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Abstract

The article addresses the importance of the partnership between university professors and the Métis community. The Métis are a distinct nation and people that emerged in the northwest of what is now Canada and a bit into the United States through a process of ethnogenesis. The Métis Nation expressed its nationhood and defended its territory militarily in 1870 and again in 1885. Subsequently, Canada dealt with the Métis as individuals by implementing a scrip system, which displaced the Métis from their lands. In the 1980s and 1990s, the Métis Nation, along with other Aboriginal peoples, engaged in a constitutional process that witnessed limited success. Following that process, in 1993, the Métis moved their fight to the courts as many of their citizens were being charged with hunting and fishing infractions. This process necessitated the need for historical research and expert testimony, so the already emerging relationships with academia became more pronounced with progressive professors engaging in preparing expert reports and testifying at trial. Outside of the courts, research alliances were also engaged in. The outlook for the Métis Nation is more and more positive. The partnerships with academia has been a key contributor to this movement forward.

Keywords

Métis rights research, partnerships, Aboriginal rights

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Partnerships between Aboriginal Organizations and Academics

With the recognition and affirmation of Aboriginal and treaty rights in the *Constitution Act 1982* (Constitution Act, 1982), there has been a heightened awareness of the rights of Indigenous peoples within Canada. This has not only occurred in the political and judicial systems, but also within the academic community. While appreciation of the rights of Aboriginal peoples no doubt existed and was supported by many in academia prior to 1982, their elevation to constitutional status has provided a firmer basis upon which to address them. This is also true with respect to the Aboriginal communities themselves.

Armed with this new acknowledgement of their rights, coupled with the constitutional conferences between 1983 and 1987, along with the Charlottetown Accord in 1992 (see Gall, 2014), Aboriginal leaders and communities have taken stronger and further steps to conduct research that strengthens their legal positions and bargaining power. With the failures of the constitutional conferences in the 1980s and in 1992, many Aboriginal communities turned to the courts for a resolution on their respective rights: some forced to do so through hunting and fishing charges by the State, and others through self-initiated statements of claim seeking court pronouncements on their rights.

Regardless of how they ended up in the courts, Aboriginal litigants increasingly turned to academia in search of expert witnesses who would be able to provide objective and credible evidence in search of the truth. In other cases, while litigation was not a motivating factor, many Aboriginal communities turned to academia to assist in historical research, as well as to modern day land use studies in order to assist their communities in asserting their customary practices over traditional territories—often in cases where the duty to consult and accommodate were triggered by industry moving into their traditional territories. The cornerstone for this interaction is reflected in the partnerships that have emerged between Aboriginal communities and academia and, for the purposes of this article, the partnerships between the Métis Nation and academia. This article introduces some key aspects of my involvement in this partnership effort as the President of the Métis National Council (MNC). In so doing, I want to shed light on the roles Indigenous leadership may play in establishing mutually beneficial partnerships between Aboriginal communities and academics.

Understanding the Métis Nation and its Challenges

In order for the reader to better understand the significance of the newly emerged and/or emerging partnerships between the Métis Nation and academia, an understanding of the Métis Nation itself is both important and necessary.

The Definition of the Métis and Métis Homeland

The following definition was adopted by the Métis National Council General Assembly in September 2002 (Métis National Council, 2015):

1. “Métis’ means a person who self-identifies as Métis, is distinct from other Aboriginal peoples, is of Historic Métis Nation ancestry, and is accepted by the Métis Nation” (para. 7).

2. "Historic Métis Nation" means the Aboriginal people then known as Métis or Half-breeds who resided in the Historic Métis Nation Homeland.
3. "Historic Métis Nation Homeland" means the area of land in west central North America used and occupied as the traditional territory of the Métis or Half-breeds as they were then known.
4. "Métis Nation" means the Aboriginal people descended from the Historic Métis Nation, which is now comprised of all Métis Nation citizens and is one of the "Aboriginal peoples of Canada" within the meaning of s.35 of the *Constitution Act 1982*.
5. "Distinct from other Aboriginal peoples" means distinct for cultural and nationhood purposes.

Although we are still undertaking extensive research to determine more precisely our historic and traditional homeland boundary for present purposes, we have been using a general description, subject to refinement, based on that research. At our March 2013 General Assembly, we asserted our traditional territory. It includes the three Prairie Provinces (Manitoba, Saskatchewan, and Alberta) and extends into a contiguous part of British Columbia, Ontario, and the Northwest Territories as well as into an adjacent portion of the United States of America. At the General Assembly, on March 24, 2013, the Métis National Council re-affirmed "that there is only one Métis Nation" and "that the geographic homeland of the Métis Nation is the historic Northwest which entered into confederation in 1870 through the negotiations of the Métis Provisional Government led by President Louis Riel" and that the term "west central North America" in the 2002 definition of Métis means the "historic Northwest" (Métis National Council, 2013, para. 31).

Different Treatment by Canada: Treaty versus Scrip

Under s.31 of the *Manitoba Act* (1870), the negotiations leading to the formation of the Province of Manitoba under a provisional government headed by Louis Riel included a commitment to set aside 1.4 million acres of land for the Métis in exchange for the extinguishment of their Indian title (Manitoba Act, 1870). Ultimately, the Métis were not successful in acquiring this land and it became the subject of litigation, culminating in a decision by the Supreme Court of Canada in *Manitoba Métis Federation v. Canada and Manitoba* (2013), which held that the honour of the Crown was not met in fulfilling its obligations under s.31. The Manitoba Métis Federation is currently in dialogue with the federal government—seeking a just implementation of the court's decision.

In short, with its subsequent actions, the federal government began a process of dealing with the citizens of the Métis Nation as *individuals*, while at the same time dealing with the Indian nations through Treaty as *collectivities*. In 1879, the *Dominion Lands Act* (1879) was amended to provide for the distribution of *scrip* to the citizens of the Métis Nation living outside of the original postage stamp Province of Manitoba. The process for distributing scrip under this amendment did not begin until after an 1885 armed struggle in the Saskatchewan River Valley near present day Duck Lake/Batoche, Saskatchewan. Scrip was a process used prior to this time in the United States and eastern Canada, and was generally valued at 240 acres (land scrip) or \$240 (money scrip) good for the purchase of open or surveyed dominion land. A number of *scrip commissions* traveled throughout western Canada

(Manitoba, Saskatchewan, Alberta, and the Northwest Territories). Later ones (1899, Treaty 8 and 1906, Treaty 10) served as both the Treaty Commission and Scrip Commission.

Political Organizing

Since 1885, after the creation of other territories and provinces beginning in 1870 (e.g., the Province of British Columbia and the Northwest Territories that included present-day Alberta and Saskatchewan) and the expansion of Manitoba and Ontario, “outsider boundaries” were imposed on our people, who nevertheless have retained their sense of nationhood and identity. At the same time, our people have organized politically and administratively within those provincial boundaries, especially since the 1930s. Métis organizations admitted Non-Status Indians into their membership; both groups faced similar social and economic problems: lack of housing, educational opportunities, employment, medical care, and so forth. The Métis, as seen above, were stripped of their rights by the infamous scrip system and the Non-Status Indians through loss of registration under the *Indian Act* (Indian Act, 1985).

In the early 1970s, the Métis of the Prairie Provinces formed the Native Council of Canada (the present-day Congress of Aboriginal Peoples), which by the late 1970s covered all of Canada and included many Non-Status and Status Indians in its membership through organizations and members from outside the Métis Nation homeland. With patriation of the Constitution in 1982, the negotiations leading up to and after patriation, and especially with the March 1983 First Ministers Conference (FMC) on Aboriginal Issues, the leadership of the Métis Nation realized that the Métis Nation’s aspirations, recognition, accommodation, and rights could only be pursued through a Métis Nation-specific representative body to create a Métis voice for Métis people.

In early March 1983, the Métis National Council was established and, through a successful out-of-court settlement, it forced the federal government to invite the Métis Nation to the constitutional talks (Métis National Council, 2015). This included an agreement to add Métis self-government and a land-base to the agenda. In the process leading up the March 1983 FMC, the Native Council of Canada (NCC), the Inuit Committee on National Issues (ICNI), and the Assembly of First Nations (AFN, which is the Aboriginal title group) had successfully, at the last ministerial–Aboriginal leaders meeting, removed any reference to the Métis from the FMC agenda.

This exclusion from the agenda resulted after it became clear to the above named parties that the Métis Nation was approaching the FMC on the basis of the right of self-determination and the right to a land-base as universal rights, and not based on the narrower legal concept of Aboriginal or Indian title. The MNC leadership had consciously decided that it would engage in political negotiations based on the right of self-determination and, if necessary in the future, it could fall back on the narrower s.35(1) Aboriginal rights provision.

With the limited success of the 1983 FMC, and the failures of the FMCs of 1984, 1985, and 1987, the Métis Nation continued its pursuit of rights through the political process. With the full engagement of Aboriginal peoples in the 1992 Charlottetown Round, the Métis Nation decided to pursue its political agenda through its own Métis Nation-specific process. While fully engaging in the multilateral process and with of the working groups, the Métis Nation was able to convince the Right Honourable Joe Clark (representing the federal government) and the provincial governments of Ontario to British Columbia and the Northwest Territories to engage in parallel negotiations with the Métis National Council.

The Charlottetown Accord of 1992 also had a companion document in the same year, known as the *Métis Nation Accord* (1992). While it was a hard fought battle, with several Indian leaders attending one of our sessions and speaking out against an amendment that would include all Aboriginal peoples within s.91(24) of the *Constitution Act* (1867) regarding Indians and the lands reserved for the Indians, the Accord was successfully negotiated by the Métis National Council. The Inuit suggested that the amendment should not be Métis-specific as they wanted to be included as well, even though, in the reference case *Re Eskimos* (1939), the Supreme Court of Canada had already ruled that they were included under s.91(24).

In order to achieve consensus, the federal government insisted that the provinces agree that they would not reduce services to the Métis and that they would make lands available to the Métis under the agreed upon land process (except for Alberta, which had already provided land to the Métis). In exchange, the provinces received a commitment that the federal government would not reduce services to the Indians. In the end, the Métis Nation ensured that no one's rights or services would be affected.

Although a slight majority of Canadians voted against the Charlottetown Accord, thus ending both it and the Métis Nation Accord, the process was a good experience for the Métis Nation, particularly with respect to the Métis Nation-specific process with the relevant provincial and territorial governments and the federal government. This has been a process engaged in by the Métis Nation since then, and it was particularly effective in the years leading up to the 2005 Kelowna First Ministers Meeting (FMM). This type of process was also adopted during that time by the Inuit Tapiriit Kanatami (ITK). In May 2005, we (the MNC, ITK, and AFN) each respectively signed bilateral agreements with the federal government—in our case, the *Métis Nation Framework Agreement* (2005). This was a process document, which would have addressed Métis Nation-specific agenda items, including the resolution of outstanding legal issues.

With the election of a Conservative federal government in 2006, the Kelowna Accord and the Métis Nation Framework Agreement went “by the wayside.” However, continuing on the road of a distinctions-based approach, in 2008, the Métis National Council and the federal government concluded a *Métis Nation Protocol* (2008). This Protocol paved the way for an engagement by the parties with the five westernmost provinces, from Ontario to BC, in a Métis Economic Development Symposium (MEDS) process. The objective of the MEDS process is to formulate a national Métis Economic Development Strategy. The *Métis Nation Protocol* (2013) was extended for another five years on April 29, 2013 with a formalized process of meetings at the political and official levels. Also signed on that day was a *Governance and Financial Accountability Accord* (2013) under the Protocol, which is to lead to federal block funding to the MNC, as well as a commitment by the MNC to post its financial documents on its website.

Failure of the Political Process

With the demise of the Charlottetown Accord in the fall of 1992, and with the provincial governments laying more wildlife and fisheries charges against our people, the Métis Nation leadership decided that it was time to move forward based on the inherent right of self-government and other rights guaranteed in s.35(1) of the *Constitution Act* (1982). With the failure of the political process, it seemed opportune to

fall back on the legal protections afforded by s.35, even though they were viewed as limited and limiting rights.

Charges against Métis harvesting (primarily hunting and fishing) throughout the Métis Nation homeland produced a concerted and strenuous defense from 1990s to the present time. As part of the decision to defend our citizens in the courts, we also felt that it was necessary to test the legitimacy of the scrip system. In response to the federal government's conclusion that our Aboriginal rights and title were extinguished by s.31 of the *Manitoba Act* (1870) and by the scrip system under the *Dominion Lands Act* (1879), in 1981, the Manitoba Métis Federation had initiated an action on section 31. In 1994, a Statement of Claim was filed in Court of Queens Bench in Saskatoon, Saskatchewan by the Métis of northwest Saskatchewan, the Métis Nation of Saskatchewan, and the Métis National Council, which claimed existing Aboriginal title to the lands and resources in the northwest quarter of the Province of Saskatchewan, to Aboriginal harvesting rights and for the inherent right of self-government. The case has not yet made it to trial.

To date, the Supreme Court of Canada has only dealt with two Métis hunting cases: *R. v. Powley* (2003) and *R. v. Blais* (2003). The Supreme Court, in finding a s.35(1) Aboriginal hunting right in Sault Ste. Marie and environs, set out a 10 point test to guide future s.35(1) Aboriginal harvesting litigation (*R. v. Powley*, 2003). In *R. v. Blais* (2003), the Court held that Mr. Blais, as a Métis in Manitoba, did not fall within the term "Indian" in paragraph 13 of the *Natural Resources Transfer Agreement* of 1930 (Constitution Act, 1930) between the federal government and the Province of Manitoba. In so doing, the Court made it clear that this did not affect the question as to whether the Métis fell under the term "Indians" in s.91(24) of the *Constitution Act, 1867*, whereby the federal government has jurisdiction for "Indians and the lands reserved for the Indians" (Constitution Act, 1867, s.91(24)).

While the Métis Nation had, and continues to have, reservations about using the courts to determine or define Métis rights and, more importantly, *who* the Métis are, the *Powley* decision on the whole was positive and helpful to the Métis Nation. Like any case, it leaves many issues unresolved but has been instructive as to how we can potentially craft future cases to meet our rights and existence as a people.

The Métis Nation is particularly pleased with how the Supreme Court dealt with the existence of the Métis as a distinct people—as a people who emerged post-contact but pre-effective control. This is a fact that cannot be disputed. It is historically correct and irrefutable. It is also true that the Métis, as a distinct people from our Indian ancestors, while having many similar cultural practices and attributes, possess our own culture, heritage, practices, and language. Our rights are "inherent" to our existence. They are not dependent on or "inherited" from our Indian ancestors, except for the fact that the origins giving rise to our Aboriginality comes from them. However, through a process of ethnogenesis, we are now "us." While it is also true that many of the citizens of the Cree, Ojibway, and Dene peoples are now of mixed ancestry (as are other Indian peoples), what makes them who they are, and makes us who we are, is not the mixed ancestry *per se*, but our respective cultures, persevering identities, and sense of belonging.

While we were also very apprehensive as to how the Supreme Court of Canada would deal with "who are the Métis," in the Métis National Council and Métis Nation of Ontario interveners' brief of law, we cautioned against the courts defining our people or any people, asserting that it is only the people themselves who can define or determine their citizenship. We were pleased that the criteria used by the

Court mirrored what we put forward as our definition. This of course remains an open question, and the courts may one day take it upon themselves to put forward a definition, which the Métis Nation may or may not accept as defining its citizens.

With respect to Aboriginal title, we are left pondering: What will be the test for establishing our Métis Aboriginal title? Based on the reasoning by the Supreme Court in *Powley* for the establishment of Aboriginal harvesting rights (*R. v. Powley*, 2003), it cannot be other than the same reasoning that was applied in the case of Aboriginal title to the lands and resources. As these rights inhere in a people (Aboriginal), they cannot inhere until the people themselves come into existence. Where this has happened pre-sovereignty, this will accord with the test laid down in *Delgamuukw v. B.C.* (1997) and *Tsilhqot'in Nation v. B.C.* (2014) for Indian peoples. It will only become an issue if the date of sovereignty is established to be earlier than the emergence of the Métis, in which case the existing date of the sovereignty test for establishing Aboriginal title to the land and resources may have to be re-addressed for the Métis Nation, and perhaps modified, as in the case of *R. v. Powley* (2003).

The Métis Nation and Academia

While some universities and individual academics have produced various studies, reports, and theses prior to 1982, the work was often undertaken in the absence of partnerships or collaboration with Aboriginal communities, including the Métis. Although much of this work was positive and respectfully done, in some instances, the studies were viewed in a negative light by the Aboriginal peoples who were the subjects of such initiatives.

Some of the earlier work also proved to be of benefit in the courts when individual Métis charged with a hunting or fishing without a license were able to establish their s.35(1) Aboriginal harvesting rights based upon such work. This is especially so with respect to the early to mid-1900s research reports by universities.

In the mid to late 1970s, academia also began to play a positive role in newly funded research programs made available to Aboriginal peoples based on land claims and Aboriginal rights-funded processes established by the federal government following the landmark *Calder v. A.G.* decision rendered in 1973 by the Supreme Court of Canada (*Calder v. A.G. (B.C.)*, 1973).

While the above developments were taking place so too did the evolution of various research ethics policies of universities. Institutions such as the Social Sciences and Humanities Research Council (SSHRC), which provided funding to the academic community for varied research projects, also funded projects that involved Aboriginal peoples.

Interaction Between the Métis Nation and Academia

In addition to the constitutional conference processes following the patriation of the Constitution in 1982, the work of the Royal Commission on Aboriginal Peoples (RCAP) in 1996 (Canada, 1996), provided a vehicle wherein further research connected to the Métis Nation could be undertaken. This triggered a new era of engagement with academia, with whom the Métis National Council collaborated on research in preparation for submissions to RCAP. Professors from various universities, including the University of Saskatchewan and the University of Manitoba, were engaged in this process. This provided

the springboard for a greater relationship with the University of Saskatchewan and the University of Alberta, leading to actual partnerships between those two universities and the Métis.

In 1999, with financial contributions from the federal and Saskatchewan provincial governments, the Métis Nation of Saskatchewan, where I served as President from February 1998 to January 2004, entered into a contractual arrangement with the University of Alberta to conduct research with respect to the Statement of Claim filed in 1994. This work was led by Professor Frank Tough who was the principal researcher and also a prospective expert witness in the case. The project was entitled *Métis Aboriginal Title Research Initiative X (MATRIX)*, since almost all the 1906 scrip recipients in northwest Saskatchewan signed their scrip applications with an “x” because they could not write their names.

Following this time, the Métis of northwest Saskatchewan, through the North West Saskatchewan Métis Council (NWSMC), entered into a partnership with the University of Alberta and the University of Saskatchewan and were successful in securing a Community–University Research Alliance (CURA) grant from SSHRC. The six-year project was directed by a committee composed of the three partners, with an executive committee composed of one representative from each of the three partners. The NWSMC was also able to receive a grant from the Aboriginal Healing Foundation (AHF), which was used for that component of the partnership CURA project dealing with traditional resource use mapping and community interviews.

All of this work was premised on community ownership, with use and access by the university partners guided by the research ethics policies of the universities. This initiative has resulted in numerous traditional resource-use maps being digitized through the University of Saskatchewan partner, and will also see the production of an *Atlas of the Métis of Northwest Saskatchewan*.

Another partnership project involved the University of Alberta, the Manitoba Métis Federation, the Métis Nation of Saskatchewan and the Métis Nation of Alberta. This venture witnessed a successful application for a standard grant under SSHRC, which provided a grant over a three-year period that was matched by the above three named organizations. The result was the retrieval and data-basing of hundreds of scrip documents issued under the *Dominion Lands Act 1879*.

In 2004, after the *Powley* decision, the federal government provided research and registry funding to the MNC and its Governing Members: Métis Nation of Ontario, Manitoba Metis Federation, Métis Nation of Saskatchewan, Métis Nation of Alberta, and Métis Nation British Columbia. Based on the ruling in the *Powley* case (*R. v. Powley*, 2003), the federal government provided this funding to enable the Métis Nation and its institutions to identify citizens deemed to possess these rights as well as a registry of such rights holders. In order to accomplish this task, it was also necessary to identify historic Métis communities to which the respective citizens could trace their Métis ancestry. The process of identification accorded with both the criteria set out in the *Powley* decision as well as the national definition adopted by the Métis Nation itself. Based on this research and rigorous application of the MNC definition, the Governing Member registries of Métis Nation citizens are objectively verifiable and will withstand the scrutiny of governments and the courts.

Through the above-mentioned financing, some of which is still ongoing, the MNC was able to retain academics from various universities, including the University of Ottawa and the University of British Columbia, which undertook the work assigned by a research team of which they formed a part, as well as

the Métis Rights Panel established by the MNC in 1997. The body of work produced further research and data-basing of scrip related documents, census records, voyageur contracts, and the economic history of the Métis Nation. The majority of this work has been carried out at the University of Alberta through the Métis Archival Project (MAP) Lab.

Another example of a partnership involves the Métis Nation of Alberta and the University of Alberta, which last year created the Rupertsland Centre for Métis Research, jointly funded by the partners. The Centre is housed in the Faculty of Native Studies and will engage in research exploring Métis rights, land use, history, and contemporary issues affecting Métis education and health. The Centre has a strong basis from which to move forward as it has the benefit of the years of work of the Métis Archive Project Lab through the on-going relationship with the Métis National Council. The Centre and MNA's education and training arm, the Rupertsland Institute, will also serve as a think tank to guide and address Métis research and explore policies that have an impact on the Métis Nation.

Significance of the Partnerships

For many years, the Métis Nation was marginalized within the overall relationship between the federal government and Aboriginal peoples. While some of this persists to the present, radical changes have taken place, especially with the inclusion of s.35 in the *Constitution Act 1982*, including s.35(2), which clearly identifies the Métis as one of the three Aboriginal peoples in Canada (Constitution Act, 1982)—a significant departure from past federal government practice.

In the continuing struggle for the recognition of land and self-government rights, as well as for the provision of services, the research taking place through the partnerships between the Métis people and academia has provided the Métis leadership with a firmer base from which to launch their assertions of those rights. Building on the *Powley* decision, the research, undertaken by credible academics, cannot be discounted by the federal bureaucracy.

This is one of the ways that the Métis community has benefitted from the relationship. As the research is conducted by objective and highly educated academics who are experts in their respective fields, it provides a greater credibility in the eyes of the government and general population than if the research was conducted solely by the Métis community.

The research has also been of significant value as some of it has formed the basis of expert reports and oral testimony in several hunting and fishing rights cases, made possible in part by a litigation fund available through funding to the Métis National Council from the federal government between 1999 and 2006.

Conclusion

While research partnerships between First Nations peoples and academics are relatively new, the partnerships and research relationships between the Métis Nation and academia has already proven to be of significant value to the Métis and, I would hope, to the Canadian public as well.

The Métis have struggled for many generations to have their real story heard, and their rights recognized and accommodated. It has been my contention that through sound and credible research and

dissemination of reports, books, and other media, this story should be told. Partnerships with academics have proved to be beneficial, leading to various improvements in the formulation and clarification of Métis policies and rights (as, for example, in the *Powley* decision).

While much of the research-based story telling has already been accomplished, there is still a great deal more to be done. It is through strategic partnerships between the Métis Nation and academia that progress has been made, and I hope that further progress will be made by the Métis leadership in the future.

The continuation of these partnerships bodes well for the Métis Nation's quest for justice and rights, based on the education of the general public, the sensitizing of government bureaucracies, and future successes in the courts.

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