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# Policy Brief

## ***Thoughts on Métis Economic Development***

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*by*

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## **Acknowledgements**

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## Introduction

There is an abundance of literature in the Aboriginal economic development academic world which suggests that access to capital is a main impediment to Aboriginal economic development.<sup>1</sup> Based on a longer paper, this policy brief considers Métis economic development from the perspective of the capitalization of a possible outstanding claim owed by Canada to the Métis, or Half-breeds, as named in the *Manitoba Act*. In order to provide a theoretical examination of capitalizing such a possibility, the policy brief offers a thought experiment involving several assumptions.

These assumptions are the following:

- The term “Métis” relates to those people who are the descendants of the population labelled “Half-breeds” in Sec. 31 of the *Manitoba Act*, although the term has a broader application in present day usage.
- Any outstanding obligation to the Métis would be treated by Canada in the same way Canada has treated with the Indians and the Inuit:
- Canada would negotiate to fulfill any outstanding obligations it may have in relation to the Métis

- There is an outstanding claim for the Métis against Canada
- A settlement of that claim could provide access to capital that would be set aside for economic development purposes.

Whereas the longer paper examines a sampling of final agreements between Canada and First Nations or the Inuit, the policy brief merely summarizes the components that were discovered. The full paper also provided a range of possible values of a settlement with the Métis. By examining these sample final agreements, the thought experiment yielded a good understanding of the “per capita value” of those agreements for the beneficiaries, thereby allowing for a calculation of a rational constraint on the potential value of any possible settlement of an outstanding claim against Canada by the Métis.

In presenting this thought experiment, my intention is not to diminish the importance or complexity of the sort of processes that would need to happen, nor the lengthy negotiations that would be necessary get to the point in the Métis relationship with Canada that a final agreement might be negotiated. My intention rather is to examine the economic aspects of such an evolution in the Métis-Canada relationship. If a final agreement could be formulated in such a way as to provide capital transfers from Canada to the Métis, what could it look like? And how might it be structured in order to provide economic benefit to both parties?

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<sup>1</sup> Capital comes in many forms, including social capital and human capital. Here, I will use only a narrow and traditional notion of capital. To get a sense of the issue of access to capital and the many efforts to address it, the reader should note the existence of the most recent Federal Framework for Aboriginal Economic Development announced by INAC (<http://www.ainc-inac.gc.ca/ecd/ffaed-eng.asp>), the existence of Aboriginal financial institutions (<http://www.nacca.net/eng-splash.html>), and for an excellent survey of the issue see Chapter 5, Volume 2 of the Report of the Royal Commission on Aboriginal Peoples, pp 906-931, (<http://www2.parl.gc.ca/Content/LOP/ResearchPublications/prb9924-e.htm>). The issue has been examined extensively in the policy research literature on Aboriginal economic development.

## **A Possible Scenario for Capitalizing a Settlement with the Métis**

Capitalization of a settlement with the Métis of Canada could take the following forms:

1. land in fee simple
2. land in reserve
3. impact benefit agreement (IBA)
4. cash

One possible scenario – the one explored in this policy brief – employs the notion of a settlement area for the Métis in which land is not a part of the final agreement. The idea for this scenario is to take land out of the capital mix. Thus, the final Métis agreement could contain cash, a settlement area (suggested would be the area of Rupert’s Land) and access to project-based Impact Benefit Agreements on that settlement area. The cash could be put into a trust fund and used to provide capacity for negotiation and also to exploit economic opportunities.

Other scenarios are of course also possible. But for reasons outlined more fully in the longer paper, the suggested way forward would be to put a rationally constrained amount of money in a trust fund, equivalent to a negotiated amount in the range of settlement scenarios described above. Métis communities, as understood under the 2003 Supreme Court of Canada (SCC) decision, *R. v. Powley*, could draw from this trust fund for the purposes of participating in economic development opportunities.

### **Justification of the Landless Scenario**

Why should the Métis go for a landless final agreement? The reasons in support of a landless final settlement are outlined at further length in the full paper, but can be stated briefly here. First, Métis Aboriginal title cannot be proven using the existing test for Aboriginal title (though the Court may change the test in the future). Second, even if the SCC were to change the test, proving Métis Aboriginal title would take a long

time. And third, Métis rights, as established in the *Powley* decision, do not include Métis title.

In the landless scenario, I would recommend an evolving relationship between the Crown and Métis communities. This relationship would be created on a case-by-case basis in accordance with the principles of the Crown’s duty to consult established in the SCC *Taku* and *Haida* decisions. An evolving relationship would be a rational course of action since it brings together a confluence of factors, including the concept of a Métis community as outlined in the *Powley* decision, the principles of the *Taku* and *Haida* decisions, and the potential for the Métis to realize the economic opportunities made available through IBAs. A rational constraint for a settlement with the Métis is derived from a calculation of the per-capita financial transfer amounts in a sample of concluded final settlements, combined with the dollar-value equivalent of the land quantum per capita transfers in those same final settlements. The result is a capital value range for a final Métis settlement.

### **Conclusion**

The failure to enhance Indigenous self-government in urban settings continues to exacerbate the marginalization experienced by many Indigenous people. Reframing the issues so that urban Indigenous peoples are no longer seen as deficient and out of place, but rather as constituting legitimate communities and possessing inherent rights, will be part and parcel of making space for urban Indigenous self-determination. This policy brief suggests that Canada and the Métis would both benefit maximally economically by limiting a final settlement to IBAs in relation to a specific settlement geographic area (Rupert’s Land) and cash – in other words, components 3 and 4 above, as stated earlier, of the potential components of a settlement. A settlement of this kind would provide the

parties to such an agreement with the most positive impacts in relation to economic development in the settlement area. By having a trust fund available to *Powley* communities, the benefits from the economic development opportunities could be long-term in two senses. First, the financial impact to Canada could be spread out over many years; and second, the number of “*Powley*” communities could be added to over time. By restricting the negotiation of IBAs by government (if required) and proponents to *Powley* communities only, the economic benefits accrued from these “sharing mechanisms” would be directed to the Métis communities which have survived from the earliest days when they emerged.

The thought experiment presented in this policy brief was conducted in order to come up with some rational limits on settling any outstanding obligation to the Métis and to think about how such a settlement might be used in the context of Métis economic development. From thinking about Métis economic development, the notion of capitalizing an economic development trust fund arose – in order to address the need for access to capital. Perhaps, if political conditions ever provided an impetus, elements of the paper could someday inform a serious discussion between Canada and a ratified representative body of the Métis and Half-breeds about laying to rest any outstanding grievances.