

Appendix 5E: Excerpts from the Draft Legal Text of the Charlottetown Accord 9 October 1992

Proposed Amendment to the

Constitution Act, 1867

12. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following...[section]:...

95E. In the context of section 91A, the legislature of Alberta may make laws, and the Parliament of Canada may make laws, in relation to the Métis in Alberta and to Métis settlement lands in Alberta and, where such a law of Alberta and a law of Parliament conflict, the law of Parliament prevails to the extent of the conflict.

Proposed Amendment to the

Alberta Act

23. The Alberta Act is amended by adding thereto, immediately after section 24 thereof, the following section:

Definitions

24.1 (1) In this section,

“Métis Settlements General Council”

“Métis Settlements General Council” means the Métis Settlements General Council incorporated by the Métis Settlements Act (Alberta);

“Métis settlement land”

“Métis settlement land” means land held in fee simple by the Métis Settlements General Council under letters patent from Her Majesty in right of Alberta.

Expropriation

(2) The fee simple estate in Métis land, or any interest in it less than fee simple, may not be acquired through expropriation by

(a) any person,

(b) Her Majesty in right of Alberta, or

(c) Her Majesty in right of Canada, except with the consent of the Governor in Council after consultation between the Government of Canada and the Métis Settlements General Council, but an interest less than fee simple may be acquired in that land in a manner permitted by the Métis Settlements Land Protection Act (Alberta).

Exemption from seizure

(3) The fee simple estate in Métis settlement land is exempt from seizure and sale under court order, writ of execution or any other process whether judicial or extra-judicial.

Restriction on Legislature

(4) No Act of the Legislature may

(a) amend or repeal the Métis Settlements Land Protection Act (Alberta),

(b) alter or revoke letters patent granting Métis settlement land to the Métis Settlements General Council, or

(c) dissolve the Métis Settlements General Council or result in its being composed of persons who are not settlement members, without the agreement of the Métis Settlements General Council.

Restriction on Parliament of Canada

(5) No Act of the Parliament of Canada may dissolve the Métis Settlements

General Council or result in its being composed of members who are not settlement members without the agreement of the Métis Settlements General Council.

Application of laws

(6) Nothing in this section shall be construed as limiting

(a) the application of the laws of Alberta or Canada to, or

(b) the jurisdiction of the Legislature of Alberta or the Parliament of Canada to enact laws in and for Alberta applicable to, Métis settlement land and any activities on or in respect of that land, except to the extent necessary to give effect to this section.

Non-derogation

(7) Nothing in this section shall be construed so as to abrogate or derogate from any rights referred to in Part II of the Constitution Act, 1982.

Appendix 5F: Correspondence Concerning the Métis of Labrador

Letter dated 17 February 1994 from Harry W. Daniels, former president, Native Council of Canada, to Kirby Lethbridge, president of the Labrador Métis Association, concerning the application of section 35 of the Constitution Act, 1982 to Métis people who are not part of the Métis Nation.

In response to your question “What did the term “Metis” mean when inserted into the Constitution of Canada?” I am providing the following for your information.

Firstly, let me state that at the time I was President of the Native Council of Canada which was a Federation of Metis and Non-Status Indian Organizations representing Metis and Non-Status Indians from the Yukon to Newfoundland. As the President, I was responsible for negotiating

constitutional change on behalf of the constituents of the Native Council of Canada.

On the 30th of January, 1981 when the agreement was reached that Indians, Inuit and Metis be specifically identified as Aboriginal People, in what is now Section 35(2) of the Constitution Act, 1982, it was at my insistence that the above-mentioned were included.

With specific reference to the term "Metis" it was understood at the time that it (Metis) included the member organizations and their constituents who self-identified as a Metis person. The notion being that self-identity is a right that cannot be usurped by any means. It was also understood that the term Metis was not tied to any particular geographic area, keeping in mind that Aboriginal people from coast to coast identified with the term Metis as their way of relating to the world.

The then Minister of Justice and now Prime Minister of Canada, the Rt. Hon. Jean Chrétien made the final deal and I distinctly remember stating that all our people were included whether they identified as Metis or the erroneous term Non-Status Indians. At that time we held a more accommodating view of what a Metis person was and is, contrary to the views of revisionist historians and lawyers who were not involved in the process.

In my view, the people of Labrador who identify as Metis are expressing their right to self-identify as an Aboriginal person and are included in the people who I negotiated into the Constitution in 1981, and should enjoy all the rights that inhere in them as Aboriginal people.

I trust that this short letter answers your question and is of some assistance. If necessary I am prepared to testify under oath that the above is a true statement. Please do not hesitate to call me if a further clarification or additional information is required.

In Brotherhood,

Harry W. Daniels
Honourary President, Native Council of Canada
Board Member, Metis Society of Saskatchewan

GOVERNMENT OF NEWFOUNDLAND AND LABRADOR
Executive Council
Intergovernmental Affairs Secretariat

March 18, 1994

Ms. Linda Jordan
Commission Secretary
Royal Commission on Aboriginal Peoples
P.O. Box 1993
Station "B"
Ottawa
K1P 1B2

Dear Ms. Jordan:

Thank you for your invitation to attend the forthcoming Metis Circle Special Consultation, April 5 - 6, 1994.

While the government of Newfoundland and Labrador recognizes there are people of Aboriginal descent in the province who identified themselves as "metis", it does not agree they are "Metis" within the meaning of S.35 (1) of the Constitution Act (1982). Accordingly, I do not think it appropriate to accept your kind invitation. We would appreciate receiving, however, copies of any discussion papers distributed to the participants.

I wish you a successful conference.

Ray Hawco
Assistant Secretary to Cabinet
(Native Policy)

P.O. Box 8700, St. John's, Newfoundland, Canada, A1B 4J6