Manitoba Metis Federation Inc v Canada (AG) (2013): Canadian Government Failed to Fulfill Its Promise to the Metis

Introduction

On March 8, 2013, the Supreme Court of Canada ruled that the Government failed to allocate land to Metis children, pursuant to section 31 of the *Manitoba Act*,[1] in accordance with the honour of the Crown.[2] The honour of the Crown requires servants of the Crown to act honourably. This means that Government officials, acting on behalf of the Crown, must perform their duties fairly and in good faith, as opposed to merely conducting themselves in a manner that can be technically justified under the law.[3]

In 1870, the Canadian Government promised the Metis in the Red River Settlement that 1.4 million acres of land would be distributed among the children of Metis heads of families.[4] This promise was one of the reasons why the Red River settlers agreed to join Confederation as part of the province of Manitoba.[5] The land was eventually allocated, but Government delays and inadequate planning resulted in many Metis children being taken advantage of by land speculators[6] and many Metis left the area to settle elsewhere.[7]

The Supreme Court of Canada stated that the Canadian Government's actions amounted to a "persistent pattern of inattention," and it failed to diligently fulfill its solemn obligation (i.e. quickly and efficiently allocate the land), thereby violating the honour of the Crown.[8] This in turn created a rift between the Canadian Government and the Metis.[9] The following Featured Court Ruling summarizes the judgment and briefly explains how the decision will assist in reconciling the Crown's assertion of sovereignty with the Metis' pre-existing interest in the land.

Facts

How Manitoba Became a Province

In 1867, the Province of Canada (now Ontario and Quebec), Nova Scotia, and New Brunswick united under the *British North America Act*[10] to become Canada. Following Confederation, the Canadian Government was intent on westward expansion and settlement. To assist with these goals, England agreed to cede Rupert's Land to Canada. Rupert's Land covered all of Manitoba and parts of Alberta, Saskatchewan, Nunavut, Ontario, and Quebec. The Red River Settlement, located in what is now downtown Winnipeg, Manitoba, was also included in Rupert's Land. By 1869, the Red River Settlement

was a thriving community with 12,000 people. The Metis made up 85% of the population.[11]

When the Canadian Government gained control of the Red River Settlement, the French-speaking Roman Catholic Metis feared that a wave of English-speaking Protestant settlers would threaten their traditional way of life. On November 2, 1869, two survey parties arrived at the Red River Settlement, and they were met with armed resistance led by Louis Riel.[12]

The Metis drafted a list of demands that the Canadian Government would have to accept before the Red River settlers would agree to Canadian control. In response, the Canadian Government invited a delegation to Ottawa to present the demands of the settlers. On March 24, 1870, Louis Riel sent three delegates. The delegates arrived in Ottawa in April 1870 and negotiated the terms on which Manitoba would enter Canada as a province. On May 10, 1870, Parliament passed the *Manitoba Act*.[13] Manitoba officially entered Confederation as a province on July 15, 1870.[14]

Sections 31 and 32 of the Manitoba Act

Sections 31 and 32 of the *Manitoba Act* were at issue in this case. Section 31 stated that the Canadian Government would provide land for Metis children.[15] Section 31 had two purposes: (1) provide Metis children with a "head start" over the settlers from the east, and (2) reconcile the Crown's assertion of sovereignty with the Metis' pre-existing interest in the land.[16] The Canadian Government set aside 1.4 million acres of land to allocate to Metis children.[17] Section 32 of the *Manitoba Act* recognized all existing landholdings where people claimed ownership but had not yet been granted title.[18]

What were the claimants seeking?

In the *Manitoba Metis Federation* case, the claimants were seeking the following declarations:

1. The Canadian Government breached the fiduciary duty[19] it owed to the Metis when it implemented the *Manitoba Act*;

2. The Canadian Government did not implement the *Manitoba Act* in a manner consistent with the honour of the Crown; and

3. Legislation by the Manitoba Government in relation to the implementation of the *Manitoba Act* was unconstitutional.[20]

Procedural History

In 2007, the trial judge at the Manitoba Court of Queen's Bench dismissed the claim for declarations because sections 31 and 32 of the *Manitoba Act* did not give rise to a fiduciary duty or a duty based on the honour of the Crown.[21] The trial judge ruled that a fiduciary duty can only arise if the Metis held the land collectively prior to 1870. The evidence offered

at trial established that the Metis had individual landholdings; therefore, there was no fiduciary duty. Additionally, the trial judge concluded that the claim would not be successful due to *The Limitation of Actions Act*[22] and the doctrine of laches.[23] He also ruled that the legislation enacted in relation to the land grants was constitutional and that the Manitoba Metis Federation should not be granted standing[24] because individual plaintiffs could bring the claim forward.[25] The Manitoba Metis Federation appealed this decision to the Manitoba Court of Appeal.

In 2010, the Manitoba Court of Appeal dismissed the appeal and declined to issue a declaration in favour of the Manitoba Metis Federation.[26] The Court of Appeal rejected the trial judge's finding that the Metis had to hold land collectively in order for there to be a fiduciary duty. The Court of Appeal, however, did not find it necessary to consider whether the Crown did in fact owe a fiduciary duty to the Metis because there was no evidence that the Crown had violated the duty. The Court of Appeal also ruled that the honour of the Crown had not been violated, and, in any event, the claim for a declaration would have been unsuccessful because *The Limitations of Actions Act*[27] would have applied. Additionally, there was no need to determine whether the legislation was unconstitutional because it was no longer in effect. Finally, the Court declined to interfere with the trial judge's finding that the Manitoba Metis Federation did not have standing.[28] The Manitoba Metis Federation appealed this decision to the Supreme Court of Canada.

Issues

The Supreme Court of Canada considered the following issues:

1. Did the Manitoba Metis Federation have standing?

2. Was the Canadian Government in breach of its fiduciary duty?

3. Did the Canadian Government fail to comply with honour of the Crown in its implementation of sections 31 and 32 of the *Manitoba Act*?[29]

4. Were the Manitoba statutes related to implementing sections 31 and 32 of the *Manitoba Act* unconstitutional?[30]

5. Was the claim for a declaration barred by limitations?

6. Was the claim for a declaration barred by laches?

7. If the Canadian Government was in breach of its duties, and the claim was not barred, what was the legal remedy for the claimants?[31]

Decision

The Supreme Court of Canada ruled:

1. The Manitoba Metis Federation did have standing to bring the case before a

court.[32]

2. The Canadian Government did not owe a fiduciary duty to the Metis in implementing sections 31 and 32 of the *Manitoba Act*.[33]

3. The Canadian Government failed to comply with honour of the Crown in its implementation of section 31 of the *Manitoba Act*. Section 32 of the *Manitoba Act* did not engage the honour of the Crown.[34]

4. There was no need to address the constitutionality of the statutes because they were no longer in force and could have no future impact.[35]

5. The *Limitations of Actions Act* did not apply to this case.[36]

6. The declaration was not barred by laches.[37]

7. The claimants were entitled to a declaration that the Canadian Government failed to implement section 31 of the *Manitoba Act* in accordance with the honour of the Crown.[38]

Court's Analysis

Issue 1: Did the Manitoba Metis Federation have standing?

Standing refers to a party's ability to bring a lawsuit to court. Traditionally, standing was limited to persons whose private rights were at stake or who were directly impacted by the issue. In cases that deal with public law, however, courts have discretion to grant standing to people or groups who are not directly impacted by the issue.[39]

In this case, the Supreme Court of Canada ruled that the existence of other potential claimants did not prevent a group from receiving public interest standing. A plaintiff may be issued public interest standing if that plaintiff would provide a useful perspective to the case at hand. In this case, the Manitoba Metis Federation was seeking a declaration that would assist in reconciling the Crown's sovereignty with the Metis' pre-existing interest in the land. Because this was a collective claim, the Supreme Court determined that the Manitoba Metis Federation should be granted public interest standing as a way to represent the collective interests of the Metis.[40]

Issue 2: Was the Canadian Government in breach of its fiduciary duty?

A fiduciary duty is a relationship between two parties where one party (the fiduciary) is obliged to act in the best interests of the other party (the beneficiary).[41] Generally, the relationship between the Metis and the Canadian Government is fiduciary in nature, but not all dealings between the parties are governed by fiduciary obligations.[42]

A fiduciary duty between the Canadian Government and the Metis can arise in two ways. First, a fiduciary duty arises if the Canadian Government assumes discretionary control over a specific Metis interest.[43] Second, a fiduciary duty may arise from an undertaking if

three conditions are met: (1) the fiduciary promises to act in the best interests of the beneficiary; (2) the beneficiary is vulnerable to the fiduciary's control; and (3) the beneficiary's interests may be negatively impacted by the fiduciary's control.[44]

In this case, the Metis (beneficiaries) claimed that the Canadian Government (the fiduciary) breached its fiduciary duty by failing to quickly and efficiently allocate the land to the Metis children.[45] The Supreme Court ruled that the Canadian Government did not owe the Metis a fiduciary duty even though the Government assumed discretionary control when it promised to administer the land. [46] A fiduciary duty was not owed to the Metis because they did not have a specific interest in the land. For the Metis to have a specific interest in the land, they must have held it communally not individually.[47]

The Court also dismissed the claimants' argument that a fiduciary duty arose as a result of an undertaking by the Canadian Government. The claim for a fiduciary duty failed because the Canadian Government did not promise to act in the best interest of the Metis to the exclusion of all others.[48]

Issue 3: Did the Canadian Government fail to comply with honour of the Crown in its implementation of sections 31 and 32 of the Manitoba Act?

Honour of the Crown refers to the principle that servants of the Crown must conduct themselves with honour when acting on behalf of the sovereign. This means that Government officials, acting on behalf of the Crown, must perform their duties fairly and in good faith, as opposed to merely conducting themselves in a manner that can be technically justified under the law.[49] For example, when the honour of the Crown is engaged, the Canadian Government must act with integrity and avoid taking advantage of the Aboriginal Peoples.[50] The principle of the honour of the Crown exists because Aboriginal Peoples lived on the land prior to the Crown asserting its sovereignty, and Aboriginal Peoples were not conquered. In order to reconcile the Crown's sovereignty with Aboriginal Peoples' pre-existing societies and interests, the Crown must act honourably, fairly, and in good faith in its dealings with Aboriginal Peoples.[51]

Not all dealings between the Crown and Aboriginal Peoples engage the honour of the Crown. Honour of the Crown is engaged: (1) in situations concerning the reconciliation of Crown sovereignty with pre-existing Aboriginal Peoples' societies, (2) under section 35 of the *Constitution Act, 1982*,[52] and (3) by an explicit obligation to Aboriginal People that is protected in the Constitution.[53] In this case, the Court ruled that the honour of the Crown was engaged due to the Canadian Government's promise to fulfill constitutional obligations made in section 31 of the *Manitoba Act*.[54] Section 32 of the *Manitoba Act* did not engage the honour of the Crown because it was not a promise made specifically to an Aboriginal group.[55]

The promise made in section 31 of the *Manitoba Act* required the Canadian Government to interpret the constitutional promise broadly and act diligently to fulfill the promise because the honour of the Crown was engaged.[56] The Court ruled that the Canadian Government failed to fulfil its duty to act honourably for three reasons: (1) the Government took too long

to allocate the land, (2) the Government failed to protect Metis children from being taken advantage of by land speculators, and (3) scrip was given in lieu of land.[57] In conclusion, the Government's actions demonstrated a consistent pattern of inattention, and, therefore, the Government did not comply with the honour of the Crown in the implementation of section 31 of the *Manitoba Act*.[58]

Issue 4: Were the Manitoba statutes related to implementing sections 31 and 32 of the Manitoba Act unconstitutional?

The claimants sought a declaration that eight statutes, passed between 1877 and 1885, were unconstitutional. The claimants argued that the *Manitoba Act* was a piece of federal legislation, which meant that the Provincial Government of Manitoba did not have the authority to enact the statutes.[59] The Supreme Court declined to consider the constitutionality of the statutes because they were no longer in force and could have no future impact on the claimants.[60]

Issue 5: Was the claim for a declaration barred by limitations?

Statutes of limitations, enacted by provincial legislatures, provide a time period during which an action may be brought before a court. If claimants do not bring forward an action within the specified time period, the defendants can have the case dismissed. The Supreme Court, however, ruled that the law of limitations did not apply to cases where the claimants were seeking a declaration on the constitutionality of the Crown's conduct.[61]

The Court made this exception because the "unfinished business of reconciliation of the Metis people with Canadian sovereignty is a matter of national and constitutional import."[62] The process of reconciliation required that the Manitoba Metis Federation's claim not be barred by the statute of limitations.[63]

Issue 6: Was the claim for a declaration barred by laches?

Laches is an equitable doctrine that requires a claimant to bring an action before a court without delay. The amount of time that must pass before a claim is barred by laches is dependent upon the specific facts of the case. To determine if a case is barred by laches, the court asks two questions: (1) Did the claimant acquiesce? (2) Did the defendant change its position as a result of reasonably relying on the claimant's acquiescence?[64]

In response to the first question, the Supreme Court ruled that the Metis did not acquiesce to the Canadian Government's actions. The delay in bringing forward their claim could not be interpreted as acquiescence because the Metis had suffered historical injustices, there was a power imbalance following the Crown's claim of sovereignty, and there were negative consequences that followed the delays in allocating the land (e.g. some Metis children received scrip worth much less than the land that was promised).[65] Regarding the second question, the Court ruled that the Canadian Government did not change its position as a result of the delay.[66]

For the above reasons, the Metis' claim for a declaration was not barred by laches.[67]

Issue 7: If the Canadian Government was in breach of its duties, and the claim was not barred, what was the legal remedy for the claimants?

The claimants were entitled to a declaration that the Canadian Government failed to implement the land grant provision set out in section 31 of the *Manitoba Act* in accordance with the honour of the Crown.[68]

The Dissenting Judgment

The dissenting judgment of Justices Rothstein and Moldaver would have dismissed the appeal and denied the claimants a declaration. Justices Moldaver and Rothstein disagreed with the majority judgment on three issues: (1) the scope of the duty engaged by the honour of the Crown, (2) the applicability of the statute of limitations, and (3) the applicability of laches.[69]

First, the dissenting judgment was concerned that the majority of the justices expanded the honour of the Crown to include a duty that requires solemn promises to be diligently fulfilled. Previous court decisions have tended to focus on the interpretation of treaties and statutory provisions, not how the Government should go about executing them.[70] The dissent did not believe this was an appropriate case to create a new duty derived from the honour of the Crown because the claimants did not make any submissions to the Court on this point. As a result, the issue was not debated. The dissent noted that there is a possibility that the newly created duty will cause uncertainty in future cases.[71]

Second, the dissenting judgment determined that the statute of limitations should apply. Provincial legislatures enact limitation periods for three reasons: (1) to establish certainty, (2) to ensure evidence is not lost, and (3) to guarantee that potential claimants are being diligent.[72] The dissent concluded that there was no principled legal basis for the majority to disregard these underlying policy considerations.[73]

Finally, the dissent concluded that a declaration was barred by laches. The Metis waited over 100 years to bring their claim before the courts, and the dissent determined that this demonstrated that the Metis acquiesced to the situation.[74] Additionally, the dissent noted that the power imbalance between the Metis and the Canadian Government did not prevent the Metis from bringing a claim before the courts. This point was demonstrated by the fact that the Metis have, over the course of time, launched several cases against the Canadian Government.[75]

Significance of the Ruling

The Supreme Court of Canada's declaration appeared to be a partly symbolic gesture aimed at mending the rift in Canada's history between the Canadian Government and the Metis. John Morrisseau, a descendent of the Red River settlers, said the ruling makes him optimistic about the future of Government and Metis relations.[76] Reconciling the Crown's assertion of sovereignty with pre-existing Metis societies is, however, an ongoing process that will undoubtedly take more time before it is fully achieved.

The declaration also gives the Manitoba Metis Federation some political leverage to begin negotiations with the Canadian Government. Importantly, a declaration from the Supreme Court does not force the Canadian Government to partake in negotiations. Nonetheless, David Chartrand, the Manitoba Metis Federation President, is hopeful that the Government will be willing to meet and resolve the unsettled land claims. It is possible that the negotiations will take years to conclude. The Canadian Government is currently reviewing the ruling.[77] The vast majority of the 1.4 million acres of land in question is now privately owned. It is likely that monetary compensation will be given in lieu of any actual land.[78]

While the judgment seems to pave the way for reconciliation between the Canadian Government and the Metis, it is unclear what the precedential value of this case will be going forward. On the one hand, the Supreme Court has ruled that statutes of limitations do not apply to cases where the constitutionality of the Canadian Government's actions is called into question. Since most land claims arose many years ago, the statute of limitations was used as a defence to Aboriginal Peoples' claims. The decision in the *Manitoba Metis Federation* case seems to put an end to that objection.[79] On the other hand, the judgment has expanded the honour of the Crown to include the duty to diligently fulfill solemn obligations, but Justices Rothstein and Moldaver caution that the obligations of this new duty are ambiguous, and this may create uncertainty in future cases.[80]

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[1] *Manitoba Act*, 1870, SC 1870, c 3, ss 31, 32 [Manitoba Act].

[2] *Manitoba Metis Federation Inc v Canada* (AG), 2013 SCC 14 [MMF] < http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/12888/index.do>.

[3] David M Arnot, "The Honour of the Crown" (1996) 60 Sask L Rev 339 at 341.

[4] See *MMF*, *supra* note 2 at para 37 (land was to be given directly to the children, but, following legislation enacted in 1877, they could sell their land upon reaching the age of majority).

[5] *Ibid* at para 54.

[6] *Ibid* at para 114 (long delays in the allotment process resulted in many Metis children selling their land to speculators for less than it was worth).

[7] *Ibid* at para 39.

[8] *Ibid* at para 108.

[9] *Ibid* at para 140.

[10] *Constitution Act, 1867* (UK), 30 &31 Vict, c 3, reprinted in RSC 1985, App II, No 5 (the British North America Act is now known as the Constitution Act, 1867).

[11] *MMF*, supra note 2 at paras 23-24.

[12] *Ibid* at paras 25-26.

[13] *Manitoba Act*, supra note 1.

[14] *MMF*, supra note 2 at paras 28-31.

[15] *Manitoba Act*, supra note 1, s 31; *MMF*, *supra* note 2 at para 11.

[16] *Ibid* at para 9.

[17] *Ibid* at para 11.

[18] *Manitoba Act*, supra note 1, s 32; *MMF*, *supra* note 2 at para 12.

[19] A fiduciary duty is a relationship between two parties where one party (the fiduciary) is obliged to act in the best interests of the other party (the beneficiary).

[20] *MMF*, supra note 2 at para 40.

[21] *Manitoba Metis Federation Inc v Canada* (AG), 2007 MBQB 293 <http://www.canlii.org/en/mb/mbqb/doc/2007/2007mbqb293/2007mbqb293.html>.

[22] *The Limitations of Actions Act*, RSM 1970, CCSM c L150 [Limitations] (statutes of limitations, enacted by provincial legislatures, provide a time period during which an action may be brought before a court).

[23] Laches is an equitable doctrine that requires a claimant to bring an action before a court without delay.

[24] Standing refers to a party's ability to bring a lawsuit to court.

[25] *MMF*, *supra* note 2 at paras 14-15.

[26] *Manitoba Metis Federation v Canada* (AG), 2010 MBCA 71 <http://www.canlii.org/en/mb/mbca/doc/2010/2010mbca71/2010mbca71.html>.

[27] *Limitations*, *supra* note 22.

[28] *MMF*, *supra* note 2 at paras 16-18.

[29] *Manitoba Act*, *supra* note 1.

[30] *Ibid*.

[31] *MMF*, supra note 2.

[32] *Ibid* at para 44.

[33] *Ibid* at para 64.

[34] *Ibid* at paras 95, 100.

[35] *Ibid* at para 132.

[36] *Ibid* at para 133.

[37] *Ibid* at para 153.

[38] *Ibid* at para 154.

[39] *Canada (AG) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at para 1 < http://www.canlii.org/en/ca/scc/doc/2012/2012scc45/2012scc45.html>.

[40] *MMF*, *supra* note 2 at paras 41-44.

[41] *Ibid* at para 47.

[42] *Ibid* at para 48.

[43] *Ibid* at para 49.

[44] *Ibid* at para 50.

[45] *Ibid* at paras 46.

[46] *Ibid* at para 59.

[47] *Ibid* at para 52.

[48] *Ibid* at paras 61-63.

[49] Arnot, *supra* note 3.

[50] "Aboriginal Peoples" refers to Indian, Inuit, and Metis peoples of Canada.

[51] *MMF*, *supra* at paras 65-66; See *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at paras 16-25 < http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/2189/index.do>.

[52] *Constitution Act, 1982*, s 35, being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11.

[53] *MMF*, *supra* note 2 at paras 68-70 (the Constitution "is at the root of the honour of the Crown" because it is the document used to assert Crown sovereignty over land already occupied by Aboriginal Peoples).

[54] *Ibid* at para 94.

[55] *Ibid* at para 95 (section 32 recognized landholdings of all people, not just Metis).

[56] *Ibid* at para 75.

[57] *Ibid* at paras 110, 117, 123 (scrip is a substitute for money and is often a form of credit).

[58] *Ibid* at para 128.

[59] *Ibid* at para 129.

[60] *Ibid* at para 132.

[61] *Ibid* at para 135.

[62] *Ibid* at para 140.

[63] *Ibid* at para 144.

[64] *Ibid* at para 145.

[65] *Ibid* at para 147.

[66] *Ibid* at para 152.

[67] *Ibid* at para 153.

[68] *Ibid* at para 154.

[69] *Ibid* at paras 157, 161.

[70] *Ibid* at para 203.

[71] *Ibid* at paras 203-04.

[72] *Ibid* at para 231.

[73] *Ibid* at para 215.

[74] *Ibid* at para 274.

[75] *Ibid* at para 287.

[76] "Metis celebrate historic Supreme Court land ruling" CBC News (8 March 2013), online: CBC News.

[77] Ibid.

[78] David Weisz, "Explainer: Manitoba Metis Federation ruling" Global Edmonton (8 March 2013), online: Global Edmonton <http://globalnews.ca/news/406250/explainer-manitoba-metis-federation-ruling/>.

[79] *Ibid*.

[80] *MMF, supra* note 2 at para 204.