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The Emerging Policy Relationship between Canada and the Métis Nation

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Summary

- The Supreme Court of Canada decided in 2016 that the federal government's jurisdiction over First Nations and Inuit people extends to the Métis.
- Initiatives such as the 2017 Canada-Métis Nation Accord suggest the federal government is committed to deepening its relationship with the Métis.
- A true government-to-government relationship will require an ongoing commitment to respect the Métis as partners in policy-making

Sommaire

- La Cour suprême du Canada a établi en 2016 que la compétence constitutionnelle du gouvernement fédéral à l'égard des Premières Nations et des Inuits s'étend également aux Métis.
- Des initiatives comme l'Accord Canada-Nation métisse de 2017 indiquent que le gouvernement fédéral s'engage à renforcer ses relations avec les Métis.
- Pour mettre en œuvre de véritables relations de gouvernement à gouvernement avec les Métis, il faudra un engagement permanent où les Métis sont des partenaires.

On April 13, 2017, Métis Nation President Clément Chartier and Prime Minister Justin Trudeau signed the Canada-Métis Nation Accord. Through it, Métis and federal leaders have agreed to develop priorities and programs jointly and to advance Métis rights, claims and aspirations. As the Prime Minister declared, "we now have a solid foundation upon which to move forward with a respectful, renewed Métis Nation-Crown relationship, for the benefit of all Canadians."[1] This historic agreement is part of Canada's commitment to advance reconciliation with Indigenous peoples through nation-to-nation relationships.

The signing of the Canada-Métis Nation Accord marks a significant shift in the federal government's approach to the Métis. Historically, Ottawa has denied the

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existence of Métis rights and marginalized the Métis in developing programs and policies. To address this marginalization, the Métis have turned to the courts. A significant breakthrough occurred in 2003, when the Supreme Court of Canada affirmed the existence of Métis rights in *R. v. Powley*.[2] Also significant was the Supreme Court's 2013 *Manitoba Metis Federation Inc. v. Canada* decision, which acknowledged that Canada failed to fulfill constitutional promises made to the Métis.[3] In 2016, the Supreme Court confirmed in *Daniels v. Canada* that the Métis fall within the constitutional jurisdiction of the federal government.[4] Taken together, these decisions confirm that Canada has "unfinished business of reconciliation" with the Métis.[5]

This article critically reflects on the promise of reconciliation by examining how Canada's constitutional order has shaped its policy relationship with the Métis Nation. I argue that, despite its commitments to advance reconciliation, the federal government has struggled to reconcile its constitutional authority to exercise jurisdiction over the Métis with its fiduciary obligation to work alongside the Métis in developing policy. I conclude that reconciliation and the implementation of a nation-to-nation relationship depend not only on the federal government's response to Métis demands for policy redress but also on a policy environment that respects Métis governments as partners in decision-making.

Situating the Métis in Canada

The Métis Nation is a postcontact Indigenous people, whose roots lie in the nineteenth-century fur trade. As children of dual-heritage unions between Europeans and First Nations began to intermarry and create their own families, they developed a collective consciousness as "la nouvelle nation." This shared consciousness and the ability to develop what Chris Andersen describes as "intersocietal norms that govern expectations of behaviour" are at the heart of what defines the Métis as a distinct Indigenous nation.[6] Connected through highly mobile trade networks and extensive kinship ties that extended across what are now the Prairie provinces, parts of Ontario, British Columbia, the Northwest Territories and the northern United States, the Métis developed a distinct way of life and a unique culture, language (Michif) and nationhood.

Aided by kinship relations across their homeland, the Métis organized politically and established their seat of political and economic power in Red River — present-day Winnipeg. It was there, where the Red and Assiniboine Rivers meet, that the Métis mounted a resistance movement against Canada's westward takeover of their lands in 1869. Under the leadership of Louis Riel, they created

a provisional government that successfully negotiated the protection of linguistic, political and land rights in exchange for Manitoba's entry into Confederation in 1870. However, instead of honouring the deal made with the provisional government, the federal government sent troops to take military control of Red River. Riel and many other Métis were forced to flee.

As displaced Métis families settled westward along trade routes, they continued to demand recognition of their land and political rights in settlements such as St. Laurent de Grandin and Batoche, in present-day Saskatchewan. Canada once again responded with military force. Confrontations between Métis and Canadian soldiers culminated on the battlefield of Batoche, where the Métis were defeated. Riel surrendered to face charges of high treason, for which he was hanged in 1885.

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Since Confederation, the Métis have sought to have their land and political rights recognized by Canada. Instead, they have been politically marginalized, denied rights to land, overlooked in social service provision and subjected to policies of assimilation.[7] As successive governments at both the federal and provincial levels denied constitutional responsibility for them, the Métis were stuck in what the Supreme Court of Canada describes as a "jurisdictional wasteland," with no government to turn to for policy redress.[8] To overcome this situation, the Métis have asked the courts to clarify their constitutional standing and recognize their rights.[9]

To Whom Should the Métis Turn for Policy Redress?

In order to help the Métis escape from this jurisdictional wasteland, Harry Daniels, a Métis leader and activist, launched a court action in 1999. In what came to be known as the *Daniels* case, the Supreme Court of Canada was asked what level of government the Métis should turn to for policy redress.

At Confederation, Canada's founders divided jurisdiction over a range of matters between the federal and provincial governments. Section 91 of the *Constitution Act, 1867* lists the areas over which the federal government exercises jurisdiction, whereas section 92 lists those assigned to provincial governments. Section 91(24) states that "Indians and lands reserved for Indians" fall under the jurisdiction of the federal government. Although First Nations and Inuit are considered "Indians" for the purposes of section 91(24), it was not until the *Daniels* decision that the Court clarified whether the Métis are also included as "Indians" in this constitutional provision.[10]

Developed by Canada's (non-Indigenous) founding fathers, the 1867 constitutional framework rests on two key assumptions. The first is that sovereignty, and by extension power, is divided between federal and provincial governments to the exclusion of Indigenous peoples. The second is that Indigenous peoples[11] are subjects (or wards) over whom Parliament's power can be exercised. The constitutional framework of 1867 is thus top-down and gives the federal government the authority to decide to legislate over Indigenous peoples. It is this authority that the federal government has used to justify the adoption of legislation such as the *Indian Act*.

In *Daniels*, the Supreme Court of Canada was asked to make three declarations: that the Métis and non-status Indians are "Indians" under section 91(24) of the *Constitution Act, 1867*; that the federal government has a fiduciary duty to the Métis and non-status Indians; and that the Métis and non-status Indians have a right to be consulted and negotiated with in good faith by the federal government on a collective basis through representatives of their choice, respecting all their rights, interests and needs as Indigenous peoples. In its 2016 decision, the Court made the first declaration but declined to make the second and third, stating that these matters were already settled in law. In other words, the Court confirmed that the Métis fall under federal constitutional jurisdiction through section 91(24).

In its 2016 decision, the Supreme Court of Canada confirmed that the Métis fall under federal constitutional jurisdiction through section 91(24) of the 1867 *Constitution Act*.

From a policy perspective, the *Daniels* decision was about more than providing clarity on who is "Indian." One of the core grievances advanced by non-status Indians and Métis was that uncertainty about their constitutional standing had led to a "legislative vacuum," as federal and provincial governments both claimed to have no constitutional authority over them.[12] By clarifying who is "Indian" for the purposes of section 91(24), the Court also clarified to whom the Métis should turn for policy redress.

The Court's decision to grant the first declaration was intended to put an end to what is described in legal terms as a "live controversy" that affects the rights of the parties. In this case, the live controversy is the jurisdictional dispute between the federal and provincial governments, which have both historically refused to accept responsibility for the Métis. The Court recognized that this dispute has left Métis and non-status Indians to rely more on "noblesse oblige" than on what is required by the Constitution.[13] For this reason, it argued that the first declaration is of "enormous practical utility" for non-status Indians and Métis since it provides clarity to end the live controversy between the federal and provincial governments.[14] The ruling clearly states that that these Indigenous people can turn to the federal government to remedy the policy vacuum created by this jurisdictional dispute.[15]

What About Métis Rights?

The *Daniels* decision removes uncertainty about the level of government to which the Métis should turn for policy redress, but it offers little in terms of policy direction to address their long-standing grievances concerning land and political rights. As the Court made clear, section 91(24) does not create a "duty to legislate" but is instead permissive — that is, the federal government can, if it so chooses, adopt legislation affecting the Métis.[16] What does that mean for Métis rights? Does Canada have a constitutional obligation to make good on the promises of land and political rights made to the Métis?

The 1867 constitutional framework was silent on Métis rights. It was not until 1982 that the Métis were recognized as rights bearers within the Canadian constitutional framework. Section 35 of the *Constitution Act, 1982* states:

(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
(2) In this Act, "*aboriginal peoples of Canada*" includes the Indian, Inuit and Métis peoples of Canada.
(3) For greater certainty, in subsection (1) "*treaty rights*" includes rights that now exist by way of land claims agreements or may be so acquired.[17]

The "grand purpose" of section 35, according to the Supreme Court of Canada, is "The reconciliation of Aboriginal and non-Aboriginal Canadians in a mutually respectful long-term relationship."[18] Although reconciliation has many meanings, the Court has set out, in several judgments, some general guidelines about the policy implications that flow from the reconciliatory purpose of section 35.

In the 1990 *Sparrow* decision, the Supreme Court of Canada argued that reconciliation requires the federal government to protect the interests of Aboriginal peoples and to justify infringements upon, or denial of, Aboriginal rights through federal regulation.[19] This is because, according to the Court, the exclusive federal power to legislate over Indigenous peoples outlined in section 91(24) of the *Constitution Act, 1867* must be understood in conjunction with section 35(1) of the *Constitution Act, 1982*, which recognizes a federal duty to "act in a fiduciary relationship with respect to aboriginal peoples and so import some restraint on the exercise of sovereign power."[20] Through decisions such as *Van der Peet*, *Haida Nation*, *Mikisew Cree* and *Taku River Tlingit*, Canada's highest court has acknowledged the social, political and economic factors that flow from the presence of non-Indigenous peoples in Canada and has called for the reconciliation of the preexistence of Indigenous societies with the sovereignty of the Crown.[21]

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Specifically, the Court in *Van der Peet* states:

> *[W]hat s. 35(1) does is provide the constitutional framework through which the fact that Aboriginals lived on the land in distinctive societies, with their own practices, traditions and cultures, is acknowledged and reconciled with the Crown. The substantive rights that fall within the provision must be defined in light of this purpose; the Aboriginal rights recognized and affirmed by s. 35(1) must be directed towards reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown.*[22]

Although there continues to be much debate about section 35(1), Indigenous rights have been interpreted to include a range of cultural, social, political and economic rights, including the right to land and the rights to fish, hunt, practise one's own culture and establish treaties.

As a result of the 1982 constitutional changes, the federal government's exclusive authority to legislate over "Indians" must now be reconciled with its section 35(1) duty to act in a fiduciary relationship with respect to the Indigenous peoples recognized in section 35(2). In practical terms, this means the federal government cannot adopt legislation that infringes on the rights of First Nation, Métis and Inuit peoples.[23] It also means that the federal government has the authority to adopt legislation that flows from this fiduciary duty insofar as it has legislative authority over *all* Indigenous peoples.

Read together, these constitutional provisions give rise to a unique policy environment. As the Court confirmed in *Daniels*, the constitutional purpose of section 91(24), which is about jurisdiction, differs from that of section 35, which is about rights.[24] Importantly, section 91(24) is *permissive* and recognizes the federal government's authority to adopt legislation if it chooses. By contrast, section 35(1) is *purposive* and imposes a responsibility to act in a fiduciary capacity. These constitutional provisions offer different foundations for policy development.

On the one hand, Canada's constitutional framework permits the federal government to make decisions that affect Indigenous peoples across policy sectors. This approach is consistent with the top-down constitutional framework laid out in 1867 in which Indigenous peoples are subjects (as opposed to partners) over whom Parliament exercises power. On the other hand, a purposive approach would see the federal government making decisions in partnership with Indigenous governments. This would include consulting Métis governments prior to making decisions about policy priorities

and funding allocations. What are the implications of these constitutional provisions for Canada's emerging policy relationship with the Métis Nation?

Canada's Emerging National Reconciliation Framework: A Purposive Approach

Since his election as prime minister in 2015, Justin Trudeau has committed his government to advancing reconciliation with Indigenous peoples.

Since his election as prime minister in 2015, Justin Trudeau has committed his government to advancing reconciliation with Indigenous peoples. He has promised to sit down with Indigenous leaders in a nation-to-nation relationship. Moreover, Trudeau has consistently argued that rights are the basis of this relationship — more specifically, section 35 rights and those enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.[25]

The Prime Minister has identified three pillars to advance reconciliation with Indigenous peoples through nation-to-nation relationships.[26] The first consists of establishing "permanent bilateral mechanisms" with the national governing bodies that represent the three groups of Indigenous people recognized in section 35(2): the Assembly of First Nations, Inuit Tapiriit Kanatami and the Métis National Council. These bilateral mechanisms are intended to enable annual priority setting and joint policy development and allow progress to be measured on an ongoing basis.[27]

The historic signing of the Canada-Métis Nation Accord in April 2017 flows from this commitment. Concluded with the Métis National Council and its five governing members — Métis Nation of Ontario, Manitoba Métis Federation, Métis Nation-Saskatchewan, Métis Nation of Alberta and Métis Nation British Columbia — during the first Métis Nation-Crown Summit in Ottawa, the Accord outlines the ways in which the Government of Canada and the Métis Nation will work together to set priorities and develop policy in areas of shared interest.[28]

The 2017 Accord followed the conclusion of the Inuit Nunangat Declaration on Inuit-Crown Partnership, which commits the federal government and Inuit leadership to work in partnership on shared priorities.[29] It was also succeeded in June 2017 by the signing of the Memorandum of Understanding on Joint Priorities by the Prime Minister and Assembly of First Nations National Chief Perry Bellegarde that outlines eight joint priorities.[30]

The second pillar involves the creation of a ministerial working group to review laws and policies related to Indigenous peoples. Announced in February 2017, the working group of ministers has the mandate to review existing federal

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laws, policies and operational practices to ensure that the Crown lives up to its constitutional obligations with respect to Indigenous and treaty rights and adheres to international human rights standards. To this end, the working group has begun to meet with Indigenous leaders to identify and recommend changes to laws, policies and operational practices.[31] This process is guided by 10 principles adopted by the federal government in July 2017, which include the recognition of Indigenous peoples, governments, laws and rights — most notably, the right to self-determination and the inherent right of self-government.[32]

The third pillar of the framework is the full implementation of the Truth and Reconciliation Commission's 94 calls to action. Established as part of a class action settlement with Indian residential school survivors, the commission proposed actions that governments, institutions and citizens can undertake in response to the abuse and harmful legacy of residential schools.[33] Many of the federal government's investments in housing, clean water, education, child and family service reform, and the revitalization of Indigenous languages and cultures are contained in this pillar, as is the commitment to develop an Indigenous languages act.[34]

Through these three pillars, the Prime Minister proposes an ambitious whole-of-government approach to advancing reconciliation. Testifying to his commitment, ministerial mandate letters call on each department to engage with Indigenous peoples in implementing policies and programs in various sectors.[35] In addition to mandating all ministers to work in a nation-to-nation relationship with Indigenous peoples, the Prime Minister promised to "Work, on a nation-to-nation basis, with the Métis Nation to advance reconciliation and renew the relationship, based on cooperation, respect for rights, our international obligations, and a commitment to end the status quo."[36] This purposive approach is consistent with section 35 insofar as it commits the federal government to work in partnership with Indigenous governments to ensure the respect of their rights.

Policy-Making: The Permissive Approach Endures

The governments of the Métis Nation are now sitting across from the federal government to negotiate their rights. In addition to establishing the bilateral mechanism with the Métis National Council, the federal government has begun signing memoranda of understanding on advancing reconciliation with the five Métis governments that make up the council. To date, these memoranda have led to the signing of bilateral (federal-Métis) framework agreements

for advancing reconciliation in Manitoba and Alberta as well as a trilateral (federal-provincial-Métis) agreement in Ontario.[37] In addition, the bilateral mechanism has led to the establishment of tables to begin dialogue on section 35 rights in Alberta, Manitoba and Ontario.

Although the federal government is evoking section 35 as the basis for its relationship with the Métis Nation, it has not worked alongside the Métis Nation on all aspects of policy. An examination of recent announcements instead suggests that the top-down approach that gives Parliament power to exercise jurisdiction over Indigenous peoples continues to inform federal policy decisions.

A closer look reveals that the disadvantage that Métis leaders sought to address through *Daniels* has remained largely unchanged. Although the federal government has increased Indigenous-related spending, there is no clear indication that these funds and the accompanying programs and services are destined for the Métis in particular.

Arguing that the federal government continues to overlook the specific needs of the Métis in policy spending, Métis Nation President Chartier notes that less than 1 percent of the total set aside for Indigenous peoples in the 2016 and 2017 federal budgets was allocated to the Métis specifically.[38] In its 2017 budget, the federal government acknowledged that it did not take a distinctions-based approach, which would require distinct responses to the specific needs of First Nations, Métis and Inuit.[39]

More problematic is the way in which Métis governments have been sidelined or altogether bypassed in the allocation of federal funding. In a 2016 report commissioned by the federal government to map out a process for dialogue on section 35 Métis rights, Thomas Isaac, the ministerial special representative on reconciliation with the Métis, confirmed that the Métis Nation is represented politically by the five democratically elected governments that make up the Métis National Council. He adds that these governments have the legal authority to represent their respective citizens and, in particular, their section 35 rights.[40] Despite Canada's recognition that Métis governments "are mandated and authorized to represent the citizens who comprise the Métis Nation," they are often overlooked by the federal government in policy-making.[41]

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This is the case in sectors such as housing, in which the federal government announced an $11.2-billion investment over 11 years in Budget 2017.[42] Although some of this support was targeted to Indigenous peoples, it was unclear how much, if any, was earmarked for Métis-related housing or what

role Métis governments would play with respect to implementation. It was not until Chartier raised this issue following the budget that the Prime Minister acknowledged that the Métis had been neglected in the 2017 budget and committed to work with the Métis Nation on a national housing strategy.[43] Federal and Métis leaders have since engaged in discussions on this front through the bilateral mechanism established by the Canada-Métis Nation Accord.[44]

In July 2017, leaders of the three national governing bodies that represent First Nations, the Inuit and the Métis Nation expressed concern about the way in which their relationship with Canada is evolving. At a joint press conference, leaders of the Assembly of First Nations, the Inuit Tapiriit Kanatami and the Métis National Council called for full and effective participation of Indigenous peoples in intergovernmental forums. Rejecting their designation as "special interest groups," Bellegarde argued that an "effective process for intergovernmental participation must reflect our status under the Constitution and international law as peoples and nations with inherent rights, title and jurisdiction."[45] Chartier added that a true nation-to-nation approach would require national Indigenous organizations to be recognized as "full-fledged governments" with an invitation to all intergovernmental meetings.[46]

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Ultimately, Indigenous leaders are asking to be equal partners within the Canadian federation. Although the Prime Minister has made a number of gestures to include Indigenous leaders, such as inviting them to his inaugural First Ministers' Meeting, the federal government has struggled to work alongside Indigenous leaders in the design and implementation of everyday policy.[47] In the discussions that led to the Canada-Métis Nation Accord, Métis and federal leaders agreed to codevelop policies in a number of areas, including employment and training, early learning and child care, poverty reduction, and health and wellness.[48] Sitting beside one another through the bilateral mechanism established as part of Trudeau's reconciliation framework, federal and Métis representatives have engaged on some of these issues. However, the commitment to consistently extend this partnership approach across a range of policy sectors has yet to materialize.

Is the Redesigned Federal Bureaucracy the Answer?

The creation of the Ministry of Crown-Indigenous Relations, announced in August 2017, responds in many respects to the call by First Nation, Inuit and Métis leaders for an institutional mechanism for a nation-to-nation

relationship with Indigenous peoples. Presented as a way for Canada to shed its colonial administrative structures, this ministry holds the promise of providing the institutional framework to support this relationship.[49] This move was accompanied by the announcement of the Ministry of Indigenous Services, charged with ensuring a consistent, high-quality and distinctions-based approach to the delivery of Indigenous services.[50]

In many ways, this ministerial restructuring is consistent with Canada's constitutional framework. On the one hand, the Ministry of Indigenous Services corresponds to the federal government's section 91(24) responsibility for programs and services directed toward all Indigenous peoples. On the other hand, the Ministry of Crown-Indigenous Relations and Northern Affairs corresponds to the federal government's section 35(1) duty to act in a fiduciary relationship with First Nations, Inuit and Métis. In a sense, this bureaucratic development taps into these respective provisions in Canada's constitutional framework. However, it does little to reconcile them.

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As the Supreme Court has repeatedly noted, the federal government must exercise its authority to legislate over Indigenous peoples while fulfilling its fiduciary duty to protect Indigenous rights. When we consider specific policy sectors, such as the housing example mentioned earlier, our objective is not simply to ensure that Métis have access to appropriate housing (that is, that they have access to section 91[24] programs and services); it is to ensure that the Métis Nation participates, as a partner in decision-making, in programs related to housing. Although Ottawa's bureaucratic structure now more clearly corresponds to its respective constitutional obligations in section 91(24) and section 35(1), it is not yet clear whether or how this change will serve to reconcile those obligations.

Reconciliation: The Need for Purposive Rather Than Permissive Action

Since 1867, Canada's constitutional framework has largely favoured a top-down approach in dealing with Indigenous peoples. The affirmation of Indigenous rights in section 35 of the *Constitution Act, 1982* altered Canada's constitutional landscape by calling on the federal government to reconcile its authority to legislate over Indigenous peoples with its fiduciary duty to protect Indigenous rights.

The evolution of Canada's constitutional order has been especially significant for the Métis. Historically excluded from section 91(24), Métis leaders are now

sitting at the table with federal leaders as rights-bearing Indigenous people. The federal government has also made significant commitments to deepening its relationship with the Métis Nation through the Canada-Métis Nation Accord. However, despite the commitment by Métis and federal leaders to set policy priorities jointly, this nascent government-to-government relationship has yet to take hold across policy sectors. Part of the challenge lies in the lingering attitude that the Métis, like other Indigenous peoples, are subjects as opposed to partners in policy-making.

Although the federal government continues to face significant challenges in implementing a rights-based approach with Indigenous governments across policy sectors, its openness to this approach marks a significant shift in Canada's policy landscape. This shift is also becoming more apparent at the provincial level, where governments are developing their own approaches to reconciliation. This is the case in Ontario, where the Métis and the provincial government signed a framework agreement that has led to collaboration in a number of areas, including economic development and education.[51] In Alberta, following the recent signing of a framework agreement between the Métis and the provincial government, discussions are under way to develop a consultation policy as well as to reignite dialogue on a Métis harvesting policy.[52]

The extent to which similar advances will manifest themselves at the federal level will depend in part on the conclusions of the working group of ministers currently reviewing federal laws and policies.[53] However, policy frameworks are highly path dependent, opening up to change only in moments of significant political, economic or social upheaval.

The election of a prime minister who has made reconciliation a stated priority, the calls to action of the Truth and Reconciliation Commission, and increased public awareness of Indigenous rights due to movements such as Idle No More suggest that the political climate in Canada is ripe for change. In this regard, Supreme Court Justice Abella has written that "reconciliation with *all* of Canada's Aboriginal peoples is Parliament's goal."[54] The achievement of this goal depends not only on which policies are adopted but also on how they are adopted. As Taiaiake Alfred argues, at issue is more than the laws, policies or structures that view Indigenous peoples as a problem to be confronted; the colonial mentality that frames Canada's relationship with Indigenous peoples must also be challenged.[55] Beyond policy redress and bureaucratic restructuring, reconciliation requires fundamental shifts in attitude and, above all, purposive action to develop a policy environment that respects Indigenous governments as partners in decision-making.

Reconciliation requires fundamental shifts in attitude and, above all, purposive action to develop a policy environment that respects Indigenous governments as partners in decision-making.

Notes

1. Prime Minister of Canada, *The Prime Minister of Canada and President of the Métis National Council Welcome the Signing of the Canada-Métis Nation Accord*, April 13, 2017 (Ottawa: Prime Minister of Canada, 2017), http://pm.gc.ca/eng/news/2017/04/13/prime-minister-canada-and-president-metis-national-council-welcome-signing-canada.
2. *R. v. Powley*, [2003] 2 S.C.R. 207, 2003 SCC 43.
3. *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 S.C.R. 623.
4. *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, [2016] 1 S.C.R. 99.
5. This phrase appears in *Manitoba Metis Federation* at para. 140.
6. See C. Andersen, "Métis," *Race, Recognition, and the Struggle for Indigenous Peoplehood* (Vancouver: UBC Press, 2014), 130. As A. Gaudry and D. Leroux explain in "White Settler Revisionism and Making Métis Everywhere. The Evocation of Métissage in Quebec and Nova Scotia," the Métis did not emerge solely from the intermarriage of Europeans and Indigenous peoples, but as a result of a self-conscious historical assertion of themselves as a social and political people (*Journal of the Critical Ethnic Studies Association* 3, no. 1 [2017]: 116-42).
7. In examining this period, the Supreme Court of Canada declared that, by failing to act honourably in implementing promises made to the Métis, Canada breached its constitutional duty (*Manitoba Metis Federation*).
8. *Daniels,* para. 14.
9. T. Isaac, *A Matter of National and Constitutional Import: Report of the Minister's Special Representative on Reconciliation with Métis: Section 35 Métis Rights and the* Manitoba Métis Federation *Decision* (Ottawa: Indigenous and Northern Affairs Canada, June 14, 2016), 34, http://www.aadnc-aandc.gc.ca/eng/1467641790303/1467641835266.
10. In 1939, the Supreme Court of Canada declared that Inuit are considered "Indians" for the purposes of section 91(24) and thus fall under federal legislative authority. See *Reference Re Eskimos 1939* CanLII 22, [1939] S.C.R. 104.
11. Since the word "Indian" is used in section 91(24) of the *Constitution Act, 1867*, it is not clear precisely over whom the founding fathers intended Parliament to exercise power. The *Daniels* decision clarified that the denomination "Indian" is meant to refer to all Indigenous peoples for the purposes of that section.
12. *Daniels*, para. 15.
13. *Daniels*, para. 12.
14. *Daniels*, paras. 11 and 12.
15. The Court noted that provinces have a role to play and can adopt legislation that does not impair the core of the federal power in section 91(24). Specifically, provincial laws of general application apply to treaty rights, and provinces can legislate where justified.
16. *Daniels*, para. 15.
17. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
18. *Beckman v. Little Salmon/Carmacks First Nation*, [2010] 3 S.C.R. 103, at para. 10; also cited in *Daniels* at para 34.
19. M. McCrossan, "Shifting Judicial Conceptions of 'Reconciliation': Geographic Commitments Underpinning Aboriginal Rights Decisions," *Winsor Yearbook of Access to Justice* 3, no. 2 (2013): 160; D.G. Newman, "Reconciliation: Legal Conceptions and

Faces of Justice," in *Moving Toward Justice: Legal Traditions and Aboriginal Justice*, ed. J.D. Whyte (Saskatoon: Purich, 2008).

20. *R. v. Sparrow*, [1990] 1 S.C.R. 1075. Further clarifying the implications of reconciliation in *R. v. Van der Peet*, [1996] 2 S.C.R. 507 at para. 31, the Court held that the rights recognized in section 35(1) must be directed toward the reconciliation of the preexistence of Indigenous societies with the sovereignty of the Crown.
21. The obligation to weigh Indigenous concerns against other societal interests in making decisions that could adversely affect Indigenous rights claims was further clarified in *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73; *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388, 2005 SCC 69; *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550, 2004 SCC 74.
22. *Van der Peet*, para. 31.
23. Compliance with this obligation rests with the Court, which can be called upon to determine whether legislation infringes on Indigenous rights.
24. See, on this point, C. Vowel and D. Leroux, "White Settler Antipathy and the *Daniels* Decision," *TOPIA: Canadian Journal of Cultural Studies* no. 36 (2016): 31-42.
25. Government of Canada, *Making Real Change Happen: Speech from the Throne to Open the First Session of the Forty-Second Parliament of Canada*, December 4, 2015 (Ottawa: Government of Canada, 2015), https://www.canada.ca/en/privy-council/campaigns/speech-throne/making-real-change-happen.html; and Liberal Party of Canada, *Real Change: Restoring Fairness to Canada's Relationship with Aboriginal Peoples. Justin Trudeau's Remarks at the Assembly of First Nations 36th Annual General Assembly on Tuesday, July 7, 2015*, July 10, 2015 (Ottawa: Liberal Party of Canada, 2015), https://www.liberal.ca/justin-trudeau-at-assembly-of-first-nations-36th-annual-general-assembly/.
26. For an outline of the pillars, see a statement by Yvonne Jones, Parliamentary Secretary to the Minister of Indigenous and Northern Affairs, *House of Commons Debates* 148, no. 167 (May 1, 2017), https://www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-167/hansard. The government's efforts to advance new fiscal relationships with First Nations, the Inuit and the Métis Nation are also subsumed under this pillar. These include changes to funding approaches and financial transfer mechanisms. Canada signed a memorandum of understanding with the Assembly of First Nations in July 2016 that outlines the structure of a new fiscal relationship. The federal government also announced long-term stable funding to support the Métis Nation in Budget 2017.
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