

# Indigenous Self-Government in Canada: Where Are We and the Métis Landscape

For: Canadian Institute for the Administration of Justice  
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Pape Salter Teillet LLP ([www.pstlaw.ca](http://www.pstlaw.ca))

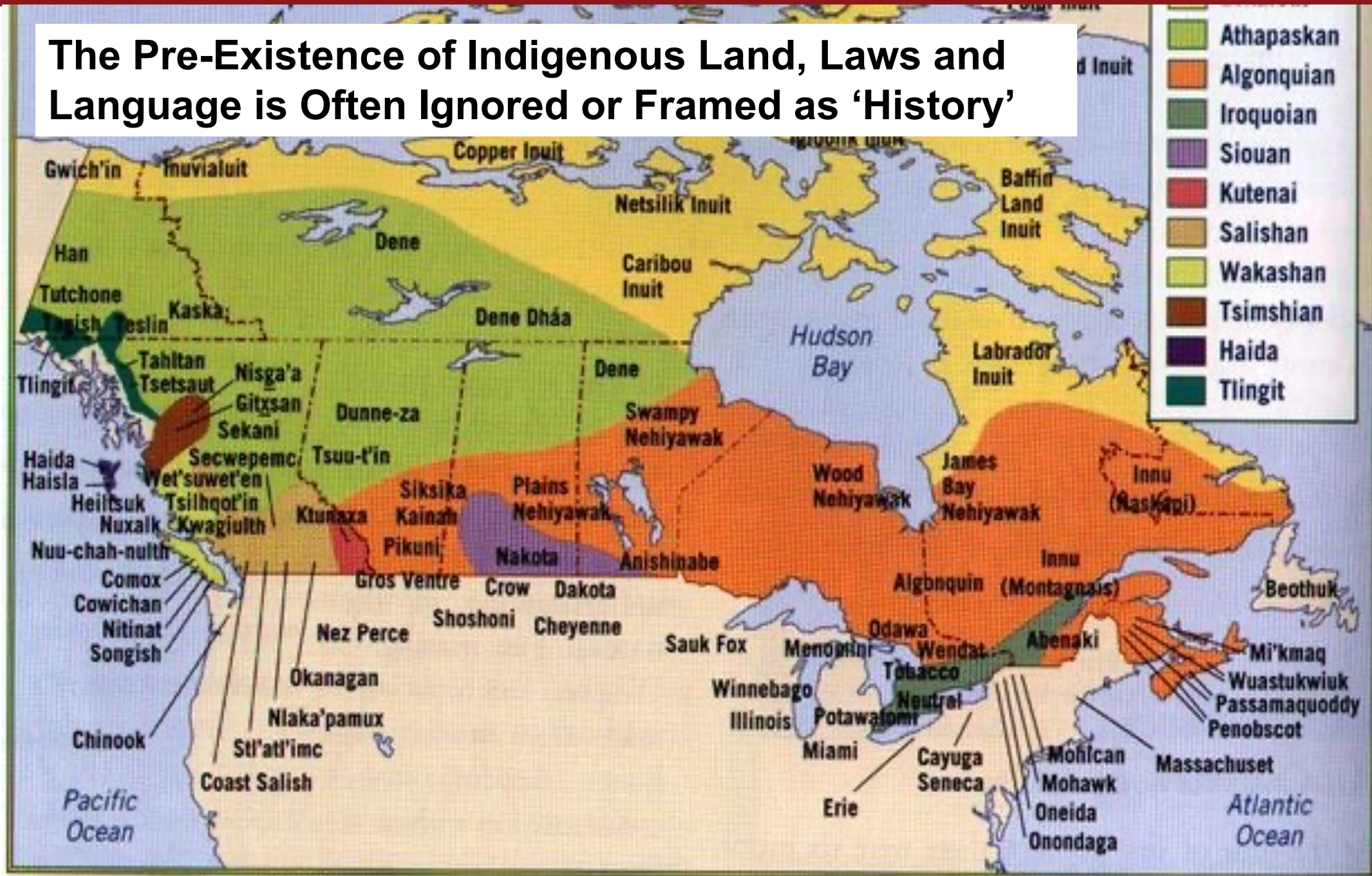
# Acknowledging the Biases and Fictions in Some 'Nation Building' Narratives

## Telling Truths About Canada's History



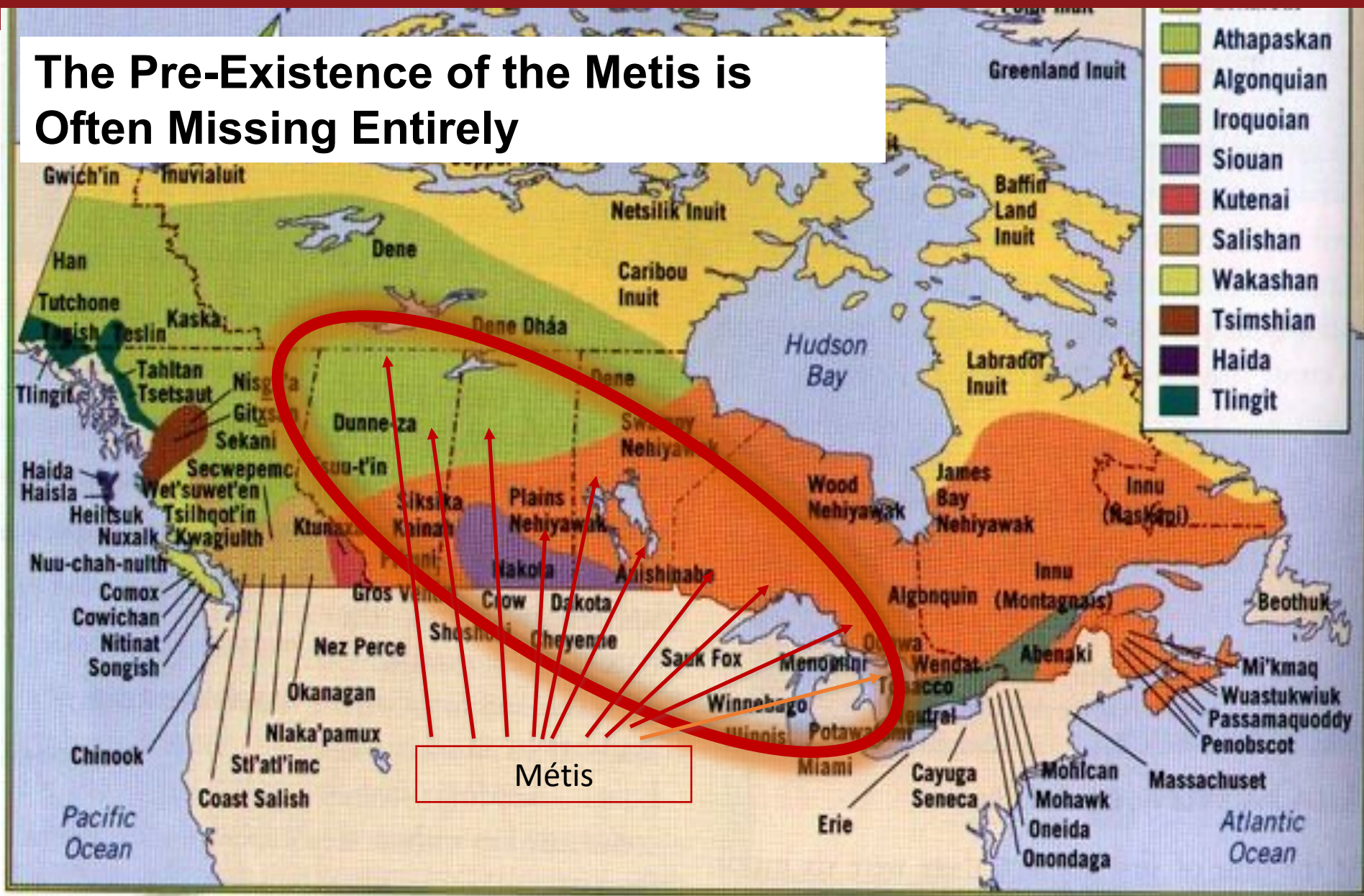


# The Pre-Existence of Indigenous Land, Laws and Language is Often Ignored or Framed as 'History'





# The Pre-Existence of the Metis is Often Missing Entirely



At the time of European contact, diverse groups of Aboriginal peoples lived in all regions of the northern half of the continent.





**Colonization's Toolkit:  
Dispossession, Denial and  
Erasure from the 'Map'**





## R. v. Van der Peet, [1996] 2 S.C.R. 507

[263] The history of the interface of Europeans and the common law with aboriginal peoples is a long one. As might be expected of such a long history, the principles by which the interface has been governed have not always been consistently applied. Yet running through this history, from its earliest beginnings to the present time is a golden thread – the recognition by the common law of the ancestral laws and customs the aboriginal peoples who occupied the land prior to European settlement.



Canada's Underlying Constitutional Legitimacy and Future is Anchored on Treaties (Historic & Modern), Fulfilling Solemn Promises and Constitutional Commitments as well as Reaching Other Constructive Arrangements with Indigenous Peoples







# MODERN TREATY TERRITORIES



This map is for illustration purposes and identifies only those areas which are subject to signed modern treaties. It does not represent any governments, organizations or territories that are currently negotiating agreements; that have historic treaties or land claims; or that have asserted title or rights to their territories which have not been the subject of a modern treaty.





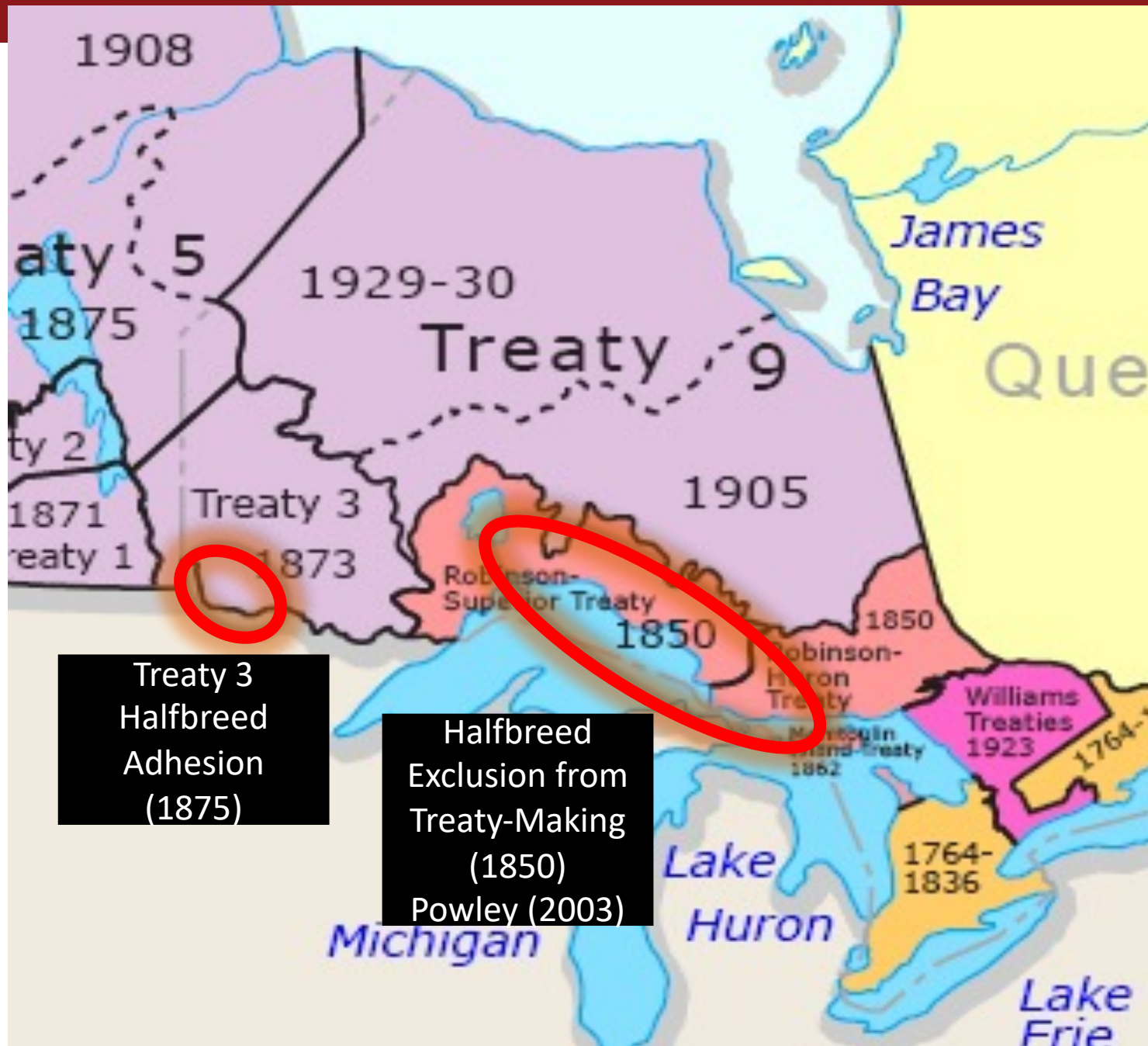
# Manitoba Metis Federation v. Canada, [2013] 1 S.C.R. 623

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[3] The government policy regarding the First Nations was to enter into treaties with the various bands, whereby they agreed to settlement of their lands in exchange for reservations of land and other promises.

[4] The government policy with respect to the Métis ... was less clear.

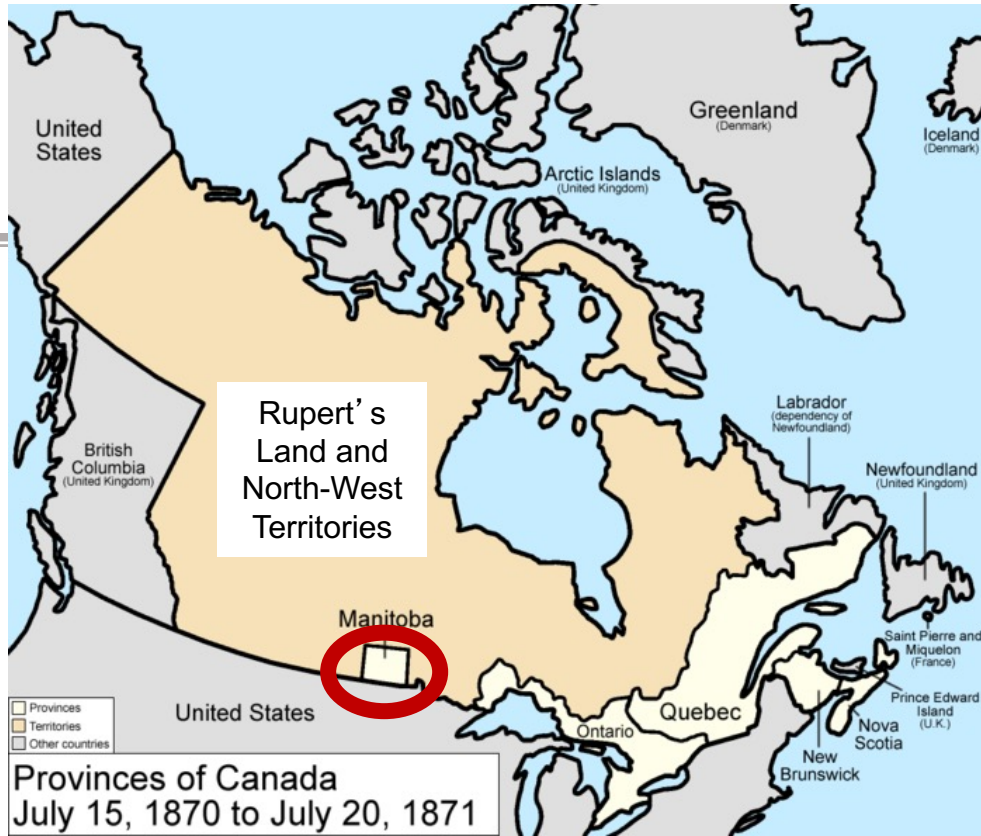




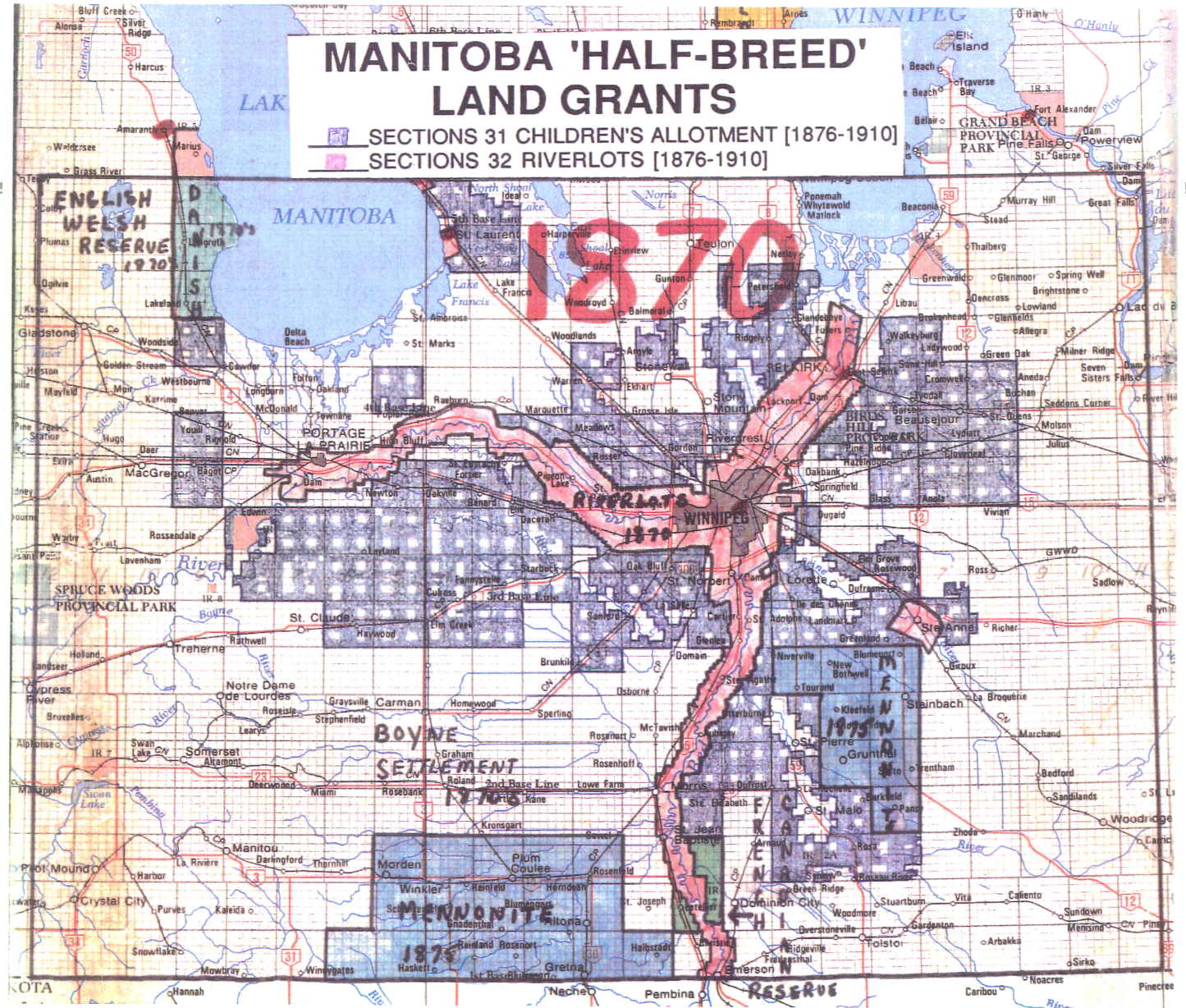
Treaty 3  
Halfbreed  
Adhesion  
(1875)

Halfbreed  
Exclusion from  
Treaty-Making  
(1850)  
Powley (2003)





“... towards the extinguishment of the Indian Title to the lands in the Province, to appropriate a portion of such ungranted lands, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents ...” – *Manitoba Act, 1870, s. 31*





# The Métis Perspective

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**“When the Government of Canada presented itself at our doors it found us at peace. It found that the Métis people of the North-West could not only live well without it ... but that it had a government of its own, free, peaceful, well-functioning, contributing to the work of civilization in a way that the Company from England could never have done without thousands of soldiers. It was a government with an organized constitution whose junction was more legitimate and worthy or respect, because it was exercised over a country that belonged to it.”**

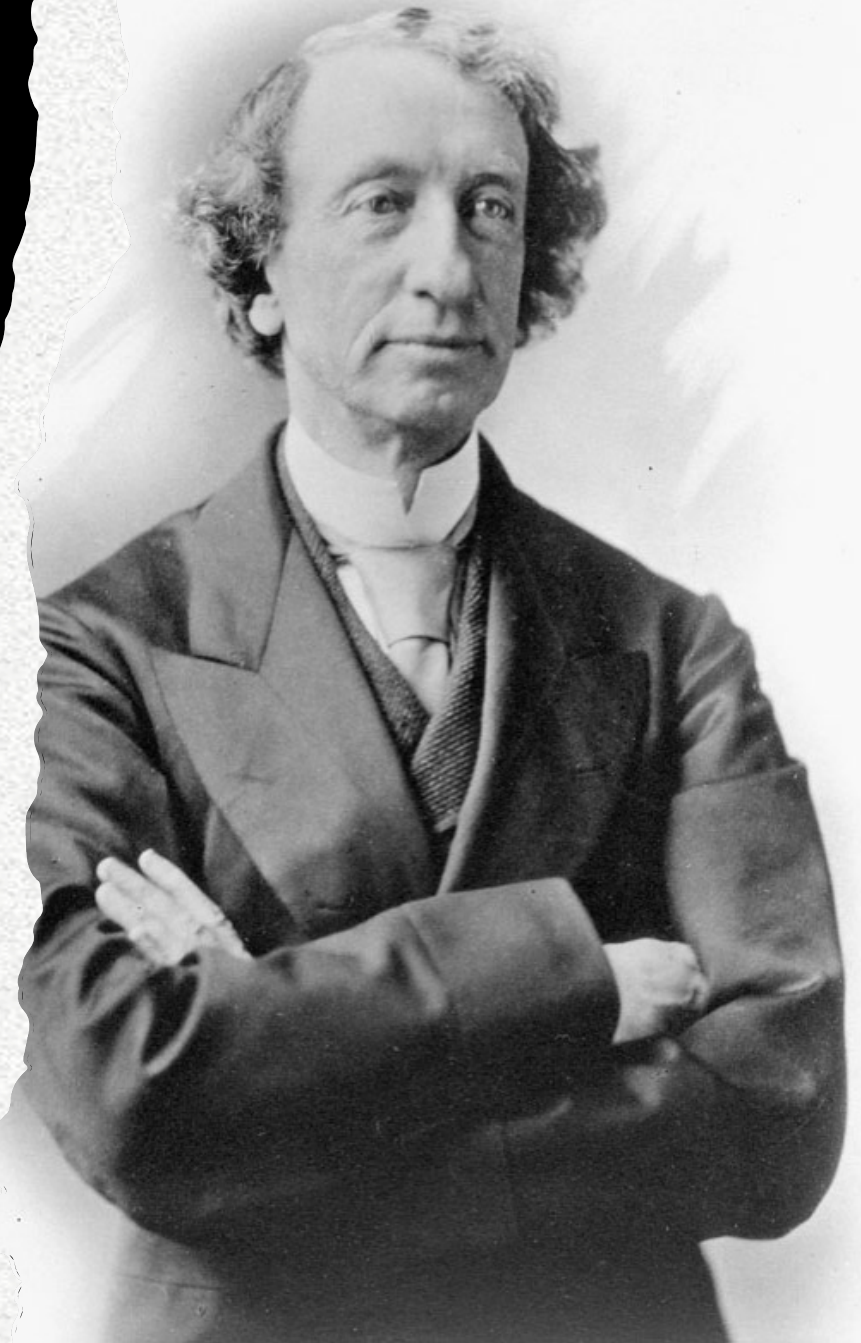
- Louis Riel, 1885



# The Prime Minister of the Day's Perspective

"... it will require a considerable management to keep those wild people quiet. In another year the present residents will be altogether swamped by the influx of strangers who will go in with the idea of becoming industrious and peaceable settlers."

— Prime Minister Sir John A. MacDonald, 1869





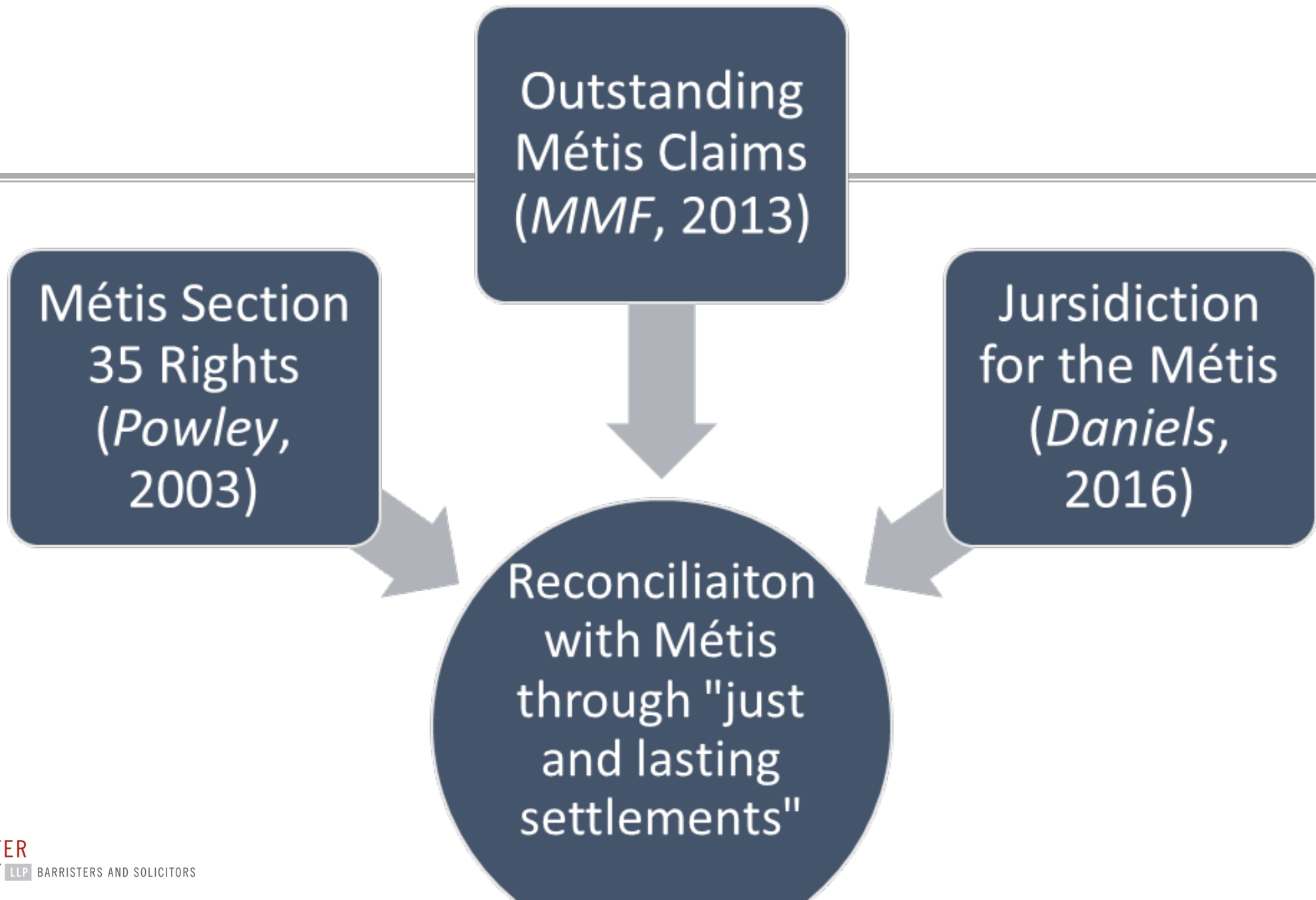


## Métis Rights: A “Legal Lacuna” in Canadian Law

“Although widely recognized as a culturally distinct Aboriginal people living in culturally distinct communities, the law remained blind to the unique history of the Métis and their unique needs. ... Governments slowly awoke to this legal lacuna. ... The constitutional amendments of 1982 ... signal that the time has finally come for recognition of the Métis as a unique and distinct people.

Alberta (Aboriginal Affairs) v. Cunningham, [2011] 2 S.C.R. 670

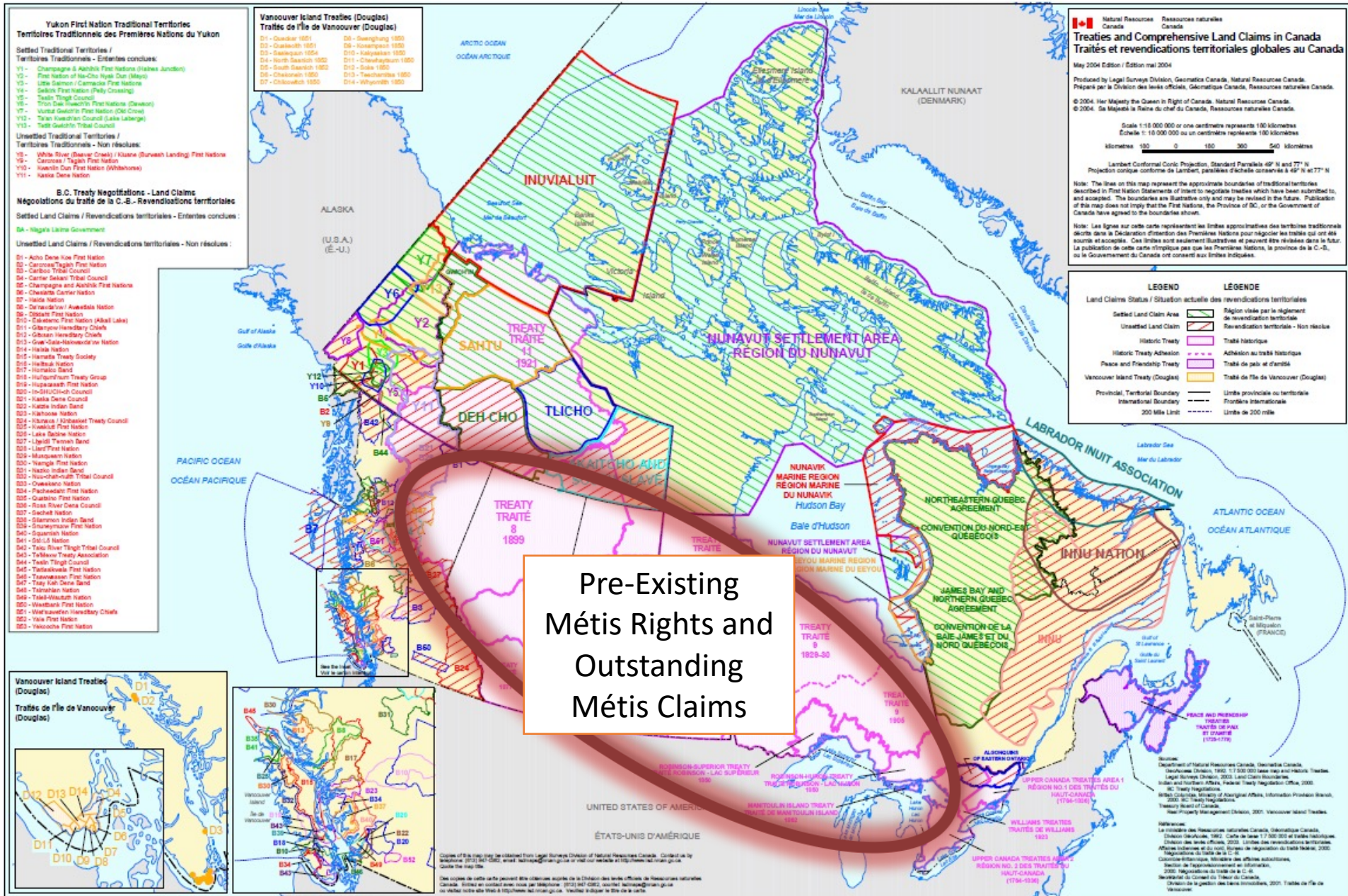




# Addressing the “Legal Lacuna”: Métis Self-Government Agreements

- In June 2019, Canada signed *Métis Government Recognition and Self-Government Agreements* with the Métis Nation of Alberta (“MNA”), the Métis Nation-Saskatchewan (“MN-S”) and the Métis Nation of Ontario (“MNO”) that provide immediate federal recognition of the Métis right to self-government of these collectives as well as sets out a process for Federal Recognition Legislation and full recognition of Métis jurisdictions in core areas.
- In July 2021, Canada signed a *Manitoba Métis Self-Government Recognition and Implementation Agreement* with the Manitoba Métis Federation (“MMF”) that provides immediate federal recognition with respect to MMF’s representativeness and existing self-government as well as contemplates a future self-government treaty, along with Federal Implementation Legislation.





**Yukon First Nation Traditional Territories**  
**Territoires Traditionnels des Premières Nations du Yukon**

Settled Traditional Territories /  
 Territoires Traditionnels - Ententes conclues:

- Y1 - Champagne & Ahnik First Nations (Inhale Junction)
- Y2 - First Nation of Na-Cho Hya-Dun (Misty)
- Y3 - Lina Samon (Carmichael First Nations)
- Y4 - Selkirk First Nation (Pelly Crossing)
- Y5 - Takhli Thaghi Council
- Y6 - Takhli Thaghi Council
- Y7 - Vuntut Gwitchin First Nation (Old Crow)
- Y8 - Takhli Thaghi Council (Laska Lake)
- Y9 - Takhli Thaghi Council (Laska Lake)
- Y10 - Takhli Thaghi Council (Laska Lake)
- Y11 - Takhli Thaghi Council (Laska Lake)

Unsettled Traditional Territories /  
 Territoires Traditionnels - Non résolus:

- Y12 - White River (Barnes Creek) / Kluane (Burwash Landing) First Nation
- Y13 - Carcross / Tagish First Nation
- Y14 - Kluane First Nation (Whitehorse)
- Y15 - Nahoko First Nation

**Vancouver Island Treaties (Douglas)**  
**Traité de l'île de Vancouver (Douglas)**

- D1 - Quatsino 1851
- D2 - Quatsino 1851
- D3 - Quatsino 1851
- D4 - North Saanich 1852
- D5 - South Saanich 1852
- D6 - Cowichan 1852
- D7 - Oklawaha 1852
- D8 - Cowichan 1852
- D9 - Cowichan 1852
- D10 - Cowichan 1852
- D11 - Cowichan 1852
- D12 - Sooke 1852
- D13 - Tsoo-lie-wan 1852
- D14 - Whycomeh 1852

**B.C. Treaty Negotiations - Land Claims**  
**Négociations du traité de la C.-B. - Revendications territoriales**

Settled Land Claims / Revendications territoriales - Ententes conclues:

- B1 - Nisga'a Nation Government
- B2 - Athabasca First Nation
- B3 - Cariboo Tribal Council
- B4 - Carrier Settlement Tribal Council
- B5 - Champagne and Ahnik First Nations
- B6 - Chehalis Carrier Nation
- B7 - Haida Nation
- B8 - Debrahwa / Awakwala Nation
- B9 - Okanagan First Nation
- B10 - Okanagan First Nation (Kettle Lake)
- B11 - Okanagan Hereditary Chiefs
- B12 - Okanagan Hereditary Chiefs
- B13 - Okanagan Hereditary Chiefs
- B14 - Haida Nation
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**Vancouver Island Treaties (Douglas)**  
**Traité de l'île de Vancouver (Douglas)**

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- D60

**Treaties and Comprehensive Land Claims in Canada**  
**Traité et revendications territoriales globales au Canada**

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Scale 1:10 000 000 or one centimetre represents 100 kilometres  
 Echelle 1:10 000 000 ou un centimètre représente 100 kilomètres

Scale: 100 0 100 200 300 400 Kilometers  
 Échelle: 100 0 100 200 300 400 Kilomètres

Lambert Conformal Conic Projection, Standard Parallels 49° N and 77° N  
 Projection conique conforme de Lambert, parallèles d'échelle conservés à 49° N et 77° N

Note: The lines on this map represent the approximate boundaries of traditional territories described in First Nation Statements of Intent to negotiate treaties which have been submitted to, and accepted. The boundaries are illustrative only and may be revised in the future. Publication of this map does not imply that the First Nations, the Province of BC, or the Government of Canada have agreed to the boundaries shown.

Note: Les lignes sur cette carte représentent les limites approximatives des territoires traditionnels décrites dans la Déclaration d'intention des Premières Nations pour négocier les traités qui ont été soumis et acceptés. Ces limites sont seulement illustratives et peuvent être révisées dans le futur. La publication de cette carte n'implique pas que les Premières Nations, la province de la C.-B., ou le Gouvernement du Canada ont consenti aux limites indiquées.

**LEGEND** **LÉGENDE**

Land Claims Status / Situation actuelle des revendications territoriales

- Settled Land Claim Area / Région visée par le règlement de revendication territoriale
- Unsettled Land Claim / Revendication territoriale - Non résolue
- Historic Treaty / Traité historique
- Historic Treaty Adhesion / Adhésion au traité historique
- Peace and Friendship Treaty / Traité de paix et d'amitié
- Vancouver Island Treaty (Douglas) / Traité de l'île de Vancouver (Douglas)
- Provincial, Territorial Boundary / Limite provinciale ou territoriale
- International Boundary / Frontière internationale
- 200 Mile Limit / Limite de 200 milles

Pre-Existing Métis Rights and Outstanding Métis Claims

# The Way Ahead?

- The limitations of a “right” by “right” approach to interpreting and implementing Section 35 has shown its frailties and limits.
- The honour of the Crown is increasingly relied upon to balance the inherent tension between pre-existing title, laws, interests and “assumed Crown sovereignty.
- The reconciliation of Indigenous laws, jurisdictions and legal orders with Canadian law through negotiations and/or judicial recognition of Canada’s multi-juridical origins provides a better way forward. This approach is consistent with the *United Nations Declaration on the Rights Indigenous Peoples* as well as the ultimate purpose of Section 35.