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Métis as Section 35 Rights Holders & Métis Self-Government Recognition

February 28, 2020

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Agenda

1. Métis & Section 35, *Constitution Act, 1982*
2. The Métis Perspective
3. The Métis Nation – Saskatchewan
4. Métis Government Recognition & Self-Government Agreement
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MÉTIS & SECTION 35, *CONSTITUTION ACT, 1982*

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Métis & Section 35

- Section 35 recognizes and affirms existing Aboriginal rights
- Section 35 recognizes the Métis peoples in Canada as falling within “Aboriginal peoples of Canada”
- “The term ‘Métis’ in Section 35 does not encompass all individuals with mixed Indian and European heritage; rather, it refers to distinctive peoples who, in addition to their mixed ancestry, developed their own customs, way of life, and recognizable group identity separate from their Indian or Inuit and European forebears.” (*R. v. Powley*)





THE MÉTIS PERSPECTIVE

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The Métis Perspective

“When the Government of Canada presented itself at our doors it found us at peace. It found that the Métis people of the North-West could not only live well without it ... but that it had a government of its own, free, peaceful, well-functioning, contributing to the work of civilization in a way that the Company from England could never have done without thousands of soldiers. It was a government with an organized constitution whose junction was more legitimate and worthy of respect, because it was exercised over a country that belonged to it.”

- Louis Riel, 1885



Inherent Right of Self Government & Self-Determination

- The inherent right of the Métis to self-government is **not** dependent on the recognition of other governments or the courts.
- The legitimacy of Métis self-government comes from the belief, support, reliance, and participation of Métis in governments.
- This is what has sustained Métis self-government in the face of colonialization, denial, disrespect and internal divisions.
- This is what will finally get the Métis to the place where a nation-to-nation, government-to-government relationship with Canada is realized.
- For MNS, this is embodied in the MNS Constitution (adopted in 1993).



Perseverance of Métis Self Government

- The Métis have re-built or built their own governments: community meeting by community meeting, assembly by assembly, success by success.
- The longevity of Métis governments, in the face of adversity (internal and external), speaks to the strength and resilience of the belief in Métis self-government.
- The strength of Métis self-government is based on Métis citizenship registries, democratic elections, Métis law, justice and accountability





THE MÉTIS NATION – SASKATCHEWAN

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The Métis Nation – Saskatchewan (MNS)

- MNS is the modern day manifestation of the inherent right to self-government of the Métis in Saskatchewan.
- MNS is the only Métis-created and legitimate representative government of rights-bearing Métis citizens in Saskatchewan.
- MNS is based on the will and determination of Métis people and communities in Saskatchewan, objectively verifiable registration systems and democratic elections, governance structures and institutions at the local, regional and provincial level.



MNS Constitution & Governance

- MNS Constitution is the main legislation with respect to governance of MNS
- Pursuant to the MNS Constitution:
 - MNS is the governing body of Métis in Saskatchewan and responsible for protecting s. 35 rights of Métis in Saskatchewan
 - Métis Nation Legislative Assembly (MNLA) is the governing authority of the MNS
 - MNLA has a great degree of paramountcy with respect to other governance structures of MNS
 - Regions shall enact a Constitution “which is not inconsistent with this constitution”, i.e. the MNS Constitution
 - Locals shall enact a Constitution “which is not inconsistent with this constitution”, i.e. the MNS Constitution



What has been the problem?

- Despite the legitimacy of the MNS and other Métis Governments, other governments and the courts have not consistently recognized these Métis Governments.
- The longstanding goal of the MNS and other Métis Governments has been to have their existing governments, as Indigenous governments, recognized as such by other governments based on Métis rights recognition, including the inherent right of self-government and self-determination.
- Government of Saskatchewan has been struggling to fully comprehend the meaning and effect of Section 35.



The background of the slide is an abstract composition. On the left side, there are dense, wavy, layered lines in shades of gray, creating a sense of depth and movement. Scattered across this background are numerous small triangles, some of which are orange and others are gray. The right side of the slide is a solid white background, providing a clean space for the title text.

MÉTIS GOVERNMENT RECOGNITION & SELF- GOVERNMENT AGREEMENT

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Métis Government Recognition & Self-Government Agreement



- On June 27, 2019, the MNS signed a historic Métis Recognition and Self-Government Agreement (MGRSA) with Canada.
- This is the first time Canada has recognized any self-government rights of the Métis **in a legally binding agreement** that commits the federal Crown to further negotiations, agreements and recognition.

Background Story

- “**Whereas** Canada’s historic relationships with Indigenous peoples have been steeped in colonialism, and successive governments have failed to acknowledge and respect the inherent rights of Indigenous peoples, including their rights in relation to land, their distinct governments, their customary laws and traditions, as well as their unique cultures; ...”
- “**Whereas** Canada has begun to deal with the rights, interests, and claims of the Métis of Saskatchewan, which has led to the signing of the Framework Agreement on Advancing Reconciliation between the Parties on July 20, 2018; ...”
- “**Whereas** the Parties have established a collaborative process to advance reconciliation based upon the recognition, affirmation, and implementation of rights, respect, cooperation, and partnership; ...”



Purpose of the MGRSA

“The overall purpose of this Agreement is to support and advance the inherent right of self-determination and self-government of the Métis of Saskatchewan, as recognized and affirmed by Section 35, *Constitution Act, 1982*, in a manner that is consistent with UNDRIP, through a constructive, forward-looking, and reconciliation-based arrangement between the Parties that is premised on rights recognition and implementation.”

- Article 2.01 of MGRSA



What the MGRSA Does

Creates a Mutually Agreeable Process:

- “This Agreement also sets out a mutually agreeable process leading to federal legislative recognition of the Métis Government of the Métis of Saskatchewan, as an Indigenous government, along with the recognition of the Jurisdiction as set out in this Agreement premised on rights recognition and implementation.”

- Article 2.03 of MGRSA



What the MGRSA Does

Immediate Recognition:

- “Upon signing of this Agreement, Canada recognizes that:
 - the MNS is mandated to represent the Métis of Saskatchewan;
 - the Métis of Saskatchewan has an inherent right to self-government over its internal governance that is protected by Sections 25 and 35, *Constitution Act, 1982*; and
 - the MNS has been mandated by the Métis of Saskatchewan to implement its inherent right to self-government that is protected by Sections 25 and 35, *Constitution Act, 1982*.”

- Article 3.01 of MGRSA



What the MGRSA Does Not Do

Affect Métis Rights:

- “Nothing in this Agreement or the implementation of this Agreement extinguishes, defines, creates, modifies, limits, prejudices, restricts, or surrenders any right, freedom, interest, or claim:
 - protected by Sections 25 or 35, *Constitution Act, 1982* or flowing from any constitutional duty or obligation; or
 - any other inherent jurisdiction, right, freedom, interest, or claimthat is held or exercised collectively by the Métis of Saskatchewan or components thereof.”

- Article 27.02 of MGRSA



What the MGRSA Does Not Do

Undermine Métis Self-Government:

- “Notwithstanding the recognition provided for and the processes set out in this Agreement, the MNS maintains its position that it is already a Métis government that is mandated by the Métis in Saskatchewan based on the inherent right of self-government. Nothing in this Agreement will be interpreted, used, or relied upon to undermine the position held by the MNS on this issue”

- Article 3.03 of MGRSA

Recognition of Jurisdiction in the MGRSA Is Not Exhaustive

- “The Jurisdiction set out in this Agreement is not intended to be definitive of, or conclusively define, the inherent right of self-government or any other inherent right or jurisdiction that may be recognized or implemented through further negotiations between the Parties or how the inherent right of self-government may ultimately be defined at law.” (Article 8.04)
- “The Métis Government and Canada may agree to negotiate further areas of jurisdiction as provided for in Part VI.” (Article 8.05)
- “The Jurisdiction of the Métis Government will be exercised in accordance with the Constitution and this Agreement.” (Article 8.09)



Potential Topics for Additional Jurisdiction Implementation Agreements

- Land
- Language, Culture, and Heritage
- Education
- Training
- Child Care
- Early Childhood Development
- Child and Family Services
- Administration of Justice
- Housing and Infrastructure
- Health Services and Promotion
- Economic Development
- Environment
- Veterans' Affairs
- Application of Métis Government Laws on Lands held by the Métis Government or Governance Structure
- The Métis Government's Role, Involvement, or Shared Decision Making in Relation to: Water or Subsurface Rights; Wildlife, Fishing and Fisheries; Forests; Protected Areas; and Land Management
- Environmental Assessment
- National Parks
- Any Other Matters Agreed to by the Parties, including Taxation





NEXT STEPS

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Next Steps

- Federal Recognition Legislation
- Constitution and Core Laws Development
- Fiscal Financing Agreement, Intergovernmental Affairs Agreement, Transition Plan



Fiscal Financing

- “Offering stable and predictable political and financial support to Métis governments is an important element of overall reconciliation, and should be considered as Canada progresses down the road of developing a Section 35 Métis rights framework.” (Thomas Isaac in *A Matter of National and Constitutional Import*)
 - Public interest is not served by Métis governments and organizations not knowing with reasonable predictability if, and to what extent, they will be funded.
 - In order to achieve reconciliation, there need to be coherent, stable and credible Métis governance bodies to undertake Métis rights discussions with the Crown.



Internal Self-Government Readiness Work to be Undertaken by MNS

- MNS develops its own internal processes, workplan and structures to achieve the following pillars for self-government:
 - Constitution
 - Citizenship and Registry Law
 - Internal Structures, Operations, Procedures and Financial Management Law
 - Election Law
 - Engagement, Consultation and Ratification by Citizens



Thomas Isaac, B.A., M.A., LL.B., LL.M.

Thomas Isaac is a nationally recognized authority in the area of Aboriginal Law and serves as the Chair of the Aboriginal Law Group at Cassels. Tom has extensive cross-Canada experience advising industry, investors, and federal, provincial, territorial, and municipal governments/agencies on matters involving complex multi-jurisdictional Aboriginal-related disputes. Tom also has extensive experience representing industry and government clients before the Supreme Court of Canada, Federal Court of Canada, Ontario Court of Appeal, Ontario Divisional Court, BC Court of Appeal, BC Supreme Court, NWT Supreme Court, Yukon Supreme Court, Yukon Court of Appeal, Manitoba Court of Queen's Bench, PEI Supreme Court, PEI Court of Appeal, National Energy Board, Ontario Energy Board, and BC Environmental Appeal Board. In 2018, Tom was honoured as one of Canada's "Top 25 Most Influential" lawyers by *Canadian Lawyer* magazine.

Tom is a former Chief Treaty Negotiator for the Government of British Columbia and a former Assistant Deputy Minister responsible for establishing Nunavut for the Government of the Northwest Territories. He also served in a senior capacity with the Government of Saskatchewan dealing with Aboriginal issues.

Tom served as the Minister's Special Representative for the Minister of Indigenous and Northern Affairs regarding a Section 35 Metis Rights and Reconciliation Framework and a reconciliation approach for the Supreme Court of Canada's decision in *Manitoba Metis Federation v. Canada*. His report—*A Matter of National and Constitutional Import: Metis Section 35 Rights and the Manitoba Metis Federation Decision*—was released by Canada in July 2016.

Tom also served as the Minister's Special Representative for the Minister of Indigenous and Northern Affairs and the Premier of the Northwest Territories regarding the Akaitcho Dene and NWT Metis Nation negotiations in the Northwest Territories. His report—*A Path to Reconciliation*—was released by both governments in March 2017.

Tom is presently serving as the Minister's Special Representative for the Minister of Indigenous and Northern Affairs to conduct exploratory discussions on the Gottfriedson class action lawsuit against the Government of Canada relating to residential school day students.

Tom has published extensively in Aboriginal law, including 15 books, the most notable being *Aboriginal Law, 5th Ed.* His published works on Aboriginal law have been cited with approval by Canadian courts, including the Supreme Court of Canada and the Federal Court of Appeal.

Tom is a member of the law societies of Alberta, British Columbia, Nunavut, NWT, Ontario, Saskatchewan, and Yukon.





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