

WALKING TOGETHER

First Nations, Métis and Inuit Perspectives in Curriculum

Aboriginal & Treaty Rights Métis and Non-Status First Nations Land Claims

Excerpt from *Contemporary Issues*

Government of Alberta ■



MÉTIS AND NON-STATUS FIRST NATIONS LAND CLAIMS

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Métis and First Nations People without status make up a significant proportion of Canada's Aboriginal Populations. Many of these people grapple with economic and social hardships in the midst of a society that views them as neither Aboriginal nor part of the mainstream society.

NON-STATUS LAND CLAIMS ISSUES

Most Aboriginal leaders dispute the government's right to legislate who does and does not belong to various groups of Aboriginal people. They wonder why, for example, someone cannot claim their Aboriginal ancestry and the rights that accompany that ancestry simply because his or her great-great-grandfather decided to accept scrip. They wonder why someone is denied rights because of who his or her mother or grandmother decided to marry.

They point to people like Stephen Kakfwi. This prominent Dene leader, a former premier of the Northwest Territories, is the son of two full-blooded Dené Tha' parents. However, because his grandfather gave up his status to own property and open a business, Stephen Kakfwi is officially considered a non-Status Indian by the federal government.

When the federal government passed the Indian Act in 1876, it had to decide to whom that law would apply. It decided that, for the purposes of the act, an *Indian* was "Any male person of Indian blood reputed to belong to a particular band; any child of such person; any woman who is or was lawfully married to such person."

By defining who would be considered an Indian, the government also decided who would not be considered one. If a person was not on their lists, the Indian Act did not apply to them. These early lists generally coincided with individuals belonging to First Nations that signed treaties. Individuals with treaty rights were generally the same as those with status under the Indian Act. As far as the federal government was concerned, these were the only individuals to be included in its legislation, programs and services.

Over time, due to scrip process, involuntary enfranchisement, loss of status through Indian Act rules, and mistakes that occurred in creating the Indian register in 1951, many people lost their status or never gained status, even though they were as eligible as others.

Today, most First Nations people with treaty rights also have status. However, people with status do not necessarily have treaty rights. For example, people who regained status through Bill C-31 do not necessarily have membership in a band, which is usually required to

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receive treaty rights. This is a highly controversial and difficult issue for First Nations today. It comes down to a conflict between individual and collective rights. An individual might be morally and legally entitled to belong to their band (and receive the benefits that come with band membership, such as living on a reserve), but a band might claim the right to restrict the size of its membership to match its resources. A band that already faces a housing shortage for long-term members of its community will have a difficult time accepting new members reinstated by federal legislation.

However the situation is solved leads to injustice. Either individuals do not receive benefits they are entitled to receive or whole communities might see their benefits eroded. There are no simple solutions. The problems result from decades of colonial policies and laws. Even if the federal government today completely backed away from any role in deciding who is and is not a status First Nations person, the legacy of its historic involvement would remain.

METIS LAND-CLAIMS ISSUES

The land rights promised by the Manitoba Act and Dominion Lands Act were never fulfilled for most Métis people. The vast majority of Métis and First Nations people who took scrip never received the land they were entitled to receive.

Those who did not receive land found their communities widely scattered. The federal government refused to handle Métis claims to land on a collective basis, which would have provided blocks of land large enough to accommodate whole communities. Such a land base would have assisted Métis people in preserving their social and cultural ties. Instead, the federal government would deal only with individual Métis people, a policy that facilitated scrip fraud and speculation.

Many Métis people who had been displaced from their lands in Saskatchewan and Manitoba moved farther west in search of a new start. Many settled in and near communities around Alberta, such as St. Albert, Lac La Biche, Lac Ste Anne, Whitefish and Victoria (an historic Métis settlement). Some of these people settled before 1870, some after the Red River Resistance in 1870, and still more after the 1885 Resistance in Saskatchewan. The displaced Métis families re-established their communities, basing them on traditional pursuits such as farming and annual buffalo hunts. The most significant Métis hunt in Alberta was the Edmonton Hunt, which involved French-speaking Métis people from Lac La Biche, Lac Ste Anne, and St. Albert.

As in earlier Métis history, most of these settlers did not receive title to their land. They established land-holding systems like that at Red River, each farm stretching back from riverfronts. In some cases, families even settled next to the same families they had lived near at Red River.

Once again, however, history seemed to destined to repeat itself. As non-Aboriginal settlement continued in the late nineteenth and early twentieth centuries, many Métis families were forced to move from their homes.

The Métis Population Betterment Act

During the Depression of the 1930s, conditions for many Métis people in Alberta had reached a crisis point.

Organizers, such as Adrian Hope, travelled by boxcar around the province to speak with Métis communities about forming a farming association to bring pressure on governments to ease the problems faced by Alberta's Métis population. On one of his trips, Hope slept under Edmonton's High Level Bridge and travelled to Calgary with eighty cents for expenses.

In 1932, Joseph Dion, Malcolm Norris, Felix Calahoo, Peter Tomkins, and James Brady formed the Métis Association of Alberta. This group decided to resolve the issues that faced their people once and for all. Instead of petitioning the federal government, as so many Métis communities had done in the past, they decided to pursue their land rights with the provincial government. In addition, the association pressured the provincial government for education, medical care, and free hunting and fishing permits.

In 1934, the Alberta government responded by appointing a commission to study the matter. The Ewing Commission recommended the creation of Métis farming colonies on Crown land, under the supervision of the provincial government. This led to the passage, in 1938, of the Métis Population Betterment Act. The act defined a Métis person as someone "of mixed white and Indian blood, but not . . . an Indian or treaty Indian as defined by the Indian Act."

A committee of Métis and government representatives selected lands for the twelve new settlements. In 1943, the Métis Betterment Trust Fund was established to manage income from resources taken from Métis Settlements areas. Adrian Hope recalls "In 1942, we had sat down with Dr. W.W. Cross (then Socred [Social Credit Party] minister of public welfare) and began talking about what would happen if we found coal or gold on the settlements. Who would get the money? 'Well, it will be put into the Métis trust fund,' replied the minister."

Although it wasn't gold and coal, the Métis Settlements did have a wealth of resources in oil and gas. However, the approximately \$30 million that the province received by the 1970s for this wealth did not go into the trust fund. Adrian Hope was on hand to fight the injustice, beginning in 1961. In 1969, with Stan Daniels, president of the Métis Association of Alberta, he helped launch the first lawsuit against the provincial government to reclaim the resource revenue.

In 1988, the Alberta government settled the lawsuit with \$310 million in financial compensation, title to Métis Settlement lands, and legislated self-government.

A NEW ERA IN MÉTIS AND NON-STATUS RIGHTS

Métis and First Nations people without status have long been caught in a jurisdictional struggle between the federal and provincial governments. The British North American Act gave the federal government responsibility for "Indians and lands reserved for Indians." The federal government argues that this clause means Indians *on* lands reserved for Indians. In other words, they accept responsibility for First Nations people who live on reserves. In this argument, all other Aboriginal people are under provincial jurisdiction.

The Supreme Court has ruled that Inuit people are to be included in this section of the British North American Act. 91 (24), but there is no ruling on Métis people and First Nations people living off reserves or who are not eligible to live on reserves.

In practice, the federal government has assumed responsibility for Métis people in the Northwest Territories, Yukon, and Nunavut, but not south the 60th parallel. They argue that Métis people in the provinces are a provincial responsibility because Métis people in those provinces were extinguished through the scrip process.

Despite recognition in the Constitution Act of 1982, Métis people still do not benefit from the same levels of programs and services offered to other Aboriginal peoples. Furthermore, with the exception of people at the Métis Settlements, they do not have access to a secure land base.

The federal government has been slow to resolve Métis and non-status rights issues. In 1985, the government created a position for a Federal Interlocutor for Métis and Non-Status Indians. This was the first time Métis and First Nations people without status had an official point of contact in the federal government to whom they could address their concerns.

Responding to the Supreme Court's 2003 Powley decision is a priority for the Federal Interlocutor's office. In April 2004, the government allocated approximately \$10 million for the Métis organizations to help them further develop their membership lists, especially in terms of individuals who might have harvesting rights according to standards set in the Powley case.

Constitutional recognition of Métis status and the Powley decision have led to a new era in Métis rights. In this new period, negotiations with the federal government will likely play a significant role.