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Articles

Abstract

R. v. Horseman, [1990] 1 S.C.R. 901, is the principal judicial authority for the proposition that the Natural Resources Transfer Agreements (NRTAs) with the three prairie provinces extinguished the treaty rights of Indians in those provinces to hunt or fish for commercial purposes. This article argues that that proposition — the "extinguishment hypothesis" — needs and deserves reconsideration. It is inconsistent with the rest of current Canadian law on extinguishment. It draws no support from the text or the legislative history of the NRTAs, from the arguments offered in favor of it in the Horseman decision, or even from the judicial authorities cited there to substantiate it. It was quite unnecessary to the result in Horseman. And it has troubling practical consequences for the treaty peoples it affects. The difficult question is how to bring this issue back before the Court for fresh deliberation.

Abstract

The legal history of paragraph 12 of the *National Resources Transfer Agreements* have been focused almost entirely on the development of the case law interpreting First Nations hunting rights, law that took a narrow, formalistic approach to interpretation. This article uses critical legal history to fill in this historical context and help us understand the evolution of the regulatory regime prior to 1930, the conflict over wildlife, and the class interests represented in this regulatory regime. This analysis will illuminate the importance of the treaties to First Nations, especially their ability to continue their traditional livelihood, as promised during treaty negotiations. The intention behind paragraph 12 was to transfer authority to the provinces to regulate First Nations' hunting, while ensuring that the governmental obligations to look out for First Nations' interests in access to the wildlife were also secured.

Abstract

The British North America Act, 1930 (the Natural Resources Transfer Agreements) marked the end of 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 and were not constitutionally equal to the other Canadian provinces. One of the terms of the constitutionalized agreements provided that after the transfer, the provincial governments would undertake all of the federal governments' continuing obligations to third parties. One of these obligations was the redemption of Métis scrip issued by the federal government to extinguish the Métis interest in the lands. The provinces initially refused to accept this obligation, which led to an extensive debate over the constitutional responsibility for Métis scrip. The author examines this debate in order to shed light on the nature and extent of the constitutional obligations that were owed to the Métis prior to their inclusion in section 35 of the *Constitution Act, 1982*.

Manitoba and the Long and Winding Road to the *Natural Resources Transfer Agreement*
Jim Mochoruk

Abstract

This article constitutes a case study of Manitoba's struggle to win control over its natural resources. Its central argument is that from a Manitoba perspective, the issues involved were not actually matters of constitutional principle, except in a rhetorical and perhaps a technical sense. For Manitoba, the path to the NRTA of 1930 was paved almost exclusively by political and economic factors. With this path in mind, this article argues that in the case of Manitoba, this agreement should be viewed as an arbitrarily crafted and completely political solution to a series of long-festering economic disputes between Ottawa and the province. Thus, while Manitoba's political elite had rather cynically appealed to high-sounding principles by dressing their claims up in the terminology of inherent British constitutional rights, all they really wanted were "better financial terms."

Book Review

Book Review of Avigail Eisenberg, ed.
Diversity and Equality; The Changing Framework of Freedom In Canada
Natasha Bakht