A REVIEW OF THE SOCIAL UNION FRAMEWORK AGREEMENT AND ITS IMPLICATIONS ON THE MÉTIS NATION

A Report Prepared for the Métis National Council

March 2002

B. Morse & Associates Consultants Ltd.

Prepared by: Peggy J. Blair
Bradford W. Morse

TABLE OF CONTENTS

Part I - Introduction

Three-Year Review

This report was prepared at the request of the Métis National Council to form part of its participation in the three-year Review of the Social Union Framework Agreement (SUFA) that was signed by the Government of Canada, the provincial governments [with the exception of the Government of Quebec] and the territorial governments [with the exception of Nunavut which was not yet in existence] on February 4, 1999. Section 7 of the SUFA states that:

> By the end of the third year of the Framework Agreement, governments will jointly undertake a full review of the Agreement and its implementation and make appropriate adjustments to the Framework as required. This review will ensure significant opportunities for input and feed-back from Canadians and all interested parties, including social policy experts, the private sector, and voluntary organizations.

The Federal-Provincial-Territorial Ministerial Council on Social Policy Renewal, which is the group of Ministers responsible for SUFA, met with the leadership of the five national Aboriginal organizations on December 16, 1999. A separate meeting of the national Aboriginal leadership with Federal-Provincial-Territorial Ministers responsible for Aboriginal Affairs met on the prior day. At the meeting of SUFA Ministers, all parties agreed that the five national Aboriginal organizations would be actively engaged in the implementation of SUFA wherever it had implications for Aboriginal peoples. Areas of special interest identified as readily impacting upon the Aboriginal population in Canada that related to implementing SUFA were the National Children's Agenda, matters concerning Aboriginal Youth, and the participation of Aboriginal people in the economy. This involvement was also to include full Aboriginal participation in the three-year review, with financial assistance to do so provided by the federal government.

The Ministers and Aboriginal leaders further agreed to take three concrete steps to move forward in this regard, namely:

> 1. to create immediately an ongoing working group of officials, consisting of representatives from the five national Aboriginal organizations and officials supporting the Ministerial Council and Aboriginal Affairs Ministers;
>
> 2. the Ministerial Council co-chairs to meet the five national Aboriginal Leaders within six months to review the progress made by the working group; and
>
> 3. to convene, within one year, a meeting of the Ministerial Council, Ministers Responsible for Aboriginal Affairs and the Leaders of the five national Aboriginal organizations to review the outcomes of this work.

Unfortunately, the positive tone of the meeting in late 1999 and the commitments made at that time have not been completely sustained over the intervening years. Some important progress has, however, been made. The Working Group promised in the first step was established and it proceeded to develop a plan to guide its further work through the following five elements:

1. Engaging Aboriginal organizations in the implementation of SUFA;
2. Ensuring Aboriginal participation in the three year review of SUFA;
3. Sharing information on SUFA Implementation;
4. Developing a document reviewing the social trends affecting Aboriginal Peoples; and
5. Developing an inventory of best practices, where Aboriginal involvement is already established in intergovernmental social policy initiatives.

This work plan was approved by the Federal-Provincial-Territorial Ministerial Council on Social Policy Renewal at its meeting in St. Johns, Newfoundland on June 23, 2000. The Work Group

subsequently prioritized elements 4 and 5 leading to the creation of sub-work groups to focus upon each priority. The MNC currently chairs the sub-group on element four, which has completed a draft report analyzing the available data on social trends for presentation at the next Ministerial Council meeting. The other sub-group has developed a document containing a collection of 49 reports of "best practices" to identify what positive results have been learned over the years in a wide variety of programs across Canada. A report discussing "best practices" among the Métis Nation has been prepared for submission.

The commitment made at the December 16, 1999 meeting to convene a meeting of the full Ministerial Council along with the Minsters responsible for Aboriginal Affairs and the Aboriginal Leaders by December 2000 was only partially fulfilled on May 11, 2001 in Winnipeg, although the members of the Ministerial Council on Social Policy Renewal were not in attendance.

The federal and provincial/territorial Minsters responsible for Aboriginal Affairs, along with the national Aboriginal Leaders, launched a distinct yet related process called the Federal-Provincial- Territorial-Aboriginal [FPTA] Process as a result of this meeting. They endorsed the *Strengthening Aboriginal Participation in the Economy* report that had been prepared by officials for the parties. This document considered the many difficulties encountered by Aboriginal peoples seeking involvement in the Canadian economy as well as the existing opportunities to foster such inclusion by the public and private sectors. All participants supported the main recommendations contained in the Report and directed their officials to meet within six months to develop a strategy to implement the recommendations, with particular emphasis to be placed upon encouraging greater participation of Aboriginal women and youth in the economy. The Minsters and Leaders also committed to convene a National Aboriginal Youth Conference in Edmonton in October of 2001 with full participation by all governments, national Aboriginal organizations, Aboriginal youth and elders from all parts of the country. The purpose of the Conference was to provide an opportunity for Aboriginal youth to review and comment upon the National Aboriginal Youth Strategy that was developed through the FPTA process.

The FPTA participants met again on December 7, 2001 in Ottawa to review progress made by their respective officials and to consider the results of the National Aboriginal Youth Conference. The need for immediate action was acknowledged by all parties along with the necessity to obtain the active cooperation of the private sector and broader public support. The Ministers and Leaders accepted the work plan prepared by officials and directed them to:

- Establish a FPTA Working Group on the National Aboriginal Youth Strategy to review the final report of the National Aboriginal Youth Conference, develop an action plan, and continue to involve Aboriginal youth in achieving the goals of a National Aboriginal Youth Strategy.
- Explore measures to increase the participation of Aboriginal women in the economy; particularly in the area of encouraging entrepreneurship.
- Continue to implement the recommendations of the *Strengthening Aboriginal Participation in the Economy* Report with emphasis on addressing the needs of Aboriginal women and youth.
- Plan for a national business summit of governments, Aboriginal and private sector representatives aimed at strengthening Aboriginal participation in the economy.

The Ministers and Leaders also agreed to meet again in June of 2002 in Iqaluit to review progress and pursue common objectives further. This meeting has subsequently been rescheduled for September.

The FPTA process can be regarded as an indirect outgrowth of SUFA that has achieved some moderate success. On the other hand, it is important to realize that the original commitment from the Ministerial Council to meet with the national Aboriginal leadership again within one year has yet to be honoured over the last 28 months. Although considerable work has been undertaken by officials of all parties and several positive FPTA meetings have been held in the interim, the concept of a tripartite process among governments and Aboriginal leaders on SUFA itself

involving the Ministers who carry direct responsibility for this national Agreement has not been implemented. This means that the Métis people have been effectively isolated from the ongoing broader discussions among governments on the successes and deficiencies of SUFA.

Contents of Paper

The purpose of this paper is to describe the impact of the Social Union Framework Agreement upon the Métis Nation in Canada. It attempts to describe the experiences of Métis people in the social policy areas that come within the breadth of SUFA's scope and seeks to assess the degree to which the position of the Métis people has been advanced - or not - by the terms of SUFA and the efforts made by governments toward its implementation.

This report contains a number of specific components. We begin by describing the contents of SUFA in the context of several major constitutional renewal efforts over the past fifteen years that provide somewhat of a backdrop to the development of SUFA. The important position of the Aboriginal peoples of Canada is naturally the cornerstone in which this analysis occurs. Part 3 involves a consideration of the potential legal implications of SUFA for the constituents of the Métis National Council and considers whether or not there is a duty on governments to consult with the Métis Nation through its representatives. We next proceed in Part 4 to assess situations in which the principles contained within SUFA appear to be respected in practice to some degree through the provision of financial assistance to the Métis National Council and its member associations to deliver critical services to Métis people. Part 5 concentrates attention upon important spheres of human activity in which the MNC wishes to pursue active involvement on behalf of the Métis people but in which the lack of adequate fiscal resources has restrained the level of involvement. Part 6 examines the area of social housing in which SUFA seems to be having little or no positive effect in contrast to developments in labour market training. This atter section draws heavily upon a report on social housing prepared by the National Aboriginal Housing Association (NAHA).

The final chapter contains some recommendations for the future in terms of how SUFA and its underpinning objectives can be achieved more effectively.

Part II - SUFA'S Contents and its Backdrop

After the failed federal referendum on the Charlottetown Accord [which is discussed in greater detail below], interest to create a new framework for federal-provincial relationship in which to regulate social policy was still alive. The provinces took the lead by creating the Provincial/Territorial Council on Social Policy Renewal in 1995 to foster further debate and consideration of re-ordering federal-provincial relationships and authorities within the social sphere in reflection of the principles agreed to by all 13 governments through the Charlottetown Accord. As a result of extensive and secretive internal discussions, a consensus was reached, which included the Government of Quebec, and was made public at the 1998 Premiers' Conference in Saskatoon (the *Saskatoon Consensus*).

The full details of this consensus were later elaborated through the *Victoria Proposal* released in January of 1999. During this period the federal government also laid out some of its key positions, in a two-part document, *Working Together for Canadians*, released in July of 1998 and January of 1999. In closed-door negotiations, aided with an offer by the Prime Minister to boost healthcare funding to the provincial and territorial governments, a final Social Union Framework Agreement (SUFA) was reached on February 3, 1999.

The Social Union Framework Agreement commences in section 1 with a strong articulation of common principles that are to guide Canada's social union. The section starts by attempting to describe "the fundamental values of Canadians" as consisting of "equality, respect for diversity, fairness, individual dignity and responsibility, and mutual aid and our responsibilities for one another." It then proceeds to commit all of the signatory governments [which does not include Quebec] within their constitutional realms to respect the following principles:

All Canadians are equal

- Treat all Canadians with fairness and equity

- Promote equality of opportunity for all Canadians
- Respect the equality, rights and dignity of all Canadian women and men and their diverse needs

Meeting the needs of Canadians

- Ensure access for all Canadians, wherever they live or move in Canada, to essential social programs and services of reasonably comparable quality
- Provide appropriate assistance to those in need
- Respect the principles of medicare: comprehensiveness, universality, portability, public administration and accessibility
- Promote the full and active participation of all Canadians in Canada's social and economic life
- Work in partnership with individuals, families, communities, voluntary organizations, business and labour, and ensure appropriate opportunities for Canadians to have meaningful input into social policies and programs

Sustaining social programs and services

- Ensure adequate, affordable, stable and sustainable funding for social programs

Aboriginal peoples of Canada

- For greater certainty, nothing in this agreement abrogates or derogates from any Aboriginal, treaty or other rights of Aboriginal peoples including self-government

It is interesting to consider the language used in the elaboration of the overarching principles that the nine provinces, two territories and the federal government have drafted in an agreement that is intended to be binding upon them in an intergovernmental but not justiciable sense. It is

particularly enlightening when one considers what had led the governments to this point, namely, the inability to achieve constitutional change through the Meech Lake Accord of 1987 and the Charlottetown Accord of 1992, as well as the various legal drafts intended to complement those Accords through formal amendments to Canada's Constitution. The government parties were well aware of the prior failed efforts and the numerous drafts that had been generated following the proclamation of the *Constitution Act, 1982* to bring about further change. One should not be surprised to find echoes of those past attempts in the language of SUFA.

The proposed Meech Lake amendment package of 1987 had sought to entrench an interpretive clause in section 2 of the *Constitution Act, 1867* that would compel all to interpret the Constitution of Canada "in a manner consistent with

> (a) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada; and
>
> (b) the recognition that Quebec constitutes within Canada a distinct society."

Although only intended to guide the judiciary and others in how to read the rest of the Constitution's provisions, this provision became a lightning rod for those who feared that the Province of Quebec would have far greater powers than those allocated to other provinces thereby contravening their belief in provincial equality as well as those who thought that Quebec might use such powers in a manner disadvantageous to Anglophones, allophones and Aboriginal peoples within the province. While many vigorously argued that the proposed amendment was of limited import or was perfectly acceptable, others felt that the objective of establishing such an interpretive prism was beneficial but that the proposed language was far too narrow in scope as it excluded millions of Canadians who did not see themselves included within this description.

This eventually led to eleventh hour proposals from the New Brunswick government for a companion package of amendments, further Parliamentary hearings and another First Ministers' meeting in early June of 1990 that was ultimately unsuccessful. For our purposes, what is important is the notion that governments can and should establish specified parameters for what can be regarded at law as fundamental articulations of Canada's identity.

The federal government launched a new round of constitutional discussions on September 24, 1991 with the tabling of proposals for renewal along with the release of a series of research and policy papers including an overview proposal document.[1] The federal proposals were immediately referred to a Special Joint Committee of the House of Commons and the Senate (the Beaudoin-Dobbie Committee) traveled across the country receiving 3,000 submissions and hearing from 700 witnesses. The Rt. Hon. Joe Clark also initiated a round of discussions with provincial and territorial governments, the four national Aboriginal political associations (Assembly of First Nations, Inuit Tapirisat of Canada, Métis National Council, and Native Council of Canada) and the public generally.

This was complemented over the winter by regional conferences and the initiation of formal negotiations on March 12, 1992 with all provinces (except Quebec which had announced after the failure of Meech Lake that it would only negotiate constitutional reform with the federal government while embarking upon its own consultation process within the province), both territorial governments and the four national associations. The Government of Quebec joined the negotiations in the very late stages that culminated in a political accord reached in Charlottetown on August 28, 1992 signed by all seventeen parties. The Charlottetown Accord was then transformed into an agreed upon legal text by October 9, 1992 but was not supported by a majority of Canadians in the referendum later that month.

[1]Government of Canada, *Shaping Canada's Future Together - Proposals* (Ottawa: Minister of Supply and Services Canada, 1991).

One of the key features of these constitutional negotiations was that they were billed by the participants as the "Canada Round" to distinguish them from Meech Lake, which focused almost exclusively on Quebec's demands, and the prior round from 1982-87 concentrating upon Aboriginal constitutional matters. In other words, the plan this time was to try to accommodate both Aboriginal and Quebec demands while also seeking to address complaints of those who felt excluded by the efforts at reform since re-patriation and to consider demands for structural and jurisdictional reform affecting all provinces and the federal government.

Thus, the Canada Round led to proposals: to transform the authority of the Senate entirely while making it an elected upper house; to entrench the Supreme Court of Canada while also repeating the Meech Lake proposals ~~for~~ guaranteeing three members from Quebec and provincial input on filling vacancies; to revise the composition of the House of Commons; to entrench the use of First Ministers' Conferences as an annual vehicle for discussion among all provincial, territorial and federal governments and to include Aboriginal representatives on matters that affect them [thereby opening its membership from the Meech Lake proposal to include territorial and Aboriginal participation while broadening its focus beyond the economy and constitutional matters]; to revise significantly the division of powers between the provincial and federal levels far beyond the Meech Lake amendments to section 95 concerning immigration and aliens; to add an extensive collection of amendments regarding the inherent right of self-government, treaty interpretation and clarification [the position of the Métis people as clearly being included within section 91(24)] while confirming the constitutional validity of the Government of Alberta's legislation affecting the Métis people and settlements in that province, and a number of other Aboriginal issues of concern; and changes to the amending formula that reflected most of the elements contained within the Meech Lake package.

It was also agreed that the Charlottetown Accord, if passed by Canadian voters, would be accompanied by the signing of a Métis Nation Accord negotiated simultaneously among the MNC, the federal government and the five western most provinces. As well, a political accord would have been entered into among all governments and Aboriginal leaders intended to

provide added guidance to the interpretation of the proposed constitutional amendments specifically addressing Aboriginal matters as well as the process of negotiations to follow in their implementation.

The draft legal text, which differs somewhat from the language of the Charlottetown Accord signed by First Ministers and Aboriginal Leaders in August, contained a far more comprehensive version of an interpretive clause than the one proposed through the Meech Lake Accord. It took the form of a "Canada Clause" intended to become a new section 2 of the *Constitution Act, 1867* "that would express fundamental Canadian values" in the following terms:

> 2. (1) The Constitution of Canada, including the *Canadian Charter of Rights and Freedoms*, shall be interpreted in a manner consistent with the following fundamental characteristics:
>
> > (a) Canada is a democracy committed to a parliamentary and federal system of government and to the rule of law;
> >
> > (b) the Aboriginal peoples of Canada, being the first peoples to govern this land, have the right to promote their languages, cultures and traditions and to ensure the integrity of their societies, and their governments constitute one of the three orders of government in Canada;
> >
> > (c) Quebec constitutes within Canada a distinct society, which includes a French-speaking majority, a unique culture and a civil law tradition;
> >
> > (d) Canadians and their governments are committed to the vitality and development of official language minority communities throughout Canada;

(e) Canadians are committed to racial and ethnic equality in a society that includes citizens from many lands who have contributed, and continue to contribute, to the building of a strong Canada that reflects its cultural and racial diversity;

(f) Canadians are committed to a respect for individual and collective human rights and freedoms of all people;

(g) Canadians are committed to the equality of female and male persons; and

(h) Canadians confirm the principle of the equality of the provinces at the same time as recognizing their diverse characteristics.

(2) The role of the legislature and Government of Quebec to preserve and promote the distinct society of Quebec is affirmed.

(3) Nothing in this section derogates from the powers, rights or privileges of the Parliament or the Government of Canada, or of the legislatures or governments of the provinces, or of the legislative bodies or governments of the Aboriginal peoples of Canada, including any powers, rights or privileges relating to language.

(4) For greater certainty, nothing in this section abrogates or derogates from the aboriginal and treaty rights of the Aboriginal peoples of Canada.

Obviously, the Canada Clause in the Charlottetown Accord was framed considerably broader than the articulation of "the fundamental values of Canadians" in section 1 of SUFA as the former's scope was to guide the judiciary in the interpretation of all aspects of the Canadian Constitution. There are, however, important points for comparison. Both emphasize as a core concept the commitment to gender equality, with SUFA extending beyond recognizing sexual

equality in isolation as it also includes respecting the rights and dignity of both genders while acknowledging their diverse needs. Both acknowledge the importance of equality more generally. However, the Canada Clause concentrates more specifically on race and ethnicity while using the more general language of "individual and collective human rights and freedoms"when speaking to Canadians as a whole. Additionally, the Canada Clause directly addresses the hot button issues of linguistic rights, the distinctness of Quebec, the "principle of the equality of the provinces" and the rights of Aboriginal peoples as well as the jurisdiction of their governments. SUFA naturally has the more limited focal point of social policy issues and clearly reflects the desire to use less controversial factors in describing our collective identity.

It is also critical to appreciate the distinction between the audience for constitutional changes and that of SUFA. The Canada Clause was to become a fundamental touchstone for all future courts, governments and Canadians generally to rely upon as they read every section of our Constitution. As a result, it could have had a profound effect upon the future evolution of the country while also serving as a mirror reflecting who we are for the world, along with our own descendants, to see. The difference in orientation of SUFA is blatantly evident by the way section 1 is drafted. Its purpose is basically to declare how committed the signatory governments are to fulfilling the essential needs of the public regarding social and health services without authorizing anyone to have the authority to review their compliance with these objectives.

Both section 1 of SUFA and the Canada Clause contain an express clause intended to protect the rights of Aboriginal peoples from being negatively effected by the other substantive provisions. The Meech Lake proposal also contained a non-derogation clause that referred solely to the section numbers of the existing constitutional provisions that expressly affect Aboriginal peoples. It is noteworthy that the Charlottetown language was followed in part in this matter. The latter used the phrasing of "abrogates or derogates" in six places when attempting to meet this particular objective which is matched by SUFA. The use of "for greater certainty" is strewn throughout the legal text drafted pursuant to the political direction provided by the Charlottetown Accord.

The SUFA non-derogation clause is also more inclusive than the Canada Clause equivalent. SUFA does not limit protection to "aboriginal and treaty rights" only but encompasses the idea that there could be "other rights of Aboriginal peoples" distinct from aboriginal and treaty rights that might be negatively affected by SUFA if not for this saving clause. In doing so, the drafters have borrowed in part from section 25 of the *Charter of Rights and Freedoms* but have chosen to delete the *Charter*'s reference also to "freedoms" when it utilizes the phrasing, "aboriginal, treaty or other rights or freedoms" in the opening language of s. 25.

One might ask why the reference to freedoms was omitted from SUFA. SUFA's non-derogation clause does expressly seek to protect "self-government" in such a way that it clearly is included within the phrase "aboriginal, treaty or other rights or freedoms of Aboriginal peoples." From one perspective this can be seen negatively - as it suggests that 'self-government' falls within the 'other rights' aspect so as not to be within 'aboriginal and treaty rights' as contained in subsection 35(1) of the *Constitution Act, 1982.* This view would mean that there was a conscious consideration of how to word the non-derogation clause so as to advance the position that the inherent right of self-government is not already included in s. 35(1) as an existing aboriginal or treaty right.

An alternative approach would be to view the SUFA wording as giving added comfort to the assertion that self-government is now protected by s. 35(1) as it is covered by the 'aboriginal and treaty rights' part of the non-derogation clause with the 'other rights' portion intended to reflect a desire to protect non-section 35 rights, such as those that may emanate solely from federal or provincial legislation or *Charter* based rights. The wording used is capable of receiving either interpretation, although the latter seems more likely.

The other aspect of this matter that is relevant is the linkage of self-government to "Aboriginal peoples" such that the definition contained in s. 35(2) is the natural way to define who is intended to benefit from this provision. Given that this non-derogation clause does not attempt to cast any doubt upon whether self-government is a right [for example, by using such language as 'including any right of self-government that may exist for certain Aboriginal peoples'], it can be argued that this constitutes a clear statement from all twelve signatory governments that (a) self-government is a right, although without specifying its source, and (b) that the right is held by "the Indian, Inuit and Métis peoples of Canada" that are referenced in s. 35(2). This is the first such acknowledgment by many of these governments since the Charlottetown Accord. Its importance should not be underestimated.

SUFA does far more than merely seek to describe the "fundamental values of Canadians" and commit governments to certain principles. SUFA declares in section 2 that the government parties are committed to the freedom of movement of Canadians and to eliminate the "residency-based policies or practices" that constrain mobility. This is an attempt to implement more fully the guarantee of mobility rights in section 6 of the *Charter* and comply with the intergovernmental Agreement on Internal Trade. The Charlottetown Accord proposed to amend the Constitution to guarantee "the free movement of persons, goods, services and capital" to further this objective.

Section 3 of SUFA commits governments to greater public accountability and transparency through increased sharing of information among them and enhanced reporting to Canadians on the performance of social programs. Section 4 declares the willingness of governments to work together through joint planning on common priorities. It also requires that "any new Canada-wide social initiatives" will be "made available to all provinces/territories in a manner consistent with their diverse circumstances." At the same time, the governments promise to "work with the Aboriginal peoples of Canada to find practical solutions to address their pressing needs."

A major component of SUFA is the agreement to impose limits on the Government of Canada in its use of the federal spending power through section 5. The federal government agrees to consult with provincial and territorial governments at least one year prior to renewing or significantly changing funding patterns regarding existing social transfer payments. The Government of Canada also agrees only to pursue new national schemes to cost-share or block-fund "initiatives in health care, post- secondary education, social assistance and social services" through working collaboratively with all provincial and territorial governments. There is also a commitment that no new Canada-wide initiatives will be undertaken without the prior agreement of a majority of the provinces. SUFA further guarantees that all provincial and territorial governments will receive their share of funds so long as they agree to meet the Canada-wide objectives and an accountability framework that is to be negotiated at that time. The federal government has also agreed to restrain its ability to establish new Canada-wide initiatives in these same spheres involving direct payments to individuals and organizations by promising three months notice and an offer to consult with provincial and territorial governments. It is unclear if this latter commitment applies in reference to any new federal programs targeting Aboriginal peoples and their associations. Unless such initiatives would negatively impact upon "Aboriginal, treaty or other rights of Aboriginal peoples," it would appear that the restrictions voluntarily imposed by the federal government upon itself could retard its freedom to proceed solely on a bilateral basis with Aboriginal organizations without provincial and territorial governmental input.

The exercise of the federal spending power has been an ongoing source of friction between Quebec City and Ottawa for many years. The Meech Lake Accord proposed a new constitutional provision that would allow a province to opt out of "a national shared cost program" within "an area of exclusive provincial jurisdiction" and receive "reasonable compensation" if it carried on "a program or initiative that is compatible with the national objectives." The Charlottetown Accord reiterated the same provisions from the Meech lake Accord once again as a new section 106A of the *Constitution Act, 1867* along with the addition of a clause clarifying that s. 106A would not affect the commitments in the equalization payments provision in section 36 of the *Constitution Act, 1982.*

The Charlottetown Accord also would have led to amendments to s. 36 to include the territorial governments within its breadth while extending its scope to ensure "reasonably comparable economic infrastructures of a national nature;"adding an obligation on the federal government to engage in "meaningful consultation with provincial governments before introducing legislation relating to equalization payments;" and committing all governments to promote "regional economic development to reduce economic disparities." The Charlottetown Accord also proposed a new section to commit federal, provincial and territorial governments to preserve and develop a social and economic union that included many of the elements in section 1 of SUFA as well as worker rights, environmental protection, "the goal of full employment," and a "reasonable standard of living" for all Canadians.

Since SUFA is not expressly declared to be justiciable, and hints that it is not intended to be a matter for judicial consideration but instead that disputes should be left to be resolved through the "democratic accountability by elected officials"[section 6], the agreement sets out a commitment by the parties to work together to avoid intergovernmental disputes. SUFA also directs all government parties to create mechanisms to resolve any disputes that do arise in the future. The exact parameters of such alternative methods of resolving intergovernmental disputes

remains unclear at present.

Having described what is contained within SUFA and the echoes that continue softly from the Meech Lake and Charlottetown Accords, it is now timely to assess what relevant guidance can be elicited from the Canadian jurisprudence to date.

Part III - Legal Implications of SUFA

INTRODUCTION

The purpose of this Part is to analyze various major court decisions to try to determine the legal implications of SUFA to the Métis. As such, the Ontario Court of Appeal's decision in *Powley,* together with the Supreme Court of Canada's decision in *Corbiere,* will be examined in particular detail. Various other cases involving the relationship between Aboriginal peoples and the *Charter of Rights and Freedoms,* along with the government's duty to consult, will also be discussed.

It should be noted that none of these cases expressly address the existence of SUFA or its legal significance. On the other hand, recent jurisprudence is making clear that the Métis do possess substantive legal rights that are no longer merely theoretical or speculative ones. In addition, the judiciary is also making clear that Canadian law recognizes Aboriginal peoples as holders of unique rights such that advancing the objectives of equality and equity in Canada definitely does not mean treating all people the same. There is an obvious necessity to respect and accommodate the differences that exist.

We note first that SUFA draws no distinction between Métis and other Aboriginal peoples, but affirms instead that "Governments will work with the Aboriginal peoples of Canada to find practical solutions to address their pressing needs." Importantly, SUFA also indicates that "nothing in this Agreement abrogates or derogates from any Aboriginal, treaty or other rights of Aboriginal peoples..." To properly examine the implications of SUFA from a legal perspective, we must first consider how the courts have interpreted Métis rights to date.

R. v. Powley

The first appellate court to address the issue of Métis rights in a substantive way was the Ontario Court of Appeal. In the *Powley* decision,[2] the respondents claimed to have a section 35 right, protected by the *Constitution Act,* 1982, to hunt for food without a licence as members of an historic Métis community. The Crown argued that they did not. The MNC was one of four interveners.

The Court noted at para. 9 that the Powleys did not have status under the *Indian Act*,[3] nor do they enjoy any treaty rights. As a result, while the case did not involve an allegation of discrimination under section 15 of the *Charter of Rights and Freedoms*, the court noted that Métis were in fact treated differently from status Indians in the area:

> Status Indians in the Sault Ste. Marie area have a treaty right to hunt for food pursuant to the 1850 Robinson-Huron Treaty. The treaty right to hunt for food is recognized in the 1991 Interim Enforcement Policy issued by the Ministry of Natural Resources under the Game and Fish Act, pursuant to which those who enjoy treaty rights are not prosecuted for what would otherwise amount to violations of the Act.

Having reviewed the evidence, the Court concluded that the scheme which recognized Indian hunting rights but denied recognition to those of the Métis was not justifiable. It held:

> [T]he present scheme cannot be justified as being consistent with the Crown's trust-like duty. It accords no recognition to the Métis right, in stark contrast to the blanket exemption given status Indians. A scheme that creates such an obvious imbalance between rights holders, and gives the Métis no priority over those who have no constitutional right to hunt, cannot be described as"equitable" or in keeping with the Crown's trust-like duty.

---

[2] *R. v. Powley and Powley* (2001), 53 OR (3d) 35 (Ont. C.A.) affirming (2000) 47 O.R. (3d) 30 (Sup. Ct.), affirming [1999] 1 C.N.L.R. 153 (Ont. Prov. Ct.).

[3] R.S.C.1985, c. I-5.

> ... I fail to see how the legislative objective of conservation can justify this blatant disparity in treatment between the two rights-holders.[4]

The Court acknowledged that while provincial policy had provided for negotiations for Métis hunting rights, and Métis representatives had tried to negotiate an agreement, a major problem had been the government's uncertainty as to who qualified as "Métis" for the purposes of s. 35 and the issue of representation of Métis interests: "As a result, the Ontario government has, to date, refused to recognize Métis people as having any special access to natural resources."[5] The Ontario government's argument, however, that it could not be certain who were entitled to Métis rights and therefore could not accommodate them was rejected outright. The Court held:

> I do not accept that uncertainty about identifying those entitled to assert Métis rights can be accepted as a justification for denying the right. The appellant has led no evidence to show that it has made a serious effort to deal with the question of Métis rights. *The basic position of the government seems to have been simply to deny that these rights exist, absent a decision from the courts to the contrary.* While I do not doubt that there has been considerable uncertainty about the nature and scope of Métis rights, this is hardly a reason to deny their existence. There is an element of uncertainty about most broadly worded constitutional rights. The government cannot simply sit on its hands and then defend its inaction because the nature of the right or the identity of the bearers of the right is uncertain. [6]

The Court made other important comments concerning the fact that Métis people do have constitutional rights equal to those of Indians but different in that they are based on their own distinctive culture and history:

> A diversity in the specific content of aboriginal rights is also to be expected from the recognition in s. 35 of three distinct "aboriginal peoples", the Indian, the Inuit and the Métis. It seems inevitable that although they are rooted in a common principle, the specific rights of distinctive peoples will reflect their distinctiveness. The Métis peoples were not here before contact between the Indian or Inuit peoples and the Europeans. The

---

[4] *Powley,* at para. 164.

[5] *Powley,* at para. 16. [emphasis added].

[6] *Powley,* at para. 16 [emphasis added].

> very concept of prior occupation that lies at the heart of aboriginal rights necessarily requires modification to deal with the distinctive history of the Métis. [7]

Importantly, the Court expressly found that the "Métis peoples" are a discrete and *equal* subset of the larger class of "aboriginal peoples of Canada, and that their rights should "not be subsumed under the rights of another"[8] nor should their rights be seen as "subordinate" to the rights of First Nations.[9] The Court warned that it might be difficult to resolve the question of what Métis rights might be but indicated it would expect the nature of Métis rights to correspond in broad outline with those of Canada's other aboriginal peoples.[10]

Additionally, the Court stated that the severe prejudice and discrimination inflicted upon the Métis as a historically disadvantaged community was something which a court deciding such issues was not only entitled to take such circumstances into account but would be wrong to ignore:

> The constitutional recognition of the existence of the Métis as one of Canada's aboriginal peoples may not be capable of redressing all the wrongs of the past, but it cannot be that when interpreting the constitution, a court should ignore those wrongs. As noted by Dickson C.J. and La Forest J. in Sparrow, at 1103, "[f]or many years, the rights of the Indians to their aboriginal lands - certainly as legal rights - were virtually ignored." It is undeniable that past practices, including those of government, have weakened the identity of aboriginal peoples by suppressing languages, cultures and visibility. It would be completely contrary to the spirit of s. 35 to ignore these historical facts when interpreting the constitutional guarantee. ...The trial judge was entitled to conclude that the Sault Ste. Marie Métis community had suffered as a result of what was at best governmental indifference, and to take the historically disadvantaged situation of the Métis into account when assessing the continuity of their community.[11]

---

[7] *Powley*, at paras. 93 and 94.

[8] *Powley* at para. 94.

[9] *Powley* at para. 102.

[10] *Powley* at para. 104.

[11] *Powley*, para 136.

As a result, the "bald promise" contained in Ontario's Enforcement Policy to negotiate an agreement with the Métis was not sufficient to justify the Ontario government's failure to ultimately accommodate Métis rights by according them a priority:

> ... in relation to non-aboriginal hunters, Métis rights holders are given no priority. The failure to attach any weight whatsoever to the aboriginal right flies in the face of the principle that aboriginal food hunting rights are to be accorded priority. While the Interim Enforcement Policy contemplates negotiations with the Métis community, I fail to see how a bald promise that has not been acted on can justify limiting a constitutional right.[12]

Finally, the Court encouraged the government and representatives of the Métis people to enter good faith negotiations with a view to resolving s. 35 claims. [13]

The significance of *Powley*, then, is that the Court indicated that the rights of Métis are not to be treated as subordinate to, or unequal to, those of First Nations peoples. As well, the express mention of the Métis as historically disadvantaged satisfies one of the tests set out in the Supreme Court of Canada's decision in *Corbiere*, a case which dealt expressly with allegations of unequal treatment and discrimination between classes of Aboriginal peoples and which therefore has significant implications with respect to the SUFA commitments.

Corbiere v. Canada

The most recent decision addressing the right of Aboriginal peoples not to be discriminated against with respect to other Aboriginal peoples is the Supreme Court of Canada decision in *Corbiere v. Her Majesty the Queen.*[14] *Corbiere* dealt with the right of only those Band members "ordinarily resident on reserve" to vote in band council elections. The central issue

---

[12]*Powley*, paras. 165 and 166.

[13]*Powley* para. 177.

[14][1999] 2 S.C.R. 203.

before the Court was whether the exclusion of off-reserve Band members from voting amounted to a violation of the equality rights contained section 15 of the *Charter of Rights and Freedoms*.

Applying an approach to section 15 issues developed in an earlier case, *Law* v. *Canada*, the Supreme Court decided that "Aboriginality-residence" was an analogous ground to the enumerated grounds (race, sex, age, and so on) set out in section 15 and that discrimination had occurred. The discrimination was not justified, leading to a declaration of invalidity of section 77(1) of the *Indian Act.*

The *Corbiere* decision has already had profound implications for First Nations' local government under the *Indian Act* and will be applied to other cases involving claims of differential treatment of Aboriginal peoples. Therefore, we can expect it may have profound impacts with respect to the Métis and their present exclusion from programs and services available to other Aboriginal peoples. This is so particularly in light of provisions in SUFA which state that Canada's social union should reflect and give expression to "*equality*, respect for diversity, fairness, individual dignity and responsibility and *mutual aid and our responsibilities for one another*" and the commitment to "work *with* the Aboriginal peoples of Canada to find practical solutions to address their pressing needs." Indeed, it may be argued that SUFA itself could have discriminatory effects if the re-working of the social union which it contemplates does not include the Métis within the promises of equality and consultation contemplated by the Framework.

The *Corbiere* decision, unlike the *Powley* case, dealt specifically with a claim of discrimination under section 15 of the *Charter of Rights and Freedoms,* which sets out that:

> (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
>
> (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The decision in *Corbiere* flowed directly from an earlier ruling of the Supreme Court of Canada in *Law* v. *Canada (Minister of Employment and Immigration).* [15] The approach set out in *Law* has also been used in *Lovelace,*[16] a case brought by unrecognized First Nations as well as Métis and non-status Indian claimants alleging discrimination, and in other recent decisions involving the effect of legislation and government programs on different categories of Aboriginal peoples.

In *Law*, the Supreme Court synthesized earlier human rights decisions and outlined the steps that courts must take when determining if legislation or government programs are discriminatory under section 15. According to the Court, the purpose of section 15 was to prevent " the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration." [17]

---

[15] [1999] 1 S.C.R. 497

[16] *Lovelace v. Ontario,* [2000] 1 S.C.R. 950.

[17] *Law* v. *Canada (Minister of Employment and Immigration)* [1999] 1 S.C.R. 497 at para. 4.

The Supreme Court set out the various points to be considered in assessing whether a section 15 violation has been established. For example, when challenging a law or program on the basis of discrimination, the claimant may choose the person, group, or groups with whom he or she wishes to be compared for the purpose of the discrimination inquiry. [18] In the case of Métis, this means that the claimant can choose a comparative group which is either Aboriginal (as in *Corbiere*, where the comparative group were members resident on reserve) or non-Aboriginal. This comparison may be refined by the court where necessary or where the claimant's characterization is insufficient, but in all cases, the court is required to locate a relevant comparison group. In *Lovelace*, as will be discussed later, the court "refined" the claimant's chosen comparative group from "rural-Aboriginal bands" to "Aboriginal bands" in general.

The test is a rather subjective one, resting much on a perception of what is "unfair:"

> Human dignity within the meaning of the equality guarantee does not relate to the status or position of an individual in society *per se*, but rather concerns the manner in which a person legitimately feels when confronted with a particular law. Does the law treat him or her unfairly, taking into account all of the circumstances regarding the individuals affected and excluded by the law? [19]

The Court set out the general broad inquiries to be made in determining whether discrimination has occurred:

> First, does the impugned law (a) draw a formal distinction between the claimant and others on the basis of one or more personal characteristics, or (b) fail to take into account the claimant's already disadvantaged position within Canadian society resulting in substantively differential treatment between the claimant and others on the basis of one or more personal characteristics? If so, there is differential treatment for the purpose of s. 15(1). [20]

---

[18] *Law*, at para. 6.

[19] *Law* at para. 53.

[20] *Law* at para. 39.

> ... Second, was the claimant subject to differential treatment on the basis of one or more of the enumerated and analogous grounds? And third, does the differential treatment discriminate in a substantive sense, bringing into play the purpose of s. 15(1) of the *Charter* in remedying such ills as prejudice, stereotyping, and historical disadvantage? [21]

Later, in *Corbiere*, Justice McLachlin clarified that the third stage of *Law* – differential treatment – relates to the present circumstances of the claimant, not the composition of its membership. This could be particularly important to Métis people in light of the very different approaches taken from province to province in the recognition of, and accommodation of their rights. [22]

To decide whether a ground is analogous -- the issue in *Lovelace* as well as in *Corbiere* – the Court has directed that the subject-matter of the legislation and its effects be examined, as well as its context. [23] *Law* established that there are four primary factors to be considered in determining these contextual issues. The first, and central consideration, is whether there is any "pre-existing disadvantage, stereotyping, prejudice, or vulnerability experienced by the individual or group at issue." The language used by the Court suggests that this in itself is sufficient to raise an almost *prima facie* case of discrimination:

> While association with a historically more advantaged or disadvantaged group is not *per se* determinative of an infringement, it favours such a finding of discrimination.
>
> ... The most compelling factor favouring a conclusion that differential treatment imposed by legislation is truly discriminatory will be pre-existing disadvantage, vulnerability, stereotyping, or prejudice experienced by the individual or group. [24]

---

[21] *Ibid.*

[22] *Corbiere* at para. 19.

[23] *Law* at para. 6.

[24] *Law* para. 63.

The second factor outlined by the Court is whether the impugned law or act corresponds to the actual need, capacity, or circumstances of the claimant. For example, if legislation takes into account actual needs, it is less likely to be discriminatory:

> Although the mere fact that the impugned legislation takes into account the claimant's traits or circumstances will not necessarily be sufficient to defeat a s. 15(1) claim, it will generally be more difficult to establish discrimination to the extent that the law takes into account the claimant's actual situation in a manner that respects his or her value as a human being or member of Canadian society, and less difficult to do so where the law fails to take into account the claimant's actual situation.

However, legislation which excludes the claimant altogether, or which over-reaches in order to achieve its purpose, as was found in *Corbiere*, will be harder to defend. This again is important in the context of Métis rights, given the facts considered in *Powley*, above, where Métis people were completely excluded from a government policy which made Aboriginal hunting and fishing rights a priority.

The third factor set out in *Law* is the "ameliorative purpose" of the impugned law. If this purpose or effect accords with the purpose of section 15(1) of the *Charter*, it will likely not violate the human dignity of more advantaged individuals, although it may affect disadvantaged individuals in an adverse way. However, the Court noted in a passage which perhaps predicted the outcome of *Corbiere* that "[u]nderinclusive ameliorative legislation that excludes from its scope the members of a historically disadvantaged group will rarely escape the charge of discrimination."[25]

The fourth factor outlined in *Law* was the nature and scope of the interest affected by the impugned law. If all other things are equal, the more severe and localized the consequences on the affected group, the more likely that the distinction responsible for these consequences is discriminatory within the meaning of s. 15 of the *Charter*. [26]

---

[25] *Law* para. 72.

[26] *Law* para. 74.

It is important to emphasize that the claimant is not required to establish that the intent of Parliament or the legislature in enacting the impugned statute was discriminatory, in the sense that, for example, the legislation was consciously premised upon a prejudicial stereotype, or the legislature purposely failed to take into account the social disadvantage of an individual or group.[27] If the distinction restricts access to a fundamental social institution, or affects "a basic aspect of full membership in Canadian society," or "constitutes a complete non-recognition of a particular group," [28] it will be a violation of section 15.

In circumstances where a claimant could show he or she was discriminated against by laws aimed at ameliorating the situation of others, justification under section 1 of the *Charter* is also required. [29] Again, this point is important with respect to the Métis, as many of the programs available to First Nations peoples that are not available to Métis have been directed at ameliorating the situation of First Nations peoples. Nonetheless, such laws may be found to be discriminatory.

Corbiere raised the question of whether discrimination *between* Aboriginal peoples could be considered an analogous ground to the other grounds enumerated in section 15 and concluded that it could.[30]

Having concluded that the distinction made by the impugned law was made on an analogous ground, the Court arrived at what it described as the final step of the s. 15(1) analysis: whether the distinction at issue in a particular case in fact constituted discrimination, or "In plain words, does the distinction undermine the presumption upon which the guarantee of equality is based -- that each individual is deemed to be of equal worth regardless of the group to which he or she

---

[27] *Law,* para. 80.

[28] *Law*, para 74

[29] *Law*, para. 73.

[30] *Corbiere*, para. 6.

belongs?... Applying the applicable *Law* factors to this case -- pre-existing disadvantage, correspondence and importance of the affected interest -- we conclude that the answer to this question is yes." [31]

In considering the nature and scope of the interest affected, both the majority and the minority in *Corbiere* adopted the same passages from the findings of the Royal Commission on Aboriginal Peoples stressing the importance of Aboriginal "cultural identity:"

> Throughout the Commission's hearings, Aboriginal people stressed the fundamental importance of retaining and enhancing their cultural identity while living in urban areas. *Aboriginal identity lies at the heart of Aboriginal peoples' existence; maintaining that identity is an essential and self-validating pursuit for Aboriginal people in cities.*
>
> ...Cultural identity for urban Aboriginal people is also tied to a land base or ancestral territory. For many, the two concepts are inseparable. . . . Identification with an ancestral place is important to urban people because of the associated ritual, ceremony and traditions, as well as the people who remain there, the sense of belonging, the bond to an ancestral community, and the accessibility of family, community and elders.[32]

The majority noted that *all Aboriginal peoples* might be considered an underprivileged or historically disadvantaged group, not merely those living off reserve. [33] In *Corbiere*, both the majority and minority reached the same conclusions. Perhaps more importantly, both considered "cultural identity" to be as important a need and interest on the part of the claimants as their interest in band assets, thus signaling how the Court may approach other cases raising this kind of issue.

---

[31] *Corbiere*, paras. 16-17.

[32] *Report of the Royal Commission on Aboriginal Peoples* (1996), vol. 1, *Looking Forward, Looking Back*, at pp. 137-91 cited in *Corbiere,* para. 17.

[33] *Corbiere*, para. 19.

The minority agreed that the decision in the case related only to the constitutionality of the voting distinctions made within bands themselves by s. 77(1) of the *Indian Act.*[34] However, Madam Justice L'Heureux-Dubé relied on more extensive reasons in reaching the same conclusion as the majority. First, she concluded that band members living off-reserve form part of a "discrete and insular minority", defined by both race and residence, "which is vulnerable and has at times not been given equal consideration or respect by the government or by others in Canadian or Aboriginal society. Decision makers have not always considered the perspectives and needs of Aboriginal people living off reserves, particularly their Aboriginal identity and their desire for connection to their heritage and cultural roots."[35]

The Court's majority and minority findings raised the justification issue under section 1 of the Charter. In the result, the majority held that those attempting to justify the scheme had failed to meet the justification onus, as they had "present[ed] no evidence of efforts deployed or schemes considered and costed, and *no argument or authority in support of the conclusion that costs and administrative convenience could justify a complete denial of the constitutional right*. Under these circumstances, we must conclude that the violation has not been shown to be demonstrably justified."[36]

Other Cases

In some provinces, as earlier discussed, the Crown has completely denied the constitutional rights of Métis people, and has been roundly criticized by the courts in the result. However, some government programs and policies that discriminate in order to create better conditions for some Aboriginal peoples may be upheld. For example, in *Perry and Shewell*, the Ontario Court of Appeal held that the fact that Métis and non-status Indians were treated differently than

---

[34] *Corbiere,* para. 68.

[35] *Corbiere,* para. 71.

[36] *Corbiere,* para 21.

registered Indians under a government program did not violate section 15.[37] A decision to deny social assistance benefits to all non-Indian spouses, however, has been found to be a breach of section 5 of the *Canadian Human Rights Act*, even if perceived as a progressive step, eliminating discrimination on the basis of sex but discriminating on the basis of race and/or marital status.[38]

In *Lovelace*, [39] the Supreme Court was asked to interpret section 15(2) of the *Charter* where a government program recognized an historically disadvantaged group – *Indian Act* Bands – but did not include Métis and those Bands who have not received federal recognition. It did so again applying the approach set out in *Law* and determined that the program was not contrary to the *Charter*.

Between 1991 and 1993, First Nations had approached the provincial government for the right to control reserve-based gaming activities, with the profits to be used to strengthen band economic, cultural, and social development. In *Lovelace*, the Court had to deal with an ameliorative program, the First Nations' Funds, which were alleged to be discriminatory by those excluded from their benefits – communities not recognized as Bands under the *Indian Act*. Once again, the Court applied *Law* which it said had "synthesized a number of approaches in the equality jurisprudence of the Court and provided a set of guidelines for the analysis of a discrimination claim under the *Charter*." Importantly, the Court decided that section 15 applied not merely to "laws" but to programs as well. [40]

---

[37] *Ardoch Algonquin First Nation v. Ontario* (1997),148 D.L.R. (4th) 96; 33 O.R. (3d) 705 (Ont. C.A.), sub nom. *R. v. Perry and Shewell* [leave to appeal to S.C.C. refused 152 D.L.R. (4th) vi].

[38] *Shubenacadie Indian Band v. Canada (Canadian Human Rights Commission)* sub nom. *MacNutt v. Shubenacadie Indian Band,* [1995] C.H.R.D. No. 14 (CHRT), affirmed [1998] 2 F.C. 198 (T.D.); affirmed (2000) 187 D.L.R. (4th) 741 (F.C.A.); leave to appeal to S.C.C. dismissed [2000] S.C.C.A. No. 398.

[39] *Lovelace v. Ontario* [2000] 1 S.C.R. 950.

[40] *Lovelace*, para. 56.

The Court concluded that the exclusion of the non-band Aboriginal communities from a First Nations Fund established to share the proceeds from a casino did not violate s. 15 of the *Charter*, "despite a recognition that, regrettably, the appellant and respondent Aboriginal communities have overlapping and largely shared histories of discrimination, poverty, and systemic disadvantage that cry out for improvement."[41]

In this case, the disadvantage was argued to result from exclusion from the *Indian Act*. As the Court noted, the appellants faced a unique set of disadvantages "traced to their non-participation in, or exclusion from, the *Indian Act.* These disadvantages include: (i) a vulnerability to cultural assimilation, (ii) a compromised ability to protect their relationship with traditional homelands; (iii) a lack of access to culturally-specific health, educational, and social service programs, and (iv) a chronic pattern of being ignored by both federal and provincial governments**.**"[42] The Court found that these arguments were "clearly supported" in the findings of the *Royal Commission on Aboriginal Peoples*, citing from the report as follows.

> ... a number of speakers pointed to inequalities between groups of Aboriginal people. Registered (or status) Indians living on-reserve (sometimes also those living off-reserve) and Inuit living in the Northwest Territories have access to federal health and social programs that are unavailable to others. Since federal programs and services, with all their faults, typically are the only ones adapted to Aboriginal needs, they have long been a source of envy to non-status and urban Indians, to Inuit outside their northern communities, *and to Métis people*. .... *Equity, as we use the term, also means equity among Aboriginal peoples. The arbitrary regulations and distinctions that have created unequal health and social service provision depending on a person's status as Indian, Métis or Inuit (and among First Nations, depending on residence on- or off-reserve) must be replaced with rules of access* that give an equal chance for physical and social health to all Aboriginal peoples. ...[43]

---

[41] *Lovelace,* para. 6.

[42] *Lovelace,* para. 70.

[43] Vol. 3, *Gathering Strength* (1996) at pp. 204 and 225.

The Court was prepared to find stereotyping of the same type it had applied in *Corbiere*, acknowledging that all Aboriginal peoples have been affected "by the legacy of stereotyping and prejudice against Aboriginal peoples. Aboriginal peoples experience high rates of unemployment and poverty, and face serious disadvantages in the areas of education, health, and housing ..." [44]

However, although the Court considered that there might well be enumerated or analogous grounds, as in *Corbiere*, " I find that it is not necessary to decide this in view of my finding that even if these grounds are present there is no discrimination in these circumstances."[45]

The Court stated that more than economic prejudice was required.

> The discriminatory calibre of a particular distinction cannot be fully appreciated without also evaluating the constitutional and societal significance of the interest(s) adversely affected. Other important considerations involve determining whether the distinction somehow restricts access to a fundamental social institution, or affects a basic aspect of full membership in Canadian society (e.g. voting, mobility). *Finally, does the distinction constitute a complete non-recognition of a particular group*? *It stands to reason that a group's interests will be more adversely affected in cases involving complete exclusion or non-recognition than in cases where the legislative distinction* <u>*does*</u> *recognize or accommodate the group*, but does so in a manner that is simply more restrictive than some would like. [46] [emphasis added]

In *Lovelace,* the Court found that the necessary evaluation of the needs of those included and excluded from the program had been taken into account. However, both *Powley* and *Lovelace* have signaled that the complete non-recognition of the Métis and their total exclusion from government programs and benefits extended to other Aboriginal peoples would amount to discrimination under section 15 of the *Charter.*

---

[44] *Lovelace*, para. 69.

[45] *Lovelace*, para. 67.

[46] *Lovelace,* para. 89.

The Supreme Court of Canada has indicated on several occasions the importance of "cultural identity" to Aboriginal peoples, including in *Corbiere.* In a recent criminal sentencing case, the Supreme Court drew no distinctions between Métis and other Aboriginal peoples when considering the applicability of Criminal Code provisions intended to recognize their unique circumstances. In *Gladue*, the Court held that "The class of aboriginal people who come within the purview of the specific reference to the circumstances of aboriginal offenders in s. 718.2(e) must be, at least, all who come within the scope of s. 25 of the *Charter* and s. 35 of the *Constitution Act, 1982.* The numbers involved are significant. National census figures from 1996 show that at a minimum an estimated 799,010 people self-identified as Aboriginal in 1996. Of this number, 529,040 were Indians (registered or non-registered), 204,115 Métis and 40,220 Inuit."[47]

The Supreme Court's understanding of the population data was not entirely correct. The current total Aboriginal population has been estimated by the federal government as consisting of approximately 1.4 million people, or almost 5% of the entire country. While the 1996 Census only recorded 779,790 as self-identifying as Aboriginal persons, it also indicated that a total of 1,101,960 people indicated they possessed Aboriginal origins. Unfortunately, the 1996 census had a number of implementation difficulties, including the refusal by a number of First Nations to participate. As a result, it only recorded 488,040 people as being Status Indians at a time when the Indian registry maintained by the Department of Indian Affairs and Northern Development included 593,050 registered Indians as of December 31, 1995 and 610,874 as of the end of the year in which the census was taken. It has been suggested that the census obviously under reported well over 100,000 registered Indians and may, therefore, similarly have under reported many Métis, non-status Indian and Inuit peoples. Adding somewhat to possible sources of confusion is that over 40% of First Nations control their own membership lists and many individuals now only identify themselves in terms of their original national identity or through the name of their First Nation rather than as an 'Indian' at all.

---

[47] *R. v. Gladue,* [1999] 1 S.C.R. 688 (S.C.C.) para. 90.

According to the Department of Indian Affairs and Northern Development (DIAND), there are approximately 65,000 Inuit in Canada, the vast majority of which live in the Northwest Territories, Nunavut, Quebec and Labrador. Due to the *Indian Act,* the Indian population has been divided into those who are registered, or have status, under that Act and those who are not recognized as legally being Indians for the purposes of that statute or the services made available by DIAND and Health Canada. DIAND=s latest statistics recorded 675,499 registered Indians as of 2001, of whom over 112,000 individuals gained status through the 1985 amendments to the Act (Bill C-31), while it estimated the Métis and non-status Indian population as consisting of 632,800 people by the end of 1997.

The Aboriginal population has been growing at a rapid and varied rate over the past 15 years. The Indian population had an annual growth rate of over 7% from 1986 to 1991 according to Statistics Canada, which then fell to 1% from 1991-1996. On the other hand the INAC data demonstrates an annual growth rate of almost 4% for the latter five-year period. The data from Statistics Canada indicates that the Métis population kept increasing throughout the ten-year period while the Inuit numbers were falling. Demographically speaking, the annual growth rates for Indians from 1986-91 and Métis from 1991-96 were more than double the world's highest national rates and even higher than the theoretical maximum natural population increase rates. Therefore, shifts in population have been affected by legal changes [with over 100,000 non-status Indians and Métis moving over to become registered Indians by 1995] and relatively high natural growth rates. In addition, there is clearly a growing number of Canadians who are self-identifying as being Aboriginal [and particularly as being Métis]. Even if this trend is not sustained to the same degree, projections from DIAND indicate that the registered Indian population should rise to over 810,000 people by the end of this decade. Similar rates of growth, if not even higher, are anticipated to continue for the Métis.

As mentioned previously concerning *Corbiere*, the Supreme Court once again quoted the same passage from the Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, vol. 4, *Perspectives and Realities* (1996), at p. 521:

> Throughout the Commission's hearings, Aboriginal people stressed the fundamental importance of retaining and enhancing their cultural identity while living in urban areas. Aboriginal identity lies at the heart of Aboriginal peoples' existence; maintaining that identity is an essential and self-validating pursuit for Aboriginal people in cities...
>
> Cultural identity for urban Aboriginal people is also tied to a land base or ancestral territory. For many, the two concepts are inseparable.... Identification with an ancestral place is important to urban people because of the associated ritual, ceremony and traditions, as well as the people who remain there, the sense of belonging, the bond to an ancestral community, and the accessibility of family, community and elders.[48]

It is therefore suggested that the exclusion of Métis people from programs which can be linked to their cultural identity are likely to find sympathy from the courts. As we will see under Part Three, programs affecting Métis education, literacy, youth, language and culture tend to be the most variable from province to province, primarily because of variable funding practices on the part of provincial governments. Since SUFA contains commitments to "services of reasonably comparable quality" and "sustainable funding," any variability of funding in these important areas may be subject to review.

CONSULTATION

One fiduciary obligation applicable to the Crown *vis-a-vis* Aboriginal peoples in general is that there be adequate consultation with them before steps are taken that affect their interests. The statement in SUFA that governments are committed to "work *with* the Aboriginal peoples of Canada to find practical solutions to address their pressing needs" in the context of "Working in Partnership" would seem to imply even more than consultation, but there is little question that the government has, at a minimum, a duty to consult with the Métis before implementing any programs or transferring any services that may affect their distinct cultural identity and rights.

The requirements of consultation have been stated in a wide variety of cases dealing with section 35 rights. As first stated by the Supreme Court of Canada in *Sparrow*:

> Within the analysis of justification, there are further questions to be addressed, depending on the circumstances of the inquiry. These include the questions of whether there has

[48] *R. v. Gladue* [1999] 1 SCR 688 (S.C.C.) para. 90.

> been as little infringement as possible in order to effect the desired result; whether in a situation of expropriation, fair compensation is available and, *whether the Aboriginal group in question has been consulted with respect to the conservation measures being implemented.* The Aboriginal peoples, with their history of conservation-consciousness and interdependence with natural resources, would surely be expected, at the least, to be informed regarding the determination of an appropriate scheme for the regulation of the fisheries. We would not wish to set out an exhaustive list of the factors to be considered in the assessment of justification. Suffice it to say that recognition and affirmation requires sensitivity to and respect for the rights of Aboriginal peoples on behalf of the government, courts and indeed all Canadians. [emphasis added] [49]

As also noted by the Supreme Court in *Marshall # 2*:

> Aboriginal people are entitled to be consulted about limitations on the exercise of treaty and Aboriginal rights. The Court has emphasized the importance in the justification context of consultations with Aboriginal peoples. Reference has already been made to the rule in *Sparrow*, *supra*, at p. 114, repeated in *Badger*, *supra*, that:
>
> > the special trust relationship and the responsibility of the government vis-a-vis Aboriginals must be the first consideration in determining whether the legislation or action in question can be justified. [50]

The Supreme Court of Canada also addressed the question of consultation in *Delgamuukw.* In the following passage, the Court suggested that the degree of consultation might vary depending on the type of decisions being made:

> There is always a duty of consultation...The nature and scope of the duty of consultation will vary with the circumstances. In occasional cases, when the breach is less serious or relatively minor, it will be no more than a duty to discuss important decisions that will be taken with respect to lands held pursuant to Aboriginal title. Of course, *even in these rare cases when the minimum acceptable standard is consultation, this consultation must be in good faith, and with the intention of substantially addressing the concerns of the Aboriginal peoples whose lands are at issue. In most cases, it will be significantly deeper than mere consultation*. Some cases may even require the full consent of an Aboriginal nation, particularly when provinces enact hunting and fishing regulations in relation to aboriginal lands. [emphasis added][51]

---

[49] *R. v. Sparrow,* [1990] 3 C.N.L.R. 160, at 187.

[50] *R.* v. *Marshall* (1999), 177 D.L.R. (4th) 513; motion for re-hearing dismissed 179 D.L.R. (4th) 193 at para. 43.

[51] *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 at para. 168.

There are some areas in which the government is not required to consult. A referendum, for example, may be one. In *Native Women's Association*, the Court considered consultation in terms of "freedom of expression" stating that although

> ... a referendum is undoubtedly a platform for expression, *s. 2(b) of the Charter does not impose upon a government, whether provincial or federal, any positive obligation to consult its citizens through the particular mechanism of a referendum*. Nor does it confer upon all its citizens the right to express their opinions in a referendum. A government is under no constitutional obligation to extend this platform of expression to anyone, let alone to everyone. A referendum as a platform of expression is, in my view, a matter of legislative policy and not of constitutional law.[52]

The Court added, however, that

> While s. 2(b) of the *Charter* does not include the right to any particular means of expression, where a government chooses to provide one, it must do so in a fashion that is consistent with the Constitution. The traditional rules of *Charter* scrutiny continue to apply. Thus, while the government may extend such a benefit to a limited number of persons, it may not do so in a discriminatory fashion, and particularly not on a ground prohibited under s. 15 of the Charter.[53]

By analogy, then, it would seem that whatever mechanism is used for consultation, it must at least comply with *Charter* provisions. There are additional requirements, as well. Where Aboriginal peoples are concerned, these include "good faith." In *Nunavik Inuit* v. *Canada*, the Federal Court held that:

> *The fiduciary relationship between the Crown and Aboriginal peoples may be satisfied by the involvement of Aboriginal peoples in decisions taken with respect to their lands. There is always a duty of consultation*. Whether the Aboriginal group has been consulted is relevant to determining whether the infringement of Aboriginal rights is justified. The nature and scope of the duty will vary with the circumstances. Even where the minimum acceptable standard is consultation, *this consultation must be in good faith and with the intention of substantially addressing the concerns of the Aboriginal peoples whose rights and lands are at issue*. [emphasis added][54]

---

[52] *Native Women's Association v. Canada*, [1994] 3 S.C.R. 6 at para 31.

[53] *Ibid.*

[54] *Nunavik Inuit* v. *Canada*, [1998] 4 C.N.L.R. 85 at 98.

Where policies affecting Aboriginal rights such as fishing are developed for example, the Courts have said that the federal government must "fully inform itself" of both the fishing practices of Aboriginal groups and their views of the measures to be taken before acting. As well, the government is required to provide full information on the conservation measures and their effect on the Indians and other user groups.[55] In *Halfway River First Nation* v. *British Columbia (Minister of Forests*), the British Columbia Supreme Court ruled that the duty to undertake reasonable consultation means providing full information as to proposed actions and their potential impacts:

> The Ministry of Forests submits that the duty to consult does not arise until the Aboriginal group has established a *prima facie* infringement, citing *Sparrow*, where consultation is not considered until the second stage of the infringement test. In my view, this approach is inconsistent with the cases referred to and is inappropriate given the relationship between the Crown and Native people. Based on *Noel, Jack* and *Delgamuukw* cases, the Crown has an obligation to undertake reasonable consultation with a First Nation which may be affected by its decision. In order for the Crown to consult reasonably, *it must fully inform itself of the practices and of the views of the First Nation affected. In so doing, it must ensure that the group affected is provided with full information with respect to the proposed legislation or decision and its potential impact on Aboriginal rights*. [emphasis added] [56]

It seems then that all levels of government have an obligation to consult before developing any policy interpreting or applying treaty or Aboriginal rights. In *R*. v. *Noel*, the Court stated these must be meaningful and reasonable:

> Consultation must require the government to carry out meaningful and reasonable discussions with the representatives of the Aboriginal people involved. *The fact that the time frame for action was short does not justify the government to push forward with the proposed regulation without prior consultation.* [emphasis added][57]

---

[55] *R*. v. *Jack*, [1996] 2 C.N.L.R. 113 at 133 (B.C.C.A.).

[56] *Halfway River First Nation* v. *British Columbia (Minister of Forests)*, [1997] 4 C.N.L.R. 45 (B.C.S.C.) at 71, upheld by the British Columbia Court of Appeal, but with different reasons.

[57] *R.* v. *Noel,* [1995] 4 C.N.L.R. 78 (Y.T.T.C.) at pp. 94-95.

CONCLUSION

There are certain legal conclusions that can be drawn from the cases reviewed. To summarize these, it seems clear that at least in Ontario, the provincial government may not simply deny the existence of Métis rights when delivering programs and services to Aboriginal peoples. As well, quite apart from section 35 rights, section 15 of the *Charter of Rights and Freedoms* can be used to challenge legislation, policies and programs which differentiate among categories of Aboriginal peoples, including Métis people, and will almost certainly apply where Métis people have been denied access to programs altogether. Only those statutes, policies and programs which can establish an ameliorative purpose will be able to withstand such a challenge.

.

Second, it seems fairly clear that the Supreme Court's intent was that section 15 be applied more broadly than in the past. Comments made in *Lovelace*, for example, indicate that the Court considers non-Band Aboriginal communities to be historically disadvantaged and, therefore, will likely be willing to extend the analogous grounds in section 15 to include *Indian Act* status and not merely residence. The fact that the Métis are historically disadvantaged has been the subject of express comment in *Powley*.

Third, the Supreme Court has repeatedly recognized the importance of cultural identity and its retention to Aboriginal peoples.

Overall, the purpose of section 15 is to prevent the imposition of differential treatment against groups subject to stereotyping, historical disadvantage and political and social prejudice in Canadian society, a group the Court has made clear includes Aboriginal peoples in general, and Métis, non-status and off-reserve Band members in particular. As a result, legislation, policies or programs which draw arbitrary distinctions between other categories of Aboriginal peoples, such as Métis or non-status Indians, and particularly those which have cultural impacts, will be subject to judicial scrutiny and will require justification.

This will be of particular importance to organizations such as the Manitoba Métis Federation

(MMF) which has defined its main five priorities as including the retention of its culture, language and history as well as securing appropriate and adequate assistance to deal with social problems and concerns of the Métis communities in Manitoba. Differential treatment in these areas is obvious. For example, the MMF points out that the federal government has been providing health services to First Nations and Inuit for many decades and is now transferring responsibility for these services to individual First Nations and Inuit communities. However, it has not done so with respect to the Métis, and as the MMF suggests, "Métis have the same health problems and issues as other Aboriginal peoples but unlike Indians and Inuit, they do not have any capacity to deal with these problems and issues."[58] Not surprisingly, the Métis desire the same opportunity to provide needed and culturally sensitive health care and preventative services like those delivered by First Nations and Inuit organizations through federal funding.

Any differential treatment of the Métis vis a vis other Aboriginal peoples in the delivery or devolution of such programs may be caught by section 15 of the *Charter.* However, as the Supreme Court of Canada also put it, legislation need not always correspond perfectly with social reality in order to comply with s. 15(1) of the *Charter*. In setting out the approach to be used in determining whether legislation or government programs are contrary to section 15, the Court has found that legislation which accords with the purpose of s. 15(1) of the *Charter* by ameliorating the circumstances of disadvantaged groups will likely not be found to discriminate.

It is noteworthy that at a First Minister's Meeting held in Ottawa in September 2000, the First Ministers committed themselves to work in collaboration with Aboriginal peoples, their organizations and their governments, to improve their health and well-being. While these political commitments may not be enforceable per se, any policies or laws which implement them will require that the needs of Métis people be taken into account, and that meaningful consultation precede their implementation. Programs such as the National Child Benefit, which respond specifically to the needs of Aboriginal children and families who live on reserves and

[58]Manitoba Métis Federation, Paper on Governance, p. 13, "Health and Wellness".

are designed to address the "unique and diverse needs of their communities"[59] do not take into consideration the needs of off-reserve members or the Métis. Residency requirements also exist in relation to Métis services in the areas of employment, labour market training, housing and others. These kinds of differential programs may be harder to defend in the future in light of SUFA and the evolving jurisprudence under the Charter.

Similarly, the mobility provisions of SUFA will require that a number of programs and services delivered by provinces will need to be reconsidered with regard to Aboriginal peoples who move off-reserve. British Columbia, for example, has already signified its intention to consider this issue and is removing the residency study requirement for bursaries under the First Citizens Fund, allowing Aboriginal students who study at post-secondary institutions outside of British Columbia to receive bursaries. [60] Manitoba has also indicated that it will continue to consider the impact of the mobility provisions of SUFA on Aboriginal peoples that move off the reserve. [61]As the distinction between on and off-reserve Aboriginal peoples becomes of less significance in their qualification for programs and services, it may be harder for the Crown to justify the exclusion of Métis from similar programs. The mobility area is one in which the Federal, Provincial and Territorial Ministers have agreed that national Aboriginal organizations (including the MNC) need to be involved.[62]

A final critical message from this review of the case law is the willingness of Canadian courts to find the presence of a duty to consult upon the federal and provincial governments, at least when

---

[59]National Child Benefit Progress Report: 2000, p. 79.

[60]British Columbia, *Annual Report to the Ministerial Council on Social Policy Framework on Residency-Based Mobility Barriers*, February 2000.

[61]Government of Manitoba, *Report to the F/P/T Council on Social Policy Renewal on the Elimination of Residency-Based Policies and Practices in Social Programs*, 3 April 2000.

[62] Government of Nova Scotia, *Mobility Report*, 14 March 2000, p. 4.

s. 35 rights may be affected. The courts are also rapidly developing their thinking regarding how to craft remedies that would be suitable where the Crown has breached its duty to consult entirely, or has pursued it in a half-hearted and ineffective manner. As a result, it appears that we are moving from the time when consulting with First Nations, and occasionally with the Métis, was simply a matter of good policy development and smart politics into the era in which federal and provincial governments are legally obligated to consult. The key questions now turn not on if consultations must occur, but rather how much is the minimum required by law? how early must consultations begin? how extensive is the information that must be shared? and whether financial and other resources must be provided so that the affected Aboriginal group is in a position to respond meaningfully?

In terms of the issue of appropriateness of consultation, a policy paper offering guidance to public servants in implementing the Social Union Framework Agreement notes that "Federal departments and agencies should ensure that an offer to consult is provided to provincial/territorial governments *prior* to implementing a new social policy or program [and] provided early enough that the suggestions of affected governments can be duly considered and integrated as appropriate."[63] In light of the specific, express commitment in SUFA to be working *with* Aboriginal people, and given the federal and provincial Crown's overall duty to consult with Aboriginal peoples as part of fiduciary responsibilities, there is no reason to think that any lesser standard of consultation would apply to Aboriginal peoples, including the Métis, than applies to provinces and territorial governments. In fact, it is arguable that the obligation upon federal and provincial governments to consult with each other prior to embarking on major initiatives that might affect the other level of government is merely a political duty generated by wise governance; whereas the obligations on both orders of government to consult with the representatives of the Aboriginal peoples of Canada is legally enforceable and is now constitutionally endorsed through section 35.

[63] Working in Partnership for Canadians, Implementing the Social Union Framework Agreement, p. 19.

It can even be asserted that SUFA reflects this understanding and expands upon a duty to consult through the explicit language declaring that "Governments will work with the Aboriginal peoples of Canada to find practical solutions to address their pressing needs" in Article 4. This phrasing suggests that the government partners must do more than consult about what they are thinking of doing on their own, and instead they should be promising to work collaboratively to identify solutions. This conclusion suggests that SUFA Ministers must be more vigorous in fulfilling the commitments made in the Agreement itself as well as by them directly to the national Aboriginal leadership in December of 1999.

Part IV - What's Working Well with SUFA? The Experience of Engaging the Métis

SUFA is an agreement which applies specifically to social policies and programs. Certain sections of the Agreement make commitments relating to health and health care, social services and social assistance, post-secondary education, training, labour market development and Aboriginal peoples specifically. As a result, SUFA bears specific relevance for the federal departments of Human Resources Development, Health, and Indian and Northern Affairs, as well as Justice, Industry, the Solicitor-General, Canadian Heritage and others.

At a Premiers Conference in 2000, the provincial Premiers called on the federal government to recognize its treaty, fiduciary and constitutional responsibilities for the health, education and well-being of Aboriginal Canadians and to work with the provinces, territories and Aboriginal peoples on more effective delivery and financing of health, education and social services for Aboriginal peoples. As well, the Premiers stressed the importance of continuing Aboriginal involvement to ensure that the needs of Aboriginal children are a priority during the National Children's Agenda. They further encouraged cooperation between governments and Aboriginal peoples to address the education, skills development and labour market needs of Aboriginal peoples.

The federal government's SUFA commitments were reinforced by the January 2001 Speech from the Throne which made a number of commitments to Aboriginal peoples. These included commitments that basic needs be met for jobs, health, education, housing and infrastructure; that early childhood development programs be improved and expanded; that the Head Start program be expanded; that the number of Aboriginal children affected by fetal alcohol syndrome be reduced as well as the incidence of preventable diabetes and tuberculosis, that the percentage of Aboriginal people entering the criminal justice system be significantly reduced and that the federal government take steps to help strengthen Aboriginal entrepreneurial and business expertise, governance and accountability.

Many of the commitments outlined within SUFA will extensively affect Métis people in significant ways, and will overlap with programs and services currently provided by the Métis National Council and its governing members with the assistance of federal and provincial governments. Under the umbrella of the social development sector, the Métis National Council (MNC) addresses a variety of areas including Métis child and family services, literacy and education, disabilities, the Aboriginal Peoples Survey, justice and corrections, human resource development and Métis veterans. Many of these sectors have been starved for funds. They are reviewed within Part V as areas of special importance to the Métis but in which involvement has not been enhanced by SUFA.

All of the initiatives developed in these areas by the MNC and its governing members will be discussed in this Part or the next in order to allow the reader to obtain an overview of the priority areas of the MNC and its governing members in which they have been able to deliver efficient appropriate services despite ongoing funding concerns. Those initiatives and commitments announced by governments that impact on these areas will also be outlined. As was noted by one author, however, "the SUFA process includes literally dozens of working groups, tables and ministerial committees. It is even difficult for the smaller provinces to participate effectively across the whole range of SUFA and for the much larger number of much smaller First Nation governments, the task is all but impossible. For those segments of the Aboriginal population such as the Métis who do not have functional governments, the intergovernmental maze of
SUFA is impossible to navigate."[64] This "fundamental structural dilemma" has precluded effective participation by the Métis in the SUFA process, and has thereby limited the progress made to date.[65]

---

[64]Roger Gibbins, "Shifting Sands: Exploring the Political Foundations of SUFA," *Policy Matters,* vol. 2, (Institute for Research and Public Policy, 2000) at 15.

[65]*Ibid*.

1. Children and Family Services

At a First Minister's meeting held in September, 2000, the Ministers (with the exception of Quebec) agreed that families and communities should be supported in their efforts to ensure the best possible future for their children. In particular, they committed that governments would work with the Aboriginal peoples of Canada to find practical solutions to address the developmental needs of Aboriginal children.[66]

Children and family services fall mainly within the provincial jurisdiction, but delivery of these programs is beginning to shift to Métis controlled delivery systems. All governing member organizations of the MNC are involved with their respective provinces in administering family and children service agreements/accords. The Manitoba Métis Federation (MMF) has stated, for example, that one of its priorities is to help the Métis family adjust to the modern world in a way that will preserve the role of the family as the guardian of Métis traditions and rights.

As a result of an historic Memorandum of Understanding called the Child Welfare Initiative that was signed in February of 2000, the Manitoba government has undertaken to transfer responsibility for child welfare and family services to the Manitoba Métis Federation.

The Métis Child and Family Support Services is an MMF Department that delivers its programs through regional offices. During 2000-2001, it handled 16 cases of reunification; 49 foster care/adoption referrals and 300 family counselling cases and referrals. In addition, the Department completed the initial field testing of the Neah Kee Papa parenting program, organized a Family Group Conference in The Pas, negotiated a Foster Care agreement with the Province of Manitoba to increase the number of foster homes in the Thompson region and continued close collaboration with the province's Healthy Manitoba child and youth initiatives in Winnipeg. MMF devoted $861,000 for child and family services, including spending on the

[66]News Release, First Minister's Meeting, Ottawa, September 11, 2000.

Child Welfare Initiatives negotiations. Contributions to the child and family sector will likely increase substantially in coming years as the transfer from the province of programs concerning Métis children is implemented.

The Métis Nation of Alberta (MNA) uses the Métis Child and Family Services Society as its service institution as it possesses a client base that is 53 per cent Métis and 46 per cent First Nations with an operating budget of just over $1 million. The Society is certified and accredited to provide in home services and foster care programs for all children and families in Alberta. As well, the MNA offers a Family Service Program which provides advocacy, counselling and services to supporting service agencies. This program has offered practical support to over one hundred families. The Family Intervention Program provides support services to families who have experienced child welfare interventions. It focuses on keeping families together and provides training in child management techniques, parenting skills, life skills and other counselling. Support services were provided to 128 families in 2000. Other programs include the Youth Stay in School Program and a Youth Support Program.

The Métis Provincial Council of British Columbia (MPCBC) formed La Society des Enfants Michif (Métis Family Services - MFS) in 1992 with the sole purpose of administering Métis child and family care. The MFS works closely with the British Columbia Minister for Children and Families and other public and private social service agencies to address the needs of Métis children and families. Its services including holistic counselling for families and children in crisis, recruiting and managing culturally appropriate foster and adoptive homes, assisting the Ministry for Children and Families in identifying Métis children in care and providing other support services to foster parents and children in care. MFS is the first Métis agency in British Columbia to accept responsibility for child and family services under authority delegated by the provincial Director of Child Protection.

On March 22, 2001, the MPCBC signed a five year MOU with the Minister of Child and Family Services, the United Native Nations, the First Nations Summit and the Aboriginal Child and

Family Directors Association, intended to establish a dialogue process on issues related to the safety and well-being of Aboriginal children and families.

2. Youth

One of the more important recent federal endeavours that reflects the spirit of SUFA, although does not flow from it directly, has been through the development of the Urban Multi-purpose Aboriginal Youth Centre Initiative (UMAYCI) on a national basis. The MNC has contracted with the Government of Canada to co-ordinate this program for the Métis Nation with its member provincial associations serving as the delivery agents. For example, the MMF is involved in an UMAYCI program in Manitoba while also being a party to a contribution agreement with the federal government that direct funds towards the Youth-at-Risk component of the MHRDA. These two funding streams have been amalgamated, for MMF internal purposes, into the MMF Youth Department. This Youth Department provides funding to MMF regions to enable them to implement programs addressing youth personal development, employment, education, community development and Métis culture. Approximately $1.3 million of the MMF's operating revenues were spent on youth initiatives.

In British Columbia, the MNC delivers the UMAYCI on an interim basis on behalf of the Métis Provincial Council of British Columbia.

The Métis Nation - Saskatchewan (MNS) provides social, economic and cultural support to Métis people in Saskatchewan through its affiliated structures and institutions. The MNS delivers the Urban Multipurpose Aboriginal Youth Centres Initiative under agreement with the Department of Canadian Heritage. The MNS Youth Committee guides the initiative and recommends projects to the MNS for approval. Key priorities are education, employment, health, culture, spirituality, justice and communications. In all communities, areas of concentration include tutoring, career development, constructive peer association, youth diversion and community recreational activities.

3. Labour Market Training

The area of labour market training has been perhaps the most significant example of the principles of SUFA being applied within an area absolutely vital to the Métis people that has nevertheless been undergoing fairly major overhaul in recent years. As such, we will return to this topic in the next Part for its value in contrasting the success within this sphere with the utter failure in the transfer of social housing. Since it has largely been a successful endeavour in engaging the Métis, it is important to describe what has transpired over the last few years here.

The administration and delivery of labour market training programs of the Aboriginal Human Resources Development Strategy (AHRDS) have been devolved to Aboriginal control. The MNC signed a five year National Métis Accord on Human Resources Development to support the national implementation of the AHRDS. A MHRDA Working Group guides the implementation of this Accord. AHRDS agreements have been signed with a variety of groups, including the MNC and its governing members.

The National Métis Accord focuses on providing support for capacity-building, enhancing and developing the MNC's ability to provide technical support and play a coordinating role with the Métis Human Resources Development Agreement holders. In collaboration with those holders, among other things, the MNC enhances accountable governance within its ranks, improves the employment and employability skills of Métis, enhances Métis participation in the labour market, fosters public and private sector partnerships related to training, and helps build the capacity of Métis human resource providers to design, deliver and evaluate human resource development programs and services.

The Accord also supports the MNC participating in national policy and procedural issues, such as the national forum with HRDC and representatives of other national Aboriginal organizations. The total budget provided to the Métis Nation under the Strategy in 2000 was $ 42 million. The delivery of labour market training has been a major initiative of the MNC and

its governing members. More than 3,500 jobs have been created, and savings generated by Métis delivery systems are estimated at $ 2.74 million.

The MNC is also involved in creating a Métis National Council Apprenticeship Training Program mandated to develop a strategy to create apprenticeship opportunities for Métis and to develop a data base of Métis people registered in trades training who have an interest in apprenticeship opportunities. This initiative is in its early stages and has obtained the support of the Aboriginal Affairs Secretariat of the Privy Council Office .

The MMF is party to an MMF/Canada/Manitoba Tripartite process as well as to the MNC's Bilateral Process with the federal government. Its primary source of funds for programs, services and institutions, is grants and contributions from the federal and Manitoba governments. In 2000-2001, the MMF received $ 13.3 million in the form of grants and contributions. Of the MMF's 2000-2001 operating budget, $ 9,027,242 was spent on training, representing 46.1% of its overall budget. About one-third of its funds was designated for provincial initiatives and the remainder for local projects. Allocation decisions are the responsibility of the Human Resources Development Committee. Local Management Boards have also been established in each MMF region to make allocation decisions with respect to local projects.

The MMF has a Human Resources Development and Training (HRDT) Department which administers training programs to Métis, Non-Status Indians and Inuit living off-reserve in Manitoba. Classroom instruction and on the job-training is generally provided by a third party service provider under contractual arrangements with the MMF. HRDT can also fund projects that serve to overcome obstacles to employment or that will lead to employment over the short to medium term. Local Management Boards operate under the supervision and direction of the Provincial Management Board, which reports to the Human Resources Development Committee. The HRDT provides staff and administrative support to both the HRD Committee and the LMB/PMB structure.

Results of the program for 2000-2001 show that the HRDT has surpassed targets for the number of Métis people who complete training, and served three times as many people as was expected. However, only 20% of Métis who completed training in 2000-2001 were able to find employment.

Métis Governing Members have been in the forefront of providing training programs and services to enhance the participation of Métis people in labour market activities. Each association has entered into bilateral five year agreements with HRDC and the Aboriginal Human Resources Development Strategy to undertake the delivery of these services in their respective provinces. Services provided include: career counselling, employment preparation, resume writing, job referrals and posting, and access to financial support for eligible clients. Additional funds have been supplied by HRDC to deal with the increasing demand for training in urban centres.

MMF is also involved in initiatives to accelerate the employment of Métis people. It has established a licenced employment agency (Provincial Recruitment Initiatives) as a Métis-specific agency. As well, under an agreement with the Winnipeg Regional Health Authority, the PRI arranged for the training of Métis Health Care Aides, all of whom found employment with the regional health authority. The MMF's administrative cost for the delivery of human resource development programs was only 15% for Employment Insurance and 17% on the CRF component of the program. The MMF is processing over 3,000 training spaces per year, many more than HRDC was able to achieve with much higher administrative costs.

The Métis Nation-Alberta (MNA) assumed responsibility for labour market training from HRDC in 1996, and has entered into a five year AHRDA agreement which will expire in 2003. For 2000-2001, the AHRDA operating budget was over $11 million. In a recent comparison study, the MNA's delivery systems were shown to be among the top five in success of delivery agents under contract with HRDC. The MNA has implemented the AHRDA through its Labour Market

Development (LMD) Unit. As of March, 1998, 72% of the MNA-LMD clients were participating in the labour force. Overall, in 1999-2000, the MNA Employment Assistance Centres offered services to 5,924 clients, of whom 2,304 were Métis. In 1998, the MNA was one of six participants under a national Case Study survey conducted by HRDC as part of the national evaluation of the program. The MNA was identified as having a number of "best practices" indicating its financial accountability.

The Métis Provincial Council of British Columbia (MPCBC) is also involved in Labour Market programming. In July of 2000 the MPCBC signed a five year agreement with HRDC to deliver human resources development programs tailored to meet the needs of Métis people. Métis youth are considered one of the priority target groups of this Agreement. As well, special efforts are taken to ensure access of Métis persons with disabilities to obtain, maintain or retain employment.

4. Federal-Provincial Government Relations

Tripartite Self-Government Negotiations (TSN) have been underway between Canada, Manitoba and the MMF since 1986. In 1998, the Government released its *Gathering Strength* policy which contained very little on Métis rights. Accordingly, the federal government through the Office of the Interlocutor for Métis and Non-Status Indians agreed to develop a Métis Nation Agenda with the MNC that could form the basis for subsequent negotiation of Métis rights. The MMF receives approximately $400,000 annually shared 50/50 by the province and federal government to participate in the TSN process. The MMF continues to hope to be able to enter into serious negotiations concerning hunting and fishing rights and to address outstanding claims.

In May of 2001, the Aboriginal Affairs Ministers for the provinces and territories met with the five national Aboriginal Leaders and endorsed a federal-provincial-Aboriginal Working Group report's recommendations to strengthen Aboriginal participation in the economy. These

recommendations include promoting connectivity, engaging the private sector, developing partnerships, continuing to share information and best practices and ensuring a special focus on youth and women.

As discussed, some of the MNC's governing members, such as the MNS, are currently involved in the direct delivery of some federal programs including the Labour Market Training program on behalf of HRDC, the Urban Multipurpose Youth Centre Initiative and the Aboriginal Languages Initiative, on behalf of Canadian Heritage, and the RRAP, Emergency Repair and Home Adaptation for Seniors programs of CMHC.

The British Columbia, Ontario, Manitoba and Saskatchewan governments have taken the position that Métis are a federal responsibility under section 91(24) of the *Constitution Act, 1867* while the federal government takes the position that they are a provincial responsibility. This has meant that only the Government of Alberta has been willing to see the Métis as being within the shared jurisdiction of both levels of government while the other provinces have been unwilling to take a leadership role. That position appears to have softened somewhat in Saskatchewan with the passage of the *Métis Act* last year and its recent proclamation in force. The province currently provides 40% of the programs revenues received by MNS. Under the new *Métis Act* that provincial government has signalled its readiness to engage in more formal bilateral negotiations with the MNS. It remains to be seen how this recent initiative will unfold.

In Alberta, the MNA operates under two process agreements. The first is the Tripartite Process Agreement between Canada, Alberta and the MNA, established in 1992. The second is the Framework Agreement between the MNA and Alberta, renewed in 1999. The general objectives of these two agreements are to allow the MNA some level of access to federal and provincial programs in terms of devolution, delegated authority or contractual arrangements. As well, they provide the MNA with input into government policies and decisions affecting Métis people. As partners to these agreements, the government signatories are required to provide an advocacy role in terms of interdepartmental coordination.

In 2000-2001, under these agreements, the MNA Tripartite Unit facilitated the development of a Métis-specific homeless strategy. An MNA Enumeration Task Force worked cooperatively with Government enumeration officials in conducting the Aboriginal Peoples Survey. A Métis Education Foundation was established to provide post-secondary Métis students with grants, bursaries, scholarships and loans. Rural economic needs were considered and incorporated into a Strategic Economic Development Plan as part of a Rural Strategy Initiative. Pre-employment training for Aboriginal Correctional Officers was explored and a final report was forwarded to Corrections Canada outlining an approach which would serve the needs of Métis and other Aboriginal offenders. Funding was provided through Canadian Heritage to facilitate support for the Michif language at community levels. Funding was also received from Health Canada to develop a Diabetes Program as well as to develop a program to deal with the tragic incidences of Fetal Alcohol Syndrome and to conduct workshops on HIV/AIDS in the six provincial zones.

Under its Bilateral Process Agreement, the MNA has assisted the Education Department to conduct a review of Aboriginal education policies, legislation and regulations. A contract signed in August of 1999 permits Alberta Learning to call on the Métis Nation on an ongoing basis in matters dealing with Métis education such as curriculum review, policy development and working/advisory committees. Key recommendations include the establishment of the Métis Institute of Learning, a Métis Education Fund, an Aboriginal Teachers Training Program, and the increased and continuing involvement of Métis people in the development of education policy in Alberta.

Another sector of the Agreement involves Community Development and Housing. This bilateral sector works in tandem with the Department of Municipal Affairs and Housing under the Tripartite Process Agreement involving Canada. Addressing the needs of Métis people to have adequate and affordable housing is one of the priorities of this sector, while preserving and protecting Métis historical and cultural resources is another. The Agricultural Food and Rural

Development Sector has been added to the Bilateral Framework Agreement to address the needs of Métis farmers and ranchers. A current work plan is under negotiation.

Overall, the MNA operated in 2000-2001 with $ 15,652,845 in funding of which 82% was provided by the federal government and 18% came from the Alberta government. The Métis Provincial Council of British Columbia (MPCBC) had total revenues in 2000-2001 of $7,024,688, almost 99% of which comes from the federal government. The difference in funding levels between the two accounts for much of the difference in their ability to fund programs.

The Métis Nation of Ontario does not have a tripartite self-government agreement with the federal and provincial governments as the province of Ontario has not responded favourably to requests from the MNO to negotiate such an agreement. Currently, the MNO receives 32% of its funding from the province with the federal government providing the remaining 68%. Some funding is provided by the Privy Council Office, Aboriginal Affairs Secretariat, to assist the MNO in its rights agenda.

Conclusion

The Métis Nation, through the MNC and its provincial affiliates, have managed to succeed to a surprising degree in delivering vital programs and services, as well as providing political representation, to the Métis people of Canada despite often very meagre financial resources to do so and with limited revenue derived from their own sources, along with a strong level of voluntarism. All of the foregoing initiatives commenced prior to SUFA but they have all to varying degrees been affected in recent years by the existence of this intergovernmental agreement. In the next Part we will examine areas of human endeavour that are also important to the MNC and its constituents but for which the absence of funding, both before and since SUFA, have left extremely limited opportunity to have the level of success desired and desperately needed by the Métis Nation.

Part V - Areas of High Interest but Limited Involvement

There are a number of fields that are vital to the future well-being of the Métis Nation but in which financial resources have not been made available to the degree warranted in order to generate a significant impact and advancement. These spheres will be briefly examined.

1. Literacy and Education

Education and adult literacy are also important areas of interest for the Métis. Most of the governing members of the MNC have established Education and Scholarship Foundations to support access to higher education by Métis citizens. Education is primarily an area of provincial responsibility. Initiatives to encourage Métis to pursue full time education in academic studies in commerce and business are provided by the Gabriel Dumont Scholarship Foundation under the Napoleon Lafontaine Development Scholarship.

Recently, discussions have taken place with the National Literacy Secretariat of HRDC to seek its commitment to address the recommendations made at a forum on literacy hosted by the MNC and the Gabriel Dumont Institute. These recommendations include convening a national forum to discuss literacy issues; developing a literacy campaign for Métis individuals and communities headed by a national literacy coalition of Métis representatives; federal legislation defining the parameters of federal funding of educational programs for the Métis; undertaking a needs assessment of the Métis; undertaking research to establish criteria for literacy, and establishing a national Métis literary council. The response from HRDC officials to date has been positive.

Of the Manitoba Métis Federation's operating budget in 2000-2001, approximately $ 216,500 was spent on education, representing 1.4% of its overall budget. The MMF received no funding, however, for early childhood education. It hopes, in the future, to engage the federal and provincial governments in discussions over the means by which Métis history and culture can be promoted, including language revitalization and education and cultural transmission.

The Métis Nation of Ontario has a $ 2.2 million trust endowment for scholarships and bursaries for Métis post-secondary students in partnership with Ontario's Ministry of Education and Training.

In Alberta, the Métis Nation of Alberta (MNA) has established the Métis Education Foundation which provides Métis post-secondary students with a supplementary source of income for post-secondary education.

2. Language and Heritage

In Saskatchewan, the MNS administers the Aboriginal Languages Initiative under an agreement with the Department of Canadian Heritage, and has focussed on two initiatives: banking the language through audio and video interviews of speakers and to develop curriculum and teaching aids. Representatives of MNS are hoping to meet with Saskatchewan Department of Education officials to seek provincial support to increase the use of the Michif language.

As well, the Aboriginal Languages Initiative (ALI) is administered in Alberta by MNA and is delivered locally through several venues. For 2000/2001, the MNA received $ 120,000 to support ALI activities, including the Calgary "Medicine Wheel" Child Care Centre, in which Michif is a component of early childhood development, a home reading program and funding for the Métis Settlements to develop an inventory of Michif language speakers. Funding is provided by Canadian Heritage to facilitate support for the Michif language and its preservation, protection and teaching projects at the community level.

The MNO also receives funds to support the maintenance of the Michif language in Ontario through the Aboriginal Languages Initiative. Under a contribution agreement with the MNC, the MPCBC implemented a central language project to provide funding support to a number of community-based language projects in the province. The annual budget for 2001-2002 is

$53,500.

3. Disabilities

The provincial governments have made disability issues a priority in the pursuit of social policy renewal.[67] Approximately 30 per cent of Aboriginal peoples report having a disability, which is twice the national average.[68] Among those aged 15-34, the disability rate is three times the national average.[69]In particular, off-reserve Aboriginal peoples face significant jurisdictional barriers in accessing current services. In response, the Federal/Provincial Territorial Council on Social Policy Renewal has created the Aboriginal Technical Committee on Social Policy to ensure an Aboriginal perspective is present in the establishment of objectives and principles for children and persons with disabilities. The work of an Aboriginal Round Table on Disability Issues has led to the creation of an on-going Aboriginal Reference Group on Aboriginal Disability Issues. [70]

The MNC is dedicated to the inclusion of persons with disabilities in all matters within the Métis Nation. An Office of Métis Abilities has been established to provide opportunities to persons with disabilities in areas which impact upon their lives and to ensure that programs are accessible and meet their special needs. A Métis National Council Reference Group on Abilities has been established to guide the work of this Office, and also to participate in the implementation of HRDC's Federal Disability Strategy. The Aboriginal Human Resources Strategy also provides special initiatives to support access of persons with disabilities to labour market services.

---

[67]In *Unison: A Canadian Approach to Disability Issues*, http://socialunion.gc.ca /pwd/unison/ preamble_e.html.

[68]*Ibid*.

[69]*Ibid*., Appendix C, Profile of Aboriginal Canadians with Disabilities.

[70]*Ibid*.

The Office of Métis Abilities made its first priority addressing the healing issues of residential school abuse. With the support of the Aboriginal Healing Foundation, it conducted consultations with Métis residential school survivors. A draft report on those consultations has been tabled with the MNC Board of Governors. The MNS, MNA and MMF have all recived financial assistance through the Healing Foundation to engage in province-wide efforts to address the impacts of the residential school experience on former Métis students and their families.

A Federal/Provincial/Territorial working group includes Métis representation. It has conducted community consultations with Inuit, First Nations, non-status Indians, Métis and Native women to document the views of Aboriginal peoples on the topic of disability, integrate their perspectives into the Federal Disabilities Agenda and prepare for a meeting that was held in September of 2001.

Of the various MNC governing bodies, the Métis Nation of Ontario has been particularly active in delivering a Métis Disabilities Support Program to assist persons with disabilities to secure and complete training and secure employment.

4. Aboriginal Peoples Survey

Statistics Canada established a working group to provide guidance in the implementation of the second Aboriginal Peoples Survey (APS). The working group, which includes representation from the MNC and each of its government members, has developed and tested a Métis questionnaire. Statistics Canada will include, for the first time, Michif in its mother tongue selection in the postal census Aboriginal Peoples Survey. Field operations for the APS began last October and a second sampling will be conducted in the spring of 2002. The APS working group will continue to guide the conduct of the survey, including promoting employment opportunities for Métis in the completion of the census. A Memorandum of Understanding between Statistics Canada and the MNC is currently under review.

5. Justice and Crime Prevention

The MNC maintains regular communication with the Department of Justice as well as Corrections Canada within the Department of the Solicitor-General of Canada. A Justice/Corrections Working Group has been established, tasked with building a new relationship between Justice Canada and the Métis. It will serve as a conduit for regional and local input in policy matters and assist in developing and promoting best practices in community justice and correctional initiatives. This cooperation resulted in the convening of a Métis Justice Round Table in Ottawa in mid-summer of 2001 and production of a discussion paper entitled, "Towards a New Partnership," which has been submitted to the Minister of Justice.

A multi-year agreement between the MNC and Corrections Canada supports the efforts of the MNC to develop mechanisms and work plans to obtain the views of the Métis Nation with respect to plans to consider alternative forms of sentencing, youth diversion and improved rehabilitation efforts to reduce the proportion of Métis offenders in correctional institutions. Other issues under discussion include HIV/Aids strategies, Métis cultural curriculum for use in federal correctional institutions, hiring and retention of Métis personnel and Métis access to community based services.

The MNC is also working closely with all sectors of the Justice Department in the recruitment of Métis for employment in the public service.

The Governing Members of the MNC have had a longstanding interest in justice issues going back at least to their participation in the National Conference and Native Peoples in the Criminal Justice System in Edmonton in February of 1975 involving all federal, territorial and provincial governments and ministers involved in this topic. The provincial affiliates were often integral partners in the creation of Native court worker programs in Western Canada. Direct governmental funding for involvement in justice issues has, however, always been sparse. For

example, of the MMF's operating budget in 2000-2001, approximately $ 80,000 was spent on justice issues, representing .4% of its overall budget. However, the MMF received no funding for crime prevention programs.

The Métis Family Community Justice Services of Saskatchewan Inc. has a provincial mandate to design, develop and implement services at the regional level for Métis in Saskatchewan. One program offered is the Aboriginal court worker program, which provides advocacy and information to clients in need.

6. Veterans

The MNC supports the Métis Veterans Association, which is dedicated to addressing issues related to access of service benefits for Métis veterans. A monument recognizing the contribution of Aboriginal veterans was unveiled in Ottawa on June 21, 2001, which is National Aboriginal Day.

7. Health

The MNC has naturally been very concerned about the overall health conditions of Métis people as well as regarding the services for which they have access. It has been part of a Health sub-committee which participates in the review of proposals to be funded under the Métis, Off-Reserve Aboriginal and Urban Inuit Prevention and Promotion Initiative (OAUIPP).

In March of 2000 a national Aboriginal HIV/AIDS Summit was held in Winnipeg as a forum to voice Aboriginal individual and group perspectives on the Canadian Strategy on HIV/AIDS. An Aboriginal Interim Working Group was formed to develop a report on existing collaborative mechanisms and provide recommendations for future activities needed to enhance collaboration between the Canadian Strategy on HIV/AIDS and Aboriginal communities.

In 2000-2001, the MMF received no direct funding from the federal government for health initiatives and has had, as a result, a far too limited presence in the area of health prevention and treatment, although it hopes to remedy this in the next few years. The MMF anticipates that health costs for Métis will soar in the near future because of the high incidence of diseases such as diabetes, arthritis, tuberculosis and AIDS. The MMF hopes to persuade Health Canada to fund Métis-specific programs administered by Métis organizations. Despite limited funding, the MMF put into place a healing strategy for Métis residential survivors as well as a Breast Cancer Support Program.

The MNS and the Government of Saskatchewan established a memorandum of understanding in 1997 to build a direct relationship between the MNS and the province's health care system. The Métis Addictions Council of Saskatchewan Inc. (MACSI) is an affiliate of MNS and is supported by the Saskatchewan Community Health Care Branch to provide alcohol and recovery programs and services to Métis and First Nations citizens and communities. MACSI is also contracted by Corrections Canada's Mandatory Release Program to support reintegration of Métis offenders with their communities, and participates in Corrections Canada's Conditional Release program through its Community Residential Facility in Prince Albert and Regina. Programs are delivered on a fee-for-service basis. A complete needs assessment of the MACSI program and services was completed in 1999 and recommendations of the Spruce River Research study were implemented in 2000.

The Métis Nation of Ontario has a Long Term Health Care program which provides services, information and support for those in need. Long Term Health Care workers supply services in eleven centres in Ontario, serving approximately 1,663 people.

Part VI - SUFA at its Worst

The contents of this chapter are primarily based upon a publication of the National Aboriginal Housing association entitled, *SUFA: Benefit or Betrayal*.[71] This section will focus upon the developments in recent years regarding the fate of social housing in Canada as it relates to the Métis Nation's significant role in the delivery of social housing programs. In order to do so effectively, it is necessary to revisit the situation prior to the adoption of SUFA to help explain the level of anger and frustration over the betrayal of SUFA's principles from a Métis Nation perspective.

The refusal to consult on the transfer of social housing stands in marked contrast with HRDC's inclusive and consultative approach to the labour market training bilateral agreements, and the development of the Aboriginal Human Resources Development Strategy. As part of this latter initiative, HRDC entered into negotiations with off and on-reserve Aboriginal partners, which resulted in a series of Regional Bilateral Agreements (RBA) that transferred responsibility for the design and delivery of labour market programs directly to Aboriginal organizations. In this instance, the federal government followed the principles of SUFA by consulting with Aboriginal peoples. Further, the federal government respected the Inherent Right to Self Government by devolving the administration and delivery of the Aboriginal Labour Market envelope to Aboriginal control.

Was it coincidence that the transfer of these two important jurisdictions were taking place at the same time as the SUFA agreement was being shaped and debated?..... and why did the federal government not approach the transfer of these jurisdictions in a similar fashion, particularly given the environment and mood of the federal/provincial dialogue that led to the signing of SUFA on February 3, 1999?

[71] As indicated, this chapter draws heavily upon a report prepared by the National Aboriginal Housing Association and reflects the views of the MNC rather than the opinions of the authors.

In order to understand the strong views of the MNC on this matter properly, it is essential to begin by examining the principles of consultation and participation articulated in the Charlottetown Accord, the Report of the Royal Commission on Aboriginal Peoples and in SUFA itself.

The Seeds of SUFA

The Charlottetown Accord

The Charlottetown Accord offers both an explanation as to why the federal government decided to transfer its social housing programs to the provinces, as well as a paradox in that the exclusion of Aboriginal people from the transfer process negotiations contradicted everything for which the Accord stood and how it was reached.

During the negotiations leading up to the signing of the Accord in August of 1992, housing, along with other policy sectors such as culture, recreation, mining, forestry, labour market and training, were proposed to be declared to be areas of **exclusive** provincial jurisdiction and expendable by the federal government to bring about federal-provincial harmony in a period of rising Quebec nationalism and constitutional discord. However, the *Accord* did not seek to limit federal involvement, but rather, sought to create a financial compensation formula for those provinces who chose not to participate in cost-shared programs in these so-called exclusive jurisdictions; as long as the province pursued a program or initiative that was compatible with the national objectives.

Under the housing provision it stated:

33. Exclusive provincial jurisdiction over housing should be recognized and clarified through an explicit constitutional amendment and the negotiation of federal-provincial agreements...

It is worthy of interest to note that under the Charlottetown Accord, labour market development and training, like housing, was identified in principle 28 as a matter of "exclusive provincial jurisdiction...and should be accomplished through justifiable intergovernmental agreements designed to meet the circumstances of each province."[72]

Although federal unilateral involvement in housing policy and programs predated the entry of provincial activity in the 1970s other than concerning building standards and zoning matters, the notion that housing was an ***exclusive*** provincial authority had never been given much credence when it came to either federal housing activity, or federal-provincial relations prior to Charlottetown. Undoubtedly, the federal government saw, in the midst of "program review" in the mid-nineties, an opportunity in the failed Accord document to use the latent agreement and rid itself of its transitional social housing responsibilities while responding to provincial demands for effectively expanding their jurisdiction.[73].

The paradox arises when one notes that the Accord also made it clear that changes in section 33 should not alter the federal fiduciary responsibility for Aboriginal people. Furthermore, there was naturally concern that any shifting in jurisdictions to the provinces might negatively impact upon the jurisdictions of Aboriginal governments in the future. The concerns of Aboriginal peoples were to be dealt with through explicit additional mechanisms set out in the Accord as

---

[72] See Charlottetown Accord , III Roles and Responsibilities, Clause 28, Labour Market Development and Training.

[73] Arguments of 'overlap and duplication' and streamlined administration don't hold up under scrutiny. The transfer has led to a hodge-podge of administrative practices across the county. Streamlined administration has not been one of the results of the transfer agreements.

principle 40, entitled the Aboriginal Peoples' Protection Mechanism, in the following terms:

There should be a general non-derogation clause to ensure that division of powers amendments will not affect the rights of the Aboriginal peoples and the jurisdictions and powers of governments of Aboriginal peoples.

This historic Accord also made it clear that a fundamental political and legal commitment had been made by all governmental parties to negotiate in good faith with Aboriginal peoples concerning the exercise of the inherent right of self-government that was also acknowledged by the Accord (principle 41). This objective was reflected through the articulation in section 45 of a commitment to negotiate in the future as follows:

There should be a constitutional commitment by the federal and provincial governments and the Indian, Inuit and Métis people in the various regions and communities of Canada to negotiate in good faith with the objective of concluding agreements elaborating the relationship between Aboriginal governments and the other orders of government. The negotiations would focus on the implementation of the right of self-government including issues of jurisdiction, lands and resources, and economic and fiscal arrangements.

The Charlottetown Accord went much further than simply articulating the fiduciary responsibility of the federal government. It proposed enshrining the inherent right of self-government, so as to (among other things) “safeguard and develop their languages, cultures, economies, identities, institutions and traditions”; and, “so as to determine and control their developments as peoples according to their own values and priorities and ensure the integrity of their societies” (s. 41). Housing, and the ability to determine the quality and characteristics of their physical communities, are critical components in safeguarding Aboriginal peoples’ culture and institutions.

What can Aboriginal people conclude by examining the transfer of authority regarding housing

in the aftermath of the Accord? It appears that the federal government remained committed to acting upon the exclusive jurisdiction provisions of the Accord, but did not feel similarly compelled to uphold the Aboriginal Peoples' Protection Mechanism. Arguably, it did not think twice about recycling certain elements of the Accord to the exclusion of the carefully crafted balancing exercise with the Aboriginal components.

Royal Commission on Aboriginal Peoples

The Royal Commission on Aboriginal Peoples (RCAP), established in August 1991, was tasked with investigating the evolution of the relationship among Aboriginal peoples (Indian, Inuit and Métis), the Canadian government and Canadian society as a whole. It was mandated to propose specific solutions, rooted in domestic and international experience, to the problems which have plagued those relationships and which confront Aboriginal peoples. The Commissioners were asked to examine all issues, which they deemed to be relevant to any or all of the Aboriginal peoples of Canada. The RCAP final report was tabled in the House of Commons, in November of 1996, only a few short months after the housing transfer had been announced! The Report represented extensive consultations with Aboriginal and non-Aboriginal peoples on various subjects and contains 440 recommendations.

Underlying all of the RCAP recommendations, were the principles of federal fiduciary responsibility coupled with Aboriginal self-determination and self-governance. As the Commissioners observed, the fiduciary obligation on the part of the Crown to act in the interests of Aboriginal peoples is now being recognized and implemented by the courts. It requires governments to acknowledge Aboriginal peoples as people who matter, not only in history but in real life today, and who have rights at common law and in the constitution, for which it is the federal government’s duty to protect. They also observed that they believed the fiduciary responsibility extended regardless of where Aboriginal people lived: either on or off reserve.

The Commissioners further recognized that there was a relationship between fiduciary duty and

the principle of participation:

The concept of fiduciary duty and the principle of participation are intimately connected. Whenever governments intend to exercise their constitutional powers to legislate or make policies that may affect Aboriginal peoples in a material way, particularly in an adverse way, they would be wise to engage first in a process of consultation. The constraints imposed by the common law and the constitution on the exercise of arbitrary governmental power would seem to require no less.

Commissioners believe that the door to Aboriginal group participation in Canada has been opened by recognition of an inherent right of self-government in the common law of Aboriginal rights and in the treaties. This right of peoples to be self-governing affords a solid legal foundation on which governments in Canada can enter into agreements with Aboriginal peoples to establish appropriate working relationships. There is no further need, if indeed there ever was a need, for unilateral government action. The treaty is still Aboriginal peoples' preferred model.

The Housing section of the RCAP Report emphasized the need to consult on and support Aboriginal control and self-governance. Stressing the importance of housing in raising families as well as in solving social, economic and political problems, the Commissioners noted that:

Aboriginal people see housing improvements as means of simultaneously increasing control over their own lives, developing increased capacity to manage complex programs and businesses, providing meaningful jobs, sustaining Aboriginal lifestyles, cultures, and generally better health, and strengthening Aboriginal communities... Housing is among the core areas of self-government jurisdiction for Aboriginal governments.

Specifically addressing off-reserve Aboriginal housing, the Commissioners observed, “tenants also saw the preservation and reinforcement of cultural identity as a very important need being met within these communities. While meeting basic housing needs,” Aboriginal housing providers have “allowed other needs such as employment, education and cultural retention to be addressed. In effect, the communities became more identifiable and could be contacted more readily to participate in various social, cultural and recreational activities. In addition, these housing corporations have had, for the most part, a positive impact on relations between Aboriginal and non-Aboriginal people.”

However, as the final RCAP report was being tabled in Parliament in November of 1996, federal housing officials were already in the process of drafting the *Social Housing Transfer Agreement,* which included no future protection of the Aboriginal ‘content’ of the off-reserve programs. They were also engaged in the first round of in camera bilateral discussions with provinces and territories. The transfer, once again, demonstrated that language and actions, when it comes to the federal government’s treatment of Aboriginal people, are so often disconnected.

SUFA at Work .....or Not!

The Transfer of Labour Market Training

Under the Charlottetown Accord, labour market development and training, like housing was identified as a matter of “exclusive provincial jurisdiction □and should be accomplished through justifiable intergovernmental agreements designed to meet the circumstances of each province.”

As part of this initiative, HRDC entered into negotiations with off and on-reserve Aboriginal stakeholders, which resulted in a series of Regional Bilateral Agreements (RBA) that transferred responsibility for the design and delivery of labour market programs directly to Aboriginal

organizations.

"The fundamental focus of the five-year $1.6 billion Strategy we launch today is to enable Aboriginal groups to deliver a wider spectrum of human resource programming that will enable Aboriginal people to prepare for, obtain and maintain meaningful employment," said Minister Pettigrew. Unlike the three-year RBAs, this is a five-year Strategy that integrates all Aboriginal programming, including: labour market programs, youth programs, programs for Aboriginal people living in urban areas, programs for persons with disabilities and child care initiatives. The Strategy is designed to enhance capacity building and gives all Aboriginal people access to programs and services, regardless of status or residence.

In addition, an Aboriginal Human Resource Development Council has been created with the federal and provincial governments, representatives of national Aboriginal organizations and the private sector. The prime objective of the Council is to encourage private-sector investment in Aboriginal human resource development. The process utilized for the conclusion of the transfer of Labour Market training to Aboriginal peoples through long-term agreements can be considered a positive example of respect for and application of the principles of SUFA.

The Transfer of Social Housing

The urban Aboriginal population accounts for almost fifty percent of Canada's Aboriginal population.[74] They are widely scattered across Canada's urban centres. Aboriginal people migrating into towns and cities, often escaping deplorable conditions on Reserves face many obstacles. Many lack the skills and incomes demanded by Canada's complex and changing urban society. Accessing appropriate and affordable housing is one of their greatest challenges. In the early 1970s, Aboriginal organizations established the first urban and off-reserve native housing projects. Since then, the slow, but steady progression of community initiatives, led to

[74] According to the Aboriginal Population Survey (APS), 320,000 or 45% of the population lives in towns and cities. The urban Aboriginal population is made up of 46% Status Indian, 24% non-Status, 28% Métis, and 2% Inuit. By the year 2016, it is estimated that the population will climb to 455,000.

the creation of a modest portfolio of approximately 19,000 units[75] nationally by the mid-nineties, when the federal government ceased funding new housing. While the numbers never matched the demand, urban Aboriginal housing Corporations became the landlord of choice for many urban Aboriginal peoples struggling with housing affordability and discrimination. Providers not only offered safe and affordable housing, but they also offered a cultural sensitivity and understanding of the Aboriginal experience missing in other forms of assisted housing, often with added social services made available. These corporations also created a significant number of jobs for Aboriginal peoples while providing practical experience to a considerable number of volunteers in operating non-profit organizations.

The availability of social housing has been a critical issue for Métis people in both urban and rural parts of Canada for many years. The member associations of the MNC have been major providers of Rural and Native Housing Units to their constituents for decades. For example, the MMF manages a portfolio of over 1600 units with an annual budget in excess of $6 million while the Urban Métis Housing Corporation of Alberta owns 880 units offering affordable accommodation to nearly 3,000 people with a maintenance budget of over $2.2 million per annum. Similar Métis Housing Corporations exist in Saskatchewan and Ontario**.**

In February 1996, as part of the Federal Budget, the government announced that it would transfer responsibility for the accompanying agreements between the federal government and Aboriginal groups, along with the financial resources for these programs, to provincial and territorial governments. The portfolio was comprised of project operating agreements between the federal government and several thousand private and municipal non-profit housing agencies; co-operative housing groups, and off-reserve Aboriginal housing providers. Starting almost immediately, federal officials entered into bilateral discussions with provinces and territories.

[75] Includes both Urban Native and Rural and Native portfolios.

By the time most Aboriginal housing corporations and leaders understood the implications of the transfer, the *Social Housing Transfer Agreement*[76] had been drafted and discussions were well under way with provinces and territories. Requests from Aboriginal organizations and Aboriginal political leaders to halt the transfer and consult with them on the future of their programs, fell on deaf ears. There was no response from federal officials to the resolution passed by the Confederacy of Nations meeting in Quebec City in 1997, which called upon Ottawa to "cease and desist in its efforts to transfer urban native/First Nations social housing, and associated resources, to the provinces; and the Minister of CMHC be asked to direct his officials to negotiate and subsequently transfer the administration (and associated resources) of urban native/First Nations social housing programs to urban native/First Nations housing delivery groups." The Resolution summed up the general anxiety over the transfer felt by Aboriginal organizations across Canada.

The Confederacy was not the only Aboriginal body to call for consultation. David Chartrand, President of the Manitoba Métis Federation, writing[77] to the then minister responsible for the transfer, Alfonso Gagliano, stated "the MMF, as representative of all Métis people in Manitoba has never been consulted with respect to any of these negotiations, much less been invited to participate at any level. This is completely at odds with the Federal government's commitment to partnership the Federal government has no legal right to transfer its housing responsibilities for aboriginal peoples to the Provincial government."

The National Aboriginal Housing Association (NAHA), representing most urban native housing groups impacted by the transfer, vociferously opposed the transfer. NAHA asked the federal government "to halt the Transfer and to immediately begin negotiations with Aboriginal housing

---

[76] See*, Highlights of The Social Housing Transfer Agreement between Canada Mortgage and Housing Corporation (CMHC) and Ontario Ministry of Municipal Affairs and Housing.* No reference to the Agreements, which regulate the transfer of approximately $1.9 billion dollars, can be located on the federal government's web pages.

[77] Letter from David Chartrand, President, Manitoba Métis Federation Inc., September 10, 1998, to the Honourable Alfonso Gagliano, P.C., M.P., Minister of Public Works and Government Services.

institutions for the administration of Aboriginal housing."[78]

In May of 1999, NDP housing critic, Bev Desjarlais, M.P., delivered a petition bearing 2,000 signatures demanding that the federal government fulfil its duty to Aboriginal peoples who need housing and criticized the federal government's transfer of urban Aboriginal housing to the provinces.[79]

Other requests for consultation and participation were made by scores of individual housing providers. In Winnipeg, Caroline Bruyere, a Status Indian and tenant of Aiyawin Corporation,[80] and Aiyawin Corporation filed a Statement of Claim in March 1999, against the Crown in the Federal Court of Canada.[81] In the Claim, the Plaintiffs allege that the Crown's actions, in entering into a Social Housing Transfer Agreement with the Province of Manitoba, has breached its obligations and fiduciary responsibility to Aboriginal peoples.

The federal Minister and his officials repeatedly assured Aboriginal stakeholders that the transfer was being undertaken "in the interests of streamlined administration and efficiency"; and that project operating agreements were binding contracts which could not be changed without mutual consent. The transfer, however, was not a mere 'administrative realignment' or creation of an 'agency relationship' with provinces and territories for administering federal programs and policies. The transfer made sweeping changes to the long term funding arrangements and resulted in giving provinces and territories wide discretionary powers with respect to the benefits and operating practices of Aboriginal housing. Public reassurances by federal officials were meant to obfuscate the reality behind the changes.

---

[78] *Halt the Transfer! Aboriginal Control of Off-Reserve Housing*; National Aboriginal Housing Association; May, 1998; p. 1.
[79] *Globe and Mail,* May 28, 1999; Section A7.
[80] Aiyawin Corporation is an urban native housing provider funded under the *National Housing Act* and part of the federal off-reserve portfolio being transferred to the province of Manitoba.
[81] Statement of Claim T-423-99*,* Federal Court of Canada (Trial Division).

Conclusion

The federal government's steadfast refusal to consult with the Aboriginal community on the transfer of federal Aboriginal housing programs to provinces and territories between 1996-2002, challenges the integrity of the government's commitment to the SUFA principles. Under the SUFA agreement, ratified in early 1999, the federal government committed, along with provinces and territories, to "Treat all Canadians with fairness and equity", and to ensure "appropriate opportunities for Canadians to have meaningful input into social policies and programs."

The federal social housing transfer was first announced in 1996. Under the arrangement, the government would transfer responsibility for the federal social housing portfolio and the financial resources to provincial and territorial governments. Although the transfer initiative commenced prior to SUFA ratification, the bulk of the Aboriginal programs were still with the federal government in 1999.

Almost immediately after the transfer was announced, Aboriginal leaders and housing organizations called for consultation. To date, transfer agreements have still not been concluded with British Columbia (which represents approximately 30 per cent of the off-reserve Aboriginal portfolio), Alberta and Quebec. However, federal officials continue to refuse to consult with the Aboriginal community impacted by the transfer, or to allow them to participate in the bilateral negotiations with provinces and territories.

The federal *Social Housing Transfer Agreement* provides a wide range of powers and responsibilities to provinces. There is no requirement under the *Agreement* to protect the Aboriginal nature of the programs. The transfer has the potential to dramatically alter the future of the programs, and to diminish the benefits that Aboriginal tenants enjoyed. Almost immediately, off-reserve Aboriginal housing providers are treated differently, as provinces and territories implement their own regimes.

Shutting the Aboriginal community out of the transfer process was not only a violation of the SUFA principles, it also contradicted federal principles articulated so fervently in the Charlottetown Accord of 1992 and the Report of the Royal Commission on Aboriginal Peoples of 1996. It also flies in the face of Canada's international promises, where it has committed to recognize and promote the principles of Aboriginal self-determination and participation and it contravenes the flagship of federal Aboriginal policy, the Inherent Right of Self Government. There is also a growing body of case law (for instance the *Delgamuukw* case) that lends support to the position of many Aboriginal organizations that the federal government has a fiduciary responsibility when it comes to off-reserve Aboriginal housing. They contend that the federal transfer abrogates this responsibility and breaches the duty of consultation discussed previously in detail.

The MNC is an active participant in the National Coalition of Housing and Homelessness, which is made up of 25 national and regional organizations, including the Canadian Housing and Renewal Association, the Cooperative Housing Federation of Canada, the Federation of Canadian Municipalities, the Canadian Council on Social Development, Family Services Canada, the United Church of Canada and the National Anti-poverty Organization.

Contrary to the principles of the Social Union Framework Agreement, CMHC has transferred its social housing portfolio to the provinces without the involvement of the Métis Nation. Some provinces are now further transferring responsibility for these programs to municipal governments. The MNC Board of Governors is currently considering creating regional Métis Housing Task Forces and a National Métis Housing Task Force to mobilize the involvement of the Métis people in protecting their interests in social housing.

SUFA failed off-reserve Aboriginal peoples by not ensuring they were consulted in the transfer of social housing.

Part VII- Conclusions and Recommendations

The agreement of SUFA Ministers and Aboriginal leaders of December 1999 to work together and to meet within one year to pursue matters of common interest has yet to be fulfilled. The endorsements of the political leadership within the FPTA process has resulted in cooperative joint work being undertaken but has not generated financial support from federal line departments that have a mandate to support the implementation of the agreed upon plans.

Neither the negotiations that led to the signing of SUFA nor the subsequent, limited approaches to the national Aboriginal associations to seek their involvement have recognized the unique place of Aboriginal peoples in the history of Canada, in its constitutional structure and its future prosperity. The incredible diversity that exists among the First Nations, Inuit and Métis, as well as within each of these peoples, has been ignored. The absolute necessity for financial support to encourage the Métis grassroots to participate in the planning and delivery of social policy in Canada has not been reflected in federal, provincial and territorial government strategies. There is a dire need to engage the Métis Nation and its institutions - including the Métis Capital Corporation, the Métis Business Development Corporation, the Métis Human Resources Development Accord holders, and the Métis housing corporations, among others - in the building of a stronger Canada in which the Métis people have a rightful place.

The Métis Nation seeks to be involved not only in the public sector's pursuit of social policy, but also in forging partnerships with the private sector. For this to occur, the Métis Nation needs to bring something to the table beyond its desire to achieve economic progress. Only a handful of Métis communities have a recognized land base or sufficient financial resources of their own to attract private sector participation. Unless and until Métis rights to lands and resources are effectively addressed, there is little chance that the Métis Nation can form productive joint ventures with the private sector without significant financial assistance and leverage being provided by other governments - and especially by the Government of Canada.

The experience to date through the development of the National Aboriginal Youth Strategy

(NAYS) also demonstrates that the issue of adequate funding being made available is central to support the active engagement of Métis youth in the implementation of the objectives identified within NAYS so that they can become a reality.

A number of specific recommendations can be made in light of the foregoing review of SUFA and prior consitutional discussions, the experience over the last three years in honouring SUFA and the ongoing work of the MNC and its Governing Members as well as the far too evident real unmet needs of the Métis people.

- Federal and provincial governments need to reaffirm their commitment to SUFA's principles, including making the express promise in the strongest terms possible of direct and active involvement of Aboriginal peoples in the future implementation of SUFA.
- SUFA Ministers should clarify the recognition of "Aboriginal peoples" within the Agreement as expressly including the "Indian, Inuit and Métis peoples" referred to in section 35(2) of the *Constitution Act, 1982*.
- The dispute resolution mechanisms called for in SUFA must be developed in such a way to enable affected parties, and specifically Aboriginal communities and associations, to have unfettered and easy access to resolve any disagreements that may arise over the implementation of the SUFA commitments by any of the signatory governments.
- Federal and provincial governments must respect the diversity that exists among Aboriginal peoples and must consider in particular the perspectives and needs of the Métis and off-reserve Indians in maintaining their identities and cultures. This is an especially significant priority in urban centres.
- Federal and provincial governments must recognize the significant need for greater equity of access to distinctive programs and services for the Indian, Inuit and Métis peoples designed by them and delivered through institutions under their control.
- At the same time, SUFA must not be interpreted as preventing bilateral initiatives and agreements between the Government of Canada and Métis or other Aboriginal organizations without the involvement or concurrence of provincial or territorial

governments.

- The ongoing political and legal dispute concerning which level of government has primary constitutional jurisdiction concerning the Métis must be definitively and clearly resolved once and for all. It is the position of the MNC, as well as most governments and commentators on this topic in Canada, that the Métis come within the concept of "Indians" in s. 91(24) of the *Constitution Act, 1867* such that the Parliament of Canada and the federal government has primary jurisdiction and responsibility. The Métis Nation Accord of 1992 needs to be a focal point for renewed discussion as part of charting the future relationship between Canada and the Métis people.
- Although the principles of SUFA have not been properly respected by governments in pursuing the transfer of social housing, it is not too late for the mistakes to be undone. It is clearly possible, in those provinces in which Transfer Agreements have yet to be concluded, for the participating governments to guarantee full Aboriginal participation in the negotiations of the projected transfer. Even where such transfers have already taken place, it is appropriate for the provincial governments to initiate negotiations to transfer existing Aboriginal social housing stock to the control of Aboriginal governance insitutions.
- The Government of Canada must provide adequate funding for the MNC to support their meaningful participation in Social Union matters in the future in order to ensure that the necessity for their cultural recognition, social equity and economic inclusion in the future of Canada is assured.
- Federal, provincial and territorial governments should commit expressly to include the Aboriginal leadership in any future intergovernmental negotiations that might impact upon Aboriginal peoples and their unique political and legal position in Canada.

Now is the time, through the vehicle of the three-year review of SUFA, to reflect upon the successes as well as the mistakes that have been made over the past twenty years during the many efforts to refashion the constitutional and intergovernmental landscape of Canada. There is an opportunity for both the SUFA Ministers and the FPTA Process to move beyond preparing

policy papers and press communiques. Now is the time to move forward to action in a way that meaningfully engages the full participation of the Métis, as well as First Nations and the Inuit, to develop a framework for social and economic reform in Canada that guarantees that Aboriginal peoples will be fundamental players in the decision-making process as natural and highly valued members of the body politic.