

MÉTIS SPECIFIC GENDER-BASED ANALYSIS FRAMEWORK for HEALTH

*****02-09 DRAFT DISCUSSION DOCUMENT *****

Preamble - The Federal Government is committed to the development and use of Gender-based Analysis (GBA). At present there is no *Métis specific Gender-based Analysis Framework (MSGBAF) for health*. Health Canada's-Bureau of Women's Health and Gender Analysis (BWHGA) is mandated to promote, co-ordinate and evaluate the implementation of a systemic GBA process for the Federal government. The Prairie Women's Health Centre of Excellence (PWHCE) is one of four Centres of Excellence for Women's Health that is funded and overseen by the BWHGA. The PWHCE is working with the BWHGA to develop a culturally relevant Métis specific gender-based analysis framework for health.

The purpose and intent of this project is to draft and develop one option of what a *culturally relevant "Métis specific gender-based analysis framework"* document could look like for consideration and application in Health and other GBA processes. In respect to building upon the expertise and knowledge of previous work done with the Métis, this document is a necessarily timely Health Canada document that is intended to be:

- A draft culturally relevant Métis specific gender-based analysis framework document for health to review and respond to
- A document that will both complement and serve as an addition to the on-going work of the *Bureau of Women's Health and Gender Analysis* in culturally relevant gender-based analysis.
- Incorporated in a planned for *Culturally-relevant Gender-based Analysis Toolkit*
- Most critically (due to the federal governments' commitment timelines) ensures that a Métis specific GBA component is included in Federal Government processes in health and other dialogues;
- Utilized by the Federal Government;
- Widely available for use by not only the Federal government, but also Métis and other organizations, agencies, researchers and individuals, as well as for provincial governments, non-governmental organizations, political and other bodies; and
- A jumping off point to assist Métis peoples participation in moving forward themselves, with a Métis specific GBA process.

Intended Audience - Métis Peoples and Organizations, Federal Government and others

SECTION 1 - INTRODUCTION and METHODOLOGY

A. Introduction - *Definitions, assumptions and underlying understandings for the purpose of this document:*

- **What is Gender- based Analysis (GBA)?**
- **What is a Framework?**
- **Development of a Culturally Relevant Gender- Based Analysis Framework for Health Specific to Métis People in Canada**

What is Gender- Based Analysis?

The Concept - The concept of Gender-based analysis systemically integrates and considers a gender (socially constructed roles and relationships) and sex (biological differences) perspective into the development of policies, programs and legislation, as well as planning and decision-making processes. Gender-based analysis is used to discern, who benefits from policy and who may be disadvantaged.¹ GBA does not advocate or promote one sex over another. GBA is for analyzing consequences for everyone.

Why do GBA? - GBA is done not only because the process is useful for its' intended analytical outcome purpose; but as further background, it is also being done as..."it responds to provisions in legal documents such as the *Canadian Charter of Rights and Freedoms*, the *Federal Plan for Gender Equality*, the *Canadian Human Rights Act* and various international obligations and commitments";² such as the *Beijing Platform for Action* signed at the 1995 United Nations World Conference on Women.

Who does GBA? - According to the Status of Women Canada (SWC), some persons who would do GBA are...individuals who participate in developing policies and projects. "Including gender expertise in the policy process helps policy makers become more gender-aware and encourages them to incorporate that awareness into their work. Most often, people who do GBA are:

¹ Sutherns, Rebecca et al, *Final Summary Report; Rural, Remote and Northern Women's Health: Policy and Research Directions*; Centres of Excellence for Women's Health (2004) A5

² Web-site: Status of Women Canada- Publication - *An Integrated Approach to Gender-based Analysis*; What is GBA? (2004)

- Involved in the planning and design of governmental and non-governmental interventions.
- Involved in the administration or implementation of governmental or non-governmental interventions.
- Participating in governmental or non-governmental interventions.
- Involved in developing policy or in research that guides governmental and non-governmental interventions." ³

How is GBA done?

Basic premise and components - A basic premise of GBA is that it is evidence-based; and is informed by data and other information gathered from research and consultation. As such, GBA occurs through the use of numerous different components such as data, determinants, indicators, guidelines and other types of criteria that may be considered on their own or be included in a framework, indicator, or other type of document and or analytical tool.

GBA and Health - GBA helps to identify and clarify the differences between women and men, boys and girls, and demonstrates how these differences affect health status, access to, and interaction with, the health care system. ⁴

GBA recognizes that gender is one of the determinants of health, interacting with other determinants in the complex web of health influences. GBA takes the differences between and among women and men into consideration. Good gender-based analysis also takes into account and honours the diversity, differing abilities, culture, economics, geographic location, and experiences of social exclusion / inclusion, as well as the effects of racism or colonialism. GBA also recognizes the differences in roles and health issues based on sexual orientation and for trans-gendered, two-spirit and other people. ⁵

As per Health Canada: "GBA is consistent with Health Canada's Population Health A approach which aims to reduce health inequities by looking at and acting upon factors

³ *ibid.*

⁴ Web-site: Health Canada - Healthy Living - Gender-based Analysis (March 2003) 1

⁵ Web-site: Prairie Women's Health Centre of Excellence (PWHCE), *Gender and Health Planning*; Report;1

that influence health. These factors, also known as the determinants of Health include:

- gender
- income and social factors
- social support networks
- education
- employment
- working and living conditions
- physical and social environments
- personal health practices
- coping skills
- healthy child development
- health services
- biology and genetic endowment; and
- culture " ⁶

Framework Document Background

Definition of the term "Framework" - For the purposes of this document a "framework" is an organized and structured outline of underlying basic background information required to be known and considered in an analysis process.

Development of this *draft* culturally relevant Métis specific Gender-based Analysis

Framework for Health document - The purpose of this framework document is to provide *an overview of cultural, historical and current issues* specific to Métis people in Canada. It is anticipated that this is one component of the type of information needed, considered and included in a gender-based analysis process. This document was written on the premise that culturally relevant gender-based analysis can only transpire from a knowledge basis. As such, for analysis to be Métis specific and culturally relevant, the historical and cultural background makeup of "*whom the Métis people in Canada are*" along with consideration of current issues; is the basic underlying *framework of information* required to be known and considered in any gender-based analysis. This framework document is written with a further focus on health. As well, while clearly respecting that *GBA* does not advocate or promote one sex over another

⁶ *supra* at 4

and is for analyzing consequences for everyone; this document does include *some emphasis of considerations specific to and by Métis women*. This has been done for the sole purpose of recognizing, respecting, building upon and or giving a voice to some of the work that *Métis women* have previously done on issues related to this document's content.

Why Develop a Métis Specific GBA Framework- Considerations

Although, the concept of gender-based analysis (GBA) is still fairly new to some parts of the Aboriginal community, in fact, a number of women and agencies have been discussing and writing about GBA that is relevant to them for many years. Therefore, it is important that this project respect and build upon the expertise and knowledge already shared by Métis and other Aboriginal women including the culturally relevant GBA frameworks already developed in conjunction with Inuit and First Nations women, respectively.⁷

Métis Women - Métis women are part of a unique cultural and political dynamic that cannot be compared to or included with those of First Nations and Inuit women. A number of Métis women and the organizations and agencies that they work with have been striving to establish Métis women specific agendas and criteria in various political arenas. These calls for recognition have taken numerous forms and include experiences, expertise, knowledge, concerns and suggestions for change that will be essential for consideration in a framework that is both culturally relevant and gender specific to Métis.⁸

Over time, Métis women have repeatedly requested and recommended that they be able to participate and be consulted concerning Métis women specific Federal and Provincial Government policy matters. As Canadians, Métis women and all Métis people are included in other Federal government GBA processes involving the general population of Canada; but there will not be any Métis specific analysis and or considerations, unless a culturally relevant Métis specific GBA framework is developed.

⁷ PWHCE

⁸ *ibid.*

This project, is such an opportunity, as it responds to the former requests and recommendations by Métis women to be consulted and included. As participants in this process, Métis women will be able to participate in the development of one option of a culturally relevant Métis specific GBA framework for health that will potentially influence and impact Federal government policy and other processes.

B. Project Methodology

1. Literature Review of:
 - Existing culturally relevant gender-based analysis documents developed *for and by* Aboriginal (Métis, Inuit and First Nations) persons in Canada.
 - Current and recent documents discussing Métis women's specific health, social and political concerns.
2. Writing of draft framework document
3. Multi-method Community Review Process with Métis grassroots community and political agencies to review and comment on the draft document via:
 - Web based invitation
 - Public Service announcements, flyers and posters advising women in rural communities of the draft framework document; and providing information for contact (toll free phone number, e-mail address and web-site location)
 - Postings through various women's health list servers and the Canadian Women's Health Network
 - Written invitations and solicited replies from established Métis organizations and agencies in Ontario, Manitoba, Saskatchewan, Alberta and British Columbia.
 - In-person meetings in two sites (Prince Albert and Winnipeg) to bring women together to review the responses from the larger community review and provide further responses and input.
4. Completion of the draft framework document, post and in consideration of, the input and responses from the community review process.
5. Dissemination of the completed framework document to:
 - All participating individuals, organizations and agencies
 - Posted on-line at the PWHCE web-site; and
 - Offered for on-line posting to others

SECTION 2 - HISTORICAL and CULTURAL BACKGROUND

- **What are the Indigenous Peoples of Canada referred to and known as?**
- **Who are the Métis People?**
 - **What is known about Métis women specifically?**
- **Who are the Métis People in s. 35 of the *Constitution Act, 1982*?**

A. What Are The Indigenous Peoples Of Canada Referred To And Known As?

- **Historical and Current Names of the three Aboriginal Peoples of Canada**

Firstly "Aboriginal" is a commonly accepted term for the general collective of all indigenous persons in Canada. Often used incorrectly in reference to a specific group.

Further, the commonly used terms today of "First Nations", "Inuit" and "Métis" prior to 1982 were known in law as "Indians", "Eskimos" and "Half-breeds" respectively. After 1982 Indian persons started adopting referring to themselves as "First Nation". The "Inuit", although not culturally "Indians" were included within the meaning of "Indians" for the purposes of being included in federal jurisdiction under s. 91(24) of the *Constitution Act, 1867*. In the late 1960's and early 1970's the public began to be more sensitized to the language of the naming of the term "half-breed"; and in 1982 the constitutional term "Métis" replaced the previous term "half-breeds" in English legal language. Historically, prior to the inclusion of "Métis" in s. 35 of the *Constitution Act, 1982* the Métis had been called, referred to and or named by others and or themselves, various different names that were sometimes born out of circumstances or events occurring at the time; such as: Half-breed, chicot, bois-bruléé, apeytogosan (Cree-meaning half-people) otepayemsuak (Cree meaning - independent ones, the bosses of themselves, people who own themselves)⁹, and the name "Michif" in reference to the people and not the language. Since the inclusion of the specific name "Métis" in s.35, the Metis have now largely adopted this as the commonly accepted name for themselves. Although it should also be noted, that some people proudly prefer to refer to themselves as "half-breeds"; as that is the term they knew themselves to be as they grew up and one that they continue to maintain with pride. As well, the word "otepayemsuak" from the Cree meaning - independent ones, the bosses of themselves and or people who own themselves has

also more recently increased in use, not in replacement of or an alternative to, but along with the name "Métis".

B. Who Are The Métis People?

The Métis

Prior to the nineteenth century, with the arrival of European settlers, Métis people evolved from the descendants of the mixed relationships of the Indian women of the north west central prairie region, of what we now know as Canada, and the male European fur traders. From the mixed ancestry of the original off-spring of these mixed - blood individuals evolved a new shared common culture, language (Michif) and distinct identity of peoples who also established their own distinct communities. The shared identity led to the creation of the Métis Nation.¹⁰

As well, a sometimes sensitive matter, including to Métis people themselves, is a possibly often held stereotypical misconception concerning the physical appearance of Métis people, in that Métis people *only have* brown eyes and dark hair and skin tone commonly associated with Aboriginal people in Canada today. While many individual Métis people proudly do possess some and or all of these physical attributes; the evolution of the Indian/Native and European mixed-blood ancestry is not limited to these distinct physical features alone. On the contrary, the evolution of the mixed-blood ancestry presents itself not only with brown eyes, dark hair and skin tone. But presents and is reflected in a diversity of skin tones, hair and eye colours and overall physical appearance; including but not limited to, any variety of light to dark skin tones, blue, green, brown eye colours and blond, red, brown, black and grey hair and other hair colours. Individual Métis people, present and reflect a broad diversity of distinct and diverse looks within the nation and within individual families themselves. This is reflective of the rich and diverse Indian/Native and European mixed blood ancestry and ethnogenesis that evolved and is part of the now shared distinct identity and make-up of "whom the Métis people" in Canada are today.

"Métis Nation and Homeland" - The Métis people constitute a distinct Aboriginal nation largely based in western Canada. The Métis Nation's Homeland is based on the traditional territory upon which the Métis people have historically lived and relied upon

⁹ Teillet, Jean, "*Métis Law Summary*" (2004) 4-5

within west central North America. This territory roughly includes the 3 Prairie provinces (Manitoba, Alberta and Saskatchewan), parts of Ontario, British Columbia and the Northwest Territories, as well as, parts of the northern United States (i.e. North Dakota, Montana).¹¹

The Métis Nation grounds its assertion of Aboriginal nationhood on well-recognized international principles including it has a shared history, traditional territory, extensive kinship connections from Ontario westward, distinct way of life, collective consciousness, common culture (song, dance, dress, national symbols, etc.) and unique language (Michif).¹²

The Culture - a Snapshot

The Métis are a people with a common culture that includes:

- A unique language known as Michif (with various regional dialects) is a mixed language primarily made up of Cree verbs and French nouns and grammar
- Song, Fiddle music and Jig Dancing
- Medicines (Seneca Root) and Food (Bannock)
- Beadwork (Flower)
- *National symbols; i.e.:*

The Métis Infinity Flag - The Métis Nation has many symbolic flags that evolved over time. The blue infinity flag is a Métis National Flag and represented the political and military force of the Métis as early as 1816. This flag is still flown by the Métis Nation today. This particular flag has a blue background with a white infinity symbol that has two meanings:

- The joining of two cultures.
- The existence of a people forever.

The Métis Sash - Historically the sash has had a different meaning to the many whom have shared in its origin. The colourful sash, as well as being distinguishable Métis apparel, has many more functional uses. It had fringed ends that served as emergency sewing kits when the Métis were out on a buffalo hunt. The Sash also

¹⁰ Balan, Joel [et al] "*Canadian Constitutional Law*" 3rd Edition (2003) (Toronto: Edmonton Montgomery Publications Limited) 512

¹¹ Métis National Council web-site document; www.metisnation.ca/who/index.html: "*Who Are The Métis*", 1

¹² *ibid*

served as a key holder, first aid kit, washcloth, towel, and as an emergency bridle and saddle blanket.¹³

Métis Women - Historical Beginnings - What is Known and or Documented

Historically, it is known that Métis women were the originators of the Métis Nation born out of the unions between the European fur traders and native Indian women. "Native society approved of marriages between its' women and European traders; such unions were consistent with pre-contact practices in which inter-tribal marriages cemented trade and military relationships between groups."¹⁴

What were often known as "country marriages" were generally looked upon favourably by the natives who used them to enhance their position in the fur trade and to forge alliances with the white traders. The women who married the fur traders often enjoyed a richer material lifestyle via gaining access to things such as European materials. Even though, the marriages were not recognized by the church officials, the North West Company encouraged its employees to establish relations with native women knowing the importance of the solid economic and social links with the aboriginal tribes.¹⁵ For a period of time, the Hudson Bay Company (HBC) was more hesitant and even had regulations forbidding their employees to have such relationships.

Later, the traders often proved fickle marriage partners when it came time to retire, as they would time and again abandon long-term relationships that had produced many children.¹⁶ Frequently, they would leave and returned to Europe alone.

Valued Matriarchal Society

Métis societies have a matrilineal and matriarchal history wherein Métis women's roles in the family and community were valued and fundamental to the preservation of the Métis culture¹⁷; for example:

¹³ Web-site - Manitoba Métis Federation: www:mmf.mb.ca

¹⁴ Conrad Finkel, *'History of the Canadian Peoples'* - Beginnings -1867 Volume 1 3rd Edition (2002) (Toronto, Ontario: Addison, Wesley Longman) 226

¹⁵ *"Rupert's Land To Riel - Manitoba 125 A History"* Volume 1 (1993) (Winnipeg: Great Plains Publications) 69

¹⁶ Supra at 14; 226

¹⁷ Barkwell, Lawrence J.[et al] *"Métis Legacy"*1st Edition (2001) (Winnipeg: Pemmican Publications Inc.) 15

- Métis women, maintaining the leatherwork skills of their ancestors, used beads rather than porcupine quills to decorate the coats, belts and moccasins they produced. Later the women of the plains nations also adopted this practice.¹⁸
- Métis women taught newly arrived Euro-Canadian and European persons to prepare and preserve wild game and other foods so that they could survive the harsh winters that they were not accustomed to;¹⁹ and
- There is some documentation of Métis women working alongside the men in building buffalo pounds, hauling and skinning meat as well as scouting and interpreting.²⁰

Note re: Written Historical Documentation on Métis Women

What has been found about the historical documentation of Métis women is recounted in the book "Métis Legacy" wherein, it states that.... "since the 1980's more historians, communities and families are documenting the lives and contributions of Métis women. Unfortunately, there is still limited information about the 19th century Métis women. In order to have a comprehensive understanding of Métis history it is necessary to learn about Métis people and the fur trade but again unfortunately most fur trade literature entirely ignores the contribution of Métis and First Nation women. If women were mentioned it was often as a passing reference in a trader's journal, and most often framed in a variety of popular stereotypes that used pejorative and stereotypical images of Métis women. More comprehensive research is needed about the extensive historical experience and contributions of Métis women."²¹

Historical Context - Brief Overview

1869 - with Louis Riel as the leader, the Métis people formed a provisional government to negotiate the terms of Manitoba's entry into Canada.

1870 - *Manitoba Act, 1870* - The *Act* that established and admitted Manitoba as a Province into the Dominion of Canada; and in c.3 s. 31 - using the term "half breed" in reference to the Métis; the *Manitoba Act* provided for the provision of land "for the benefit of the families of half-breed residents"; ²² through a land grant /scrip process.

¹⁸ Supra at 14; 226

¹⁹ Supra at 17; 1

²⁰ *ibid.* at 15

²¹ *ibid*

²² *Manitoba Act, 1870*, 33 Victoria, c 3 (Canada)

1902 - 2009 - The issue of Métis land continues to be largely unresolved. The Manitoba Métis Federation (MMF) is currently remains involved in a land claims case that commenced in the courts on April 3, 2006. As per David Chartrand; MMF President:

- "The legal action has its origins in the turbulent period of 1869 -1870, commonly known as the Red River Resistance, when the Métis established a Provisional Government and drew up a bill of rights. Subsequently, at the invitation of Canada, the Provisional Government sent delegates to Ottawa to negotiate the terms under which they would agree to join Canada.
- The Métis believe there were solemn promises and a treaty; which led to the Manitoba Act and the creation of "our" province. Evidence shows, as part of the agreement to enter Confederation, the Métis children were to receive lands distributed according to the wishes of the Métis in blocks next to the Red River Settlement and comprising river lots, wooded areas, hay lands and other lands of benefit and value.
- The MMF argued in court that there was a fiduciary and legal duty to the Métis people under sec. 31 of the *Manitoba Act 1870*, which said that 1.4 million acres of land were to be reserved for Métis children. In the view of the MMF, sec. 31 acknowledges that the land was granted to the Métis in return for extinguishing Indian title, or collective claim to the land. The *Manitoba Act 1870*, including sec. 31, is part of the Constitution of Canada." ²³

1960's - the Métis Nation joined with First Nation and Inuit peoples, in pan-Aboriginal political organizations, to push forward their collective agendas.

1982 - as a result of these united efforts, Canada's Aboriginal peoples achieved monumental success with the protection of their existing Aboriginal and Treaty rights in s. 35 of the *Constitution Act, 1982*. In particular, this was a watershed for the Métis Nation, with the explicit recognition of the Métis as one of Canada's three distinct Aboriginal peoples.

Section 35 of the *Constitution Act, 1982* provides:

35(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.

(4) Notwithstanding any other provisions of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.²⁴

- Note the rights are also guaranteed equally to male and female persons.

C. Who Are the Aboriginal and Métis in s. 35 of the *Constitution Act*, 1982?

- **Who are the Aboriginal peoples with rights in Canada?**
- **Are Métis the same as First Nations or Inuit peoples?**
- **Are all those who identify as "Métis" the same?**

1. Who are the Aboriginal people with rights in Canada?

"The legal case *R.v. Van der Peet* (1996) pointed out that "when Europeans arrived in North America, aboriginal peoples were already here, living in communities on the land, and participating in distinctive cultures, as they had done for centuries." This fact distinguishes aboriginal people from all other minority groups in Canada, and explains why aboriginal rights have a special legal, and now constitutional, status."²⁵

Much confusion surrounds "who the Métis people are". This issue also raises the following questions:

2. Are Métis the same people as First Nation persons in Canada?

- The Métis are not the same as First Nation persons. The federal *Indian Act* defines the term "Indian", and establishes a register to record the names of those who qualify to register as "Status Indian". The statutory definition of the term "Status Indian" derives from tracing Indian status from particular bands whose charter members were normally determined at the time of the establishment of a reserve or the making of a treaty and that status then devolves from those charter members to their descendants.²⁶ The terms "Treaty" and "Status" have two different meanings; which are not interchangeable and not having an association to a specific treaty does not make a First Nation person ineligible to register as a "Status" Indian. Not all

²³ Web-site - Manitoba Métis Federation "*MMF v Canada*"

²⁴ *Constitution Act 1982 s. 35*

²⁵ Hoog, Peter W., "*Constitutional Law of Canada*", Student Ed. (Toronto: Thomson Carswell Publishing, 2007) 616

²⁶ *ibid.* 597

registered "Status" First Nation persons come from communities associated with specific "treaties". But all "Status Indians" have the same and or same type of rights negotiated in all of the FN treaties based on a collective right of the nation as a whole. Persons who qualify to register as "Status Indian" have the right and entitlement to live on Indian reserves and are eligible to access other Indian Act privileges. Specific to the Métis, at present, outside of individual self-initiated memberships with Métis specific organizations, the Métis do not have any formal registration or enumeration process to register as "Métis". That being said, and as already stated earlier in this document, the Métis, in the MMF Manitoba Land claims case, believe there were solemn promises and a treaty, which led to the *Manitoba Act* and the creation of the province of Manitoba. This is one of the primary arguments being presented as a justified basis for the case.

3. What does the term " Mixed- Blood" mean?

- "Métis" is a French word when translated can mean "mixed". Theoretically any person of more than one ancestral heritage is of "mixed blood". As well, there are a number of persons in Canada who theoretically are of "mixed" European and Native / Aboriginal ancestral heritage; ie. during the French regime, intermarriage between white men involved in the fur trade and Native women was so common that one demographer suggests that as many as 40 percent French-Canadians in Quebec today have at least one Native ancestor. Although, these children of part-Native descent who integrated into Quebec society did not develop a sense of being members of a separate nation, nor did the offspring of Native-white liaisons who rejoined the tribes of their mothers.²⁷

4. How is it that Métis and Inuit persons of "Mixed Blood" are different?

- Concerning the Métis and Inuit persons of "Mixed Blood" - At the Supreme Court of Canada, in the *R v Powley* Métis hunting rights case, the factum of the Labrador Métis Nation stated: "...Labrador Métis" remain a continuing manifestation of an authentic Inuit culture...The Métis-Inuit are not a society separate and distinct from the Inuit. It is an Inuit culture, which uses the constitutional descriptor of "Métis".²⁸

²⁷ Supra at 14; 226

²⁸ Supra at 9; 9

5. **Are all persons of "Mixed blood" ancestry who identify themselves as "Métis" in Canada the same people who have rights further to their recognition in s.35 of the *Constitution Act, 1982*; and**
6. **Who are the "Métis" who are recognized as one of the three Aboriginal peoples in s.35 of the *Constitution Act, 1982***

In 2003 the *Supreme Court of Canada* provided a response to the above questions when they ruled in the case of *R v. Powley*, wherein they stated:

The term "Métis" in s.35 of the *Constitution Act, 1982* does not encompass all individuals with mixed Indian and European heritage;

- Rather, it refers to distinctive peoples who, in addition to their mixed ancestry, developed their own customs, and recognizable group separate from their Indian or Inuit and European forbears.
- A Métis community is a group of Métis with a distinctive collective identity, living together in the same geographical area and sharing a common way of life.
- The purpose of s.35 is to protect practices that were historically important features of these distinctive communities and that persist in the present day as integral elements of their Métis culture.²⁹

Further to the above, although, the court did not define a specific definition or reference any requirements specific to blood quantum, it did state: "In particular we would look to three broad factors as indicia of Métis identity for the purpose of claiming Métis rights under s. 35:

- self-identification,
- ancestral connection, and
- community acceptance".³⁰

7. What was the *R v Powley* Case?

In October 1993, Steve Powley and his son Roddy killed a moose just outside Sault Ste. Marie, Ontario which they tagged with a Métis card and a note that read "harvesting my meat for winter." The next week Conservation officers charged the Powleys for hunting without a license and unlawful possession of a moose contrary to Ontario's *Game and*

²⁹ *R.v.Powley* [2003] 2 S.C.R. 207;10

³⁰ *ibid.* at 30

Fish Act. In 2003, the Supreme Court of Canada ruled unanimously that the Powleys, as members of the Sault Ste. Marie Métis Community, could exercise a Métis right to hunt that is protected by s.35³¹ of the *Constitutional Act, 1982*.

- **"Métis Right" as per the Powley Test**

The Supreme Court further stated that... the appropriate way to define Métis rights in s. 35 is to modify what is known as the *Van der Peet* test³² which is a legal test used to define the Aboriginal rights of Indians. A defining difference between Métis and Indian and Inuit peoples concerns pre and post Colonial / European contact. Specifically, a defining difference here is thatin applying the *Van der Peet* test to determine the Métis ' s.35 entitlements, the pre-contact aspect of the test must be adjusted to take into account the post-contact ethnogenesis and evolution of the Métis. A pre-control test establishing when Europeans achieved political and legal control in an area and focusing on the period after a particular Métis community arose and before it came under the control of European laws and customs is necessary to accommodate this history.³³ The Supreme Court of Canada further defined a Métis specific test; which has ten parts to it and is now called the "*Powley* test".

³¹ Métis National Council document: "*Fulfilling Canada's Promise. Métis Rights. Recognized and Affirmed. R.v. Powley* A Case Summary and Frequently Asked Questions";2

³² *ibid.* at 4

³³ *Supra* at 29; 36-37

SECTION 3 - MÉTIS SPECIFIC HEALTH CONSIDERATIONS

- **Political and jurisdictional considerations**
- **Determinants in the realm of the Métis specific reality**
- **Agreements specific to the Métis.**

A. Political and Jurisdictional Considerations

- **Some Differences between Métis and the Specific Health Care Programs and Services for First Nations and Inuit Peoples**

First Nations and Inuit persons, as recognized in the *Constitution Act* s.35.1, have a modern history and continuing relationship with the federal government and some provincial governments for First Nation and Inuit specific health programs and services. In reality, contrary to possible commonly thought belief, First Nations and Inuit peoples do not receive all of their health care programs and services from the Federal government. As Canadians, they are also eligible to access and receive the same health care programs and benefits as the general population of Canadians further to the *Canadian Health Act*. As well, what Status First Nations and Inuit persons do receive, is a number of further federal government health care programs and services through Indian and Northern Affairs Canada (INAC) and the First Nations and Inuit Health Branch (FNIHB) of Health Canada. The Government of Canada works with First Nations on reserve and Inuit in the north to ensure the availability of, or access to, health services primarily through Health Canada's First Nation and Inuit Health Branch contribution agreements, Non-Insured Health Benefits and Indian and Northern Affairs Canada programs focused on i.e.: safe water, province-like social programs and food related issues.

This is not the case *for* the Métis people of Canada. Not even persons who meet the definition of Métis as determined by the Supreme Court and the subsequent *Powley Test* and, as such, are recognized as the third Aboriginal peoples in Canada *with rights* as set out in s.35 of the *Constitution Act 1982*.

Political Relationship between the Federal Government and Métis Organizations

The Métis have a relatively new and sporadic relationship working on health related issues with the Federal government. Unlike First Nations and Inuit persons who have had a relationship since approximately the mid 1970's, it was another twenty or so years

and not until the late 1990's that the Métis started to be invited and included as participants of some Federal government health related processes.

Métis Specific Health Programs, Services, Projects and Funding

In 2002, the Métis National Council (MNC) stated that "less than 2.4% of federal resources dedicated to "Aboriginal" peoples was accessible to the Métis Nation, even though the Métis comprise approximately 25% of the total Aboriginal population within Canada."³⁴

Historically, there have not been any health related programs and or services that have been government funded at any level that were specifically for Métis women or other Métis persons. Unlike the status First Nations and Inuit peoples, Métis have primarily only been eligible for the same programs and services as the general population. Although sometimes, Métis living in rural, northern and or remote communities may in certain circumstances and out of necessity of where they live, have limited access to First Nation and or other health care facilities within, close to and or bordering their own.

The MNC has never been a provider of health care *services* nor have the provincial Métis political organizations. The provincial Métis political organization(s) in Ontario and the Métis Settlements in Alberta have both been more successful in forging primarily provincial government relations that have resulted in some limited health related programs specific for the Métis.

That being said, most health related funding has and continues to be short-term project based. As well, this funding tends not to be Métis specific *directed* funding for Métis women and or any Métis persons. Also, historically the funding of projects is through an application / proposal process where the dollars must be competed for, with, not only First Nation and or Inuit persons, but also possibly non-Aboriginal applicants. For the past number of years the Métis have unsuccessfully aspired and tried to attain *directed funding* for the people of the Métis Nation.

³⁴ Métis National Council document: "*Snapshot of the Nation-Executive Summary*", 8

B. Determinants Affecting Health Within the Realm of a Métis Reality

- **Perceived Factors Determining an Effect on the Health of the Métis**

Preamble notes:

For the purposes of this document, no distinction has been made to exclude the comments of any person who self identifies as Métis; regardless of their definition being the ancestral one recognizing them as having rights under the *Constitution Act*, or not.

Further, although not exclusively, some of the enclosed is compiled from the information found in the literature review for this project. Concerning this information, it should also be noted that there was very little *Métis-specific only* information found; and even less *Métis women specific*; and overall most of the information was dated and primarily not current, dating from 1991 to most currently 2007.

That being said, as the historical Métis struggle for not only equal and or equitable rights relating to Métis specific programs and services with other Aboriginal peoples remains largely unresolved; the comments included, herein, are considered still relevant regardless of the date they originated.

As well, this raises, reveals and confirms a reality that the issue of concern for the lack of Métis women and other Métis specific data is real; at least in the context specific to the areas of research for this document. Further to this, a question arises as to.... *Why is this the case?* What "is" the status concerning the access and availability to and for Métis peoples for funding and other resources needed to support Métis specific health research, data collection, projects, programs and services?

Absence of Substantive Métis specific Health Related Research and Data - Outside of the health related data from part of any Stats Canada Census, Aboriginal Peoples Survey and or some relatively small sampling research projects, there is very little existing Métis specific health data. This is not only due to a lack of a recognition and formal relationship of the Métis by governments at all levels but also due to an absence of any completed comprehensive formal enumeration of the Métis people in Canada. The lack and or absence of financial and other support to complete an enumeration and ultimately the absence of an enumeration, makes it difficult to identify and consequently compile any substantive data specific to the Métis. Inclusion of Métis specific data

remains largely at the willingness of individual Métis persons to self-identify and or request to be included in data collection related activities.

Although, some mini but positive steps have most recently occurred in the form of discussions and agreements related to Métis specific health matters; still in question and largely remaining a concern today, are the issues related in 2002, by the Métis National Council (MNC) when they stated: " It is a myth that, Métis are included within "Aboriginal" initiatives announced by the federal government. Federal Ministries often use the term "Aboriginal"; however, they exclude the Métis from access to these initiatives because of a lack of understanding of the Métis Nations' unique needs and governance structures or they use the federal governments position with respect to jurisdiction vis a vis the Métis to avoid addressing Métis needs and issues."³⁵

.....Also concerning a lack of Métis access, "currently there is a void in specific sectors due to:

- a lack of investment in resources
- a lack of willingness to develop a relationship with the Métis Nation on the part of specific Ministries; and
- a lack of any consistent policy vis a vis Métis within the federal system.

Specific to the Health sector - Although there is a significant investment in "Aboriginal" health by the federal government, the Métis Nation receives little to no access to these resources and has no on-going relationship with Health Canada to address health issues. Over the past few years, numerous attempts at forging a relationship with this Ministry have been undertaken to no avail. This is a priority area for the Métis Nation as Métis health indicators are well below the Canadian average and comparable to other Aboriginal peoples; however, current investments made in the health of other Aboriginal peoples (i.e. First Nation and Inuit) exclude the Métis."³⁶

³⁵ *ibid.* at 3

³⁶ *ibid.* at 9

Métis Demographics

"Approximately one third of all Aboriginal people in Canada identify themselves as Métis. Census data from 2006 shows Métis as the Aboriginal group that experienced the highest growth at 91%, reaching 389,785 people."³⁷

The 2001 Census further reports that one third of the Métis population is under the age of fourteen and two thirds of the Métis population lives in urban centres.³⁸

Métis and or Métis Women Specific Health Determinant Concerns

Although historically very little research and or consultation has occurred with Métis people concerning their health, excerpted below is a snapshot of some of what has been said by Métis individuals and or their organizations that has a determined effect on Métis health.

- **Gender** - Historically Métis women came from an egalitarian society where they were the key pillars of their communities and were the providers for those families, both immediate and extended.³⁹
- **Culture** - The legacy of the residential schools is one of the biggest challenges faced by Métis women as keepers of traditional knowledge. Métis suffered a huge loss of culture, language and family due to residential schools and other government policies. Whereas traditional knowledge used to be widely held throughout the community, today fewer people hold that knowledge and are able to pass it on to new generations. Michif, once a vibrant language on the Prairies and the heart of Métis culture, is now at risk of becoming extinct.⁴⁰
- A major practical issue facing Métis women, is *time*, as fewer elders remain who are able to transmit traditional knowledge to the young members of the community.⁴¹
- **Employment / Education** - Métis women in terms of their economic situation, remain heavily impacted by the colonial legacy and a lack of support for pursuit of education that would heal communities, lift them out of poverty and encourage the self-governing of Métis people, consistent with section 35 of the *Constitution Act*,

³⁷ Web-site: Indian and Northern Affairs Canada, www.ainac-inac.gc.ca; INAC > Aboriginal Peoples & Communities > Métis

³⁸ Métis National Council Web-site: www.metisnation.ca; Métis Population of Canada

³⁹ Women of the Métis Nation Document; "*Health Policy Paper*", (2007) 5

⁴⁰ Women of the Métis Nation Document; "*Traditional Knowledge Policy Paper*", (2007) 5

⁴¹ *ibid.* at 7

1982. Under the federal government's Human Resource and Skills Development Canada (HRSD) guidelines, women are also prohibited from working for the duration of their studies. While non-Métis students who rely on loan programs are permitted to work to a certain degree, Métis women who chose to "take advantage" of what limited funding is made available to them in recognition of their unique place as Aboriginal peoples in Canada; are simultaneously negatively affected by the regulation stopping them from seeking even part-time employment. As it is, the programs are not designed to fully support Métis women and their families during the 52 weeks of study, and with no option to work women are forced to turn to federal and provincial loan programs again, if eligible.⁴²

- **Healthy Child Development** - As per the national "*Women of the Métis Nation*" (WMN) Organization, in 2007 a major problem with the Federal-Provincial-Territorial childhood development Agreement is that while reporting measures do exist, no one at the federal level monitors whether Aboriginal people off-reserve, specifically Métis, are obtaining equitable allocations.⁴³
- **Health Services** - Access to health services has been raised as an issue for Métis women both urban and rurally, but especially for those in rural, remote and northern communities where there may not be any local access at all. Some Métis women also feel that the lack of health care providers who may not speak their language and or be sensitive to them as Aboriginal people is also a barrier to access. As such, it is most critically important that culturally appropriate Métis specific health programs and services should be developed and provided to help reduce the stress in these relationships and increase the potential for positive access to the health care system.

Some Policy Gaps and Health Concerns of Métis Women

In 2007 a number of consultations, facilitated by the national "*Women of the Métis Nation*" (WMN) organization, were held with Métis women and service delivery organizations in preparation for an National Aboriginal Women's Summit held in Newfoundland. Through this process a number of policy areas that affect Métis women were identified as gaps that need to be addressed. As per the women consulted:

1. "Implementing holistic approaches for improving health and wellness outcomes for Métis women ;

⁴² Women of the Métis Nation, "*Education Policy Paper*", (2007) 7

⁴³ *ibid.* at 5

2. Developing economic and investment strategies for:
 - improving Métis women's labour market participation; and
 - increasing Métis women's earned incomes;
3. Improving life-long learning supports and opportunities for Métis females including children, youth adults and elders;
4. Promoting traditional knowledge and traditional approaches adopted by Métis women for improving:
 - the social and economic situation; and
 - education of Métis peoples;
5. Redressing violence within Métis families and the pernicious acts of violence directed at Métis women in particular." ⁴⁴

C. Recent Agreements between the Metis and the Federal, and or Provincial and Territorial (FPT) Governments

Further to the above concerns and issues the following agreements should be noted:

2005 Blueprint on Aboriginal Health:

- **A 10 Year Transformative Plan - A Métis Framework**

The Blueprint on Aboriginal Health incorporates 3 distinct frameworks (First Nations, Inuit and Métis) situated within an overall strategy developed collaboratively to bring about transformative changes in health status. It is a response to the commitment made at the Special Meeting of First Ministers and National Aboriginal Leaders in September 2004, and also referenced in the 10-year Plan to Strengthen Health Care for all Canadians, to develop a Blueprint for concrete initiatives to improve health status of Aboriginal peoples.

As per the federal government vision, the Blueprint is a 10 year transformative plan for making significant progress in closing the gap in health outcomes between the general Canadian population and Aboriginal peoples, including First Nation, Inuit and Métis. This will be achieved by improving access and quality health services through comprehensive, wholistic and co-ordinated service provision by all parties to the Blueprint, and through concerted efforts on determinants of health.

⁴⁴ " Women of the Métis Nation Policy Proposal Document" (2007) 3

It was further stated that the implementation of the federal commitments in the Blueprint would be undertaken in a manner consistent with the Métis Nation Agreement signed in May 2005.⁴⁵

Métis Nation Protocol

On September 5, 2008, a 5-year Métis Nation Protocol agreement was signed between the Métis National Council and the Federal Government wherein, in general, it was agreed to establish a bilateral process to examine a number of issues such as jurisdictional issues and Métis Aboriginal rights. It was also agreed to establish multilateral discussions, when appropriate, related to items such as lands and resources, harvesting rights, economic development, education and training, health, child and family services, housing, justice and policing.⁴⁶

It is noted that even though this is an agreement between a national Aboriginal political organization and the Federal government, there is no specific wording or reference to women and or any gender-based analysis that will be included and or considered as part of the protocol examination process.

⁴⁵ Document: Canada, "Blueprint on Aboriginal Health: A 10-Year Transformative Plan" - Métis Framework, 2005. Online:<www.hc-sc.gc/hcs-sss/pubs/system-regime/2005-bluprint-plan-abor-auto/index

⁴⁶ Document: "Métis Nation Protocol" (2008) 2-3

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Indian and Northern Affairs Canada, www.ainc-inac.gc.ca

Status of Women: www.swc-cfc.gc.ca

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Métis National Council Web-site: www.metisnation.ca

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Native Women's Association of Canada: www.nwac-hq.org

Prairie Women's Health Centre of Excellence: www.pwhce.ca

Pauktuutit Inuit Women of Canada: www.pauktuutit.ca

APPENDIX 1

WHO ARE THE NATIONAL ABORIGINAL POLITICAL ORGANIZATIONS THAT SOME PERSONS, WHOM SELF-IDENTIFY AS "MÉTIS", ASSOCIATE WITH TO REPRESENT THEIR INTERESTS?

NATIONAL ABORIGINAL POLITICAL ORGANIZATIONS - There are a number of national aboriginal political organizations who state that they represent and give an advocate voice to the interests of Métis specifically, Métis women specifically and or Métis within an "Aboriginal" context. What follows, in order of when they were founded historically, is what these organizations have to say about themselves:

1971 - CONGRESS of ABORIGINAL PEOPLE (CAP)

The Congress of Aboriginal Peoples, (CAP), was founded in 1971 as the *Native Council of Canada*, with an initial goal to "re-establish recognition of our constituents as Aboriginal people, and to obtain fundamental Aboriginal and human rights for them."

The goals of the Congress of Aboriginal Peoples are targeted to achieving social and economic equity for its constituents in housing, health care, education, employment and economic development. A key component of CAP's mandate continues to be advocacy for Aboriginal and treaty rights for Métis and non-status Indian people.

- The Inuit are represented by the Inuit Tapiriit Kanatami (ITK);
- Aboriginal women, by the Native Women's Association of Canada (NWAC);
- The Assembly of First Nations (AFN) serves the interests of on-reserve Indians;
- The Métis National Council (MNC) represents some Métis people.

Yet, there remains a large gap in program and service delivery once individuals leave their on-reserve communities, or in the case of the Métis, if they cannot trace their ancestral lineage back to what the MNC term as the "Métis homelands" in Western Canada. The Congress of Aboriginal Peoples is the organization that advocates on behalf of the "Forgotten People", those who are otherwise voiceless at the National level.

CAP Affiliates

- Aboriginal Affairs Coalition of Saskatchewan
- Alliance Autochtone du Quebec Inc

- Aboriginal Council of Manitoba
- Federation of Newfoundland Indians
- Labrador Métis Nation
- New Brunswick Aboriginal Peoples Council
- Native Council of Nova Scotia
- Native Council of Prince Edward Island
- Ontario Coalition of Aboriginal People
- United Native Nations Society

(Source: Congress of Aboriginal Peoples Web-site - www.abo-peoples.org)

1974 - NATIVE WOMEN ASSOCIATION of CANADA (NWAC)

The Native Women's Association of Canada (NWAC) is founded on the collective goal to enhance, promote, and foster the social, economic, cultural and political well-being of First Nations and Métis women within First Nation, Métis and Canadian societies.

NWAC is an aggregate of thirteen Native women's organizations from across Canada and was incorporated as a non-profit organization in 1974. Much like a "Grandmother's Lodge", we as aunties, mothers, sisters, brothers and relatives collectively recognize, respect, promote, defend and enhance our Native ancestral laws, spiritual beliefs, language and traditions given to us by the Creator.

Membership - From Newfoundland to British Columbia, Prince Edward Island to the Yukon, First Nations and Métis women have gathered regionally to form thirteen **Provincial and Territorial Member Associations (PTMAs)**. PTMAs regularly report to the Board of Directors and meet annually at the Annual General Assembly. The hard work and dedication of PTMA representatives is vital to the success of NWAC. These women are our connection to Aboriginal communities:

1. Native Women's Association of the Northwest Territories
2. Yukon Aboriginal Women's Council
3. Mother of Red Nations Women's council of Manitoba Inc.
4. Ontario Native Women's Association
5. Quebec Native Women Inc.
6. New Brunswick Aboriginal Women's Council
7. Newfoundland Native Women's Association

8. Nova Scotia Native Women's Society
9. Aboriginal Women's Association of Prince Edward Island
10. Alberta Aboriginal Women's Society
11. Saskatchewan Aboriginal Women's Circle Corporation

(Source: Native Women's Association of Canada web-site -www.nwac-hq.org)

1983 - MÉTIS NATIONAL COUNCIL (MNC)

In March 1983, the Métis Nation separated from the Native Council of Canada (now known as the Congress of Aboriginal Peoples) to form the Métis National Council - its own Métis-specific representative body. It receives its mandate and direction from the democratically elected leadership of the Métis Nation's governments from Ontario Westward (Métis Nation of Ontario, Manitoba Métis Federation, Métis Nation-Saskatchewan, Métis Nation of Alberta, Métis Provincial Council of British Columbia).

The Métis National Council reflects and moves forward on the desires and aspirations of the Métis Nation governments at a national and international level. Overall, the Métis National Council's central goal is to secure a healthy space for the Métis Nation's on-going existence within the Canadian federation.

For example we now have a national definition of Métis for citizenship within the Métis Nation that has been adopted by all Métis governments from Ontario westward. Based on this definition we continue to push forward on the establishment of a Métis Nation Registry.

What is the MNC definition of "Métis " Métis Nation" and "Métis Homeland?"

"Métis" - On September 27, 2002, the Métis National Council adopted the following as its national definition - "Métis means a person who self-identifies as Métis, is of historic Métis Nation Ancestry, is distinct from other Aboriginal Peoples and is accepted by the Métis Nation."

"Métis Nation" -The Métis people constitute a distinct Aboriginal nation largely based in western Canada. The Métis Nation grounds its assertion of Aboriginal nationhood on well-recognized international principles. It has a shared history, common culture (song,

dance, dress, national symbols, etc.), unique language (Michif with various regional dialects), extensive kinship connections from Ontario westward, distinct way of life, traditional territory and collective consciousness.

"Métis Homeland" -The Métis Nation's Homeland is based on the traditional territory upon which the Métis people have historically lived and relied upon within west central North America. This territory roughly includes the 3 Prairie provinces (Manitoba, Alberta and Saskatchewan), parts of Ontario, British Columbia and the Northwest Territories, as well as, parts of the northern United States (i.e. North Dakota, Montana).

Métis Rights - Powley Case - As well the MNC is continuing its work to ensure the harvesting rights of all Métis Nation citizens are recognized and protected. On September 19, 2003, the Supreme Court of Canada delivered its landmark decision in R. v. Powley which recognized and affirmed the existence of Métis as a distinct Aboriginal people with existing rights protected by s. 35 of the Constitution Act, 1982. This landmark case is central to the Métis National Council's agenda, as are the other on-going Métis rights litigations

2008 Métis Nation Protocol /Accord The Métis Nation has also recently engaged a new multilateral process with Canada and the provinces from Ontario westward in order to begin addressing rights-based issues and other priorities for the Métis people. The Métis Nation Protocol will build on past efforts to advance and secure the place of the Métis Nation in Canada.

1999 - WOMEN of the MÉTIS NATION - Women of the Métis Nation (WMN) is the more recently incorporated body of the formerly known MNC Women's Secretariat. The Métis National Council and each of its Governing Members have established representative structures for Métis women within their governance structures. The Métis National Council's Métis Women's Secretariat was established in 1999 and consists of one representative from each of the Governing Members who are the Métis Nation's governments from Ontario Westward (Métis Nation of Ontario, Manitoba Métis Federation, Métis Nation-Saskatchewan, Métis Nation of Alberta, Métis Provincial Council of British Columbia).

The Women of the Métis Nation is the national voice for Métis women and is officially mandated by the government of the Métis Nation to lobby, advocate and represent the Métis women's agenda and perspective. The Women of the Métis Nation is a body within the Métis Nation governance structure and retains a seat at the Métis Nation cabinet and on the Métis National Council Board of Governors.

(Source: Métis National Council web-site - www.metisnation.ca)