Federal and provincial responsibility in the Métis settlements of Alberta

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FEDERAL AND PROVINCIAL RESPONSIBILITY

IN THE

METIS SETTLEMENTS OF ALBERTA

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I. INTRODUCTION

1988 marks a fiftieth anniversary for the Metis settlements in Alberta. By virtue of legislation passed in 1938 Alberta has 5 geographical areas almost equal to Prince Edward Island in total size that are occupied by associations of Metis collectively exercising rights of land ownership and self-government. The geographical blocks are divided into eight "Metis Settlement Areas", each set aside for a "Metis Settlement Association" created under the Metis Betterment Act of Alberta. The settlements are home to about 5000 Metis.

As the only lands in Canada held and "governed" by Metis, the Metis Settlements of Alberta have a unique and interesting history. This paper investigates the roles the federal and provincial governments have played in enabling the Metis in Alberta to develop a land base on which to maintain their cultural identity. Although both governments have accepted responsibilities with respect to settlement Metis, neither has done so because of a clear legal obligation. In general the progress that has been made by the settlements is a result of pragmatic leadership that has focussed more on getting results than on getting specific legal rights recognized. This does not mean, however, that the settlement Metis do not assert the existence of rights essential to their survival as a people. Those rights have origins in British and Canadian history, and in the new Constitution of Canada. This paper surveys the responsibilities that each government has assumed with respect to Metis on the settlements and analyzes the sources of those responsibilities.

The settlements came about because of dedicated and capable Metis leadership in the 1930's and because the Alberta government was sensitive to their concerns. We review that period in history and then take a look at the events that have produced profound changes in the economic and political life of the settlements in the half century since their creation. We look at the legal framework in which the settlements developed and at the new legislation being proposed to constitutionally entrench Metis land and to create a new framework for self-government. Some of the jurisdictional problems involving the federal and provincial governments are examined in that context. Finally we provide some examples of how, in spite of unclear jurisdiction, the settlements, the Province and the federal government have been able to work together to produce real development on the settlements.

II. PHILOSOPHY

A. RECOGNITION AND RESPONSIBILITY

Both the federal and provincial governments have recognized that the Metis have special rights with respect to the Settlement Areas. Provincial recognition is contained in the Metis Betterment Act which provides the basic legislative framework for land management, membership and local self-government on the settlements. Federal recognition appears, for example, in regulations under the Fisheries Act which provide for special fishing rights for the Metis members in a Settlement Area. There is thus statutory evidence that both governments recognize special land related rights for Metis settlement members, and consequently special government responsibilities--if only to ensure that those rights are respected.

In considering federal and provincial responsibilities some care should be exercised in defining what we mean by a "responsibility" and to whom it is owed. Normally a responsibility implies a mandate to do something. For a government the source of the mandate may be conscience or constitution. Here "conscience" is used broadly to refer to the forces that drive a government to do something because it "ought to be done" whether the motivation is morality or Machiavellia. The mandate of the constitution is the hard edge--the legal framework that requires the government to act, whether it wants to or not.

B. RIGHTS VS. RESULTS

The history of the Metis settlements is one of pragmatic results oriented leadership. A person seeking government action can develop a strategy focused either on rights or results. The "results" orientation means that the paramount concern is to get a specific result without a great deal of concern as to why the government would act to enable that result. From this point of view the source of the government's mandate is not critical, the only real concern is that it accept some responsibility. The "rights" orientation is quite different. If the focus is on rights, the source of the government's mandate is critical, since the mandate of the constitution conveys a legal right. Clearly a strategy has the most chance of success when it can rely on both constitutional and conscience mandates of some validity. The task of native leaders in Canada for the past 100 years has been to mix the rights and results components in their political strategies to most effectively meet the needs of their present and future constituents.

Throughout their history Metis settlement leaders have emphasized the results component. Rights have been asserted and assiduously protected, but the driving concern has been results. In other words, Metis leaders working on behalf of the settlements have not insisted that the government recognize a right and act in response to that right. Rather the emphasis has been on the action, leaving the government to concern itself as to whether its mandate was conscience or constitution. Because of this

history, the focus of this paper is more on the role the federal and provincial governments have assumed in relation to the Metis settlements, than on the obligations they have at law.

There are two other good reasons for focusing on assumed roles rather than on strict legal responsibilities:

1. the question of whether or not Metis are "Indians" under section 91(24) of the *Constitution Act, 1867* is unsettled; and

2. the province and the Metis settlements are currently in court on a major claim to proceeds from the sale of oil and gas found in the settlement areas.

Section 91(24) of the *Constitution Act, 1867*, part of Canada's constitution, provides that "the exclusive Legislative Authority of the Parliament of Canada extends to ... Indians, and Lands reserved for the Indians". The term "Indians" is not defined. The current prevalent legal opinion[1] appears to be that the term probably includes Metis, although the matter has never been judicially determined. Notwithstanding this, the system of Metis settlements in Alberta has functioned under provincial legislation for 50 years, and, in cooperation with the Metis, the government has introduced bills in the 1988 spring sitting of the legislature to update this legislation and constitutionally protect Metis settlement lands.

While the province and the Metis have been cooperating in developing new Metis Settlements legislation, they have been engaged in litigation over the oil and gas revenues flowing from the settlement areas. This matter has been before the courts in one form or another since 1968. The current expectation is that the matter will go to trial in 1989. In more than 10 years of discoveries an enormous amount of material has been collected relating to the legal responsibilities, or lack thereof, of the province. The judicial determinations in that case will no doubt go a long way in defining the legal components of federal and provincial governments vis a vis the Metis on the settlements. It would be impossible in this paper to provide a detailed exposition of the arguments involved in that case. It may be useful, however, to highlight a rationale for contending that in the case of the Metis settlements, government responsibility derives from the constitution as well as from conscience.

C. COMMUNAL RIGHTS

Canada's constitution recognizes existing aboriginal and treaty rights. Section 35 of the Constitution Act, 1982 provides

> (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

[1] See P. Hogg, *Constitutional Law of Canada*, (2nd ed. 1985) 553

> (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.
>
> (3) For greater certainty in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

The Constitution Act also provided for a series of constitutional conferences to define just what is meant by "existing aboriginal and treaty rights". Although most aboriginal peoples did not get much help from the conferences in defining their constitutionally protected aboriginal rights, there have been positive developments in the courts.

Probably the most significant recent judicial determination in the area of aboriginal rights was the decision of the Supreme Court of Canada in the *Guerin*[2] case. There the Court confirmed that the common law recognizes a source of aboriginal rights outside of statute or executive order. The *Guerin* decision and the new Constitution provide a more solid foundation for defining aboriginal rights in general. A recent paper by Brian Slattery[3] provides an excellent exposition of that environment and there is no need to duplicate it here. However a brief overview will be helpful in examining the legal implications of events surrounding the establishment of the Metis settlements.

There is a fundamental problem when discussing aboriginal rights and that is distinguishing between the rights of an individual and the rights of a people. This dichotomy was a central problem in the recent Manitoba Court of Appeal decision in *Dumont et al* v. *A. G. Canada*.[4] In a majority decision with one dissent the Court rejected an application by Manitoba Metis for a declaration that amendments to the Manitoba Act between 1871 and 1886 were unconstitutional. In the view of the Metis the amendments had made it impossible to establish a land base for the Metis people as distinct from the Metis individuals. Twaddle, J.A, writing the decision for the majority said[5]

> The argument is purely speculative of what might have been. It offers no justification for a finding that the plaintiffs have a community of interest in some unspecified land or that their own rights are at issue.
>
> What the court is being asked to consider in this case is the constitutional validity of spent legislation which does not affect anyone's current rights. The rights affected by the impugned legislation were the statutory rights of individuals who are now deceased. These rights are not being pursued individually by the legal representatives of the persons whose rights they were, but generally by descendants whose degree of relationship is not even stated.

[2] *Guerin* v. *The Queen*, [1984] 2 S.C.R. 335, (1984), 13 D.L.R. (4th) 321 (S.C.C.)

[3] B. Slattery, "Understanding Aboriginal Rights", *The Canadian Bar Review*, Vol.66, p.727

[4] *Dumont et al* v. *A. G. Canada*, Judgement June 17, 1988. Not reported at writing.

[5] Citation when report of case is available

O'Sullivan, J.A. also dealt with the person vs. people problem in his dissent, stating[6]

> It is difficult for common lawyers to understand what the rights of "a people" can mean. Indeed, at a hearing before a parliamentary committee on The 1987 Constitution Accord (of Meech Lake) held August 27, 1987, the distinguished constitutional expert, the Right Honourable Pierre Elliott Trudeau said:
>
> > "In my philosophy, the community, an institution itself, has no rights. It has rights by delegation from the individuals. You give equality to the individuals and you give rights to the individuals. Then they will organize in societies to make sure those rights are respected."
>
> This is an approach with deep roots in the British tradition and was probably the outlook adopted by the legislators who, following 1870, interpreted s. 31 of the *Manitoba Act* as establishing individual rights in the immense tract of land referred to in the section. Indeed, it seems clear that the authorities of the time took painstaking care to count the individuals with rights under the section and did their best to see to it that each claimant received, so far as practicable, his aliquot share of the tract.
>
> But, as far as I can see, what we have before us in court at this time is not the assertion of bundles of individual rights but the assertion of the rights and status of the half-breed people of the western plains.
>
> The problem confronting us is how can the rights of the Metis people as a people be asserted. ... In my opinion, it is impossible in our jurisprudence to have rights without a remedy and the rights of the Metis people must be capable of being asserted by somebody. If not by the present plaintiffs, then by whom?

The problem of communal identity, enabling rights of the people as well as rights of the person, is an essential Metis problem because of their loss of a land base. It is the existence of a communally held land base that puts the Metis on Alberta's settlements much more on the plane of the Indians when asserting aboriginal rights. The Indians, through the reserve system have maintained a land base, i.e. lands held by the community rather than the individual. As a result it has been possible to develop legal theories of self-government and to press in the courts for protection of the rights of Indian peoples (tribes) as well as the rights of Indian persons. The problem of developing an aboriginal citizenship model without a communal land base has been accurately analyzed by Noel Lyon in a background paper on Aboriginal Peoples and Constitutional Reform.[7]

[6] *id.*

[7] Noel Lyon, "Aboriginal Self-Government: Rights of Citizenship and Access to Government Services", *Aboriginal Peoples and Constitutional Reform*, Background Paper Number 1, Institute of Intergovernmental Relations, Queen's University

D. THE COMPONENTS OF A NATION

Nations are more than aggregates of political entities and geographical areas. They are comprised of peoples. Some tend to be homogeneous, recognizing only one essential culture. Others incorporate the recognition of diversity in their legal foundations. This recognition of diversity creates an added dimension to the nation, a recognition of its "people" origins as well as its political origins. World powers adopt different philosophies in their treatment of indigenous peoples when they first exercise dominion over new territory acquired by military or economic conquest. Rome endeavored, to the extent that it did not threaten its power, to recognize the rights of the peoples it conquered to continue to survive as a people, maintaining their customs, laws and identity. Great Britain followed a similar course. That philosophy had important consequences for the constitutional framework of Canada.

The recognition of the rights of indigenous peoples has ancient historical roots. O'Sullivan in his dissent in the *Dumont* case[8] cited the Papal bull **Sublimis Deus** issued in 1537. Slattery in his recent article states[9]

> A review of the Crown's historical relations with aboriginal peoples supports the conclusion that the Crown, in offering its protection to such peoples, accepted that they would retain their lands, as well as their political and cultural institutions and customary laws, unless the terms of treaties ruled this out or legislation was enacted to the contrary. Native groups would retain a measure of internal autonomy, allowing them to govern their own affairs as they found convenient, subject to the overriding authority of the Crown in Parliament. The Crown assumed a general obligation to protect aboriginal peoples and their lands and generally to look out for their best interests--what the judges have described as a fiduciary or trust-like obligation. In return, native peoples were required to maintained [sic] allegiance to the Crown, to abide by her laws, and to keep the peace.

In short the principle appears to be that when the Crown exercised its dominion over new lands, it did so by providing a legal framework that recognized and respected the right of indigenous peoples to maintain their identity as a people.[10]

The principle appears to have been followed in the formation of Canada. The British North America Act of 1867 (now the *Constitution Act*, 1867) established the country of Canada. It combined existing provinces and peoples. In other words the Act operated in two dimensions--a horizontal dimension relating to government, and a

[8] *Dumont et al* v. *A. G. Canada*, Judgement June 17, 1988.

[9] Slattery, *supra* 736

[10] In this context, "peoples" means an organized cultural group exercising some control over a geographically definable area.

vertical dimension relating to nation building. The horizontal dimension contained the components of the new government, the institutions and systems providing a framework for future political life. The vertical dimension contained the components of the new nation, the recognition of the indigenous peoples comprising the new nation. As an act of the British Parliament, the recognition of the "indigenous" British citizens was implicit. However the Act also recognized the two other indigenous peoples of the confederation provinces--the French and the Indians. The French were recognized and guaranteed cultural survival rights such as language and education. The Indian peoples were recognized by assigning responsibility for them and their lands to the new national government.

III. RECOGNITION OF THE METIS

A. MANITOBA AND THE NORTHWEST

The constitutional recognition of indigenous people occurred again at the next stage in Canada's nation building. That was the creation of the province of Manitoba. The history of that event is summarized in the *Dumont* decision.

> Rupert's land was granted to the Hudson's Bay Company by Charles II in 1670. By 1867, the effective authority of the company in Rupert's Land was on the decline. the United Kingdom Parliament was thus able to foresee, and provide for, the eventual union of Rupert's Land with Canada. Provisions for this union are to be found in the *Constitution Act, 1867* and the *Rupert's Land Act, 1868.*
>
> Included in Rupert's Land was the territory which was to become Manitoba. Many of those who lived in the territory in the years immediately preceding union were persons of mixed native and European blood, their European ancestors having come to North America after 1670. These persons were then known as "half-breeds". Some half-breeds occupied small areas of land and all used unoccupied land freely. The are of land used by them lacked definition.
>
> In anticipation of the union of Rupert's Land with Canada, the Parliament of Canada enacted the *Rupert's Land Act*, S.C. 1869, c.3, by which it made provision for the future government of the territory. Also in anticipation of the union, the Government of Canada sent survey teams into the territory.
>
> In August, 1869, a number of half-breeds, fearful of the effect the proposed union would have on their use of land, opposed the making of surveys. What followed was, from Canada's viewpoint, rebellion. A number of local inhabitants openly disputed Canada's right to annex the territory, although others were anxious for union. A state of unrest prevailed. The authority of the Company had been weakened by its own inaction. In the absence of an effective ruling power, a provisional government was formed by some of the people.

> The Provisional Government (as it styled itself) sent delegates to Ottawa to negotiate the terms on which the territory might be united with Canada. A draft bill resulted from the negotiations. Before its enactment as the *Manitoba Act*, it was approved by what was known as the Assembly of the Provisional Government. This Act, assented to in May, 1870, preceded the effective date on which legislative authority for the government of the territory was vested in the Parliament of Canada by the Order of Her Majesty in Her Imperial Council dated June 23, 1870.

The decision goes on to quote several sections of the Manitoba act dealing with land, including sections 30 and 31. These section provide:

> 30. All ungranted or waste lands in the Province shall be ... vested in the Crown, and administered by the Government of Canada for the purposes of the Dominion, subject to ... the conditions and stipulation contained in the agreement for the surrender of Rupert's Land by the Hudson's Bay Company to Her Majesty.
>
> 31. And whereas, it is expedient, towards the extinguishment of the Indian title to the lands in the Province, to appropriate a portion of such ungranted lands, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents, it is hereby enacted, that, under regulations to be from time to time made by the Governor General in Council, the Lieutenant-Governor shall select such lots or tracts in such parts of the Province as he may deem expedient, to the extent aforesaid, and divide the same among the children of the half-breed heads of families residing in the Province at the time of the said transfer to Canada, and the same shall be granted to the said children respectively, in such mode and on such conditions as to settlement and otherwise, as the Governor General in Council may from time to time determine.

In short, the Dominion retained public lands and resources in Manitoba subject to the conditions of the surrender by the Hudson's Bay Company, and recognized the Metis as an indigenous people with unextinguished land rights. Thus in the first expansion beyond the founding provinces, Canada maintained the approach of nation building by recognizing the vertical component, indigenous peoples, as well as the horizontal component of political structures for the newly added territory.

Initially the province of Manitoba was a small area of land about 100 miles by 140 miles. However, at the same time as Manitoba was added as a province, the vast area of land north and west to the boundary of British Columbia, known as Rupert's Land and the North-Western Territory, were transferred to Canada. The Order in Council that transferred the land provided that

> ... upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed

> the British Crown in its dealings with the aborigines.[11]

All of the land surrendered by the Hudson's Bay Company had been surrendered on the condition that

> Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them.[12]

To summarize, the situation immediately following the creation of Manitoba on July 15, 1870, was that the Dominion government held the public lands of Manitoba, and the lands that would later become Alberta and Saskatchewan. It held those lands, subject to the commitments made to the Metis in the Manitoba Act, and subject to the claims of the Indians.

Following its acquisition of the western territory, the Dominion government set out to sign treaties with the Indians and thereby resolve the claims problem. The government recognized that the Metis also had claims in this territory and developed a strategy of dealing with these concurrent with its efforts to negotiate treaties. To that end the Dominion Lands Act of 1879, s.125 gave the Governor General in Council authority

> e. To satisfy any claims existing in connection with the extinguishment of the Indian title, preferred by half-breeds resident in the North-West Territories outside of the limits of Manitoba, on the fifteenth day of July, one thousand eight hundred and seventy, by granting land to such persons, to such extent and on such terms and conditions as may be deemed expedient

In other words, the federal government recognized that it had an obligation to satisfy Metis land claims not only in Manitoba, but also in what is now Alberta and Saskatchewan.

The basic situation was summarized in a memorandum dated October 4, 1934, prepared for the Alberta Resources Commission by a Mr. Cohoon, a senior official in the Department of the Interior. The memorandum states:

> The policy of issuing scrip to half-breeds was adopted in consideration of the interference with the aboriginal rights of this class by the extension of trade and settlement into the territories, and it was felt that an obligation devolved upon the State to properly and fully extinguish these rights to the entire satisfaction of the half-breeds.
>
> The rights of half-breeds were recognized by the Government by reason

[11] Schedule 9, *Order of Her Majesty in Council Admitting Rupert's Land and the North-Western Territory into the Union*, June 23, 1870

[12] Paragraph 14 of the Imperial O.C. of June 23, 1870

> of their Indian blood. Indian and half-breed rights differed in degree, but they were obviously co-existent.
>
> The general policy was to extinguish the half-breed rights in any territory at the same time the Indian rights were extinguished. ...
>
> The claims were investigated by Commissioners appointed by the Governor in Council, and where allowed, scrip was issued under the authority of Orders in Council passed in pursuance of the statutes in that behalf.

The memorandum goes on to give a synopsis of each of the relevant Orders in Council providing for the issuance of Metis scrip and identify as nearly as possible from the records how much half-breed land scrip was still outstanding.

B. ALBERTA, AND THE ST. PAUL DES METIS COLONY

The Metis had established themselves as a people requiring recognition when the Red River settlement area joined Canada in 1870. The rest of the great plains had been added to Canada at the same time. A railway opened the area to the area to new arrivals more interested in wheat than buffalo. The flood of new arrivals led to the inevitable destruction of the old way of life for the Indians and Metis. The reaction was the uprising, the "Northwest Rebellion" of 1885, that saw major battles at Fort Pitt[13] in west central Saskatchewan, near Fishing Lake. The "Frog Lake Massacre", a major event in that uprising occurred less than 20 miles from Fishing Lake.

Following those violent confrontations between the old and new powers of the plains there had been a more peaceful experiment at providing the Metis with a communal land base at St. Paul, about 40 miles northwest of Fishing Lake.[14] Ten years after the end of the "Rebellion", Father Albert Lacombe approached the federal government in an effort to set up a farming colony for the Metis. As a Catholic priest famous for his work in with native peoples in Alberta, Father Lacombe had some credibility. He also had a willing listener in A. M Burgess, the Deputy Minister of the Department of the Interior, who had himself done a report on the Metis in North West Territories in 1889.[15] The result was the creation in 1895 of the colony of St. Paul des Metis.

By 1898 there were 50 families of Metis living on the colony. Control of the colony was in the hands of the Catholic church, although two of the five members of the managing Board were federal politicians.[16] Along with training in agriculture, the

[13] See for example Beal and Macleod, *Prairie Fire The 1885 North-West Rebellion* (1984)

[14] For a detailed description of the St. Paul des Metis settlement see Sawchuk, Sawchuk and Ferguson, *Metis Land Rights in Alberta: A Political History* (1981), ch.5.

[15] *id.*, 166

[16] *id.*, 167

major focus of the management appeared to be religious instruction and education.[17] After 10 years, the managing Board decided that the effort had been a failure and on April 10, 1909 the colony lands were opened to homesteading. On that day, in what was apparently an orchestrated effort, 250 French Canadian settlers registered claims on most of the land.[18] Most of the Metis left to find another home.[19]

The Colony had been established on public lands before the creation of the province. When Alberta was created by *The Alberta Act* of 1905 the Dominion, as it had in the case of Manitoba, kept the natural resources and public lands.[20] Although it's actions had assisted in the loss of communally held lands at St. Paul Des Metis, the federal government continued to issue scrip to half-breeds resident in Alberta to extinguish claims[21]. Individual claims were settled by grants from the retained lands.

C. THE NATURAL RESOURCE TRANSFER AGREEMENT - ACCEPTING A TRUST

The fact that the Dominion had retained Crown lands and resources galled the western provinces, who felt that they were "second class citizens" among the provinces--the original parties to confederation not having similar reservations. Pressure for equality led to the Natural Resources Transfer Agreement of December 14, 1929. By this agreement Alberta acquired the Crown lands and resources within its boundaries, "subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same".[22] This agreement subsequently achieved constitutional status by being incorporated into *The British North America Act, 1930* which in turn became part of the *Constitution Act, 1982.*

While the government in Edmonton had been pressuring Ottawa for land, they had been receiving similar pressure from the Province's Metis. The pressure began in the eastern part of central Alberta, at a Metis community at Fishing Lake. That

[17] *id.*, 170. A large part of the colony's budget apparently went to building a Catholic boarding school, church and presbytery.

[18] *id.*, 178

[19] After the St. Paul des Metis experience, there appears to have been a shared wariness by Metis and provincial government leaders respecting the role of the church on future Metis colonies. As a result, when land was set aside under the *Metis Population Betterment Act* 30 years later, Regulations were made (now A.R. 110/60, s.13, 14) limiting the use of lands leased for church purposes and prohibiting the use of these lands for a school or residence.

[20] Section 21 of the Alberta Act, S.C. 1905, c.3 provided: "All Crown lands, mines and minerals and royalties incidental thereto ..., shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada ..."

[21] For example in conjunction with negotiations on Treaty No.10, including land in Alberta, P.C. 1459 was issued on July 20, 1906 and P.C. 326 was issued on February 15, 1908. These P.C.'s are discussed in a report by one of the Claims Commissioners, N.O. Cote, dated December 3, 1929.

[22] Clause 1 of the Memorandum of Agreement

pressure for land and general assistance should be coming from this quarter should not be surprising. As indicated earlier, most of the major events in the struggle to define Indian and Metis roles in the new Canada occurred within a hundred mile radius of Fishing Lake.

By the mid-1920's there was a fair sized community of Metis on a forest reserve land at Fishing Lake. Many of the Metis had lived on the St. Paul des Metis Colony.[23] In 1929, the Metis, led by Charley Delorme, became concerned that the land was to be transferred to the province and opened for settlement.[24] Given the events of the previous 40 years in their general vicinity, it is not surprising that they began organizing to seek some protection of the land before the transfer took place. Although they were not successful in securing their land prior to the transfer, they continued to organize and lobby the federal and provincial governments for land and aid in general.

As the full force of the Depression hit the Metis, they began organizing throughout the province. They had the good fortune of attracting very capable leadership, the three best known being Jim Brady, Malcolm Norris, and Joseph Dion.[25] By 1931 they were able to submit a petition of more than 500 names to the provincial government calling for land, education, health care and free hunting and fishing. This led to the circulation of a questionnaire among the Metis by the Province's Department of Lands and Mines. The topics dealt with in the questionnaire seem to indicate that the provincial government was already considering some kind of land scheme in response to Metis concerns.[26] By late in 1933 those concerns had made it to the Legislature where the leader of the Conservatives moved a resolution that a special committee be appointed to investigate Metis concerns and consider "some plan of colonization of the half-breed population".[27]

D. ARGUMENTS OVER RESPONSIBILITY

Early in 1934, the provincial government began making arrangements for a committee to investigate "the half-breed question", and asked the federal government to participate. Ottawa refused. The scope of issues considered as part of the "half-breed question" is unknown. In public, the Province made it clear that the proposed

[23] Sawchuk, *supra*, 187

[24] *supra*, The land at Fishing Lake was part of the Crown lands to be transferred to the Province under the *Natural Resources Transfer Agreement* of 1929.

[25] For details of the lives and work of Brady and Norris, see Murray Dobbin, *The One-and-a-half Men* (Vancouver: New Star Books, 1981).

[26] Sawchuk, *supra*, 187. For example the questionnaire asked whether they owned livestock or machinery and whether they had ever received scrip or taken homestead.

[27] See T. Pocklington, *Our Land - Our Culture - Our Future: The Government and Politics of the Alberta Metis Settlements*, unpublished manuscript, University of Alberta, 1988, p.11.

Commission would consider the "half-breed question" only from the perspective of the need for social relief. Land was relevant only indirectly, as one component of relief. It may be legitimate, however, to question whether or not there was concern within the government as to a broader scope of land related issues.

In the summer of 1934, Alberta's Minister of Railways and Telephones, George Hoadley, planned a visit to Ottawa for talks with federal authorities. One of the topics for discussion was the "Half-Breed problem". On July 23, 1934, prior to his departure, his Deputy Minister, J. Harvie, sent him a memo stating

> ... I am informed by the Premier it is your intention to discuss with the Federal authorities the question of representation by them on the Commission to be set up to investigate **the claims of the half-breeds.**[28] [emphasis added]

It is not clear whether the Deputy Minister was simply referring to the claims of poverty and destitution made by Metis leaders, or whether there was an intention to discuss broader land related matters with federal authorities.

When Hoadley returned he sent a memorandum, dated September 7, 1934, to Premier Reid. The memo said

> RE: HALF-BREED PROBLEM
>
> I am returning your file in connection with the above subject.
>
> I took this matter up while I was in Ottawa and found that the Dominion Government declined to appoint a representative on the proposed Royal Commission to investigate this problem. They considered it wholly a matter for the Province to deal with, as all half-breeds are citizens and do not come under the Department of Indian Affairs or any other federal Department.[29]

The Superintendent General of Indian Affairs, T. G. Murphy, confirmed this in a letter to the provincial Minister of Telephones and Public Health, George Hoadley, on October 10, 1934. He referred to their telephone conversation that morning regarding "the appointment of a commission by the Government of Alberta to investigate the half-breed question". He indicated that under the provisions of the Indian Act the purview of his department was restricted to Indians as defined in that Act. He set out the definition and concluded:

> In these circumstances, it is my opinion that half-breeds are not the responsibility of the Dominion Government and that the problem of relief for half-breed settlers is a matter for the consideration of the municipality

[28] Alberta government archival document

[29] *id.*

> or the Province concerned.[30]

Immediately following this there was an exchange of correspondence between the Premier of Alberta, R.G. Reid, and the Member of Parliament for Athabasca, Percy Davies. Davies wrote the Premier on October 18, 1934, indicating

> Replying to yours of the 12th instant, I understood that the Federal Government asked that the question of legal liability should be referred to the Courts for a decision before the Dominion would undertake any responsibility in respect of the Halfbreed population. Furthermore, I also understood that the Federal Government was willing to abide by the decision of the Courts and if the courts should find that there was any legal liability resting with the Dominion, that the Dominion would shoulder it.[31]

In short the federal government was not prepared to assume any responsibility for the Metis unless ordered to do so by the Courts. Apparently the possibility of seeking such an order was discussed between the governments of Alberta and Saskatchewan, but it was never pursued.

Murphy and Hoadley had discussed the proposed Commission on the telephone on October 10. Whether they discussed a mandate for the commission that would deal with Metis issues beyond health and welfare is unknown. However, the briefing memo dated October 4, 1934, and prepared by A.A. Cohoon of Murphy's department, certainly focused on the legal issues respecting responsibility for redeeming Metis land scrip.

In his memorandum of October 4, 1934,[32] Mr. Cohoon outlined what was, apparently, the federal government's viewpoint on the scrip issue. He indicated that the Dominion position was that prior to 1930 the Crown's duty to redeem Metis scrip was a trust encumbering Crown lands in Alberta. This duty arose by virtue of the conditions in the Hudson's Bay Company surrender and in the subsequent transfer of lands to the Dominion. However, clause 1 of the Natural Resources Transfer Agreement had provided that

> In order that the Province may be in the same position as the original Provinces of Confederation are in by virtue of section one hundred and nine of the British North America Act, 1867, the interest of the Crown in all Crown lands, ... shall ... belong to the Province, subject to any trusts existing in respect thereof ... .

The "subject to any trusts existing" component meant that the Province was now responsible for those trusts. The Privy Council had considered the scope of the term

[30] *id.*

[31] *id.*

[32] *id.* Cohoon was a senior official in the Department of the Interior. It is not known if there is any connection between this memo, which is apparently a briefing memo, and the letter 6 days later from Murphy, the Superintendent General of the Department of Indian Affairs.

"trusts" as used in section 109 in *Attorney General of Canada* v. *Attorney General of Ontario*, (1897) AC 199 at 210. In the Dominion's view that decision clearly implied that the existing trusts would include responsibility for redeeming Metis scrip.

By late in 1934, there were apparently two Metis land related issues before the provincial government. The government appeared ready to consider the possibility of enabling the Metis to exercise some form of "communal ownership" of land. It also had to consider its responsibility for enabling individual Metis land ownership through scrip redemption. To deal with the first issue the Province established a Royal Commission on December 12, 1934, to look into "the problems of health, education and general welfare of the Half-breed population of the Province". The Commission was headed by the Honourable A. F. Ewing, an Alberta Supreme Court Justice, and came to be known as the Ewing Commission.

The second issue was dealt with by a provincial Order in Council on June 18, 1935.[33] The Order began:

> Whereas land scrip notes were issued from time to time by the Government of Canada to half-breed grantees properly entitled thereto, in satisfaction of their claims arising out of the extinguishment of the Indian title, and to be used in connection with vacant and available Dominion lands; and
>
> Whereas there are no regulations providing for the redemption of any such scrip, which might be applicable to the Province; and
>
> Whereas it is proper and convenient that regulations be established in respect thereto;

The O.C. then went on to provide for the locating of land scrip "on any vacant and available Provincial lands".

In short, by mid-1935, it appears that the Province had accepted total responsibility for the Metis. For what it apparently considered an obligation of conscience, it had set in motion a mechanism that would consider the propriety of protecting the Metis as a people by setting aside communal lands. It had also acted, from what it apparently considered a legal obligation, to enable the satisfaction of individual Metis land claims by redeeming land scrip with provincial Crown lands. Through all of this there is no indication of any concern that the Metis might be "Indians" for the purposes of section 91(24) of the Constitution Act, 1867, and consequently within "the exclusive Legislative Authority of the Parliament of Canada."

[33] O.C. 706-35, Regulations Respecting the Locating of Half-Breed Land Scrip in the Province

IV. HISTORY OF THE METIS SETTLEMENTS

A. THE EWING COMMISSION RECOMMENDS COMMUNAL LANDS FOR THE METIS

The Ewing Commission held hearings throughout Alberta in 1935 and submitted its report on February 15, 1936.[34] To no one's surprise the Commission recommended the establishment of Metis Colonies--lands to be held by the Crown but set aside for the exclusive use and occupation of associations of Metis. The Commission made it clear that in so doing they were not responding to Metis claims regarding rights to land. In its report the Commission briefly discussed the extinguishment of Indian title claims by "half-breeds" through the issuing of scrip and went on to say

> The story of this scrip and its final outcome is still vivid in living memory. The precautions of Parliament were easily circumvented and the scrip passed readily and cheaply into the hands of speculators. The resultant advantages to the half-breeds were negligible. The policy of the Federal Government, however, extending over a period of thirty years, and these issues of scrip, throw a strong light on the present problem.
>
> In the first place, the scrip was issued in extinguishment of any supposed right which the half-breed had to special consideration. But **the Government of this Province is now faced, not with a legal or contractual right, but with an actual condition of privation,** penury and suffering. The right to live cannot be extinguished and the situation as revealed to your Commission seems to call for Governmental guidance and assistance. [emphasis added]

Two points are worth making with regard to this part of the report:

1. the Commission made it clear that the rights issue was not on the table, and

2. the Metis leadership did not insist that it be dealt with.

The Commission had made it clear that it was not interested in discussing the issue of Metis land rights, and Metis leaders did not argue their case on the basis of rights. Rather they focused on Metis needs and on the economic advantages for the government of a self-supporting colony system. In other words the approach was results rather than rights oriented.

Sanders makes the following comments in this regard:

[34] A thorough discussion of the events surrounding the hearings is contained in a paper by Judith Hill, *The Ewing Commission, 1935: A Case Study in Metis-Government Relations*, Unpublished Honours Essay, Department of History, University of Alberta, 1977. See also Sawchuk, *op. cit.*, pp. 190 - 196. For political aspects of the Commission's work see T. Pocklington, *supra*. For a legal analysis see Douglas Sanders, *A Legal Analysis of the Ewing Commission and the Metis Colony System in Alberta*, (1978) in H. W. Daniels, *The Forgotten People: Metis and Non-Status Indian Land Claims*, Native Council of Canada, p.22

> The assumptions in Alberta in 1933 would seem to have been:
>
> 1. Metis claims to Indian title had been extinguished by the Half-breed grants under the Manitoba Act and the Dominion Lands Act.
>
> 2. Metis and non-status Indians were the responsibility of the provinces either because they were not "Indians" within the meaning of that term in the British North America Act of 1867, or because the federal government had chosen to exclude them from the exercise of federal legislative jurisdiction over "Indians".
>
> 3. The Metis of northern Alberta were not asserting rights but needs.
>
> 4. The understood response to the Metis situation in Alberta was going to be some kind of allocation of land (and land was now under provincial ownership and jurisdiction).
>
> The Ewing Commission operated on these assumptions. The Metis colony system in Alberta has operated on them ever since. In contrast the Metis in Saskatchewan in the 1930's sought provincial support in order to present claims to the federal government. In response the Saskatchewan government commissioned the study by Hodges and Noonan which suggested that Metis claims were not of a legal character and, in any case, had been settled. Manitoba Metis in the same period also asserted land claims which would presumably have involved petitioning the federal government.[35]

From the vantage point of history, it now appears that the Metis leadership in Alberta better read the climate of the time, and consequently were able to employ a more effective strategy to achieve the common goal of securing a land base.

The Ewing Commission recommended setting aside land for the Metis. However, it might have been more accurate to describe the intended beneficiaries as landless natives rather than Metis. The Commission's mandate was with respect to the "Half-breed population of the Province", and it had a problem defining just who that was. The Commission's report stated:

> It may be well to define here the term "half-breed" or "Metis". We are not concerned with a technically correct definition. We merely wish to give a clear meaning to the term as used in this report. By either term is meant a person of mixed blood, white and Indian, **who lives the life of the ordinary Indian**, and includes a non-treaty Indian. It is apparent to everyone that there are in this Province many persons of mixed blood (Indian and white) who have settled down as farmers, who are making a good living in that occupation and who do not need, nor do they desire, public assistance. The term as used in this report has no application to

[35] Sanders, *A Legal Analysis of the Ewing Commission*, unpublished manuscript

> such men. [emphasis added][36]

In short the Commission had some difficulty defining "Metis", but it recognized that these people formed an identifiable group linked by aboriginal ancestry and life style. It refused to discuss the rights of the group but recognized that some such rights might exist, for example by stating

> The Commission is of opinion that as the Metis were the original inhabitants of these great unsettled areas and are dependent on wild life and fish for their livelihood, they should be given the preference over non-residents in respect of fur, game and fish.[37]

Pocklington comments on the Commission's report as follows:

> The basic problem is that a fundamental ambiguity permeates the Commission's treatment of the relationship between the Metis and the government, and thereby the dominant society as a whole.
>
> The core of the ambiguity has to do with the Commission's recognition of the uniqueness of the Metis. Throughout much of the report of the Commission the uniqueness of the Metis is seen to consist in their poverty, poor health, and lack of education. But of course the Metis were not really unique in these respects. On the one hand, plenty of white settlers shared these debilities. And on the other hand, many persons of mixed Indian and white ancestry did not. If the Metis were in fact just victims of the depression, they could have been dealt with by the same measures of relief granted to other citizens. That the Commission did not recommend that they be treated in the ordinary way of people ravaged by the Depression was at least an implicit recognition that the Metis had something else in common. Part of what they had in common is made explicit in the report. The Commissioners mention frequently the propensity of the Metis to pursue a common style of life. Only this commonality could justify the recommendation that colonies be established exclusively for the Metis. The striking ambiguity here is that the Metis are characterized as *both* ordinary *and* special. Clearly, the Commissioners, while steadfastly opposed to granting the Metis special status like that of the Indians, were constrained to admit that the Metis were unique. This ambiguity emerges most clearly in the recommendation that, while the Metis should not be compelled to join colonies, they would have no other claim to public assistance if they did not.[38]

[36] An interesting aspect of this definition is that it made life style a factor in the definition of "Metis". This cultural identification approach has been adopted in the definition of "Metis" for national aboriginal rights discussions, and in the new Metis legislation in Alberta. It was not present, however, in legislation passed as a result of the report - *The Metis Population Betterment Act*, S.A. 1938, ch. 6 There the definition adopted (s.2(a)) was

> "Metis" means a person of mixed white and Indian blood but does not include either an Indian or a non-treaty Indian as defined in *The Indian Act*, ...

[37] Report of the Ewing Commission, p. 13

[38] Pocklington, *supra*

In summary, the Ewing Commission focused on a social problem and recommended a pragmatic solution. It saw a group of suffering people of aboriginal ancestry and "Indian" life style for whom the federal government disclaimed any responsibility. It recognized them as "Metis" and as "original inhabitants of these great unsettled areas". It concluded

> ... your Commissioners are of the opinion that some form of farm colonies is the most effective, and, ultimately, the cheapest method of dealing with the problem.

It did not concern itself with the question of whether or not the Metis had any legal right to demand such lands. From its perspective the rights issue was simply not relevant. The Metis leaders did not demand that the rights issue be discussed. As a result the work of the Ewing Commission is of historical and social interest, but probably of little significance in the discussion of the legal rights of the people who were the focus of its efforts.

B. THE METIS BETTERMENT ACT - A START TO LAND AND SELF GOVERNMENT

The Provincial Government responded positively to the report of the Ewing Commission. The federal government had disclaimed any responsibility for the people whose needs the Commission sought to address. Probably because of its recent success in negotiating the Natural Resources Agreement, the Province was unwilling to take the responsibility issue to the courts. Instead it accepted what it saw as its social obligations and began setting up the machinery to reserve land for the Metis and provide for a limited form of local government on the reserved areas.

In a rather unique cooperative approach, Metis leaders apparently prepared drafts of the enabling legislation[39] and worked with representatives of the provincial government on subsequent revisions until a mutually acceptable draft was complete.[40] *The Metis Population Betterment Act*, was passed and received assent on November 22, 1938. A joint Metis/government committee was established to identify suitable Metis settlement area sites and land areas were set aside by Orders in Council commencing late in 1938. By the end of the next year Settlement Associations had held organizational meetings in eight of the areas and adopted a common constitution and by-laws.[41]

The preamble to the original Act referred to the recommendations of the Ewing

[39] The original drafts of the Act were reportedly prepared by Pete Tompkins and Joe Dion.

[40] Sawchuk, *supra*, p. 198. Other Metis elders confirm this.

[41] This constitution and bylaws was adopted by the government as O.C. 285/40. It was modified slightly by the settlements shortly thereafter, and the modification adopted as O.C. 947/41. These two O.C.'s became Alberta Regulation 634/57.

Commission and recognized the Metis role in developing the Act by acknowledging that it was in the public interest

> ... that the ways and means of giving effect to such recommendations should be arrived at by means of conferences and negotiations between the Government of the Province and representatives of the metis population of the Province;

The scheme agreed to in the Act and settlement constitutions would certainly not satisfy any contemporary proponent of self government. The Act was three short pages of bare bones legislation. It made four key things possible:

1. the Minister could help the Metis organize Settlement Associations;

2. by Order in Council unoccupied Provincial Lands could be set aside for settlement by the members of the Associations;

3. the Associations could develop a constitution and by-laws providing the basic framework for local self-government; and

4. the Associations and the Minister could cooperatively formulate schemes for bettering the members and settling them on the reserved lands.

The only means of putting legislative flesh on these bare bones principles appears to have been by cooperatively developing schemes for the betterment and settlement of members. That these schemes were intended be something more than departmental programs seems to be indicated by the requirement in the Act that

> Every scheme formulated pursuant to this Act shall be submitted by the Minister to the Lieutenant Governor in Council for approval, and upon the same being so approved, shall be laid upon the table of the Legislative Assembly ...[42]

From a legislative drafting viewpoint, the preferable approach today would probably be to enable the skeleton legislation to be filled out by regulations. In the original Act, however, the only regulation making powers were with respect to hunting, fishing and trapping.

The Act provided a sparse framework for local government by stating that the "control of the business and affairs of the association shall be in a Board", and by enabling the associations to develop constitutions and bylaws providing for "the election of the members of the Board". The provisions of the original constitution, and all changes, were subject to Ministerial approval and the aims and objects of the associations had to include cooperation with the Minister.

The constitution adopted by the settlement associations, and approved by the

[42] *The Metis Population Betterment Act*, S.A. 1938, c.6, s.5

Minister, outlined minimal requirements for membership, elections, Board meetings, and other details of managing the settlement association. It provided a rather vague general by-law making power enabling the Board to pass by-laws "... pertaining to the management and governing of the Settlement Association and the reserved area occupied by their Settlement Association." The by-laws had to be consistent with the provisions of the constitution and approved by the Minister.

C. CHANGES IN THE ACT CREATE PROBLEMS

The bare bones legislative framework provided by the original Act was adequate for the purpose at hand. It made it possible to set aside land and established a means for residents to govern them, subject to the ultimate authority of the provincial government. The goal of Metis leaders such as Brady and Norris was to create a land base. They did not seem overly concerned if a few concessions had to be made to reach that goal. The legislation was adequate, and that was enough.

The Act was amended on February 16, 1940[43] to what is essentially its present form. The preamble was dropped, but new provisions roughly tripled the size of the Act. The most significant new provisions:

1. enabled regulations to be made by Order in Council governing most aspects of settlement life, particularly the allocation and use of land and resources;[44]

2. made it possible to convert Settlement Areas into Improvement Districts--the standard rural "local government" entities for non-natives;[45]

3. enabled descent of an individual's interest in land to his family;[46] and

4. prohibited the use of a Settlement member's property as security.[47]

The last substantive change to the Act was made in 1952. The original Act, and each subsequent version, had stated that the constitution and bylaws of a settlement association

> shall provide that the control of the business and affairs of the association shall be in a Board consisting of not more than five persons and shall

[43] *The Metis Population Betterment Act, 1940*, S.A. 1940, c.6

[44] *id.*, s.8

[45] *id.*, s.9

[46] *id.*, s.14

[47] *id.*, s.18

> make provision for election of the members of the Board ...[48]

The 1952 amendment stripped the settlements of any clear legal basis for self-government. The words "control of the business and affairs of the association shall be in a Board" were removed. The power to constitutionally provide for election of all 5 Board members was also removed. In its place were added two new sections:

> (2a) A Settlement Association shall have a Local Board consisting of a chairman who shall be the local supervisor of the area appointed by the Metis Rehabilitation Branch of the Department of Public Welfare and four members who shall be *bona fide* members of the Settlement Association.
>
> (2b) The Minister shall appoint two of the members of the Local Board and the members of the Settlement Association shall elect two of the members of the Local Board by secret ballot.

In short the Act was changed to weaken the mandate of the Board and to change it from an elected to a mainly appointed body. The current Act still contains these provisions.[49]

This is just one example of the provisions that, over the past 30 years, have made the Act and Regulations increasingly unworkable because of internal inconsistencies, uncertain legitimacy, anachronisms and inadequacy. Despite the wording of the Act a regulation, *Regulations Governing the Constitution of Settlement Associations* (A.R. 56/66), was approved in 1966. This regulation replaced previous regulations on the same topic.[50] It specifies that "The affairs and business of an association shall be transacted by a Board consisting of 3 members ..."[51] and "The Board shall consist of three members all of whom shall be elected by the members of the Colony." These provisions clearly contradict the 5 member board requirement in the Act.

The contradiction has led to practical problems. For example, oil companies negotiating with settlement councils for access to settlement lands have questioned the legitimacy of the elected councils on the basis that the 5 member elected council is not properly constituted under either the Act or the regulations. The issue has never gone to court, however. As with other parts of the Act and Regulations, because these provisions have become unworkable they have been largely ignored by the Metis and

[48] *The Metis Population Betterment Act*, S.A. 1938, c.6, s.4(2)

[49] Only the name of the responsible department has been changed.

[50] The settlements and the government disagree on the legitimacy of this regulation. The settlements contend that Minister's powers are limited to approving or disapproving a change in a settlements constitution and by-laws once it has been approved by a settlement. That was the process followed on the original constitution and by-laws of the settlements adopted in 1940 (O.C. 285-40), and an amendment approved in 1941 (O.C. 947-41). The original constitution as amended became A.R. 634/57. The settlements contend that they were not consulted on the changes that led to A.R. 56/66.

[51] *The Metis Betterment Act*, s. 3

the government. Today, as in 1939, settlement members elect all five members of their Board and the government deals with the council as the proper representatives of the settlement.

D. THE 60'S AND THE END OF ISOLATION

By the end of the 1960's the focus of settlement leaders began to change. For 30 years the leaders of each settlement had concentrated primarily on the problems of survival on their particular settlement. As the decade of the 70's began the focus began to shift outward, and settlement leaders became actively concerned about the collective interests of all the settlements and their prospects for the future. The most significant event leading to this new focus on collective action was the loss of Wolf Lake.

Land surrounding Wolf Lake in northeastern Alberta was set aside for the Wolf Lake Settlement Association in 1939. By the late 1950's there were 11-12 families living on the settlement.[52] However, in 1960 a provincial Order in Council[53] was passed eliminating the settlement area. The resident families were moved to nearby communities or other settlements. The reason given by the Province for the closing was essentially that the area could not be adequately serviced. Others have expressed the view that a factor in the decision was the federal government's need for a bombing range for the nearby Cold Lake Air Force base.[54] The legitimacy of the Province's action is still the subject of litigation between the Metis and the Province.[55] Whatever the reason, the news that a settlement area had been eliminated caused considerable concern among Metis leaders as to the security of their own settlement areas.

This concern for land security was heightened by a review of the settlement situation commenced in 1969. At the instance of the Metis Association the provincial government set up a Metis Task Force, including representatives of the Metis Association, to conduct a review of The Metis Betterment Act, the Metis Settlements

[52] Sawchuk, *supra*, 200

[53] O.C. 192-60, dated February 10, 1960, rescinded the O.C.'s that had set aside land for the Wolf Lake settlement. Many of the Metis who were living on the settlement at the time were moved to other settlements. Some are currently residents of the Fishing Lake Settlement.

[54] Sawchuk, *supra*, 200

[55] The Metis in their statement of claim in the action *Keg River Metis Settlement Association et al v. Her Majesty the Queen in Right of Alberta*, No. 83520, Court of Queen's Bench of Alberta, Judicial District of Edmonton, maintain that the action was contrary to the wishes of the members of the settlement association and was not within the authority provided by the *Metis Betterment Act*, c.202, R.S.A. 1955, in force at the time.

and the Metis Rehabilitation Branch. In 1972 the Task Force presented its report.[56] The report stated that "it is incumbent upon the Committee to suggest it was not necessarily the feeling of the [Ewing] Commission that Crown lands for the Metis people should be a perpetual commitment".[57] It went on to recommend that the Settlement Areas should become Improvement Districts and suggested the possibility of enabling individual settlers to own their own land. In fairness it should be noted that the main thrust of the report was to create a better legislative and policy environment for community development. It should also be noted that the report stated that "We can foresee that some or all of the Metis Settlements could, if desirable, take over all the Crown Lands as corporate bodies under the Improvement Districts."[58] In spite of its apparent good intent, the report caused grave concern on the settlements where it was taken as an indication that the government was considering "lifting the boundaries".

A third significant event occurring in the late 1960's also had to do with land. Regulations under the Metis Betterment Act provide for a common trust fund shared by all eight settlements.[59] The regulations specify that the Trust Fund[60] is to be credited with "all moneys accrued or hereafter accruing from the sources hereinafter set out", and includes in the list of sources:

> moneys received by way of compensation from oil companies for use of surface rights on unoccupied lands, and all moneys received from the sale or lease of any other of the natural resources of the said areas.[61]

During the 1960's, oil and gas resources began to be developed on a number of settlements. Settlement leaders took the view that the mines and minerals were part of the land set aside for their benefit. In their view oil and gas were "natural resources" of the settlement areas and consequently that money from the sale of these resources should be going to the Trust Fund. The Province disagreed and Settlement leaders filed a statement of claim[62] demanding that the moneys be paid to the Trust Fund. Without ruling on the merits of the case, the Court rejected the claim on

[58] *The Report of the Metis Task Force Upon The Metis Betterment Act, Metis Settlements and the Metis Rehabilitation Branch*, Research & Planning Division, Human Resources Development Authority, Province of Alberta, (February 1972)

[57] *id.*, 8

[58] *id.*, 13

[59] The relevant Regulation was, and still is, A.R. 112/60

[60] The proper name for the fund under the Regulation is the "Metis Population Betterment Trust Account Part I". It is commonly referred to simply as the "Trust Fund".

[61] A.R. 112/60, s.1(a)

[62] The statement of claim in *Poitras et al.* v. *Attorney-General for Alberta* was filed on July 29, 1968.

procedural grounds.[63]

When settlement leaders in the early 1970's looked at their collective situation, they were concerned. The settlement at Wolf Lake had been eliminated by the provincial government. A government task force had raised fears that "lifting the boundaries" might be considered for other settlements. An initial effort to secure the benefit of subsoil resources had failed. It became apparent to settlement leaders that an ongoing coordinated effort was required to secure the developmental essentials of land security, legislative authority and adequate financing.

Brady had realized the need for an organized common front as early as 1940 and with Norris had endeavoured to establish a coordinating organization for the settlements.[64] They were unsuccessful. Thirty years later, in 1971, Metis settlement leaders again began an effort to "federate" the settlements. A group of settlement leaders[65] visited the settlements, met with settlement councils and members and discussed the common concerns of the settlements and the need for a body to coordinate settlement efforts. In 1975 the eight settlement councils created such a body by formally incorporating the Alberta Federation of Metis Settlement Associations (commonly referred to as the "Federation"). The governing Board of the Federation consisted then, and now, of the chairperson of each settlement council and four executive members elected at large. The Federation's mandate was to provide the settlement councils with a mechanism for sharing information, coordinating efforts and developing policies on matters that required cooperation, such as the sharing of the common Trust Fund.

E. THE 70'S - SETTLEMENT LEADERS REORGANIZE

In essence the goals of the settlements were the same in 1975 as they had been in 1939, and still are today: land security, local legislative authority and adequate finances. With the long term achievement of the first and third goals in mind the Federation immediately began work on legal action to secure the revenue from oil and gas resource development in settlement areas. A new statement of claim was filed in 1977.[66] The major short term focus of the Federation's efforts, however, was on the

[63] *Poitras et al.* v. *Attorney-General for Alberta*, (1969) 7 D.L.R.(3d) 161 (A.S.C). The Court held that the plaintiff had not complied with the requirements of the *Proceedings Against the Crown Act*, 1959 which required that permission be obtained from the Lieutenant-Governor in Council before an action could be brought. The judge was critical of this requirement and the legislation was subsequently changed.

[64] Sawchuk, *supra*, 200

[65] The early leaders were Lawrence Desjarlais, Maurice L'Hirondelle, Adrian Hope, Sam Johnson, and Richard Poitras.

[66] A statement of claim on behalf of the 8 settlement associations was filed on February 5, 1974 in the Supreme Court of Alberta (*Keg River Metis Settlement Association et al* v. *Her Majesty the Queen in Right of Alberta*, Action No. 83520). On July 6, 1977, a second statement of claim was filed as a class action by Maurice L'Hirondelle on behalf of the Settlement Associations and their members (Maurice L'Hirondelle et al

second goal--developing local legislative authority.

The Metis Task Force had reported in 1972 that the function of the settlement councils was "more consultative than administrative". Some settlements had no office, all administrative functions being handled by staff of the Metis Development Branch. All purchasing was done by purchase order, and wages on settlement projects were paid by the Branch. Settlement Councils generally had no bank accounts of their own and no direct financial authority. One of the top priorities of the Federation was to begin building real local governments with adequate administrative capability.

Although settlement concerns about the Metis Task Force recommendations had helped create the Federation, the Task Force and the Federation agreed on the importance of developing local self-government. The Task Force had emphasized the importance of this goal in its report, which while recommending that the Settlements be established as Improvement Districts in the near future, went on to say of this approach

> It is not a final objective, but merely a transitional stage of development with some specific date in mind to move into complete self-government.[67]

The Task Force Report had also pointed out the problems created by having all programs for the settlements delivered by one government agency--the Metis Rehabilitation Branch.[68] The Federation also saw this as a problem. In essence the single agency approach provided a single line of communication and program delivery between the Province and the settlements. That channel could be easily blocked or overloaded, with the result that developmental efforts were stymied. The settlements had to open new channels with those in power to communicate settlement needs and establish new mechanisms to meet those needs.

The most important new channel was to the federal government. After disclaiming responsibility for the Metis in the 1930's, the federal government had finally begun reassessing its role in the 1960's, and in the early 1970's began assisting Metis organizations through the Department of the Secretary of State. There had were no direct links with the settlements, however, until the Secretary of State agreed to participate with the Province in a local government development effort spearheaded by the Federation. The effort involved a number of projects extending over 3 years from 1976 to 1979. In essence the projects enabled the Federation to hire trained field workers to help settlement councils get organized and do the kind of research and writing necessary to access external development resources.

v. *Her Majesty the Queen in Right of Alberta*, Action No. 100945). The two actions have been joined and amended several times since the initial filing.

[67] Report of the Metis Task Force, *supra*, 12

[68] The name of this agency was subsequently changed to the "Metis Development Branch", and more recently to the "Metis Settlements Branch". It has also made the transition from a branch of the Department of Social Services to the Department of Municipal Affairs.

This effort was greatly helped by a change in policy by the Metis Development Branch in the early 1970's. The policy aimed at reducing the Branch's administrative role and developing the capacity of settlement administrations. In simple terms it meant that every settlement would have an office, office equipment and a clerk. It also meant that the real decision making would move from the Branch to the Council.

The new policy, combined with offices, information and support staff led to a rapid growth in Council responsibilities in the late 1970's. The Federation and individual Councils became directly involved with a broad range of federal, provincial and private agencies. Where in 1969 a settlement turned to the Branch for information and development assistance, by 1979 many of the settlements had direct contractual or program delivery links with several federal government departments, with half a dozen provincial departments and with corporations in the private sector[69]. Some Settlement Councils began to feel overwhelmed as the limitations of the single agency were replaced by the problem of managing links with a multitude of agencies.

The problems were exacerbated by anachronistic legislation and paranoia surrounding the natural resources litigation. The Province had agreed with the settlements that issues related to ownership of the natural resources of the Settlement Areas should be determined by the courts. Since a change in the legislative framework could prejudice the litigation the government and the settlements agreed that there should be no changes to the *Metis Betterment Act*, or its regulations, while the matter was before the courts. As a result, while the responsibilities of the settlement councils grew rapidly, the legislative framework in which they operated was frozen. The Task Force Report in 1972 had recommended that the Act be rewritten.[70] That was at a time when a council's function was, in the words of the report "more consultative than administrative". By 1979 most councils had major administrative responsibilities.

The Act had been essentially static since 1940. The only significant change was the amendment in 1952 that replaced fully elected councils by a board with a Branch employee as chairman, two members appointed by the Minister and two elected members. That amendment had been unworkable and by the mid 1970's was unchanged but universally ignored, the council being elected as it had been under the original Act. By 1979 the legal system provided by the Act and Regulations had become increasingly unworkable because of internal inconsistencies, uncertain legitimacy, anachronisms and inadequacies. As more parts of the system became unworkable they were ignored, and the more parts were ignored the more unclear the

[69] The main federal sources were what are now the Department of Employment and Immigration and the Department of the Secretary of State. Most settlements also worked directly with half a dozen provincial departments and agencies responsible for housing, for roads, for social services, for cultural development, for grade school education and for advanced education. In addition most settlements contracted directly with oil and gas companies for work related to oil and gas exploration and development in their settlement areas.

[70] In the Report's summary, the third recommendation was "Rewrite the Metis Betterment Act to emphasize development at all levels of Metis Society."

legal framework for local government became. The resulting uncertainty tended to increase the inherent friction accompanying the change in roles of the settlement councils and the Branch.

In addition to locking in existing legislation, the natural resources litigation contributed to other developmental problems by hampering innovation and limiting trust. Provincial employees had to constantly check with the Attorney General's department before agreeing with any proposal from the settlements or undertaking any new initiative. There was a constant concern that some well intentioned action would prejudice the Province's position in the litigation. Having taken the position in its Statement of Defence that the settlement associations were not "persons at law", the Province found itself unable to enter into normal contractual relations with the settlements. That made it impossible to transfer funds to the settlement association to enable the development of local administrations. With the increasing direct links between federal agencies and the settlements, it also led to an interesting source of potential friction between the federal and provincial governments. Federal government departments had no qualms about entering into contracts with the settlement associations and did so regularly.[71] The Province was faced with the argument that the Queen having contracted with the settlement associations on behalf of Canada could hardly deny, when acting on behalf of Alberta, that the associations lacked the capacity to contract.

In 1979 the paranoid atmosphere finally produced a political problem for the government. Early one morning representatives of the Metis Development Branch and other departments simultaneously appeared at all settlement offices, seized settlement and government files that were in their opinion relevant to the natural resource litigation, and removed the files to Edmonton. The Metis and the public were incensed by the action. The story made the front pages and an embarrassed government sought talks with the settlements. Negotiations between the Federation and the government led to an investigation by the Alberta Ombudsman. In his report the Ombudsman recommended that a committee be established to review and recommend changes to the *Metis Betterment Act* and regulations.

In a sense the Ombudsman's Report marked the end of an era. At the start of the 70's most settlement councils had no staff, no offices and no administrative responsibility. In most cases the only channel for information and developmental resources was through the Branch. By the end of the 70's the councils had the offices, equipment and staff to administer local programs. They had established links with provincial government departments, federal government departments and private sector corporations and agencies. They had begun managing housing programs, economic development projects, and local educational and cultural projects. The 1970's saw settlement leaders realize the goal of Brady and Norris in developing the capacity to coordinate their efforts province wide. In the 1980's the scene became national.

[71] The two main departments involved directly with the settlements were the Department of the Secretary of State which assisted most settlements with history and culture related projects, and the Department of Manpower and Immigration, which assisted in employment creation and training projects.

F. THE 80'S AND THE CONSTITUTION

The Ombudsman carried out an investigation of the "file raids" and tabled his report in the summer of 1979[72]. It called for the creation of a joint committee of settlement and government representatives to, among other things, review the Metis Betterment Act. It also recommended that responsibility for the settlements be transferred from the Department of Social Services and Community Health to the Department of Municipal Affairs. The transfer was effected in October of 1980,[73] but it was not until March 31, 1982 that the recommended committee was finally established.[74]

The Joint Committee was chaired by the Honourable Dr. Grant MacEwan, a former Lieutenant Governor of Alberta. It included the President and past President of the Federation[75], a Member of the Legislature and an Assistant Deputy Minister of Municipal Affairs. The Committee's mandate was "to act in an advisory capacity and in particular to review the *Metis Betterment Act* and Regulations and make recommendations to the Minister of Municipal Affairs which would allow for political, social, cultural and economic development on Metis Settlements." The Committee held hearings on the settlements and based on the concerns expressed in the communities developed suggested provisions of a new "Metis Settlements Act". The Committee's report, consisting of the provisions and explanatory comments, was transmitted to the Minister on July 12, 1984.[76]

The Committee carried out its work in the new legal environment created by the recognition of Metis aboriginal rights in the constitution of Canada. The entrenchment of those rights was a major achievement for the Metis, and not achieved without effort. There was no mention of these rights in the federal government's constitutional package proposed late in 1980. In January of 1981 a Special Joint Committee of the Senate and House of Commons unanimously agreed that recognition of Metis aboriginal

[72] Report by the Provincial Ombudsman, Dealing with the Removal of Files from Metis Settlements on Monday, June 18/1979. For more details on the Report see Sawchuk, *supra* 209.

[73] O.C. 718/80.

[74] O.C. 422/82 established the "Joint Committee to Review the Metis Betterment Act", gave it a mandate, named the government's representatives and the Chairman, and specified that the "deliberations and recommendations of the Committee shall be without prejudice" to the litigation between the settlements and the Province.

[75] The President of the Federation throughout the work of the Committee was Elmer Ghostkeeper. Although Mr. L'Hirondelle, the past President, served on the Committee for some time, he had other obligations as the chief witness for the settlements in the litigation and eventually the current President of the Federation, Randall Hardy took his place.

[76] *Foundations for the Future of Alberta's Metis Settlements*, Report of the MacEwan Joint Metis-Government Committee to Review The Metis Betterment Act and Regulations to the Honourable J.G.J. Koziak, Minister of Municipal Affairs, July 12, 1984.

rights should be included.[77] Alberta, and other provinces, objected to the patriation process, Prime Minister Trudeau threatened to proceed without their consent, and the legality of the unilateral approach was referred to the Supreme Court of Canada. The Court's decision forced a new round of negotiations between Ottawa and the provinces resulting in an agreement on an amended package on November 5, 1981. The recognition of aboriginal rights was gone from the new package, reportedly due to pressure from western Premiers.

In Alberta, settlement leaders were extremely upset by the prospect of a patriated constitution with no recognition of Metis aboriginal rights. The President of the Federation, Elmer Ghostkeeper, led a quiet protest that burned sweetgrass along with the permanent flame at the Alberta Legislature. As public pressure mounted, Premier Lougheed agreed to meet with settlement leaders with discuss the matter. At the meeting Ghostkeeper presented the argument that recognizing the Metis in the constitution was essential if there was to be real equality in Canada between the west and the east. He argued that in the east the two indigenous peoples subsumed into the new nation in 1867, the French and the Indians, had been recognized as unique peoples. The French were assured language protection and the Indians the special status of federal jurisdiction. The nation now included the west, and the new constitution for the nation should accord the indigenous peoples of the west, the Metis, the same recognition of existence as a people as the indigenous peoples had received in the east. The Premier appeared intrigued by the argument. Whether he was persuaded is not known, but he did begin encouraging the recognition of the "existing aboriginal rights" of the Metis in the constitution.

The new Canadian Constitution recognized existing aboriginal rights. It also required the First Ministers to meet to define the scope of those rights. This led to considerable soul searching by aboriginal groups in preparation for the First Ministers Conference. A topic of particular concern to the Metis was the question of whether they came under federal or provincial jurisdiction. This issue was addressed by the settlements in a position paper on aboriginal rights, "*Metisism: A Canadian Identity*", presented to Premier Lougheed on June 30, 1982. The paper noted that the settlements might be better off under federal jurisdiction since the federal government did not contest the right of Indians to benefit from the subsurface resource revenues of their lands. The paper then went on to say:

> This is not to suggest that we are seeking an exclusive relationship with the federal government. We believe that the province can be more responsive to the needs and aspirations of Metis settlers than a distant federal government. A case in point is the establishment of the Settlements at a time of federal neglect and indifference towards the Metis people. Provincial jurisdiction over education, municipalities, and health and welfare, reinforces our need to deal with the province. Perhaps the most compelling reason for us opting out of an exclusive relationship with

[77] The events relating to aboriginal rights and the patriation of the Constitution are well documented. See for example David C. Hawkes, Negotiating Aboriginal Self-Government: Developments Surrounding the 1985 First Ministers' Conference, *Aboriginal Peoples and Constitutional Reform, Background Paper No. 7*; or Douglas E. Sanders, *Aboriginal Peoples and the Constitution, Alberta Law Review*, Vol.XIX No.3, 1981, p.410.

> the federal government is that, while it might enhance our political status, it does not fit with the Metis way of doing things. More than any other Canadians, we recognize the importance of western provincial rights: our ancestors formed two provisional governments to defend them. We are proud to be western Canadians and proud to be Albertans.

The settlements have consistently maintained this preference for working with the Province. Certainly they are affected by the question of whether Metis are "Indians" under the *Constitution Act, 1867*. However, in talks between the settlements and the Province the issue is generally ignored on the basis that it is a question for the courts and not something either party can do anything about.

The first First Ministers' Conference on Aboriginal Constitutional Matters was held in Ottawa in April of 1983. Federation representatives attended with the Alberta government delegation. Although by the standards of future such conferences this one was a success, settlement leaders left with a feeling of unease. Their primary objective was the constitutional protection of their existing land base and they saw the national process as one way of achieving that objective. However, it became clear in Ottawa that getting agreement on any position further clarifying aboriginal rights would be extremely difficult. The settlements began looking for other options.

One of the options the settlements began to consider was the possibility of protecting settlement lands in the constitution by an amendment to the *Alberta Act*.[78] It was felt that such an amendment could be made under section 43 of the *Canada Act, 1982* by a "made in Alberta" process involving simply the settlements and the Province. The Federation proposed the idea to Premier Lougheed after the disastrous 1984 First Ministers' Conference. The Premier was very interested and said he would look into its feasibility. There was no more communication with the Federation on the subject until the 1985 First Ministers' Conference. Premier Lougheed did not support the federal initiatives at that conference and became upset with what he felt was the media's efforts to paint the Alberta position as "redneck". He contacted the President of the Federation and indicated that he would proceed with the Alberta Act amendment approach if he could be assured that the settlements would adopt fair and democratic procedures for membership and land allocations.[79]

The Premier's commitment was a tremendous boost for settlement leaders. It meant that there was finally a realistic possibility of achieving the fundamental goal of protecting their land base. All of the settlement councils met on April 28, 1985 at the town of Westlock, north of Edmonton. A resolution ("the Westlock Resolution") was passed adopting basic principles to govern the granting of membership and the allocation of interests in Metis settlement lands. It also committed the Settlements to "continue to work with the Government of the Province of Alberta to complete and

[78] Originally *The Alberta Act*, 1905, 4-5 Edw.VII, c.3, (Can.), this Act is identified as part of the Constitution of Canada by s.52(2)(b) of the *Canada Act, 1982*

[79] For details of the 1985 conference see Hawkes, *supra* The comments respecting Premier Lougheed are based on personal discussions at the time with the President of the Federation, Joseph Courtepatte.

implement the recommendations of the Committee and the principles of this Resolution."

The Province accepted the principles adopted in the Westlock Resolution as meeting the "fair and democratic" criteria, and on June 3, 1985, Premier Lougheed introduced "*A Resolution Concerning an Amendment to the Alberta Act*" to the Alberta Legislature. It was passed unanimously. In supporting the resolution the legislature committed itself to "introduce, once a revised Metis Betterment Act has been enacted, a resolution to amend the Alberta Act by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada to grant an estate in fee simple in existing Metis Settlement lands to the Metis Settlement Associations or to such appropriate Metis corporate entities as may be determined on behalf of the Metis people of Alberta, in accordance with this resolution."

This resolution firmly committed the Province to pursue two objectives, the entrenchment of Metis land through an amendment to the *Alberta Act*, and the passage of a new *Metis Settlements Act* that would provide a modern framework for local self-government on the settlements. On January 13, 1986, the Federation met with the new Premier of Alberta, Don Getty, to discuss the possibility of a joint effort aimed at producing a new Metis Settlements Act and an amendment to the *Alberta Act* prior to the 1987 First Minister's Conference. Following meetings on all the settlements the Federation, in July of 1986, presented a proposal for such legislation in a document entitled "*By Means of Conferences and Negotiations We Ensure Our Rights*".

Negotiations on the new legislation proceeded through the end of 1986 and into 1987. The main sticking point was the principle of "territorial integrity". To the Metis, this principle was absolutely basic. In essence it meant that the Metis would own the surface[80] of all the land within a specified boundary. The Province was not prepared to concede ownership of the road allowances and the beds and shores of the lakes and rivers. The matter had still not been resolved when the First Ministers' Conference opened on March 26, 1987. However, in his opening statement, Premier Getty discussed the negotiations and stated "With regard to outstanding matters, we understand and agree with the concept of territorial integrity". With that obstacle removed discussions proceeded rapidly and on June 17, 1987, a discussion paper entitled "*Implementation of Resolution 18*" was tabled in the Legislature. The paper included drafts of a *Metis Settlements Act*, an *Alberta Act* amendment and letters patent to transfer the Province's interest in settlement lands.

The draft *Metis Settlements Act* provided a comprehensive framework for local self-government for the settlements. It established the existing settlements as bodies corporate, gave councils by-law making powers, created a central land holding body with the power to make policies binding on settlement councils and created a tribunal to adjudicate disputes on land, membership and other matters. It also provided

[80] Matters relating to the mines and minerals were to be left to the Court's decision in the natural resources litigation.

criteria for membership and rules for land allocation. Compared to the sparce and inadequate 22 sections of the existing Act, its 212 sections overwhelmed most settlement members.

The Federation held meetings on the settlements to discuss the paper. Although there was general support for the proposal, there was also concern that it was too much too soon. After discussions with the Province it was agreed that a better approach might be to begin with bare bones legislation and implement the rest of the package, as modified in consultation with the communities, over time. The result was the introduction to the Legislative Assembly on July 5, 1988, of Bill 64, *Metis Settlements Act*, and Bill 65, *Metis Settlements Land Act*, and the tabling of a resolution to amend the *Alberta Act*.

V. A NEW LEGISLATIVE FRAMEWORK

There were two major differences between the discussion draft "Implementation of Resolution 18" that had been tabled in 1987 and the bills actually introduced in 1988. The first was that matters relating to the transfer of land were separated from local government matters and introduced as a separate *Metis Settlements Land Act*. The second was that the *Metis Settlements Act* providing the framework for local government was of an enabling rather than a comprehensive nature. In other words, where the earlier document had spelled out the details of membership, land allocation and disputes resolution, Bill 64 proposes that these matters be dealt with later by making regulations in cooperation with the Metis.

It is anticipated that the regulations brought in over time will maintain the structures and essential components of the more comprehensive document tabled in June of 1986. Given that, the four cornerstones of the contemplated new legislation are:

1. Constitutionally protected Metis lands set aside as settlement areas.

2. Settlement councils responsible for local government in the settlement areas, with additional powers to make decisions on membership and land allocation (subject to appeal).

3. A central land and trust fund holding body (the General Council) responsible for addressing common concerns of the settlement councils -- such as the administration of the trust fund and the establishing of common policies with respect to land use planning, resource development, etc.

4. Provincial jurisdiction, consistent with the protection of the Constitution, over the lands and institutions.

The first and fourth cornerstones are to be placed in the Constitution of Canada by an

amendment to the *Alberta Act*. The second and third will be put in place by the *Metis Settlements Act*[81] and regulations made under that Act.

The guiding principles in drafting the *Metis Settlements Act* were to respect the traditions of the settlements, to remedy the problems created by current legislation, and as far as possible, to keep in the new Act the institutions and processes that had been found to work in the past.

The *Metis Settlements Act* establishes the 8 existing Metis Settlement Associations as corporations with the powers and privileges of a natural person.[82] It provides for elected 5 member councils[83] with the power to make by-laws governing the settlement area[84]. The by-law making process is rather unique for local governments in that no by-law can become effective unless it is approved by the members at a public meeting.[85]

Settlement councils have many common concerns, including the use of the trust fund shared by all settlements. Over the years they have developed a mechanism for dealing with those concerns called the "All Council". This is a meeting of all council members from the eight settlements to discuss common policy on matters such as surface rights, trust fund sharing, and land use. Although the "All Council" has no legal status the policies it develops, and the decisions it makes, are generally respected by all settlement councils. In line with the philosophy of legislating what has worked, the new Act creates an incorporated central body called the "Metis Settlements General Council"[86] which is simply the All Council given legal authority to continue its common policy making role.

The traditional policy making role of the All Council is preserved with the new Act recognizing General Council Policies as having legal effect. A General Council Policy requires the support of 3/4 of the settlements[87] but once adopted is binding on all settlements to the extent that a settlement council cannot pass a by-law contrary to the Policy.[88] In addition to making policies, the General Council will also provide a single entity to hold the Metis settlement lands and possibly act as Trustee of the trust fund. At present the Crown fulfils these responsibilities.

[81] *Metis Settlements Act*, 1988 Bill 64, The Legislative Assembly of Alberta.

[82] *id.*, s.2.

[83] id., ss. 4,8

[84] *id.*, s.66

[85] *id.*, s.69

[86] *id.*, s.44.

[87] *id.*, s.54

[88] *id.*, s.55

Another culturally based component of the discussion paper is the use of a Metis Appeals Tribunal for resolution of local problems, especially with respect to land and membership. The Tribunal is made up of 7 persons, 3 appointed by the General Council and 3 appointed by the Minister. The Chairperson of the Tribunal is appointed by the Minister from a list of candidates submitted by the General Council. It is hoped that by the use of this Tribunal, made up mostly of Metis people and enabled to hear matters at the local level without formal court procedures, expensive and time consuming appeals to the Courts can be avoided. Bill 64 does provide directly for the Appeals Tribunal, but enables the Minister to make regulations to bring it into existence.[89]

The "Implementation of Resolution 18" discussion paper contained detailed land management provisions. Under the existing Act the highest interest that can be held in settlement land is the Certificate of Occupancy. It can only be held by a member, grants exclusive use, and can be passed on to next of kin on death. The discussion paper preserved this means of land holding but limited the number of Certificates any one member could hold. There were provisions for the General Council to establish Policies providing for other forms of land holding however. In Bill 64 these land management provisions are left to be brought in by regulations made by the Minister.[90] Like the discussion paper, Bill 64 does, however, contain prohibitions on the use of land for security and protection from seizure.[91]

Membership matters were dealt with extensively in the discussion paper. The paper contained detailed provisions governing the qualifications for membership and the process for membership application, approval and appeal. As with land management, Bill 64 leaves membership matters to be dealt with in regulations.[92] It simply requires that regulations recognize the principles that existing members are entitled to be members and that members must be Metis.[93]

In order to develop a complete legislative package over time, Bill 64 provides the Minister with broad powers to make regulations on substantive matters such as membership and land management. These powers must be exercised in conjunction with the General Council however. The substantive regulations may only be made or amended at the written request of the General Council, unless the regulation is required to protect the public interest.[94] This is defined as meaning that the

[89] *id.*, s.64

[90] *id.*, s.83

[91] *id.*, ss.79,80,81

[92] *id.*, s.77

[93] *id.*, s.77(2)

[94] *id.*, s.96

regulation "is essential for the peace, order and good government of a settlement area", or "necessary to prevent harm to the general public".[95]

The second component of the legislative package, Bill 65,[96] provides for the transfer of the Crown's interest in Metis settlement lands to the General Council. Included in the transfer are the road allowances and the beds and shores of the rivers and lakes.[97] Not included are mines and minerals and water.[98] The Crown may acquire an interest less than fee simple in settlement lands, but only with the consent of the General Council, or the approval of the Courts.[99]

The final part of the package presented to the legislature is a draft "Motion for a Resolution to Authorize an Amendment to the Constitution of Canada". This provides for an amendment to the *Alberta Act*. The proposed amendment prohibits the Crown in right of Alberta from expropriating the fee simple estate in settlement lands, altering the letters patent transferring the land, amending the *Metis Settlements Land Act* or dissolving the General Council, except with the agreement of the General Council. The amendment also emphasizes that Legislature of Alberta maintains its jurisdiction over the lands.

Nowhere in the materials presented to the legislature is there a mention of "aboriginal rights". There are two reasons for this. It was felt that any definition of aboriginal rights would have to take place at the national level and involve all the parties interested and affected by the definition. The process in Alberta has only involved the Province and the settlements. The second, and collateral reason, is that the *Alberta Act* amendment is sought under section 43 of the *Constitution Act, 1982*. This section allows an amendment to the Constitution of Canada if it is authorized by resolutions of the Senate, House of Commons and the legislative assembly of the affected province--in this case Alberta.[100] It was felt that if aboriginal rights were specifically mentioned other governments or aboriginal groups would take the position that the general amendment procedures of section 38, involving all provinces, would have to be followed.

In summary, the package presented to the legislature takes a unique "made in Alberta" approach to the constitutional protection of Metis lands. It draws on existing

[95] *id.*, s.98

[96] *Metis Settlements Land Act*, 1988 Bill 65, The Legislative Assembly of Alberta.

[97] *id.*, s.2(2)

[98] *id.*

[99] *id.*, s.7

[100] The Meech Lake Accord, if ratified, should not affect the proposed approach. It provides in section 46 that an amendment under section 43 can be initiated by the legislative assembly of a province, and in section 47 that such an amendment can be made without the approval of the Senate.

Alberta legislation and existing settlement practice to synthesize a unique set of institutions to meet the challenge of providing fair, democratic and effective government of the settlements and to protect the land as a Metis homeland for the future.

VI. CURRENT JURISDICTIONAL PROBLEMS

A. MEMBERSHIP

The proposed new legislation limits membership in the settlements to Metis and adopts a definition of Metis based on aboriginal ancestry and cultural identification.[101] At the moment, however, the membership problem has been complicated by the "Bill C-31" amendments to the Indian Act. The *Metis Betterment Act* employs essentially the same definition of Metis as was used in the 1938 Act, except that to qualify a person must be at least one-quarter Indian blood. It excludes anyone who is "either an Indian or a non-treaty Indian as defined in the *Indian Act* (Canada)".

The Indian Act provides that

> "Indian" means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian[102] [emphasis ours]

In one of the more arcane provisions of legislation outside of the *Income Tax Act*, the Act in subsequent sections[103] spells out who is entitled to be registered as an Indian. The "Bill C-31" changes in the Act considerably expanded the class of persons entitled to register. This was done by removing some of the patriarchal membership criteria and by allowing a woman and her children to register if she had lost status through marriage.

In the past, an Indian woman commonly lost her Indian status by marrying a white man. In Alberta, her descendants were "Metis" for the purposes of the *Metis Betterment Act*, which specifies

> "Metis" means a person of mixed white and Indian blood having not less than one-quarter Indian blood, but does not include either an Indian or a non-treaty Indian as defined in *The Indian Act* (Canada)[104]

The descendants were Metis by virtue of their mixed blood and non-Indian status. Given the fact that many status Indians have white ancestor somewhere in the family

[101] Bill 64, s.1(h) defines a Metis as "an individual of aboriginal ancestry who identifies with Metis history and culture".

[102] *Indian Act*, R.S.C. 1970, c. I-6, s. 2(1)

[103] s.5, s.6, s.7

[104] *The Metis Betterment Act*, R.S.A. 1970, c.233, s.2(a)

tree, the woman herself could often satisfy this definition of "Metis".

The changes in the Indian Act, now enable the woman and potentially several generations of descendants to register as Indians. Estimates by Metis settlement leaders are that over half the members on some settlements are entitled to be registered as Indians under these new provisions. Most of these settlement members consider themselves Metis and have no desire to be on the Indian Register. The fact that they could register, however, means they are "Indians" as defined in the *Indian Act*. Because the definition of "Metis" in *The Metis Betterment Act* excludes anyone who is "either an Indian or a non-treaty Indian as defined in the *Indian Act* (Canada)" they are not "Metis" under the provincial Act. As a result, they are ineligible to be members of the Settlement many of them have belonged to all their adult life. Needless to say this has created a very awkward situation.

The situation is made worse because the changes to the *Indian Act* also removed the enfranchisement provision[105] that made it possible for a person to voluntarily renounce Indian status. Consequently there are now Metis settlement members[106] who have become "involuntary Indians"--they cannot remove themselves from the definition of "Indian" under the *Indian Act*. Technically, under the Metis Betterment Act they are not "Metis" and consequently not eligible for membership in a settlement association. The same problem occurs for infant children of a woman on the settlement who decides to regain her Indian status, and puts the names of her children on the Register at the same time. Her children could technically be barred from settlement membership for life.

There are interesting jurisdictional problems here if one assumes that Metis are not "91(24) Indians"[107] and that the Province has exclusive competency to legislate with respect to Metis and land reserved for Metis. In passing legislation conferring rights on a group, and prohibiting an "Indian" as defined by the federal government from becoming a member of the group, is the Province legislating with respect to Indians? Conversely if the federal government adopts a definition of Indian that results in a loss of membership rights for Metis under provincial legislation, is the federal government legislating with respect to Metis? Can the federal government unilaterally, and without the consent of the individual, deprive a Metis of status recognized by the Province?

[105] Under the "old" Act, (*The Indian Act*, R.S., c. 149) on application by an Indian and report by the Minister, the Governor General in Council could issue an enfranchisement order (s. 109). On the effective date of the enfranchisement order the Indian was "deemed not to be an Indian within the meaning of this Act or any other statute or law" (s. 110). These sections were repealed by S.C. 1985, c. 27, s. 19.

[106] *The Metis Betterment Act* provides for the formation of settlement associations composed of members of the Metis population of the Province (s. 4(1)), and the setting aside of lands (settlement areas) for occupation by the association and its members (s. 6(1), 8(a)). In practice "settlement" is used for both the association and the land. Consequently it is common to refer to a member of a settlement association both as "living on the settlement", and as a "member of the settlement".

[107] The expression "91(24) Indians" is commonly used to refer to the class of people defined as Indians for the purposes of section 91(24) of the *British North America Act*, 1867, now incorporated in the constitution as the *Constitution Act*, 1867.

Fortunately the Province and the settlements have adopted a pragmatic rather than legalistic view of the problems created by the Indian Act changes. To date no one has lost membership in a settlement because of becoming an "involuntary Indian". There is a different attitude, however, toward members who apply for Indian status. The general feeling is that under the Constitution of Canada there are three mutually exclusive classes of aboriginal peoples, Indians, Inuit and Metis, and people have to decide which class they belong to. This approach has been adopted in the membership provisions of the new Metis settlements legislation. In addition, an effort has been made to enable individual settlements to resolve hardship cases where the eligibility of an individual could be affected by actions outside that person's control.

B. HUNTING AND FISHING[108]

The Canadian Constitution gives the Alberta government jurisdiction over game in Alberta, including hunting and trapping, and over the proprietary interests in fisheries.[109] Parliament has jurisdiction over non-proprietary interests in fisheries.[110] Alberta exercises its jurisdiction over hunting and trapping largely through the *Wildlife Act*[111] and its attendant regulations. Section 7 of the *Metis Betterment Act*, however, enables the making of regulations governing "the hunting, trapping and killing of any game bird, big game or fur-bearing animal" on the settlements "Notwithstanding anything to the contrary contained in *The Wildlife Act* or any other Act".

Two such regulations are in effect, A.R. 115/60, *Regulations Governing Fishing*, and A.R. 116/60, *Regulations Governing Trapping and Hunting of Game and Fur-Bearing Animals Upon Lands Set Aside for Occupation by a Metis Settlement Association*. The fishing regulations prohibit non-members from fishing in a settlement area but allows members to fish for food in the area and in any adjoining water, subject to the *Fisheries Act*[112]. The hunting regulations prohibit non-members from hunting, trapping, killing or taking any game in the settlement. These regulations must mesh with federal legislation governing migratory birds and fisheries.

Although the provinces have jurisdiction over game the federal government has

[108] Much of the material in this part is taken from an unpublished paper "Control of Hunting, Trapping, Fishing and Gathering on Metis Settlements" by David Covey.

[109] Jurisdiction over game is dealt with in the *Constitution Act, 1867*, ss.92(13),92(16). The proprietary interest in fisheries is provided for in *Constitution Act, 1930*, Schedule, s.9.

[110] *id.*, s.91(12)

[111] S.A. 1987, c. W-9.1

[112] R.S.C. 1970, c. F-14

the power to enter into treaties[113] and in view of this has passed the *Migratory Birds Convention Act*[114] establishing closed seasons on migratory birds. Unlike the Indians and Inuit, there are no specific exemptions for Metis taking food and at least one settlement member has been convicted of violating this Act. That was prior to the constitutional entrenchment of aboriginal rights, however, and since then the matter has never been raised in the courts.

The resolution of jurisdictional problems in the case of fisheries is interesting. Section 34 of the federal *Fisheries Act* gives the Governor General in Council broad regulatory powers. The *Alberta Fisheries Regulations*[115] made under this section contain specific provisions dealing with settlement Metis. The Regulations adopt the *Metis Betterment Act* definition of "Metis" involving mixed white and Indian blood[116] and provides for the issuing of a "Metis domestic license" to enable settlement members to fish for food on their settlement. It seems clear that although the federal government has the jurisdiction on these matters, it makes regulations based on the advice of the affected Province. Consequently negotiations between the settlements and the Province on fisheries matters can eventually be reflected in regulations made by the federal government.

VII. COOPERATION & RESULTS

A. MEETING THE NEED FOR HOUSING

As in most native communities, housing has been a perennial and pressing problem on the Metis settlements. In the early days of the settlements housing assistance was provided by the Province in the form of nails and basic hardware--the settler supplying the logs and labour. Eventually the log cabins were replaced by frame houses, with some loan assistance from the Province. In a Christmas radio address in 1955 the Province's Minister of Welfare proudly described the provincial program of assistance to the settlements. He also proffered some (probably unappreciated) advice to the federal government. After opening greetings to his radio audience, the Minister dealt summarily with federal/provincial responsibility for native affairs:

> Publicity in recent weeks regarding the care of Indians and Metis or half-breed people, has created confusion in the minds of people as to who is

[113] *Constitution Act,1867*, s.132

[114] R.S.C. 1970, c. M-12. This was held to be valid legislation in R. v. Sikyea, (1964) 46 W.W.R. 65 (N.W.T.C.A.), affirmed 49 W.W.R. 306 (S.C.C.).

[115] C.R.C. 1978, c. 838

[116] In section 2 the Regulations define "Metis" as "a person of mixed white and Indian blood having not less than one-quarter Indian blood, but does not include an Indian or a non-treaty Indian as defined in the *Indian Act*". Is this the only operative federal government definition of "Metis"?

> responsible for the care of these groups.
>
> So that there will be no doubt: The Indians are the sole care of the Federal Government; care of the Metis or half-breed people is the responsibility of the Provincial Government.[117]

The Minister then proceeded to outline how the Province was meeting its responsibility:

> All roads in the colonies have been built at no cost to the general public. Roads up to the colony boundaries were built by the Department of Highways, who have been paid in the amount of seven thousand dollars from the Metis Trust Fund. Five thousand dollars has also been paid to the Department of Forestry for fire fighting. Medical accounts and nurses wages have been paid, as well as many other services.
>
> You see folks, the Metis under proper supervision are doing an excellent job, and are paying their own way. This is a record of which they may well be proud.
>
> I am pleased to note that the Federal Government, at last, have come to realize the soundness of our program and are now taking steps to institute such measures at Fort Vermilion. The Federal Government yet has much to learn from the Province of Alberta, particularly in the care of their Indians.

The Minister described the housing program as follows:

> Those established on the colonies are now leading contented, happy, healthful and self-supporting lives. Regulations call for the erection of permanent houses of frame construction, well ventilated, with lots of light, and of the proper size to accommodate the family which is to occupy them.
> ....
>
> Assistance is given to the settlers by means of a loan to purchase building material such as hardware, doors, windows, and other materials that cannot be secured on the Colony. A loan of $100.00 is provided for breaking land which the settler has cleared.

By today's standards the housing program certainly appears more limited than the Minister's enthusiasm.

By 1975 the housing assistance program had grown to a Provincial grant of $28,000 per settlement to use as the Council saw fit to meet their housing needs.[118] The amount was clearly inadequate. Housing was a top priority of Settlement Councils and they began to look for other sources of assistance. One potential source was the

[117] Transcript of a public affairs broadcast made December 21, 1955 by the Honourable R.D. Jorgenson, Minister of Welfare.

[118] Information on the housing program is based on personal experience and on notes from discussions with Mr. Rick Beaupre, Executive Director of Rural Housing, Alberta Department of Municipal Affairs. Mr. Beaupre has played a key role in improving Metis housing in northern Alberta since the mid 1970's.

federal government as represented by the Central Mortgage and Housing Corporation (CMHC). The Councils contacted CMHC officials and after some discussions the Residential Rehabilitation Assistance Program (RRAP) was made available to the settlements. In 1975 and 1976 the program enabled some much needed repair work to be done on existing settlement houses. Funding for new houses, however, still came from the $28,000 per settlement grant provided through the Metis Betterment Branch.

In 1976 responsibility for settlement housing was transferred to the Department of Housing and became part of the Province's Rural Housing Assistance Program (RHAP). The funding remained at the same level. However in 1977, following a tour of the settlements by the Minister of Housing, program funding was increased sharply to $50,000 per settlement. The increased funding was made possible by a special warrant passed in response to the Minister's concern over housing conditions. The actual funding then doubled to $100,000 per settlement by matching federal funding through the Alberta North Agreement. Under this cost sharing arrangement the province's Department of Housing funded the RHAP housing programs on the settlements and then reclaimed 50% of the costs from the federal Department of Regional Economic Expansion (DREE).

From 1978 to 1982 significant progress was made in improving housing on the settlements. The housing program on each settlement was a complex amalgam of federal and provincial programs combined with settlement council coordination and individual effort and equity. Each settlement established a Waskayigan Association[119] to coordinate the local housing effort. Materials were purchased with RHAP funds and equity from the prospective home owner. Construction was carried out by the home owner, his family, and settlement apprentices enrolled in a carpentry training program. Their training allowances, and consequently the labour component of the houses, were paid by the federal Department of Manpower and Immigration. Construction was supervised by trainers paid by the provincial Department of Advanced Education. The apprentices also received classroom instruction at the Alberta Vocational Colleges in Grouard and Lac La Biche. In all about 35 journeyman carpenters were trained and close to 200 houses built.

In 1982 the Alberta North Agreement expired and was not renewed. The Province, however, assumed the federal share of the RHAP funding and continued the program. The federal government continued to provide labour funding via the carpenter training program, but that assistance ended in 1986. Since then there has been no federal assistance for new home construction. However, to bring matters a full circle, CMHC is once again providing assistance to carry out emergency repairs to existing houses.

The housing programs on the settlements represent the power of pragmatism, cooperation and a problem solving attitude. The program was not created in one piece by planners. It developed over time as representatives of the settlements, the Province and the federal government sought to combine resources to solve a problem. The focus

[119] Waskayigan is the Cree word for "house".

was not on "Whose legal responsibility is this?" but rather on "What role can we realistically play in developing a solution?". If any of the participants had insisted on first clarifying the issue of legal responsibility, the result would almost certainly have been fewer houses and carpenters and more conferences and litigation.

B. CAPITALIZING DEVELOPMENT - SETTLEMENT INVESTMENT CORPORATION

Notwithstanding the rosy picture painted by the Minister of Welfare in his Christmas message of 1955, the facts of life in the early 1970's were that the settlements were economically depressed areas. There was little cash in the local economies. Unemployment was high. Most settlement residents depended on odd jobs off the settlement for cash and on their own subsistence farming operations for food. The Metis Task Force Report in 1972 saw little hope that the farming operations could become viable businesses without a new means of accessing capital. It summarized the problem as follows:

> The Metis Settlement Areas have reserved land ownership to the Crown in order to protect their land claim. However, the agricultural resources of Western Canada have been developed largely through land mortgages; but this source of capital has not been available to the residents of Metis Settlements. No alternative source of capital has ever been arranged for the Settlements to replace the mortgage system.[120]

Creating some mechanism to solve this problem was a major priority of the Federation and individual settlements. The Metis Betterment Branch and other provincial agencies were approached for assistance. None was forthcoming. The Federation then approached the federal Department of Regional Economic Expansion (DREE) in an effort to access the native economic development programs available in other provinces. Because of the frosty federal/provincial relationship at the time, DREE representatives indicated that they could not become directly involved in funding native economic development in Alberta. The Department could only respond to initiatives from the Province. In other words, the Federation would have to convince a provincial agency to support an economic development proposal and persuade the agency to approach DREE on its behalf. Efforts to do that were not productive.

Early in 1979 the settlements finally saw an opportunity. Prior to the provincial election Premier Lougheed announced a Municipal Debt Reduction (MDR) Program under which the Province would make a $500 per capita grant to each municipality for the purpose of reducing municipal debt. Richard Poitras, one of the founders of the Federation, approached his MLA, the Honourable Al Adair, to find out whether the settlements would qualify for the program. Adair took the matter to Cabinet and it was agreed that the settlements should qualify, the same as other local governments. Because the settlements had no debt, however, the grant provided a new source of

[120] The Report of The Metis Task Force, *supra*, p.6

capital for settlement development.

In the summer of 1979 the Federation developed a detailed proposal[121] for an economic development mechanism for the settlements, using the MDR grants as seed financing to leverage additional development capital. The mechanism included a finance arm to provide capital and a development support arm to provide expertise. The proposal called for the settlements to invest their MDR money as initial equity in an economic development corporation, with the Province to provide assistance in meeting operating costs until the corporation became self supporting. Additional capital was to be sought from the federal government and the private sector.

In 1980 the settlements incorporated Settlement Sooniyaw Corporation. In 1975 each settlement had contributed $5,000 to get the Federation started as an on-going operation. The same approach was used in launching Settlement Sooniyaw Corporation, each settlement purchasing $75,000 in shares to provide the initial capitalization for the corporation. The corporation then set about looking for additional assistance to implement the overall economic development strategy. NOVA, An Alberta Corporation, agreed to loan the Federation a young manager with some expertise in economics and business development to assist in evaluating economic development opportunities. The Province, however, was less helpful. It could not be convinced to provide the funding required to create a real source of economic development capital. At the federal level there simply was no program available that could enable the financing mechanisms envisioned in the Federation's economic development proposal.

The situation changed in 1984 when the federal government announced the Native Economic Development Program (NEDP). The program made capital available to native businesses and financial institutions such as Settlement Sooniyaw Corporation. The NEDP provided some initial funding in 1984 to assist the Corporation in developing a more detailed proposal for its proposed economic development mechanism. A complete proposal was presented to the NEDP in May of 1985, and following a year of negotiations a funding agreement was signed in May of 1986. Settlement Sooniyaw created a wholly owned subsidiary, Settlement Investment Corporation (SIC), and the NEDP agreed to provide SIC with $4,220,000 in financing over 3 years, conditioned on acceptable performance. SIC has performed well and has so far received $3,140,000 of the earmarked funds.

To date SIC has provided debt financing to about 50 settlement businesses and 70 farms. The businesses range from small stores and service stations to heavy equipment contracting. Most are owner operated. About 150 jobs have been created as a result, and by creating community stores and services there has been an improvement in internal settlement cash flow--some of the money that in the past was spent for products and services off the settlement now goes to building a commercial base on the settlement. Some provincial assistance is provided to individual businesses

[121] *An Economic Development Mechanism for the Metis Settlements of Alberta*, Federation of Metis Settlements, September, 1979.

via grants made under the Canada Alberta Nothern Development Agreement, a federal/provincial cost sharing arrangement. The Province, however, still has not joined the federal government in supporting Settlement Investment Corporation.

C. INNOVATIONS IN AGRICULTURE - THE KIKINO WILDLIFE RANCH

With the exception of Paddle Prairie, the Metis settlement areas contain little land well suited for traditional agriculture. The lands were set aside out of public lands and by that time most of the good farm land in the province was already in private hands. The settlement areas tended to bush, muskeg and "moose pasture". Over the years settlers cleared the better land for subsistence farms or seeded native pasture for cattle ranching operations, but much of the land simply was not amenable to traditional farming and ranching practices. In the past it naturally supported moose, elk and buffalo. It took some effort, however, to make the same land support a viable farming operation based on cattle or grain. In the rougher bush lands or muskeg it was simply not possible.

In the mid 1970's the Intensive Wildlife Production section of the provincial Department of Fish and Wildlife began to explore the possibility of intensifying the production of wildlife on Indian and Metis lands. The effort was spearheaded by a provincial wildlife biologist, Gerry Lynch. By 1978, Lynch had outlined the potential of an intensive wildlife ranch on Metis settlement lands at Board meetings of the Federation of Metis Settlements and with individual settlement councils. The Kikino settlement council was particularly interested, and in 1978, with the assistance of Lynch and Judd Bundidge of the provincial Department of Agriculture, the council had developed a proposal for establishing a combined moose, elk and buffalo ranch in the Kikino settlement area.

The proposed project called for constructing a facility on the Kikino settlement consisting primarily of a heavy duty fence and corrals. Buffalo and elk would be obtained from the federal government through Elk Island Park east of Edmonton. The moose would be collected locally. Settlement members would construct the facilities and manage the operation. The Department of Fish and Wildlife would provide technical expertise on caring for the animals and monitor the project as a large scale experiment. The Department of Agriculture would provide additional technical expertise on facilities design and construction. The proposal called for initial funding from the Department of Social Services--the department responsible for Metis Settlements at the time. The Minister, Bob Bogle, generally considered by the settlements to be the least supportive Minister in their history, vetoed the project. The Kikino council, however, carried on.

In 1979 the council incorporated the Kikino Wildlife Ranching Association. They earmarked an area of the settlement that was primarily muskeg and bush, with little potential for traditional farming practices. The settlement's budget was reworked to allocate funds to the purchase of fencing materials. The federal government was approached for help in funding the labour component of the project. The federal

Department of Manpower agreed to support the project and by 1980 the settlement was able to begin fencing.

A page wire fence more than 7 feet tall was built and 23 buffalo imported from Elk Island National Park. In subsequent years additional lands were fenced and elk and buffalo brought in from Elk Island and Waterton Lakes National Parks. Local deer and moose were included when new areas were fenced. The fenced-in ranch area now includes more than 9 square miles. Rough estimates of the current wildlife population are about 120 buffalo, 80 elk, 60 deer and 20 moose. The ranch employs 3 people full time and 15-35 on a seasonal basis. In 1987, 24 settlement residents were employed in various ranch projects.

The ranch appears to be a viable operation. Unlike a cattle ranching operation, the mix of indigenous animals makes full use of the natural vegetation--grass, browse and branches. Bison are sold as seed stock and for meat. Elk antlers are sold to brokers for eventual resale in the orient as an aphrodisiac. Some elk are sold as seed stock, but none as yet for meat. The moose population is still being developed, but the objective is to eventually create a sufficient moose population to meet the traditional settlement demand for moose meat as dietary staple.

In addition to the practical contribution of the ranch in the form of food, cash and employment, the project has made a scientific contribution. The original goal of the wildlife biologists was to study the possibilities of "extensive" versus "intensive" animal husbandry. "Intensive" husbandry relies on extensive intervention--picking the right animal and constantly modifying their environment so they will produce marketable products with efficacy and efficiency. "Extensive" husbandry prefers minimal intervention, leaving the natural landscape essentially intact and waiting until the animals that can survive in that environment can be harvested for commercial use. In the rough areas of Kikino where farming is difficult, the extensive approach seems to be more productive.

VIII. CONCLUSION

The current legislative regime of the settlements is deeply flawed. It is paternalistic, anachronistic, inconsistent and inadequate. Nevertheless, for 50 years the settlements have functioned in a way that meets the primary objectives of the original founders. The land has provided a base on which the Metis have achieved some level of individual economic security. The Act, for all its imperfections, has provided a legal structure within which elected Metis representatives have exercised some recognized powers of local self-government. Although short of the ideal, it has been a first for the Metis in Canada. The provisional government of the Red River Settlement in Manitoba had received some recognition by the Canadian government in 1869, but had been replaced almost immediately in 1870 by an exercise of federal political and military force.

In Alberta, however, elected representatives of the Metis have been "governing"

lands reserved for Metis use for almost half a century. The Province has maintained ultimate legal authority, but outside of a period during the 1950's and early 1960's, it has generally respected the locally elected Councils as the final decision makers on Settlement matters. The Councils of the Settlements certainly do not have full self-governing powers, but for all practical purposes they have in fact governed the Settlements, making decisions on land allocation, membership, and the other key issues of settlement life.

The proposed new package of legislation, federal and provincial, should provide the basis for achieving the long range goals of land security and local autonomy. The remaining goal of adequate financial resources probably awaits the resolution of the natural resources litigation. The package presented to the legislature in 1988 represents the culmination of 8 years of effort by the Metis and the Province. Meetings on the settlements, with the All Council, with the Federation Board and with appointed representatives have produced a range of documents and reports including "Metisism" in 1982, the MacEwan Report in 1984, "By Means of Conferences and Negotiations" in 1986, "Implementation of Resolution 18" in 1987 and finally the package presented to the legislature.

The nagging question is "What happens to all these negotiations between the Province and the settlements if Metis and lands reserved for Metis are exclusively federal jurisdiction?". The only reasonable answer is that the negotiations having been carried out in good faith will be respected. Perhaps the *Fisheries Act* approach provides a solution--the federal government could simply incorporate into federal legislation the legislation developed by the Province and the settlements.