



**University  
of Victoria**

Graduate Studies

# PROGRAMME

The Final Oral Examination  
for the Degree of

DOCTOR OF PHILOSOPHY  
(Faculty of Law)

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2006	McGill University	LL.M.
2003	University of Regina	B.A. (Hons.)
2001	University of Saskatchewan	LL.B.
1996	Queen's University	B.Sc.

“Challenging the Liberal Order Framework:  
Natural Resources and Métis Policy in Alberta and Saskatchewan  
(1930 to 1948)”

Thursday, October 23, 2014  
9:00AM PST  
Fraser, 292

Supervisory Committee:

Professor Jeremy Webber, Faculty of Law, UVic (Co-Supervisor)  
Professor Hamar Foster, Faculty of Law, UVic (Co-Supervisor)  
Dr. James Lawson, Faculty of Political Science, UVic (Member)

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Dr. Heath Emerson  
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## Abstract

*The British North America Act, 1930* (the *Natural Resources Transfer Agreements* or *NRTAs*) marked the end of a lengthy battle between the provincial governments of Saskatchewan, Alberta, and Manitoba and the federal government of Canada. Prior to 1930, the provincial governments did not have administrative control over their natural resources, which were managed by the federal Department of the Interior. As a result, the three prairie provinces did not share equal constitutional status with the other Canadian provinces that did control their own resources. Under the terms of the new constitutionalized intergovernmental agreements the provincial governments agreed to fulfil all of the federal government's continuing obligations to third parties after the transfer. One of these obligations was the redemption of Métis scrip issued by the federal government to extinguish the Métis share of Aboriginal land title. After the transfer, however, the provinces resisted granting more land to satisfy what they considered to be a federal obligation. The provinces refused to redeem Métis scrip entitlements and the federal government did not enforce the terms of the *NRTAs*. Both the federal and provincial governments failed to live up to the terms of the constitutional agreement and the Métis scrip issue fell through the jurisdictional cracks of Canadian federalism. This dissertation examines the historical context and consequences surrounding the Alberta and Saskatchewan government's failure to recognize Métis scripholders' rights-based claims to land. Each provincial government pursued different avenues with respect to natural resources and Métis policies. This purpose of this study is to examine the different phases of policy development in each province.

The transfer of control and administration of the public domain from one level of government to another provides interesting insights into the history of government-Aboriginal relations in Canada. Aboriginal people (including Métis) were not consulted during the negotiations leading up to the *NRTAs*; nevertheless (or perhaps as a result), the transfer agreements were a catalyst for political organization in several Métis communities. Métis who had been living on federal crown land were concerned that the transfer of lands to the provinces would negatively impact their right to pursue traditional livelihoods such as hunting, fishing and trapping. In Alberta, the *NRTAs* sparked the formation of the Métis Association of Alberta, a political lobbying group that advocated recognition of historical claims to land. During this

period, parallel Métis living in Saskatchewan and Manitoba created parallel organizations. These political groups represent some of the earliest attempts by Aboriginal people in the prairie provinces to voice their concerns and influence government policy.

There are three recurrent themes in this study. First, land appears as a point of convergence for Métis claims and an alternative to the distribution of government social assistance due to high levels of unemployment. Second, Métis political organizing affects government policy-making. Third, the marked change in policy direction by the Co-operative Commonwealth Federation (CCF) government in Saskatchewan after its election in 1944. The CCF introduced natural resources policies based on social democratic principles such as collective marketing. This approach was a marked departure from the liberal approaches introduced by previous provincial governments in Alberta and Saskatchewan.

## **Awards, Scholarships, Fellowships**

2005-06 Law Foundation of British Columbia Fellowship

2006-08 University of Victoria Graduate Student Fellowship

2005 Ian Pilarczyk Graduate Award for Legal History, Institute of Comparative Law, McGill University

2003 Greenshields Thesis Scholarship, Institute of Comparative Law, McGill University

2002 Greenshields Entrance Scholarship, Institute of Comparative Law, McGill University

2002 Moxon Scholarship for Graduate Studies, College of Law, University of Saskatchewan

## **Presentations**

1. "The Promised Land: A History of the Alberta Metis Land Settlements." Law's Encounters: Co-existing and Contradictory Norms & Systems. Canadian Law and Society Association Annual Meeting, Faculty of Law, University of Manitoba, June 6, 2014.
2. "Fighting 'Nascent Monopoly Capital': The Metis Association of Alberta in the 1930s." Canadian Committee on Labour History, Canadian Historical Association, University of Victoria, June 2, 2013.

3. "The Pursuit of Economic Democracy or the Expression of Internal Colonialism? An Analysis of Saskatchewan's Natural Resources Policies in the North (1930 to 1960). Vision and Voice. Canadian Initiative in Law, Culture, and the Humanities. Carleton University, Ottawa, October 17, 2009.
4. "'A rather vexed question...': The Federal-Provincial Debate over the Constitutional Responsibility for Métis Scrip." OFI, University of British Columbia, Vancouver, June 5, 2008.
5. "Colonialism, Co-option, or Co-operation? Saskatchewan's Natural Resources and Aboriginal Policies in the North (1930-1964). Law and Society Association and Canadian Law and Society Association, Montreal, QC, May 29, 2008.
6. "Métis Scrip: A Study in Political and Legal Culture." Canadian Initiative in Law, Culture and the Humanities, Carleton University October 12, 2007.
7. "A 'rather vexed question'...: The Constitutional Responsibility for Métis Scrip." Canadian & British Perspectives in Legal History: Commonalities and Departures, British Association of Canadian Studies, London House, London, UK, June 22, 2007.
8. "A Living Tree has Roots: The Natural Resources Transfer Agreements and the Constitutionalization of Treaty Rights Prior to 1982." A Living Tree: The Legacy of 1982 in Canada's Political Evolution, Saskatchewan Institute of Public Policy, Regina, SK, May 25, 2007.

## **PUBLICATIONS**

1. O'Byrne, Nicole. "'No other weapon except organization': The Métis Association of Alberta and the 1938 Metis Population Betterment Act" *Journal of the Canadian Historical Association* 24 no.1 (2013): 311-352.
2. O'Byrne, Nicole. "Through the Grace of God I am the founder of Manitoba": Louis Riel's Constitutional Thought." Hans V. Hansen (ed.) *Riel's Defence: The Speeches of Louis Riel*. McGill-Queen's University Press, 2014, pp. 90-105.
3. O'Byrne, Nicole. "A rather vexed question...': The Federal-Provincial Debate over the Constitutional Responsibility for Métis Scrip." *Review of Constitutional Studies*, volume 12(2007): 41-79.