

## **Métis Rights Update**

Prepared For: Centre for Constitutional Studies  
In association with  
Legal Education Society of Alberta  
*Constitutional Symposium*

Presented by:  
**Prof. Catherine Bell**  
**University of Alberta**  
**Edmonton, Alberta**

For Presentation In:  
Edmonton – October 4, 2013

## Métis Rights Update

### ***Manitoba Métis Federation Inc. v. Canada (SCC 2013)***

Catherine Bell, Faculty of Law, University of Alberta<sup>1</sup>

#### **1. What are the Major Issues in the Case?**

After confederation in 1867 Canada began implementing a policy of western expansion including through a national railroad and expanding settlement into the western territories. This included Rupert's Land and the Red River area in southern Manitoba, home of the Métis Nation. The purpose of the *Manitoba Act, 1870* was to bring Manitoba peaceably into confederation and address the concerns of Métis and other settlers in possession of Manitoba lands.<sup>2</sup> The Métis negotiated, as part of the creation of the province, the allocation of 1.4 million acres of land to Métis children as well as land grants to Métis and other settlers in possession of land through a separate series of land grants. The promise to the children was subsequently included in s. 31 of the *Manitoba Act* and to Métis and other settlers, in s. 32. However errors and delays in implementing these sections along with underestimating eligible recipients, insufficient legislative response, instances of federal facilitation of land scrip speculation, and other frauds and abuses resulted in many Métis not receiving the land grants promised.

In *Manitoba Metis Federation Inc. v Canada (attorney General)*<sup>3</sup> (MMF) the Manitoba Métis Federation (the Federation) sought three declarations for the purpose of bringing federal and provincial governments to the negotiation table "in pursuit of the overarching constitutional goal of reconciliation" of this history of Crown conduct and its impact on Manitoba Metis.<sup>4</sup> Both governments deny jurisdiction over Métis as an Aboriginal people.<sup>5</sup> Since 1982, they have also argued contemporary Métis do not have Aboriginal title, or other Aboriginal land interests, and to the extent they might have had, these interests were

---

<sup>1</sup> The author gratefully acknowledges the past research assistance of Steve Carey (L.L.B.) and Andrew Paterson (LL.B.) on lower court decisions in MMF and ongoing assistance of Laura Skorodenski (J.D. student at law) and Heidi Besuijen (J.D. 2014) in preparation of this article. The author is also grateful to Paul Seaman of Gowlings, Lafleur Henderson, LLP for his comment on some of these arguments which we elaborate in a forthcoming co-authored article on the duty to consult Metis.

<sup>2</sup> *Manitoba Act, SC 1870, c3* [Manitoba Act].

<sup>3</sup> *Manitoba Metis Federation Inc. v Canada (Attorney General)*, 2013 SCC 14, 291 Man R (2d) 1 [MMF].

<sup>4</sup> *Ibid* at para 137.

<sup>5</sup>In *Daniels v Canada (Indian Affairs and Northern Development)*, [2013] FCR 268 Justice Phelan held that the Metis are within federal 91(24) jurisdiction over Indians and lands reserved for the Indians however leave to appeal has been granted to the Federal Court of Appeal.

terminated by federal legislation or receipt of scrip before recognition and affirmation of “existing” Aboriginal rights in s. 35 of the *Constitution Act, 1982*.<sup>6</sup> The three declarations sought by the Federation were: (1) the federal government breached its fiduciary duty in implementation of sections 31 and 32 of the *Manitoba Act, 1870*; (2) the federal government failed to implement these sections in a manner consistent with honour of the Crown, and (3) certain legislation enacted to implement these provisions were outside the jurisdiction of the province of Manitoba.<sup>7</sup> The focus of this paper is on the Supreme Court of Canada’s (SCC) rulings on honour of the Crown, but other aspects will be raised.

In determining whether to grant the declarations, the SCC addressed two main issues: (1) whether Canada failed to act in accordance with its legal obligation, and (2) whether the claim was barred by the doctrine of laches or by applicable limitations law.<sup>8</sup> In addressing these issues, the SCC brings Métis people clearly into the legal paradigm of reconciliation and broader Aboriginal rights jurisprudence on Crown fiduciary relationships, honour and negotiation of settlement as a part of the process and objective of reconciliation (a theme also dominant in the earlier *R v Powley* decision on Métis hunting rights).<sup>9</sup> As Brian Slattery argues, this is consistent with the new constitutional vision of the SCC which is shifting away from emphasis on Crown obligations arising through proof of specific rights (e.g. hunting, fishing, title) to delineation and enforcement of more general constitutional obligations owed to all Aboriginal peoples arising from the fiduciary relationship.<sup>10</sup>

## 2. What did the court decide?

On the first issue of whether the Crown failed to act in accordance with its legal obligations, the SCC agreed with the courts below that the claim based on s. 32 was not established and therefore it was not necessary to determine the constitutionality of the implementing legislation. On section 31 of the *Manitoba Act* they held:

...s. 31 of the *Manitoba Act* constitutes a constitutional obligation to the Métis people of Manitoba, an Aboriginal people, to provide the Métis children with allotments of land. The immediate purpose of the obligation was to give

---

<sup>6</sup> *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

<sup>7</sup> *MMF*, *supra* note 3 at para 7.

<sup>8</sup> *Ibid* at para 8.

<sup>9</sup> *R v Powley*, 2003 SCC 43, [2003] 2 SCR 207 [*Powley*].

<sup>10</sup> See e.g. Brian Slattery, “Aboriginal Rights and the Honour of the Crown” (2005) 29 Sup Ct L Rev (2d) 434 [Slattery, “Honour”]; Brian Slattery, “Aboriginal Rights and the Honour of the Crown” (Speech delivered at the Pacific Business Law Institute Conference The Daniels Case: Recognition of Metis and Non-Status Peoples, Ottawa, 11 April 2013, [unpublished].