative staff in Edmonton, a perception that ignores the fact that the General Council is in fact constituted by the councillors from each of the eight settlements. The reasons for this are numerous, but it does lead to difficulties in building support for the concept of the General Council as the custodian of the collective interests of all the settlement members and their posterity.

Such difficulties are perhaps inescapable in any federal political system; it is clear that they are endemic to Canadian federalism at any rate. It is important to note, however, that none of our respondents questioned in the abstract the need for an institution such as the General Council, although in some cases they differed about what the extent of its power should be. Given that there was consensus among our respondents with regard to the desirability of the General Council, the issue arose as to how perceptions of the organization might be changed.

Some of our respondents suggested that there should be more contact between the settlement membership and the General Council executive, through more frequent settlement workshops, or through more structured reporting mechanisms between the settlement councils and the executive. It was suggested that this might give the executive a more visible presence in the communities.

Part of the difficulty that executive members will always face is that they are the only members of General Council identified in the minds of the membership solely with the General Council. Settlement councillors are often viewed primarily in that role, and not in their other capacity as members of the General Council. As a result, the executive and the administrative staff who work under their direction will always be identified more closely with the General Council than settlement councillors will be.

Our respondents suggested a number of ways in which the potentially negative aspects of such identification might be changed. Principal among these was the suggestion that the executive might be selected differently. Some respondents suggested that the executive continue to be elected by the settlement councillors, but that each of the forty councillors vote individually for candidates for executive positions, rather than voting as settlements, as is the case under the current legislation. The suggestion was also made that members of the executive might be chosen through general membership elections conducted on all settlements.

However, neither of these suggestions found widespread acceptance among our

respondents. There is still a general assumption that the method of choosing the executive mandated by the legislation is the appropriate one. Since the General Council is the common body for the eight settlements, most of our respondents were of the view that it was appropriate that the eight settlements, acting collectively through their councillors, should choose the executive.

A further concern regarding any alternative method of choosing the executive was raised. The purpose of the General Council is, after all, to represent all settlements equally. To turn the selection of executive members over to the membership of the settlements as a whole would run the risk that larger settlements would always dominate electoral outcomes. It was felt that such an eventuality would profoundly undermine the credibility of the General Council as a representative body of all settlements.

Section 264 of the *Metis Settlements Act* mandates that the minister and the General Council review in 1994 the election system for officers of the General Council as well as for settlement councillors. To the extent that our survey is representative, it indicates that while there is some feeling that the current system presents difficulties, this is far from the majority view. Whatever difficulties the General Council faces as it adjusts to its new role of law maker and land holder, the current method of electing its executive was not regarded by our respondents as being among the most significant.

The Relationship of the General Council to Other Jurisdictions

General Council and settlement councils

The relationship between the General Council and the settlement councils, and the relative distribution of power between them, has been referred to in our discussion of other topics. The major conceptual point that can be taken from our survey is that this will be a continuously evolving relationship that is still in its early stages. The General Council is a new body, entrusted with several roles that its predecessor organization, the Alberta Federation of Metis Settlement Associations, never had to discharge.

Similarly, the individual settlement councils are, under the 1990 settlements legislation, also discharging responsibilities that their predecessors under the old legislation never had to contemplate. A great deal more time is needed to allow participants to become more familiar with the new system and make the adjustments necessary for its effective operation.

Clearly, the General Council will, over the course of the next few years, have to assume new responsibilities as the transition process is completed and the Metis Settlements Transition Commission ceases to exist. The Metis Settlements Land Registry, the Subdivision Approving Authority and perhaps other agencies such as a settlement-controlled resource company may come to operate under the direction of the General Council.

As settlement governments assume more and more effective authority, they may identify tasks that could be shared and administered more efficiently on behalf of all settlements by the General Council. Alternatively, such assumption of authority may make some settlements even more protective of their own decision-making power and less willing to concede responsibilities to an organization that is perceived as external to the settlement, no matter what its formal structure.

Ultimately, most of our respondents replied that it would be necessary to "wait and see" before concluding what the relationship between General Council and the settlements should or will become. The membership of the settlements, and their political leadership, are currently focused on implementing a new process of government. In doing this, they are structuring a relationship between individual settlement communities that will foster common interests while simultaneously furthering local control of political decision making. The General Council and the settlement councils are the two poles between which this process is being worked out, and their relationship will no doubt change as the process continues.

General Council and the provincial and federal governments

On their face, the 1990 Metis settlement statutes appear to be examples of devolved legislation, granting certain powers to Metis government agencies that were previously under the direct control of the provincial government. Whatever the legal merits of this perception, it does not express the assumptions of our settlement respondents. For them, the settlements have the inherent right to determine their own affairs, and this right does not depend upon any 'grant' of power by any other body. In the view of our respondents, what is coming into expression in the new order of settlement governance is simply the realization of this right within one particular temporal framework.

When the relationship between the settlements and the province was discussed in legal terms with our settlement respondents, all agreed that the appropriate way of characterizing this

relationship was that of government-to-government, and not that of local administrative unit in a municipal government regime. Further, the government-to-government analogy was applied by our respondents not only to the settlement councils, but to the relationship between the provincial government and General Council as well. In fact, it is in this area that the General Council receives the strongest affirmation of its importance for the settlements, as the General Council is seen to function as the articulator of settlement perspectives to other governments.

For many of our respondents, and not only those on the settlements, the practical reality is that the relationship between the settlements and the provincial government is in many ways conducted on government-to-government terms now. The settlements, acting through the General Council, dispose of matters — such as membership in the community, the granting of interests in land, and the regulation of hunting, fishing and trapping — for which no local government in Canada has responsibility. The settlements are dealt with differently from local governments in Alberta and are treated distinctively, no matter what the legal realities concerning settlement status.

In part, this is because the concept of Aboriginal government, even though it is never referred to explicitly in the settlement legislation, frames the context within which the legislation is being implemented. It is a constant, if frequently unacknowledged, presence as the settlement governance regime expands its authority.

The political leadership of the settlements is aware of these realities and participated actively in the negotiations leading to the Charlottetown Accord in an effort to define further the right of Aboriginal government, as well as to accomplish certain other objectives. However, with the defeat of the Charlottetown Accord, there has been no further attempt at constitutional change on the part of the settlements.

The settlements cannot effectively promote constitutional change on their own but must await the renewed attempt on the part of all Aboriginal groups to do so. However, settlements can work to develop the potential for self-determining Aboriginal government contained in the current Metis settlements legislation and, if and when that is found wanting, can move into areas that have not been considered as yet.

There is a host of practical difficulties to confront in carrying out this task, but it is in overcoming these that the nature of settlement governance will be defined. The settlements and the General Council have already embarked on this project, and they are committed to pursuing

it.

Currently, the political leadership of the settlements is focused on fulfilling this task. In our discussions with respondents in connection with this survey, there was no extensive conceptual discussion of the basis of settlement government authority or of the legal status of the settlement councils or the General Council. Instead there was always a concrete focus on Metis governments obtaining as much effective authority as possible, as well as on the development of a diversified resource base to sustain such autonomy.

The final role that the General Council will play in this process has yet to be determined. Give that the settlements see a need for a common voice and a forum within which shared problems can be discussed, it is difficult to conceive of the settlements functioning politically with no common body. The General Council's role and function will no doubt evolve over time, as will the operation of settlement governments. As this process develops, the role of the General Council as the federal voice of self-determining Metis communities may well strengthen, and the General Council may acquire a constitutional status that is appropriate to the role it has already begun to play.

*A Note on Gender Roles and the Roles of Elders and Youth
in the Metis Settlements General Council*

Women have always played a significant role in the collective life of the Metis settlements, and this continues to be the case under the Metis settlements legislation of 1990. Currently, five women serve on the General Council, since three of the eight settlement councils have women in their membership. Women have served as chairpersons of settlement councils, although to date none has occupied an executive position on the General Council.

No one would maintain that this representation of women is particularly high, and traditionally in Metis communities, men have tended to fill public leadership roles. As in many other areas of Canadian life, this is in the process of changing. Women fill many positions in settlement administrations, and in one settlement a women is chief administrative officer of the settlement. Also, more and more women are standing for public office at each settlement council election.

Traditional values are still strong in settlement communities, and this no doubt affects the roles women play in settlement life. As in many other areas of settlement life, however, traditions are changing. Large numbers of settlement women are now pursuing post-secondary education

and are preparing to play public leadership roles in politics and in such areas as education, social services and business development. The settlements legislation makes no specific reference to gender issues, but the increasing control that the legislation gives the settlements over their own government will ensure that as women play more prominent public roles, they will have a more influential voice in the effective ordering of community affairs.

The formal political decision-making process for both the settlements and the General Council is established by the Metis settlements legislation, and more particularly by the *Metis Settlements Act*. Under the terms of this legislation, no specific role is allocated to elders or youth, and none is discharged. With regard to informal decision-making processes, the situation may well be different. Older members of the community, especially those who have been involved with public affairs in one capacity or another, might have their opinions sought on a number of issues. This would vary from settlement to settlement, however, and would be one of those intangible elements of decision making that would be difficult to measure.

In the survey conducted for this project, no effort was made to measure it. Elders have no structured role at present in the functions assigned to the General Council, and any influence they might have would be indirect and informal. For the purposes of our study, this was not a relevant consideration. However, the General Council leadership is preparing to constitute a more formal role for elders in the decision-making process. An elders council will be created beginning in 1995 to act as a body for sober second thought on the General Council's governance. Although the elders council will not have formal powers, it will nonetheless have a direct influence on the General Council. This body, consisting of one elder from each settlement and a chairperson, will meet three or four times a year to provide advice to the General Council on various matters.

With regard to the role played by youth, many of the same comments could be made. Settlement membership is open to individuals who satisfy the requirements mandated by the *Metis Settlements Act* (section 74) when they reach the age of 18. Once they become members, all individuals have the same legal rights in so far as their settlement membership is concerned. No special role is given to youth with regard to the formal governing structures mandated by the Act.

As with all Aboriginal communities, there are a number of special concerns relating to youth. These range from concern with educational advancement to substance abuse and the burden imposed by feelings of alienation and despair. Such issues are often addressed by

settlement councils and by the General Council as well, but for the purposes of our study there was no special role played by youth that could be examined.

Part 3 Conclusion

Several of the themes that have emerged from this paper are summarized below.

Section 264 of the *Metis Settlements Act* provides for a joint government/settlement review of the election process in 1994, including the election of councillors and officers of the General Council. This review represents an important step in assessing the current election process and determining what type of process is best suited to meet the needs and aspirations of the settlements.

Increasingly, discussion is taking place concerning aspects of the electoral system discussed earlier in this report. Of special note are the following areas of concern. It is evident that there is a gap, if only a perceived one, between the General Council executive and the settlement membership, to which the executive is ultimately responsible through the settlement councils.

As a response to this, there is some sentiment on the settlements in support of direct membership elections for the officers of the General Council. However, as discussed earlier, a chief criticism of moving to such a system is the potential for the more populous settlements to dominate the selection of the four executive positions. In this context, a number of individuals commented that a somewhat similar situation exists at the local level where large families can often dominate elections for council positions.

With regard to the direct election of the General Council executive and the problems of more heavily populated settlements dominating the result, a possible solution could be the adoption of a weighted electoral system, similar to those adopted by political parties that have moved to a universal voting system for leadership elections. Whatever the outcome of the 1994 election review, a fundamental necessity for any governance regime is to give the community the ability to shape an electoral process that is suitable to and accepted by that community.

A second theme can be drawn from concerns expressed with regard to the decision-making process of the General Council. The frequent requirement for unanimity is often regarded as an impediment to efficient decision making. Almost all of those interviewed also felt that the existence of a ministerial veto significantly undermined settlement autonomy and

potentially made settlement governance more difficult.

It was noted earlier that since proclamation of the legislation in 1990, the General Council has on some occasions failed to reach unanimous agreement on a financial allocation policy. When such a policy has not been adopted, the Commissioner has assumed responsibility for allocating and distributing the \$25 million that is shared among the settlements annually. The Commissioner's authority in this regard finds its source in section 33(2) of the *Metis Settlements Accord Implementation Act* and will expire when the office of the Commissioner comes to an end in 1997 or whatever later date may be chosen.

The difficulties that have been experienced in adopting a financial allocation policy highlight the problems inherent in unanimous decision making. The General Council is currently discussing a variety of formulas for revenue sharing that include criteria such as population, land base, sources of alternative revenue and so on. Criteria such as these are fundamental components of any community's development in a governmental context.

To determine such criteria often requires considerable effort, and progress can be severely impaired by stringent requirements for unanimous agreement. However, these difficulties must be balanced against the widely accepted view on the settlements that consensus in decision making is also a fundamental expression of Metis culture.

A third theme that can be identified is the view that there is a gap between the General Council and the settlement membership. This gap results from a lack of understanding of the role of the General Council and what significance the organization ultimately has.

There are a number of possible reasons for such misunderstanding. A major one might be the current method of electing the General Council executive, which makes the executive accountable to settlement councils and not to the settlement membership. This difficulty is compounded by recall provisions contained in the *General Council Rules and Procedures*, which give settlement councils the ability to recall any or all executive officers at any time with or without grounds by a vote of six out of eight councils.

A further source of misunderstanding may lie in the limits the settlements legislation has placed upon General Council power. Under the legislation, the major active governmental function assigned to the General Council is policy making. The assumption of other responsibilities, if that is the wish of the settlement communities, will have to be effected in the gaps that are to be found in the existing legislation. In some instances, this process is already

under way.

Powers gained in this way do not have the stability or the legitimacy that legislation or a constitution can provide. In our interviews mention was made that a Metis settlement constitution could provide better defined mandates with a clear division of powers between General Council and settlement councils accompanied by the corresponding authority to carry these out. This would entail a new view of the relationship between settlement councils, settlement membership and the officers of the General Council. As a result, much discussion and widespread consultation with the settlement membership concerning this proposal would be required before it could be implemented.

The extent to which settlement councils are prepared to move in this direction is not yet clear. However, a constitution developed by the settlements could provide specific principles that reflect the historical and cultural aspects of settlement life, as well as a division of powers between settlement government and the General Council from which well defined mandates could flow.

As the development of Metis settlement governance proceeds, a formal constitutional ordering of the relationship between the General Council and the settlement councils may be an appropriate way of defining the relationship between these bodies. What such an ordering will reflect is the practical experience that all levels of settlement government have gained as they implement the governance regime provided in the settlements legislation of 1990.