THE CONTEXT FOR MÉTIS JUSTICE ISSUES

KATHLEEN MAKELA
RESEARCH OFFICER, NATIVE LAW CENTRE
UNIVERSITY OF SASKATCHEWAN

Prior to examining justice issues as they pertain to the Métis, one should have a sense of the Métis position. The Métis have long asserted that they are a nation of Aboriginal people within Canada whose claim to Aboriginal rights is no less valid than that of the Inuit and Indian Peoples. Although the Métis did not make treaty with the Crown, neither did they gave up their inherent Aboriginal rights, which would have been the foundation of such treaties. Parliament affirmed this position in 1982 when it amended the *Constitution Act, 1982* to explicitly recognize the existing Aboriginal and treaty rights of the Aboriginal Peoples of Canada and clarified that "aboriginal peoples" meant the Indian, Inuit and Métis peoples.[1]

The Métis maintain that their Aboriginal rights include the already existing right of self-government and that, as a consequence of section 35, the right of self-government has been constitutionally entrenched. Supportive of this position was the agreement reached during the Charlottetown Accord talks, in which the inherent right of self-government was explicitly recognized by all ten provinces and the federal government.[2] With the rejection of the Accord and constitutional reform temporarily out of reach, the Royal Commission on Aboriginal Peoples examined the question of whether the right of self-government already exists in the Constitution. Their conclusion upheld the Métis position: Aboriginal Peoples have the inherent right of self-government within Canada.[3]

For the Métis, self-government is the foundation upon which all other issues rest, including justice. In order to properly address matters pertaining to justice, the right of self-government must first be addressed. A prerequisite of self-government is the securing of a land base. This position is perhaps best explained by the Métis Society of Saskatchewan (MSS):

> Land is essential because we are inextricably tied to the land: it sustains our spirits and bodies; it determines how our societies develop and operate based on available environmental and natural resources; and our socialization and governance flow from this intimate relationship. In essence, land is a natural right, inalienable in nature, which is essential for the continued vitality

> of the physical, spiritual, socioeconomic and political life and survival of our people for generations to come.[4]

This struggle for recognition of a Métis homeland is not new. The Métis refer to the *Manitoba Act*[5] and to the *Dominion Lands Act*[6] amendment as acknowledgement by the Government of Canada that not only did the Métis have Aboriginal title to certain lands at the time of Confederation, but that Métis title had to be dealt with prior to lawful European settlement on such lands.

HISTORICAL BACKGROUND

When Canada sought to acquire sovereignty over the West, it negotiated the terms of transfer with the Provisional Government organized by the Métis and led by Louis Riel. The *Manitoba Act,* which created the province of Manitoba in 1870, was the result of these negotiations.[7] During these deliberations, the Métis insisted that their land enter the federation as a province in order to ensure their continued political power and democratic form of government. This was agreed to by the Canadian government, but it insisted upon federal control of land with special "half-breed" land grants to create a Métis land base.[8] Both the Government of Canada and the Provisional Government passed the *Manitoba Act,* and it was later confirmed by imperial legislation. Section 31 of the Act read, in part:

> 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.

This Act was never fully honoured by the federal government and, as a consequence, the Métis land base never materialized. Instead, the Métis found themselves being pushed out of the Red River area to the north and to the west.

Seven years later the *Dominion Lands Act* was amended, in 1879, to allow for land grants to the "half-breeds" in what is now Alberta, Saskatchewan, the Northwest Territories and parts of Manitoba.[9] Section 125 of the Act provided that:

> 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 the limits of Manitoba, on the fifteenth day of July, one thousand eight hundred and seventy, by granting lands to such persons, to such extent and on such terms and conditions, as may be deemed expedient.

Although this legislation provided for land grants in satisfaction of Métis

claims, as did the *Manitoba Act*, the federal government chose to administer a "land scrip," and especially "money scrip," which, when practised widely and systematically, ensured that the Métis would lose their land as the West was opened for settlement.

THE ISSUES

Given this federal recognition of the Métis' inherent Aboriginal title to lands, the Métis argue that the government today has a historical obligation to them. That is, the Métis are a federal legislative responsibility under section 91(24) of the *Constitution Act, 1867*,[10] falling under the broad ambit of "Indian" by virtue of their Aboriginal rights and title. The federal government supported this position during the Charlottetown Accord talks when it agreed to the amendment that would have clarified section 91(24) as applying to all Aboriginal Peoples.

The Métis also maintain that, given section 35 of the *Constitution Act, 1982*, the government has a fiduciary duty to not only the Aboriginal people based upon treaty rights and obligations, but also to the Métis. Moreover, they assert that the federal government is in violation of section 15 of the *Canadian Charter of Rights and Freedoms*[11] when it restricts its legal processes for addressing Aboriginal grievances to only "Indians" and the Inuit, virtually excluding the Métis. If a First Nation has a claim against the government for a historical wrong, such as an illegal surrender of reserve land, a First Nation can seek compensation through a comprehensive or specific claim, or request an inquiry by the Indian Claims Commission. Such avenues are not open to the Métis and, at the present time, their only means of redress is through the courts.[12]

THE MÉTIS GOAL IN TERMS OF JUSTICE

The Métis of Saskatchewan assert that their unextinguished Aboriginal rights and right of self-government include having control over the administration of justice for their own people. The Métis believe that for any real or positive change to take place within the justice system, they must have a say in such matters. They maintain that the Métis need to be in charge of the delivery of justice services themselves—justice services that must ultimately reflect the Métis traditional way of life and values if they are to benefit and protect the Métis people.[13]

In June of 1991 the MSS and the Governments of Canada and Saskatchewan established the Saskatchewan Métis Justice Review Committee. Its objectives were:

- to facilitate consultation on the criminal justice system as it relates to Saskatchewan Métis people and communities;
- to consider recommendations relating to the delivery of criminal justice

services to Saskatchewan Métis people and communities and, more particularly, relating to the development and operation of practical, community-based initiatives intended to enhance such services, and

- to report such recommendations to the federal and provincial governments and to the MSS.[14]

In its final report of January 1992,[15] the Committee identified four concerns that affect the criminal justice system and that warrant further discussion: racism, cross-cultural training, family violence and implementation mechanisms. It was determined that Aboriginal people are more likely than other Canadians to be subjected to racist behaviour and that racism is prevalent throughout Canada's social, economic and political systems in the form of stereotyping, prejudice or discrimination, both overt or systemic.[16]

Cross-cultural and race sensitivity training were identified as important means of ameliorating racism at all levels of the criminal justice system. The Committee recommended that First Nations and Métis organizations, in conjunction with the federal and provincial governments, jointly develop delivery standards and evaluation criteria for cross-cultural training. For such training to be effective, the Committee envisioned it to be ongoing throughout an employee's service within the justice system and that it should contain a strong Aboriginal component to familiarize and sensitize the participants to the historical and contemporary situation of the Saskatchewan Métis and First Nations.

Given the high incidence of family violence within Aboriginal communities today (eight in ten versus the one in ten for non-Aboriginal) and the devastating effect violence has on the entire family, the Métis Justice Review Committee recommended that Saskatchewan Justice, in consultation with the judiciary and representatives of both the Aboriginal and non-Aboriginal communities, evaluate the need for family violence courts. To respond effectively to family violence, individuals, communities, agencies and governments should work together and learn from one another, while at the same time avoiding duplication of services. This could be done with the support of the provincial and federal governments in the development of protocols and networks to assist in educating and co-ordinating the work of agencies dealing with family violence in the Aboriginal communities.

Finally, the Saskatchewan Métis Justice Review Committee expressed the need for the continuous development and monitoring of its recommendations, a process to be folded into the ongoing consultations between the Métis Society of Saskatchewan, the Government of Saskatchewan and the Government of Canada.

NOTES

1 Section 35 of the *Constitution Act, 1982,* being Schedule B of the *Canada Act, 1982,* (U.K.), 1982, c. 11, provides that: "(1) the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed; (2) in this Act, 'aboriginal peoples' of Canada includes the Indian, Inuit and Métis peoples of Canada; (3) for greater certainty, in subsection (1) 'treaty rights' include rights that now exist by way of land claims agreements or may be so acquired; (4) notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons."

2 The draft legal text of the Charlottetown Accord of 1992 provided, in part [35.1(1)], that "the Aboriginal peoples of Canada have the inherent right of self-government within Canada."

3 Royal Commission on Aboriginal Peoples, *Partners in Confederation: Aboriginal Peoples, Self-Government and the Constitution* (Ottawa: Canada Communication Group, 1993). As was noted in the preface, although the historical analysis used in this paper focused primarily on the relationship between the Indian First Nations and the Crown, a review of this history of the Métis and Inuit as distinct Aboriginal Peoples would lead to the same conclusions.

4 Métis Society of Saskatchewan, *Governance Study: Métis Self-Government in Saskatchewan* [Review Draft] (Saskatoon: Métis Society of Saskatchewan, August 16, 1993), 31.

5 1870, 33 Victoria, c. 3 (Canada).

6 1879, 42 Victoria, c. 31.

7 Native Council of Canada, *A Statement of Claim Based on Aboriginal Title of Métis and Non-Status Indians* (Ottawa: NCC, August 1979), 3.

8 Ibid.

9 Ibid., 5.

10 (U.K.), 30 & 31 Vict. c. 3 (formerly *British North America Act, 1867*).

11 Part I of the *Constitution Act, 1982,* being Schedule B of the *Canada Act, 1982,* (U.K.), 1982, c. 11.

12 The Primrose Air Weapons Range incident is a recent example of inequitable treatment of the Métis. In the 1950s the Department of National Defence seized approximately 4,500 square miles of land to establish a bombing range. The area included traditional lands of the Cold Lake First Nation in Alberta, the Canoe Cree Nation in Saskatchewan and the Métis people in Saskatchewan. Although the claims of the two First Nations were recognized, the Métis were denied compensation, despite the fact that the Indian Claims Commission report revealed that National Defence had recommended "more or less" equal compensation to the Indian First Nations and the Métis. It remains the position of the MSS that the Métis who were displaced in that area still retain their Aboriginal title to the land.

13 "Métis Society of Saskatchewan Justice Position Statement." In *Report of the Saskatchewan Métis Justice Review Committee* by Judge P. Linn (Regina:

Government of Saskatchewan, 1992), app. 6.

14 Ibid., "Terms of Reference," app. 2.

15 Ibid.

16 Ibid., 65. In their report, the Métis Justice Review Committee pointed out that all of their recommendations were drafted recognizing the issue of racism and all were formulated in a manner consistent with the elimination of all forms of racism.