

# “Our Time has Come”: Reconciliation in the Wake of *Manitoba Metis Federation Inc. v. Canada (Attorney General)*

*Janique Dubois and Kelly Saunders\**

*In 2016, the Manitoba Métis Federation (MMF) signed an historic Framework Agreement with Canada. A response to the Supreme Court of Canada's 2013 ruling in Manitoba Metis Federation v. Canada, the Framework Agreement outlines a process for the negotiation of a modern day treaty between Canada and the Manitoba Métis. Unlike most land-related agreements, negotiations between the Métis and Canada are unfolding at a rapid pace. Drawing on the work of Christopher Alcantara to explain variations in the success and failure of land claims negotiations, we argue that developments towards reconciliation between the MMF and Canada can be attributed to the strategies, incentives and preferences of both parties, combined with Canada's current judicial and political context. In particular, we highlight such factors as the existence of clear objectives on the part of the MMF and Canada, the role of the Supreme Court in reconciling preferences and providing incentives for negotiation, and the favourable political context created by the Trudeau government's 2015 campaign pledge for a renewed nation-to-nation relationship with the Métis in Canada. We also note the ability of the MMF to speak with a unified voice and its willingness to accept the official discourse of the state and advance goals compatible to those of the Crown as further supporting factors. Despite these successes, however, we caution that the Métis have been down this path before. Reconciliation will depend on the ability of the Métis to convince Canada to negotiate in good faith and to make good on past promises.*

*En 2016, la Manitoba Métis Federation (MMF) signa une entente-cadre historique avec le Canada. Cette entente, une réponse à l'arrêt Manitoba Metis Federation c. Canada de la Cour suprême du Canada en 2013, expose les grandes lignes d'un processus de négociation d'un traité modernes entre le Canada et les Métis du Manitoba. Contrairement à la plupart des ententes territoriales, les négociations entre les Métis et le Canada se déroulent rapidement. En nous appuyant sur l'œuvre de Christopher Alcantara afin d'expliquer les variations de réussite et d'échec en matière de négociations sur les revendications territoriales, nous soutenons que les changements en vue d'une réconciliation entre la MMF et le Canada peuvent être attribués aux stratégies, aux motivations et aux préférences des deux partis, ainsi qu'au contexte judiciaire et politique actuel du Canada. Nous attirons notamment l'attention sur des facteurs comme l'existence d'objectifs clairs de la part de la MMF et du Canada, le rôle joué par la Cour suprême pour concilier les préférences et encourager la négociation, ainsi que le contexte politique favorable créé par la promesse électorale du gouvernement Trudeau en 2015 concernant le renouvellement de la relation de nation à nation avec les Métis du Canada. Nous constatons également la capacité de la MMF à s'exprimer d'une voix unifiée et son empressement à accepter le discours officiel de l'État et faire progresser des buts compatibles avec ceux de la Couronne comme éléments de soutien supplémentaires. Cependant, malgré ces succès nous avertissons que les Métis sont déjà passés par ce chemin. La réconciliation dépendra de la capacité des Métis à convaincre le Canada de négocier en bonne foi et de tenir ses anciennes promesses.*

---

\* Janique Dubois is an Assistant Professor in the School of Political Studies at the University of Ottawa. Kelly Saunders is an Associate Professor in the Department of Political Science at Brandon University. The authors would like to acknowledge the diligent research assistance of Adam Leo Paul. They also thank the anonymous reviewers for helpful suggestions.

Our land claims is the key to the future prosperity of our nation. It is our true inheritance that we must preserve and protect for generations to come.

David Chartrand, President, Manitoba Métis Federation<sup>1</sup>

On November 15, 2016, the Manitoba Métis Federation (MMF) signed an historic Framework Agreement with Canada. A response to the Supreme Court of Canada's 2013 ruling in *Manitoba Metis Federation Inc. v Canada (Attorney General)*<sup>2</sup> (hereafter *MMF v Canada*), the Framework Agreement outlines a process for the negotiation of a modern-day treaty between Canada and the Manitoba Métis. The timing of the Agreement — one day short of the 131<sup>st</sup> anniversary of the execution of Louis Riel at the hands of the Canadian government — could not have been more significant.

As they completed the signing ceremony, the signatories to the agreement, MMF President David Chartrand and Minister of Crown-Indigenous Relations and Northern Affairs Carolyn Bennett, each spoke of reconciliation. Beaming with pride, President Chartrand stated, “[a]fter many long years of struggle, our partner has returned to the negotiating table to settle the long outstanding claim of Manitoba’s Métis in a spirit of renewal and reconciliation.”<sup>3</sup> Bennett responded in kind, affirming, “[t]his is a truly historic undertaking and we are firmly committed to working in partnership to reach a balanced solution that advances reconciliation for everyone’s benefit.”<sup>4</sup> Unlike most land-related agreements involving Indigenous peoples and the Crown, negotiations between the Métis and the federal government are unfolding at a rapid pace.<sup>5</sup> What explains the apparent speed at which the MMF and Canada are moving forward on a land claims agreement?

In this article, we use Christopher Alcantara’s heuristic framework on the success and failure of land claims negotiations to explain how the preferences,

---

1 “State of the Nation — President’s Report” (last visited 20 December 2017) at 10, online (pdf): *Manitoba Métis Federation* <[www.mmf.mb.ca/docs/aga/President\\_Report\\_2015.pdf](http://www.mmf.mb.ca/docs/aga/President_Report_2015.pdf)>.

2 2013 SCC 14 [*MMF v Canada*].

3 “Canada and Manitoba Métis Federation Celebrate Key Milestone on Road to Reconciliation” (15 November 2016), online: *Manitoba Métis Federation* <[www.mmf.mb.ca/news\\_details.php?news\\_id=204](http://www.mmf.mb.ca/news_details.php?news_id=204)>.

4 *Ibid.*

5 Pending a change in government in the 2019 federal election, President Chartrand anticipates that a final settlement between the MMF and the Trudeau government will be reached by 2022, six years after negotiations began in 2016. Interview of David Chartrand, MMF President (8 May 2019), Winnipeg.

incentives and strategies of the parties involved, along with the larger institutional context, impacted the development of negotiations of a land claims agreement between Canada and the Manitoba Métis. We argue that the speedy progress towards a negotiated land claims agreement can be attributed to the specific strategies adopted by the MMF, along with the favourable legal and political context that emerged in the wake of the Court's ruling on *MMF v Canada* and the election of the Trudeau government. We begin by providing a historical background regarding the key issues at the heart of *MMF v Canada* — namely the promises of land made to Métis families in section 31 of the *Manitoba Act, 1870*,<sup>6</sup> subsequent to which the federal government failed to uphold. In the second section, we assess the progress on land claim negotiations between Canada and the Manitoba Métis by considering the particular preferences, incentives, and strategies of both parties, along with the institutional context within which negotiations are occurring. We conclude with a critical assessment of the opportunities and obstacles that lay ahead as the Manitoba Métis and Canada move forward with these historic negotiations.

## The Promise of Land Rights at the Heart of *MMF v Canada*

In 1869, a deal was struck between Canada and the provisional government led by Louis Riel to bring Manitoba into Confederation. This deal, outlined in the *Manitoba Act, 1870*, included the provision of 1.4 million acres of land for the benefit of the resident “half-breed” families.<sup>7</sup> This promise of land, contained in section 31 of the *Act*, was at the heart of the Supreme Court's decision in *MMF v Canada*. Turning to the courts, the Manitoba Métis sought a declaration that the lands they were promised in the *Manitoba Act* were not provided in accordance with the honour of the Crown or its fiduciary obligations. In response, Canada argued that the obligations flowing from the *Manitoba Act* were discharged in good faith since the purpose of section 31 was to provide “individual Métis residents with land on which to settle, if they chose.”<sup>8</sup> To understand the gap between these positions, we turn to historical records and academic publications that ascertain the purpose of section 31. Our objective

---

6 SC 1870, c 3, reprinted in RSC 1985, Appendix II [*Manitoba Act*].

7 The term “half-breed” was often used in government documents to refer to inhabitants who were of dual heritage (Indian and European). Throughout the paper, we use Métis and, in particular, the Manitoba Métis to refer to those affected by the *Manitoba Act*. The lands in question in section 31 of the *Manitoba Act* were ungranted or waste lands deemed to be vested in the Crown by the Act. See *Manitoba Act*, *ibid* for details.

8 *Manitoba Metis Federation Inc. v Canada (Attorney General)*, 2013 SCC 14, (Factum of the Respondent at para 127).

here is not to retell the story of the birth of Canada's fifth province, a subject that has been discussed at length by historians and presented in evidence submitted to the Court in *MMF v Canada*.<sup>9</sup> Instead, we highlight the promises made to the Métis at the time of Confederation in order to better identify the issues at stake in the current negotiations between Canada and the Manitoba Métis Federation.

In the discussions that led to the adoption of the *Manitoba Act*, the question of land was hotly debated. For Riel, securing land was essential to the survival of the Métis Nation. Testifying to this, the Métis repeatedly petitioned the federal government for the recognition of their rights to land.<sup>10</sup> Canada initially resisted the idea that the Métis might have Aboriginal title or what was referred to at the time as "the privileges granted to Indians."<sup>11</sup> Father Ritchot, who negotiated Manitoba's entry into Confederation on behalf of the Métis-led provisional government, insisted that the recognition of rights to land was necessary for Red River residents to join Canada. Prime Minister John A. Macdonald and his counterpart, George-Étienne Cartier, eventually agreed.

As D.N. Sprague recounts, the only sticking point remained the appropriate compensation. Historians have explained that the agreement reached between Canadian negotiators and Father Ritchot initially proposed 1.5 million acres, to be chosen throughout the province, to ensure the continuance of land amongst Métis families.<sup>12</sup> However, Canada presented a revised text that promised 1.4 million acres with no mention of the timing or method for how the land was to be distributed. Commenting on how the agreement had become "very much modified," Ritchot demanded that the original language be adopted.<sup>13</sup>

On May 23, 1870, Father Ritchot obtained a letter signed by Cartier, with the following postscript:

---

9 See e.g. Alexander Begg, *History of the North-West*, vol 1 (Toronto: Hunter, Rose & Co, 1894); Gerhard J Ens, *Homeland to Hinterland: The Changing Worlds of the Red River Métis in the Nineteenth Century*, (Toronto: University of Toronto Press, 1996); WL Morton, *Manitoba: A History*, 2nd ed (Toronto: University of Toronto Press, 1967); George FG Stanley, *The Birth of Western Canada: A History of the Riel Rebellions*, (London: Longmans, Green, and Co, 1936); GFG Stanley, *Manitoba 1870: A Métis Achievement*, (Winnipeg: University of Winnipeg Press, 1972); *MMF v Canada*, *supra* note 2.

10 AH de Trémaudan, *Hold High Your Heads: History of the Métis Nation in Western Canada*, translated by Elizabeth Maguet (Winnipeg: Pemmican Publications, 1982) at 116.

11 DN Sprague, *Canada and the Métis, 1869-1885*, (Waterloo: Wilfrid Laurier University Press, 1988) at 57-58.

12 *Ibid* at 60.

13 Cited in Sprague, *ibid* at 60.

I have, moreover, the high honour of assuring you,... that regarding the subject of the 1,400,000 acres of land reserved by the 31st Section of the Manitoba Act for the benefit of half breed families, the regulations which ought to be established...will be of a nature for recognizing the desires of the half breed residents, and for guaranteeing, in a manner that is at once efficient and just, the division of this expanse of land among the children of the heads of breed families.<sup>14</sup>

Upon his return to the Red River settlement, Ritchot relayed Cartier's assurances to the Legislative Assembly of Assiniboia, concluding: "... as the Canadian Government seem really serious, they have to be believed, and we can trust them."<sup>15</sup> This statement was received with cheers from Red River inhabitants. Reassured by the strength of the promises of land in the *Manitoba Act*, the Assembly of Assiniboia voted unanimously to join Canada.<sup>16</sup>

The purpose of section 31 of the *Manitoba Act* was to provide a permanent land base for the Métis to adjust to the new agricultural economy that accompanied Canada's westward expansion.<sup>17</sup> Analyzing the lower courts' comments regarding the purpose of the land settlement scheme, Thomas R. Berger points out that both trial judges found that the promise of land was intended to give the Métis a "head start" before the expected arrival of settlers.<sup>18</sup> At the same time, Canada did not seem especially concerned with the long-term preservation of Métis rights to land and instead encouraged the rapid settlement of the prairies. In a letter dated October 14, 1869, Prime Minister Macdonald predicted that, "[i]n another year the present residents [in Red River] will be altogether swamped by the influx of strangers."<sup>19</sup>

The text adopted in section 31 of the *Manitoba Act* provides direction as to the framework for the settlement scheme which, as Chartrand describes, was to consist of two phases. First, the Lieutenant Governor of the province was to select the lands at his discretion and to divide them amongst the children of the heads of families. Second, while the lands were to be granted to the children, this would occur according to conditions imposed by the federal government. As a result, the implementation of section 31 required the federal government

---

14 "Appendix 6: Report of the Select Committee on the Causes of the Difficulties in the North West Territory in 1869-70" *Journals of the House of Commons of Canada* VIII (1874) at 74, cited in Sprague, *ibid* at 61.

15 Speech from Ritchot to Assembly of Manitoba, 24 June 1870, cited in Thomas R Berger, "The Manitoba Métis Decision and the Uses of History" (2014) 38:1 Man LJ 1 at 8.

16 Sprague, *supra* note 11 at 67-68.

17 Paul LAH Chartrand, "Aboriginal Rights: the Dispossession of the Métis" (1991) 29:3 Osgoode Hall LJ 457 at 463.

18 Berger, *supra* note 15 at 9.

19 Letter from Macdonald to J.W. Bown, October 1869, cited in Berger, *supra* note 15 at 2.

to determine the number of Métis children to which land would be allotted — a task that would prove to be controversial.

Three successive allotments were arranged by the federal government.<sup>20</sup> The first, in 1873, was cancelled because it erroneously included heads of families in addition to children. The second allotment was completed in 1875 but was subsequently cancelled due to a flawed estimate of the total number of eligible children. This led the Minister of the Interior to recommend, in January 1875, the appointment of a commission to address the delay, which marked the beginning of the third allotment.<sup>21</sup> The Machar-Ryan Commission was tasked with establishing the identity and entitlement of Métis eligible to receive a patent under section 31. By early 1876, the commissioners had completed a list of eligible Métis. However, the commission only managed to establish entitlement; no actual land had been granted. It was not until the early 1880s that the Crown would begin to allot parcels of land. By this time, the Métis were already marginalized in Red River with the rapid influx of settlers, just as Macdonald had envisioned.

Consistent with Canada's racist efforts to avoid the formation of communities consisting of large concentrations of Indigenous peoples, disregard for the provisions outlined in the *Manitoba Act* ultimately led to the dispossession of the Métis.<sup>22</sup> During the third allotment, it became apparent that the Métis children had not been properly counted. This was in large part due to the estimate of a Dominion Lands Agent in 1875 that there could be no more than 5,814 Métis children in Red River. He proposed the estimate be increased to 5,833 which, if each were given a quarter section and a half (240 acres), would add up to 1.4 million acres. As Berger notes, in its quest for "bureaucratic convenience" the federal government miscalculated the number of Métis children.<sup>23</sup> Eventually admitting that 993 children were left out of the third allotment, the federal government decided in 1885 that — in lieu of land — these children would receive \$240 worth of "scrip," a voucher for land or money offered by the federal government that was considered to extinguish outstanding

---

20 See Berger, *supra* note 15 at 12.

21 See *ibid* at 15-19. Berger explains that the Dominion Lands Agent adjusted the estimated number of children from 7,368 children identified in the 1870 Census to 5,814 "purely for bureaucratic convenience." This adjustment would result in allotments of 240 acres or a quarter-section and a half, which was a more convenient size to administer than 190 acres. The federal government's acceptance of this proposal led to the cancellation of the second allotment.

22 DN Sprague, "Government Lawlessness in the Administration of the Manitoba Land Claims, 1870-1887" (1980) 10:4 Man LJ 415. See also Tricia Logan, "Settler Colonialism in Canada and the Métis" (2015) 17:4 J of Genocide Research 433 at 442.

23 Berger, *supra* note 15 at 17.

Métis land claims. Since the price of land had increased, Métis children who received scrip in 1885 could only buy between 96 and 120 acres of Dominion land with these funds, as compared to the 240 acres granted in the allotment.<sup>24</sup>

Described by the Supreme Court of Canada as “a sorry chapter in our nation’s history,” the scrip system failed to give the Métis the head start that had been promised to them as part of the deal they made to enter into Confederation.<sup>25</sup> As Chartrand aptly concludes, “[g]overnment officials were implicated in one of the most highly-placed extortion rackets in Canadian history.”<sup>26</sup> The broken promises of the *Manitoba Act*, which the Crown failed to rectify in the intervening years, remained a gaping wound in Canada-Métis relations and contributed to the growing displacement and marginalization of the Métis. Frustrated with the ongoing refusal of the federal government to politically negotiate a resolution to their outstanding claims — or to even acknowledge that they had any claims against the Crown — the Métis had little choice but to turn to the courts. John Morrisseau, former president of the MMF and one of the key leaders who initiated the land claim, remembers that, “[t]he work to file the land claim helped to re-ignite pride in Métis. It was time to lift our heads again and feel good about ourselves and it helped us to build strong Métis communities.”<sup>27</sup>

In 1981 the MMF, along with seventeen Métis individuals, initiated legal proceedings against the Crown to redress the wrongs that had occurred 111 years previously. The Plaintiffs sought declaratory relief against Canada and the Province of Manitoba based on the promises made in the *Manitoba Act*.<sup>28</sup> Importantly, the Plaintiffs sought this declaratory relief in order to assist them in extra-judicial negotiations to achieve their constitutional rights.<sup>29</sup> This case, like many others, is part of longstanding efforts by the Métis to have their rights recognized and implemented through negotiations with the Canadian state.<sup>30</sup>

---

24 *Ibid* at 21.

25 *R v Blais*, 2003 SCC 44 at para 34.

26 Chartrand, *supra* note 17 at 471.

27 Métis National Council, “John Morrisseau”, (last visited 21 December 2017), online: *Métis Nation* <[www.metisnation.ca/index.php/who-are-the-metis/order-of-the-metis-nation/john-morrisseau](http://www.metisnation.ca/index.php/who-are-the-metis/order-of-the-metis-nation/john-morrisseau)>.

28 Michael Barry, “The Honour of the Crown in Aboriginal Land Issues: Manitoba Métis Federation Inc. v. R., 2013” (2015) 69:1 *Geomatica* 65 at 66.

29 Sacha R Paul, “A Comment on Manitoba Métis Federation Inc v Canada”, Case Comment, (2013) 37:1 *Man LJ* 323 at 324.

30 For a discussion of these efforts, see Kelly Saunders & Janique Dubois, *Métis Politics and Governance in Canada*, (Vancouver: UBC Press, 2019).

The case brought forward by the MMF concerned sections 31 and 32 of the *Manitoba Act*, which introduced the obligation of the Crown to address land grants for Métis children.<sup>31</sup> The Plaintiffs argued that Canada had a fiduciary duty to implement section 31 of the *Act*. As Sacha Paul explains, the Court deliberated the issue of whether the Crown's fiduciary duty was raised by section 31 in two ways. First, it considered whether the fiduciary duty unique to Aboriginal law was relevant to the case. Second, it examined general law of fiduciary duties to determine if the Crown undertook to act as a fiduciary. On both accounts, the Court found that section 31 did not impose a fiduciary duty on the Crown.<sup>32</sup> This was primarily because the Court did not find the existence of a specific, cognizable Aboriginal interest, which in the case law to date depends on a communal Aboriginal interest in the land.<sup>33</sup> Instead, the Court held that the facts showed "that the land at issue was not held collectively, but individually, and that the Métis permitted the sale of land" in this case.<sup>34</sup>

While the Court did not find a fiduciary duty, it nevertheless determined that a Crown-Métis fiduciary relationship exists. The Court argued that section 31 contained a promise made to the Métis people collectively as a distinct community that engaged the honour of the Crown.<sup>35</sup> As a result, section 31 gave "rise to a duty of diligent, purposive fulfillment" of that promise.<sup>36</sup> In examining the evidence, the Court found that the Crown did not act honourably in carrying out the promises of section 31. Contrary to Cartier's assurance that lands would be divided "in the most effectual and equitable manner," the Crown repeatedly delayed the distribution of land.<sup>37</sup> The Court held that the ten-year delay "in issuing the 1.4 million acres violated ... [the] duty of diligence, which forms part of the honour of the Crown."<sup>38</sup> As the Supreme Court of Canada confirmed, the "ineffectual and inequitable [implementation] ... was not a matter of occasional negligence, but of repeated mistakes and inaction that persisted for more than a decade."<sup>39</sup> The Court thus allowed the

---

31 Barry, *supra* note 28 at 68.

32 Paul, *supra* note 29 at 334.

33 Barry, *supra* note 28 at 70.

34 Paul, *supra* note 29 at 334.

35 Darren O'Toole, "Section 31 of the Manitoba Act, 1870: A Land Claim Agreement" (2014) 38:1 *Man LJ* 73 at 74.

36 *MMF v Canada*, *supra* note 2 at para 94.

37 See *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14, (Factum of the Appellant at para 35); See also *MMF v Canada*, *supra* note 2 at paras 101-102.

38 Paul, *supra* note 29 at 324.

39 *MMF v Canada*, *supra* note 2 at para 128.



claim in part by acknowledging that Canada failed to comply with the honour of the Crown when it failed to act diligently in implementing section 31.<sup>40</sup>

The Supreme Court of Canada's declarations in *MMF v Canada* forced the issue of Métis land rights in Manitoba onto the political agenda. Contrary to the past where judges felt that they could neither order parties to negotiate nor influence negotiations, there is a growing recognition that negotiation and adjudication processes must jointly contribute to resolve disputes over Indigenous lands.<sup>41</sup> While court decisions remain imperfect tools in resolving such disputes, *MMF v Canada* is one amongst many decisions that has helped to foster political solutions by incentivizing parties to enter into political negotiations.<sup>42</sup> In the next section, we consider how the confluence of preferences and incentives between Canada and the Manitoba Métis, assisted by the conducive strategies adopted by the MMF, helped to advance the negotiation of a modern land claim agreement.

## Explaining the Fast-Paced Negotiations between Canada and the Manitoba Métis

The Supreme Court of Canada's *MMF v Canada* decision helped set the stage for the first land claim negotiation with the Métis south of the 60<sup>th</sup> parallel.<sup>43</sup> Scholars have examined the political and contextual factors that affect the process, evolution and implications of land claims negotiations.<sup>44</sup> Within this

---

40 See Barry, *supra* note 28 at 68.

41 Shin Imai, "Sound Science, Careful Policy Analysis, and Ongoing Relationships: Integrating Litigation and Negotiation in Aboriginal Lands and Resources Disputes" (2003) 41:4 Osgoode Hall LJ 587 at 589.

42 See Kent Roach, "Remedies for Violations of Aboriginal Rights" (1992) 21:3 Man LJ 498. For a discussion of the ways in which the specific decisions provide incentives and disincentives to negotiate, see Shin Imai, "Creating Disincentives to Negotiate: *Mitchell v. M.N.R.*'s Potential Effect on Dispute Resolution" (2003) 22 Windsor YB Access Just 309.

43 The Canadian government has engaged with Métis collectivities north of the 60<sup>th</sup> parallel. See Larry Chartrand, "Métis Land Claim Participation in the North: Implications for Southern Canada" (2016) 4:2 Northern Public Affairs 56.

44 See e.g. Christa Scholtz, *Negotiating Claims: The Emergence of Indigenous Land Claim Negotiation Policies in Australia, Canada, New Zealand, and the United States*, (New York: Routledge, 2006); Frances Abele, Katherine A Graham & Allan M Maslove, "Negotiating Canada: Changes in Aboriginal Policy over the Last Thirty Years" in Leslie A Pal, ed, *How Ottawa Spends 1999-2000: Shape Shifting: Canadian Governance Toward the 21<sup>st</sup> Century*, (Toronto: Oxford University Press, 1999); Christopher Alcantara, "Old Wine in New Bottles? Instrumental Policy Learning and the Evolution of the Certainty Provision in Comprehensive Land Claims Agreements" (2009) 35:3 Canadian Public Policy 325; Michael Asch & Norman Zlotkin, "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations" in Michael Asch, ed, *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference*, (Vancouver: UBC Press, 1997).

literature, Christopher Alcantara has proposed a useful theoretical framework to explain variations in the success and failure of land claims negotiations, which is of particular benefit in understanding the specific case study of the Manitoba Métis.<sup>45</sup> He argues that differences in negotiation outcomes can best be explained by taking into account the preferences, incentives, and strategies of the negotiating parties, along with the larger institutional framework within which negotiations occur. Since negotiations between Canada and the Manitoba Métis are still underway, our objective here is not to assess the ultimate success or failure of this process, but rather to consider how the particular variables identified by Alcantara (preferences, incentives, strategies, and context) helped shape this process. We argue that it is the specific strategies that have been adopted by the MMF, along with the favourable legal and political context that emerged in the wake of the Court's ruling on *MMF v Canada* and the election of the Trudeau government, that account for the fast-paced negotiation of a land claims agreement between Canada and the Manitoba Métis.

### **Aligning Preferences through Reconciliation**

The first element in Alcantara's framework involves assessing how preferences affect negotiations. Working within a rational choice framework, he assumes that each party enters into deliberations with a set of goals, or preferences, which they seek to realize. In advancing this argument, Alcantara draws on the work of scholars, such as Richard Simeon, who examine the bases and dimensions of conflict and consensus between different actors in a political system. As Simeon notes, "goals on specific issues can be seen as intimately bound up with a broader set of overall goals."<sup>46</sup> Given that the goals of each party in a negotiation rarely align with each other, Alcantara suggests that what matters more is the distance between goals.<sup>47</sup> Variations in the outcomes of land claims negotiations can be attributed to the presence of a shared commitment to a larger goal, which helps to mitigate any differences that might exist between the parties in terms of specific goals.

---

45 Through empirical research, Alcantara sketches the outlines of a heuristic theoretical framework to better understand the outcomes of land claims negotiations. While it remains limited, it offers a useful framework from which to assess different negotiation outcomes. Christopher Alcantara, *Negotiating the Deal: Comprehensive Land Claims Agreements in Canada*, (Toronto: University of Toronto Press, 2013) [Alcantara, *Negotiating the Deal*].

46 Richard Simeon, *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada*, (Toronto: University of Toronto Press, 2006) at 15.

47 Alcantara, *Negotiating the Deal*, *supra* note 45 at 6. Fisher, Ury and Patton argue that the parties' willingness to let go of inflexible positions depends on the willingness of their negotiating partner to accommodate joint preferences; Robert Fisher, William Ury & Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In*, 2nd ed (New York: Penguin, 1991).

By way of illustration of how preferences can help explain differences in outcome of land claims agreements, Alcantara points to the Inuit and the Innu in Labrador. Although both groups submitted statements of intent to begin negotiations on a comprehensive land claims agreement with Canada at the same time, only the Inuit were able to successfully conclude an agreement.<sup>48</sup> This difference, Alcantara suggests, can be explained in part by a common desire for certainty with respect to land rights shared by both the Inuit and Canada in order to avoid future conflict, protests, and litigation. While the Inuit demonstrated a willingness to be flexible on other, lesser goals, the Innu refused to move from their position that any agreement had to recognize Innu sovereignty over the entirety of their traditional lands.

For the federal government, the primary goal or objective of land claims negotiations, regardless of the Indigenous group involved, is to ensure certainty and finality for the purposes of fostering economic development. It is also interested in empowering Indigenous peoples to increase their capacity for governance and self-sufficiency.<sup>49</sup> As stated in Canada's Interim Comprehensive Land Claims Policy, the negotiations process is designed to "advance reconciliation in both the short and long term, so that Aboriginal communities can access the economic benefits that meet their immediate needs as well as those of future generations."<sup>50</sup> The federal government thus views the promotion of a secure climate for economic and resource development as contributing to the objective of reconciliation by balancing Aboriginal rights with broader societal interests.<sup>51</sup>

For the Manitoba Métis, their preferences were broad but clear: negotiate land and political rights with Canada. The MMF's goal has always been to negotiate and achieve a land claims agreement with the Crown as expressly contemplated under section 35(3) of the *Constitution Act, 1982*. For the MMF, an agreement of this nature would "resolve our outstanding claim in relation to section 31 of the *Manitoba Act, 1870* as well as establish a forward-looking, nation-to-nation, government-to-government relationship between the Crown and the Manitoba Métis Community for generations

---

48 Alcantara, *Negotiating the Deal*, *supra* note 45 at 57-59. For Alcantara, this was at the time of writing; the Innu would conclude a successfully negotiated Agreement in Principle with the Crown in 2011.

49 *Ibid* at 21.

50 Aboriginal Affairs and Northern Development Canada, *Renewing the Comprehensive Land Claims Policy: Towards a Framework for Addressing Section 35 Aboriginal Rights*, (Ottawa: AADNC, 2014) at 6, online: <[www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-LDC/STAGING/texte-text/ldc\\_ccl\\_renewing\\_land\\_claims\\_policy\\_2014\\_1408643594856\\_eng.pdf](http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-LDC/STAGING/texte-text/ldc_ccl_renewing_land_claims_policy_2014_1408643594856_eng.pdf)>.

51 *Ibid*.

to come.”<sup>52</sup> These objectives ultimately serve the purpose of reconciliation, which, in the MMF’s view, starts with the recognition of the Métis as partners in the building of Canada rather than “wards of the state.”<sup>53</sup> It involves acknowledging that the Crown did not fulfill its obligations to the Métis and making amends to enable Métis citizens to become full participants in Canada’s economy and society.

The federal government’s longstanding denial of Métis land and political rights has been a significant barrier to the fulfillment of this goal. The federal government historically argued that Métis people south of the 60<sup>th</sup> parallel do not have Aboriginal title or other Aboriginal entitlements to land, and even if such rights had existed historically, they were terminated through valid federal scrip distribution. Moreover, the federal government has long refused to recognize Métis political organizations as legitimate representatives of the Métis for rights purposes.<sup>54</sup> The Supreme Court of Canada’s decision in *MMF v Canada* played a determining role in undermining the federal government’s historical position. In so doing, it contributed to lessening the gap between the preferences of the negotiating parties in two significant ways.

First, the Court brought the parties closer together by ruling that the scrip process had not honourably terminated Métis land rights. Specifically, this finding contributed to aligning the parties’ preferences by associating the respect of promises of land with reconciliation.<sup>55</sup> The principle of reconciliation, as defined by the Minister’s Special Representative on Reconciliation with the Métis, Thomas Isaac, involves settling past grievances with a plan to collabora-

---

52 “Understanding the Manitoba Métis Federation Land Claims: Frequently Asked Questions”, (last visited 15 May 2019), online: *Manitoba Métis Federation* <[www.mmf.mb.ca/land\\_claims\\_FAQ.php](http://www.mmf.mb.ca/land_claims_FAQ.php)>.

53 Interview of David Chartrand, MMF President (8 May 2019), Winnipeg.

54 This is primarily due to the fact that, since the Métis were not historically recognized as falling under section 91(24) of the *Constitution Act, 1867*, and hence outside of the *Indian Act*, they were left to devise their own governance structures. While this enabled the Métis to create their own systems of governance unfettered by state control, it also resulted in the government’s subsequent refusal to recognize them as legitimate representative bodies for the purposes of negotiation.

55 In his analysis of the development of the concept of reconciliation within Canadian jurisprudence, Hewitt maintains that reconciliation does not lie solely within section 35 or within Aboriginal laws, given the complex realities that have resulted from the presence of non-Indigenous peoples in Canada. Jeffrey G Hewitt, “Reconsidering Reconciliation: The Long Game” (2014) 67:1 SCLR 259 at 262. See also Michael McCrossan, “Shifting Judicial Conceptions of ‘Reconciliation’: Geographic Commitments Underpinning Aboriginal Rights Decisions” (2013) 31:2 Windsor YB Access Just 155; and Dwight G Newman, “Reconciliation: Legal Conception(s) and Faces of Justice”, in John D Whyte, ed, *Moving Toward Justice: Legal Traditions and Aboriginal Justice*, (Saskatoon: Purich Publishing, 2008).

tively move forward in accordance with Canadian law.<sup>56</sup> In *MMF v Canada*, the Court acknowledged that the purpose of the MMF's claim was to secure a declaration that would facilitate negotiations with the federal government in order to advance the constitutional goal of reconciliation and, in particular, to address the Métis' constitutional grievance with respect to land. As the Court noted, "[s]o long as the issue [of land] remains outstanding, the goal of reconciliation and constitutional harmony, recognized in section 35 of the *Constitution Act, 1982* and underlying section 31 of the *Manitoba Act*, remains unachieved. The ongoing rift in the national fabric that section 31 was adopted to cure remains unremedied."<sup>57</sup>

In addition to linking the fulfillment of the promise of land (the MMF's preferred goal) to reconciliation and providing certainty for the purposes of economic development and capacity-building (Canada's preferred goal), the Court also brought the two parties together in a second important way by granting the MMF standing in the case. The federal government initially contested this, arguing that the MMF had no interest in the litigation insofar as the matter was strictly about individual entitlements rather than land set aside for a representative body.

Moreover, the government maintained that as the MMF's membership was broader than the descendants of section 31 beneficiaries, the MMF's legitimacy as the Plaintiff in the case should be dismissed. Recognizing that this case involved a collective claim for declarations that sought to advance reconciliation, the Court rejected the notion that it was a series of claims for individual relief.<sup>58</sup> Isaac concludes that, "[t]here can be no doubt that based on the [Supreme Court of Canada]'s statements in the MMF Decision, that the MMF represents the Métis in Manitoba and can forthrightly represent Métis interests in respect of any discussions or negotiations relating to the implementation of [this declaration]."<sup>59</sup>

By connecting the respect of promises of land with reconciliation and recognizing the MMF as the de facto representative body of the Manitoba Métis with which the federal government can engage to foster reconciliation, the

---

56 Indigenous and Northern Affairs, *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*, by Thomas Isaac (14 June 2016) at 29, online (pdf): <[http://publications.gc.ca/collections/collection\\_2016/aanc-inac/R5-123-2016-eng.pdf](http://publications.gc.ca/collections/collection_2016/aanc-inac/R5-123-2016-eng.pdf)>.

57 *MMF v Canada*, *supra* note 2 at para 140.

58 *Ibid* at para 44. The MMF was also recognized as "the governing body of Métis people in Manitoba" in *R v Goodon*, 2008 MBPC 59 at para 52.

59 Indigenous and Northern Affairs, *supra* note 56 at 38.

Court contributed to aligning the preferences of the negotiating parties. As Kent Roach argues, declarations about the general nature of Aboriginal rights like that issued in *MMF v Canada* are “manageable” remedies for courts since they do not purport to provide a final settlement to what are often complex problems.<sup>60</sup> Consistent with the call of the Royal Commission on Aboriginal Peoples to design remedies that foster negotiations, the Court’s objective in this case was to induce the parties to negotiate a political solution to the issue at hand.<sup>61</sup>

## **Providing Incentives to Negotiate**

Along with preferences, Alcantara argues that actors involved in land claims negotiations are subject to incentives that organize their strategic interactions with one another.<sup>62</sup> Incentives can provide opportunities to work towards a completed agreement, or alternatively, constrain successful outcomes. The Comprehensive Land Claims (CLC) process serves both as an incentive for negotiations by setting out a formalized mechanism through which talks can occur as well as a disincentive, by imposing rules that exclude and/or discourage Indigenous groups from entering the process.<sup>63</sup> For Alcantara, a successfully completed land claims treaty ultimately depends on the ability of Indigenous groups to convince the Crown that an agreement is in its best interests, and to incentivize state governments to come to the bargaining table.<sup>64</sup> This is because the federal, provincial and territorial governments act as “veto players” in land claims negotiations, holding more power relative to Indigenous groups.<sup>65</sup> Key factors that can encourage state actors to negotiate with Indigenous groups, as Alcantara identifies, are judicial decisions on Aboriginal rights and the Duty to Consult as well as a growing awareness of Aboriginal rights.<sup>66</sup>

---

60 Roach, *supra* note 42 at 543.

61 Canada, *Report of the Royal Commission on Aboriginal Peoples: Restructuring the Relationship*, vol 2 (Ottawa, 1996), at 564. See also Imai, *supra* note 42.

62 Alcantara, *Negotiating the Deal*, *supra* note 45 at 6.

63 The Comprehensive Land Claims process allows Indigenous communities that had never signed treaties with the Crown, but that have a valid claim to their traditional lands, to begin negotiations with the federal government. Indigenous groups must prove to the state that their claims are valid and adopt Western standards of proof if negotiations are to proceed. The Métis south of the 60<sup>th</sup> parallel are explicitly excluded from this process. In April 2015, the federal government announced its intention to develop a new framework for addressing section 35 Aboriginal rights, including a renewed Comprehensive Land Claims Policy. See Aboriginal Affairs and Northern Development Canada, *supra* note 50.

64 Alcantara, *Negotiating the Deal*, *supra* note 45 at 72.

65 George Tsebelis, *Veto Players: How Political Institutions Work*, (Princeton: Princeton University Press, 2002) at 19.

66 Alcantara, *Negotiating the Deal*, *supra* note 45 at 28-29.

The Supreme Court of Canada's decision in *MMF v Canada* provided an incentive for the federal government to negotiate a land claims agreement aimed at reconciliation with the Manitoba Métis by implying a duty to act diligently on the part of the Crown.<sup>67</sup> This duty requires the Crown to carry out promises — in this case, the constitutional promise of land to the Métis — in such a way as to ensure an Indigenous group not be left “with an empty shell of a treaty promise.”<sup>68</sup> Importantly, the Court established a connection between this duty and reconciliation. As Bell and Seaman argue, this case “stands for the proposition that a promise aimed at reconciliation of Aboriginal interests, in that case s. 31 of the *Manitoba Act*, engages the honour of the Crown which in turn gives rise to a duty of purposive, diligent fulfillment.”<sup>69</sup>

Specifically, the Court held that the promise to provide land to Métis children engaged the honour of the Crown and had to be fulfilled with due diligence since it was a promise to an Aboriginal group entrenched in an act that has constitutional status.<sup>70</sup> In *R. v Powley*, the Court ruled that section 35 of the *Constitution Act, 1982* gives rise to duties flowing from the Crown's honour. In that case, the Court confirmed that the Métis have Aboriginal rights under section 35. While case law has made clear that the Crown has fiduciary obligations as well as duties that flow from section 35, *MMF v Canada* acknowledges that such duties also flow from other sources, in this case section 31. Significantly, section 31 provides a constitutional foundation to compel broader rights-based recognition. Such recognition, Bell and Seaman explain, includes negotiations towards reconciliation with the Métis.<sup>71</sup>

The obligation to negotiate with the Métis flows from the duty of purposive, diligent fulfillment. As Paul explicates, citing *MMF v Canada* at paragraph 79, “the duty of diligence requires that when the Crown promises to confer a benefit to Aboriginal people it must take reasonable steps to ensure that the promise is kept.”<sup>72</sup> In this case, the Court ruled that Canada's commitment to provide land to the Métis was not fulfilled and so remains, “unfinished business.”<sup>73</sup> In addition, the Court clarified that judicial declarations

---

67 Paul, *supra* note 29.

68 *MMF v Canada*, *supra* note 1 at para 80, citing *R v Marshall*, [1999] 3 SCR 456 at para 52. For a discussion of the disagreement between the majority and the dissent with respect to the link between a solemn promise and the duty to act diligently, see Paul, *supra* note 29 at 326.

69 Catherine Bell & Paul Seaman, “A New Era for Métis Constitutional Rights? Consultation, Negotiation and Reconciliation” (2014) 38:1 Man LJ 29 at 42.

70 Berger, *supra* note 15 at 11.

71 Bell & Seaman, *supra* note 69 at 5.

72 Paul, *supra* note 29 at 325.

73 *MMF v Canada*, *supra* note 2 at para 140.

on matters of constitutional law, including the constitutionality of Crown conduct, can be pursued to facilitate negotiation.<sup>74</sup>

The first decision that seeks restitution by the descendants of Métis, *MMF v Canada* lays the foundation for a new approach towards rights and obligations that are outside of section 35, but nonetheless engage the honour of the Crown.<sup>75</sup> Paul contends that the case serves as a powerful incentive for Canada to move quickly on the political front, given that the failure to address the repeated mistakes and setbacks in the distribution of land to the Métis carries with it the possibility for damages based upon delay, lost rental income, or lost business opportunities.<sup>76</sup> By situating the negotiation with the Métis on matters of land as a means to reconciliation, the case provides an incentive for the federal government to come to the negotiation table. Failure to do so would signal a further breach of the Crown's duty of purposive, diligent fulfillment.

### **Asserting Agency through Strategy**

Alcantara's framework acknowledges the agency of Indigenous leaders in shaping the outcome of negotiations based on their response to the requirements imposed by dominant government actors. Just as Indigenous groups can seek to align their preferences more closely with those of state governments and to strategically use incentives to advance negotiations, so too can they adopt strategies to mitigate the effects of historical, cultural, and institutional constraints. Examples of "winning" strategies referenced by Alcantara include: adopting the official discourse of the state; negotiating only those issues that the federal government wants to negotiate; avoiding confrontational tactics; maintaining internal cohesion; fostering a positive perception of their group; creating a fruitful working relationship with government negotiators; demonstrating financial accountability; and exhibiting ability to successfully navigate the negotiation process.<sup>77</sup> Together, Alcantara argues, these factors can play a critical role in determining whether an agreement will be completed in the short or long term — or, indeed, if at all. In the case at hand, we identify three strategies adopted by the MMF that have been particularly effective in moving forward the negotiation of a land claims agreement.<sup>78</sup>

---

74 Bell & Seaman, *supra* note 69 at 42.

75 *Ibid* at 52. See also Barry, *supra* note 28 at 66.

76 Paul, *supra* note 29 at 332.

77 Alcantara, *Negotiating the Deal*, *supra* note 45 at 8.

78 By pointing out some of the specific strategies that the MMF has engaged in to encourage Canada to enter into land claims negotiations, we are not suggesting that these strategies are unique to the Métis. Rather, our goal here is to highlight what we see as some of the particular factors accounting for the speediness of land claims negotiations in the case of the Manitoba Métis.



The first is the strategic pursuit on the part of Métis leaders to find avenues within the Canadian state framework to resolve grievances related to their constitutional rights to land. From the outset, the strategy of the MMF in bringing legal proceedings forward was to force the federal government to the negotiation table in order to pursue a political resolution to outstanding Métis land rights in Manitoba.<sup>79</sup> While unwavering in their commitment to fulfilling their land and political rights, the Métis have purposefully done so in a way that is compatible with larger state interests. The Métis take pride in Louis Riel's historic role in bringing Manitoba into Confederation; just as Riel pursued the protection of Métis land and political rights within an expanded Canada, the MMF sees the fulfillment of their rights within the parameters of Canadian federalism.<sup>80</sup> This positioning of the Métis Nation as a part of, rather than separate from, a united Canada is crucial, for, as Alcantara notes, "an Aboriginal group will only be able to complete a treaty if it is willing to accept a final agreement that situates its administrative, legal and self-governing institutions within the Canadian constitutional order."<sup>81</sup>

At the same time, the MMF was adamant that negotiations be distinctions-based to account for the specificity of Métis rights, history, and culture. This strategy led the Manitoba Métis to negotiate "a new kind of treaty" with Canada that is separate from the Comprehensive Land Claims process established for First Nations and Inuit groups.<sup>82</sup> MMF President Chartrand argues that this Métis-specific process has allowed for "new kinds of thinking" about what is possible in Indigenous-Crown relations and how treaties can evolve in a more effective, expeditious, and respectful manner. He adds that the promise of this innovative model, and the positive and mutually beneficial relationships it has helped foster, has allowed federal officials to see new opportunities for effective change towards reconciliation.

The second purposeful strategy of the MMF leadership has been the mobilization of Métis citizens around a common political vision that links the constitutional promise of land rights to reconciliation. As President Chartrand noted in his opening address at the MMF's 2013 annual general assembly, the victory of the Manitoba Métis in *MMF v Canada* goes beyond the issue of land. It is about the Métis Nation's larger struggle for self-government, he

---

79 Speech by David Chartrand, MMF President (10 March 2017), MMF Government Summit, Winnipeg.

80 Interview of David Chartrand, MMF President (8 May 2019), Winnipeg.

81 Alcantara, *Negotiating the Deal*, *supra* note 45 at 98.

82 Interview of David Chartrand, MMF President (8 May 2019), Winnipeg.

argued, that began in 1816 with the Battle of Seven Oaks.<sup>83</sup> With this victory, “the Government is being called back to the table to finish the business of Confederation and to right the wrongs and create a legacy for our children, grandchildren, and future children.”<sup>84</sup> These efforts contributed to the signing of a Memorandum of Understanding (MOU) in May 2016 between the MMF and Canada to advance reconciliation. The first step towards the negotiation of a land claims agreement, the MOU set out a process for the establishment of an exploratory discussion table to develop a mutually acceptable framework agreement to advance reconciliation in a manner consistent with the Court’s direction in *MMF v Canada*.

The third strategy has been the steady and consistent strengthening of the MMF’s governance structures under the leadership of President Chartrand and his cabinet. The MMF proudly promotes itself as a “mature, responsible, and accountable” representative government of the Métis community in the province.<sup>85</sup> Over the past two decades, in order to prepare itself for self-government, the MMF has taken active measures to improve its governance functions, enhance its programming and services to Métis citizens, expand its financial accountability processes, seek out new opportunities for revenue generation, and gain respect for the inherent rights of the Manitoba Métis — all with the objective of establishing a recognized, self-sufficient, and sustainable Métis government in Manitoba.<sup>86</sup> As President Chartrand explains, “our strong democratic institutions, modern philosophy of governance, and ability to speak with a united and clear voice not only gives us greater autonomy but has made the federal government willing to negotiate a land claim agreement with our government, the government of the Métis people in Manitoba.”<sup>87</sup>

To demonstrate not only the readiness of the MMF to enter into self-government negotiations but also the internal unity of the Métis community in Manitoba around a shared vision for reconciliation, delegates to the 2013 general assembly unanimously passed a resolution that all monies received through a negotiated land claims settlement with Canada be put into a collective trust to

---

83 This battle to protect their ability to trade freely is one of the first instances that brought the Métis together as a people to advance a political agenda. David Chartrand, “Office of the President Annual Report, 45<sup>th</sup> MMF General Assembly”, (28 September 2009) at 14, online (pdf): *Manitoba Métis Federation* <[www.mmf.mb.ca/aga\\_annual\\_report\\_2013.pdf](http://www.mmf.mb.ca/aga_annual_report_2013.pdf)>.

84 *Ibid* at 15.

85 “2018 Annual Report”, (21 September 2018) at 28, online (pdf): *Manitoba Métis Federation* <[www.mmf.mb.ca/docs/aga/2018/2018\\_AGA\\_Report\\_Web.pdf](http://www.mmf.mb.ca/docs/aga/2018/2018_AGA_Report_Web.pdf)>.

86 “2017 Office of the President Report”, (September 2017) at 5, online (pdf): *Manitoba Métis Federation* <[www.mmf.mb.ca/docs/aga/2017\\_AGA\\_President\\_Report.pdf](http://www.mmf.mb.ca/docs/aga/2017_AGA_President_Report.pdf)>.

87 Interview of David Chartrand, MMF President (8 May 2019), Winnipeg.

benefit future generations.<sup>88</sup> Following the passage of this resolution, President Chartrand convened a committee of “all-star” individuals, including former Prime Minister Paul Martin and other Canadian business leaders, to advise the MMF on the investment of an anticipated settlement to “support the aspirations of the Métis people for generations to come.”<sup>89</sup>

While there were many strategic decisions undertaken by successive leaders of the MMF since the inauguration of their land claims case in 1981, the following factors played a determining role in bringing Canada to the bargaining table: the resolve to find a Métis-specific solution within the context of the Canadian state; the development of a shared vision for reconciliation that is connected to the constitutional promise of rights to land; the collective designation of land claims proceedings for future generations; and the positioning of the MMF as a democratic, responsible, and representative government. Together, these purposive strategies on the part of the MMF helped make a “win” on the Liberal government’s Indigenous file all the more possible, and fostered the trust necessary for negotiations on a land claims agreement to advance.<sup>90</sup>

## **The Institutional Context: Making the Most of the Federal Political Climate**

Our analysis of the events that unfolded in the wake of the Court’s decision in *MMF v Canada* illustrate how preferences, incentives and strategies contributed to the development of fruitful negotiations between Canada and the MMF. The Court’s declaration contributed to aligning preferences and providing incentives to foster reconciliation between the parties. At the same time, the tactical decisions of the MMF have been especially noteworthy in incentivizing the federal government to enter into talks on a land claims agreement. The MMF’s strategic positioning of itself as a representative, accountable, and credible negotiating partner within the federation, whose goals for reconciliation correlated with those of the federal government, helped create the favourable conditions necessary for land claims negotiations to advance at a rapid pace.

---

88 “Minutes of the 45th Annual General Assembly, September 28 & 29, 2013”, Resolution #14, cited in Annual General Assembly Report, 2014 at 18-19, (last visited 20 December 2017), online (pdf): *Manitoba Métis Federation* <www.mmf.mb.ca/docs/AGA\_2014\_OCT28.pdf>.

89 “Land Claims Strategic Investment Committee” (31 July 2013), online: *Manitoba Métis Federation* <www.mmf.mb.ca/news\_details.php?news\_id=100>. See also “Métis eye opportunities from massive land claim settlement”, *CBC News* (31 July 2013), online: <cbc.ca/news/canada/manitoba/metis-eye-opportunities-from-massive-land-claim-settlement-1.1399419>.

90 Interview of John Weinstein, Metis National Council Advisor (November 2018), Winnipeg.

While these factors are important, Alcantara maintains that the larger institutional framework within which Indigenous and state actors operate can also have a significant impact on the success or failure of land claims negotiations. This context does not pre-determine the political outcomes of negotiations; rather, it helps to determine the range of possible outcomes and the likelihood of certain outcomes occurring over others by shaping power relations between the negotiating parties.<sup>91</sup> Along with judicial decisions such as *MMF v Canada*, political developments can play a decisive role in shaping the institutional context. Depending on how groups strategically position themselves, changes in the political environment can act as opportunity structures that constrain and/or enable the behaviour of the federal government, on the one hand, and the Indigenous group seeking a treaty, on the other. In our discussion of the political developments that surrounded the Court's decision in *MMF v Canada*, we show how the MMF acted strategically to capitalize on this context to advance negotiations on a land claims treaty.

The 2015 federal election provided the MMF with an opportunity to advance their goal of a negotiated settlement on their outstanding claim to land. In anticipation of the Court's decision in *MMF v Canada*, the MMF sought a commitment from the major federal political parties that, should they form government, they would settle the outstanding claim with the Manitoba Métis. Both the NDP and the Liberal Party agreed in 2013. When the federal writ was dropped in late 2015, the MMF again approached the federal parties for a commitment.<sup>92</sup> Liberal leader Justin Trudeau's 2015 electoral promise for "real change" provided a political context favourable to the MMF's demands. Trudeau pledged to "complete the unfinished work of Confederation by establishing a renewed Nation-to-Nation relationship with the Métis Nation, based on trust, respect and cooperation."<sup>93</sup> He also promised to "immediately establish a negotiations process ... in order to settle the outstanding land claim of the Manitoba Métis" as mandated by the Supreme Court of Canada's decision in *MMF v Canada*.<sup>94</sup>

---

91 Christoph Knill & Andrea Lenschow. "'Seek and Ye Shall Find!': Linking Different Perspectives on Institutional Change" (2001) 34:2 *Comparative Political Studies* 187 at 195.

92 "2016 Annual Report" (September 2016), online (pdf): *Manitoba Métis Federation* <[www.mmf.mb.ca/docs/aga/2016\\_AGA\\_Report\\_web.pdf](http://www.mmf.mb.ca/docs/aga/2016_AGA_Report_web.pdf)> at 27.

93 Liberal Party of Canada, "Métis National Council" (21 September 2015), online (pdf): *Métis Nation* <[www.metisnation.ca/wp-content/uploads/2015/09/Liberal-Party-Response-Sept-21-2015-.pdf](http://www.metisnation.ca/wp-content/uploads/2015/09/Liberal-Party-Response-Sept-21-2015-.pdf)>.

94 Liberal Party of Canada, "Real Change: Advancing and Achieving, Reconciliation for the Métis Nation" (20 December 2017), online (pdf): *Manitoba Métis Federation* <[www.mmf.mb.ca/docs/elections/Liberal\\_Advancing-and-achieving-reconciliation-for-the-Metis-people.pdf](http://www.mmf.mb.ca/docs/elections/Liberal_Advancing-and-achieving-reconciliation-for-the-Metis-people.pdf)>.

With persistent pressure from Métis leaders and allies, the Liberal government remained true to their commitment to begin negotiations, which aligned with their larger commitment to reconciliation with Indigenous peoples. On May 27, 2016 — 7 months after taking office — the Minister of Indigenous-Crown Relations and Northern Affairs and MMF President signed a Memorandum of Understanding (MOU) on Advancing Reconciliation.<sup>95</sup> Commenting on this historic signing, Minister Bennett stated, “[t]he court decided there needed to be a relationship, and so today we have agreed that we will sit down and develop a framework for what that actually will mean in breathing life into the rights of the Métis people that are in section 35 of the constitution.”<sup>96</sup> Recognizing that the federal government’s longstanding position that denied Métis rights and contested the representative legitimacy of Métis political organizations was no longer tenable, Canada set out on a new path of relationship-building with the Métis.

Negotiations led the parties to complete a Framework Agreement in November 2016, 6 months after the signing of the MOU — a record achievement in terms of federal-Indigenous land claims negotiations.<sup>97</sup> Reaffirming Canada’s commitment to work on a nation-to-nation, government to government basis with the Métis Nation in order to advance reconciliation, the Framework Agreement outlines the shared objectives of Canada and the MMF that will inform a final agreement. These objectives include the recognition and support of a Manitoba Métis government with law-making authority and acknowledged jurisdiction, Métis participation in an economy that is sustainable, innovative, integrated, and prosperous, and a commitment to improving the cultural, social, physical, emotional, and economic wellbeing of the Manitoba Métis community.<sup>98</sup>

With these objectives in mind, the Agreement specifies a series of subject matters that are to form the basis of a negotiated final agreement. These in-

---

95 “Memorandum of Understanding on Advancing Reconciliation (‘MOU’)” (last modified 15 July 2016), online: *Government of Canada* <[www.rcaanc-cirnac.gc.ca/eng/1467055681745/1539711559006](http://www.rcaanc-cirnac.gc.ca/eng/1467055681745/1539711559006)>.

96 “Canada and Manitoba Métis Federation sign MOU following historic Supreme Court land ruling”, *CBC News* (27 May 2016), online: <[www.cbc.ca/news/canada/manitoba/metis-federation-of-manitoba-signs-mou-1.3604370](http://www.cbc.ca/news/canada/manitoba/metis-federation-of-manitoba-signs-mou-1.3604370)>.

97 Guiding these discussions on the MMF side were a series of community consultation workshops held in Métis communities throughout the province, the purpose of which was to determine what Métis citizens would like to see included in a modern-day treaty with Canada. The 2016 Annual General Assembly of the MMF also included a land claim consultation meeting with delegates.

98 Government of Canada and the Manitoba Métis Federation, “Framework Agreement for Advancing Reconciliation” (last modified 31 August 2017), online: *Government of Canada* <<https://www.rcaanc-cirnac.gc.ca/eng/1502395273330/1539711712698>>.

clude: the strengthening and building of Manitoba Métis government institutions including citizenship and registration processes; the application and enforcement of Métis laws; financial transfer arrangements; closing of the gaps in areas such as education and training, child and family services, health and economic development; addressing issues related to land, including water and subsurface rights, wildlife, fishing, forestry, and protected areas; the creation of a “Lasting Place Trust;” and other issues including a formal apology from Canada, transboundary claims, and clarity on the Manitoba Métis community’s Aboriginal rights and claims.<sup>99</sup>

In keeping with the stated commitment to a “results oriented” negotiation process, the focus of initial efforts will be on the conclusion of incremental agreements within two years focused specifically on core governance functions, fiscal arrangements, legal status and capacity, and Métis harvesting laws. These agreements are intended to build self-government in separate phases. Negotiators for the MMF have commented on the need to rebuild trust with the federal government one step at a time.<sup>100</sup> This involves finding concurrence on key issues and ensuring that the mechanisms are in place to support agreements in the long term. While the idea of a quickly completed final agreement is attractive, Métis leaders repeatedly state that the priority is to achieve common ground and build capacity to secure the ongoing future of the Métis Nation.

## **Conclusion: Reconciliation at Last?**

On November 16, 2016, at a graveside ceremony marking the 131<sup>st</sup> anniversary of the hanging of Louis Riel by Canada, President Chartrand symbolically presented the signed Framework Agreement to the father of the Métis Nation. Speaking to this momentous occasion, Chartrand noted that after more than 140 years of struggle, three decades of court battles, and numerous consultations with Métis citizens, the solemn promise made to Riel at the time of the *Manitoba Act* would finally be respected. Seen as a precursor to the negotiation of a modern-day self-government treaty with Canada, for the MMF, Riel’s vision has come full circle. As Chartrand declared, “[t]his Agreement is the culmination of the hope, hardship and struggle of the Métis. We never quit fighting for what Riel gave his life for.”<sup>101</sup>

---

<sup>99</sup> *Ibid.*

<sup>100</sup> Interview of senior advisor to the MMF (May 2018), Winnipeg.

<sup>101</sup> “President Chartrand presents signed Framework Agreement to Riel during ceremony” (16 November 2016), online: *Manitoba Métis Federation* <[www.mmf.mb.ca/news\\_details.php?news\\_id=206](http://www.mmf.mb.ca/news_details.php?news_id=206)>.

The reconciliation of Canadian sovereignty with the inherent rights of the Métis, which include rights to land and to self-government, is part of a long, arduous, and unfinished battle. The signing of the Framework Agreement is undeniably historic. As Chartrand reiterated, “[t]his is a monumental and historic time for Manitoba’s Métis.”<sup>102</sup> In an update to delegates at the 2017 annual general assembly, Chartrand noted that negotiations on the Framework Agreement were progressing well, and announced two initiatives illustrative of the renewed, nation-to-nation relationship that the Métis have forged with Canada. The first involved Canada’s “full financial support” for the establishment of a Métis National Heritage Centre. The first cultural and historic institute of its kind, the Centre will be built at Upper Fort Garry, where Riel’s Provisional Government founded the Province of Manitoba and negotiated its entrance into Confederation with Canada.<sup>103</sup> The President and Minister of Health for Canada also announced their joint commitment to explore new opportunities in health services, including a new prescription drug program for vulnerable Métis seniors living at or below the poverty line.<sup>104</sup>

Canada’s willingness to engage with the Métis in productive negotiations on advancing reconciliation took a substantive step forward in the fall of 2018. In September, at the MMF’s 51<sup>st</sup> annual assembly in Winnipeg, President Chartrand and Crown-Indigenous Relations Minister Bennett announced \$154 million in funding under the Framework Agreement. The monies will be used to support the MMF’s transition from its current corporate structure to a self-governing Métis government, and to facilitate work towards reaching “a self-government agreement in a timely manner that recognizes the Manitoba Métis Federation’s legal status, role and jurisdiction as a Métis government and ... the Manitoba Métis Community’s vision of greater self-determination.”<sup>105</sup>

Despite the challenges that lay ahead, the Métis of Manitoba are more optimistic than ever that reconciliation with Canada might be possible. Yet, the Métis have been down this road before. In 1869, 1982, and again in 1992, Canada committed to bring the Métis into Confederation and respect their inherent rights, only to subsequently renege on these promises. As the Supreme

102 “President’s Message” (24 November 2016), online (pdf): *Manitoba Métis Federation* <[www.mmf.mb.ca/docs/presidents\\_message\\_2016\\_11\\_24.pdf?v=20170811181439](http://www.mmf.mb.ca/docs/presidents_message_2016_11_24.pdf?v=20170811181439)>.

103 Le Métis, “President’s Message” (18 October 2017), online (pdf): *Manitoba Métis Federation* <[www.mmf.mb.ca/docs/LeMetis\\_2017\\_10\\_18.pdf?v=20180221121740](http://www.mmf.mb.ca/docs/LeMetis_2017_10_18.pdf?v=20180221121740)>.

104 “Prescription Drug Program” (16 November 2017), online: *Manitoba Métis Federation* <[www.mmf.mb.ca/pdp\\_health.php](http://www.mmf.mb.ca/pdp_health.php)>.

105 Manitoba Métis Federation & Crown-Indigenous Relations and Northern Affairs Canada, “Manitoba Métis Federation and Government of Canada announce joint action plan on Advancing Reconciliation”, (22 September 2018). Document in authors’ possession.

Court of Canada declared in *MMF v Canada*, reconciliation with the Métis remains “unfinished business.”<sup>106</sup> The Court’s declaration opened the door for the federal government to revisit its constitutional relationship with the Métis, and to achieve reconciliation at last. By acknowledging that section 31 provides a constitutional foundation to compel broad rights-based recognition, the Court played a seminal role in inviting the federal government to return to the negotiation table with Métis leaders. This decision created a space for the MMF, through its strategic decisions and its positioning as a credible, responsible, and trustworthy partner, to incentivize the federal government to enter into negotiations on a land claims agreement.

Reflecting on how the goals of the case were to honour the pledges made by Riel and his compatriots, former MMF president and Métis elder John Morrisseau contends, “we never changed our path.”<sup>107</sup> Then, as now, the Métis are seeking to have their rights to land and to self-government respected by the Canadian state. Alcantara argues that when the relationship between parties in a negotiation is unequal, a successful outcome will depend on the ability of the Indigenous group to convince the state that a completed agreement is the preferred outcome. In this sense, reconciliation will depend on the Métis’ ability to convince Canada to negotiate in good faith to make good on past promises. Given Canada’s history of failed promises, the enormity of this task should not be underestimated. At the same time, it is important to note that the ability of the Métis to force the federal government to the negotiation table through judicial action is a significant development and a success to be noted.

For President Chartrand, as for many of the leaders that preceded him, the ultimate goal of the MMF in its land claims negotiations is to make amends for the “head start” that was denied to the Manitoba Métis as a result of Canada’s broken promises of land 150 years ago.<sup>108</sup> Yet, while a final settlement remains the penultimate measure of success, in the eyes of the Manitoba Métis, they have already won. As Chartrand concluded, “we spent 32 years in the court room in *MMF v Canada* in order to tell our story. What Canada did to us by failing to uphold their promises put our people into a state of despair for over 150 years. Now that story has been told and what Riel gave his life for has not been in vain. For us, that is our victory.”

---

106 *MMF v Canada*, *supra* note 2 at para 140.

107 Interview of John Morrisseau, former MMF President (November 2009), Vancouver.

108 Interview of David Chartrand, MMF President (8 May 2019), Winnipeg.