

Manitoba Métis Federation v. Canada (Attorney General)

Understanding the Supreme Court of Canada's Decision

Overview of Document

This document was prepared by Jean Teillet and Jason Madden. Both are partners in the firm Pape Salter Teillet LLP. The document provides an overview and summary of the Supreme Court of Canada's decision in *Manitoba Métis Federation et al. v. Canada (Attorney General) et al.*, [2013] S.C.J. No. 14 (the "MMF case"). The document is not legal advice and should not be relied upon as such.

The History of the MMF Case

The MMF case was launched in 1981. The Manitoba Métis sought a declaration that the lands they were promised in the *Manitoba Act, 1870* were not provided in accordance with the Crown's fiduciary and honour of the Crown obligations. They also sought a declaration that certain legislation passed by the Manitoba Government that affected the implementation of the *Manitoba Act* was not within the jurisdiction of the province.

In 2007, after 26 years of litigation and having to go all the way to the Supreme Court of Canada procedural issues in order to even proceed with the claim, the MMF lost at trial. Justice MacInnes of the Manitoba Court of Queen's Bench dismissed the action. He found that there was lengthy delay in implementing the land provisions of the *Manitoba Act* and that the delay was due to government error and inaction. However, he found that there was no fiduciary duty or a duty based on the honour of the Crown. The trial judge took the view that a fiduciary duty required proof that the Métis held the land collectively prior to 1870. Since the evidence showed that the Métis held their lands individually, he concluded the claims failed. He also held that the claim was filed too late and was barred by limitation periods and the delay. Finally, he denied the MMF standing. In effect, he held that while the individual plaintiffs were capable of bringing the claim, the MMF was not.

The MMF lost again at the Manitoba Court of Appeal in 2010. The Court of Appeal, recognizing that this was an historic case, sat five judges instead of their usual three to hear the appeal. It rejected the trial judge's view that aboriginal title was essential to the fiduciary duty claim, but then found it unnecessary to make any decision with respect to the fiduciary duty claim. The Court of Appeal said the trial judge's findings of fact did not support any breach of the duty. It rejected any claim with respect to the honour of the Crown and held that the entire claim was moot because there was no live controversy. It upheld the trial judge's finding that the MMF had no standing to bring the case.

Victory finally arrived at the Supreme Court of Canada. The Supreme Court handed down its reasons for judgment on March 8, 2013. They granted the MMF's appeal and held that the federal Crown failed to implement the land grant provision set out in s. 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown. The Supreme Court also granted the MMF standing and gave them costs throughout.



The Story of the Manitoba Métis and the *Manitoba Act*: Canada's Negotiating Partners in Confederation

In order to understand this case, we have to go back to the 1860s. The Métis had created a vibrant community at Red River in the early 1800s. By 1869 there were 12,000 inhabitants, of which 10,000 were Métis and 7,000 of those Métis were children. Canada became a new country in 1867 and wanted to expand westward. Plans were made to negotiate Rupert's Land into Canada, and as a first step ownership of the Hudson's Bay Company's interest in Rupert's Land was transferred to Canada in 1868. As a result, Canada considered itself to be the owner of the Red River Settlement.

The Métis in Red River, however, did not agree with the transfer and were deeply concerned that Canadian control would threaten their traditional way of life. They were particularly worried about the arrival of a wave of English-speaking Protestant settlers. Canada sent out survey parties in 1869 and the Métis, led by Louis Riel, turned them back. They also turned back Canada's proposed Lieutenant Governor.

Then, in November 1869, the Métis seized Upper Fort Garry and established a provisional government. The Métis government drafted a list of demands that Canada had to satisfy before the Red River Métis would accept Canadian control. Riel sent three negotiators to Ottawa. In March 1870, negotiations began between the Red River representatives, Prime Minister Sir John A. Macdonald and George-Etienne Cartier (Minister of Militia and Defence).

When Canada determined that it would retain ownership of the public lands in Manitoba, the Red River negotiators countered by demanding land. This took two forms: a provision to protect existing land holdings of the 3,000 Métis adult land holders (s. 32); and a provision to give the 7,000 Métis children a "head start" in the province with a land grant of 1.4 million acres (s. 31). On the basis of these promises, the Métis agreed to lay down their arms.

"The Canadian government, led by Prime Minister John A. Macdonald, embarked on a policy aimed at bringing the western territories within the boundaries of Canada, and opening them up to settlement. This meant dealing with the indigenous peoples who were living in the western territories. On the prairies, these consisted mainly of two groups -- the First Nations, and the descendants of unions between white traders and explorers and Aboriginal women, now known as Métis."

– MMF Case, paras. 1-2

“This appeal is about obligations to the Métis people enshrined in the *Manitoba Act* ... These promises were directed at enabling the Métis people and their descendants to obtain a lasting place in the new province. Sadly, the expectations of the Métis were not fulfilled, and they scattered in the face of the settlement that marked the ensuing decades.”

– MMF Case, para. 5

Through this compromise, the Manitoba Métis became Canada’s negotiation partner to bring Manitoba into Confederation. This arrangement one of the foundational deals that led to Canada’s expansion westward. These types of deals are often called the “compacts of Confederation.” These compacts go to the heart and soul of Canada. Manitoba became part of Canada on July 15, 1870. The *Manitoba Act* was made part of the Constitution of Canada in 1871.

The Canadian government began the process of implementing s. 31 in early 1871. The first step was to set aside the 1.4 million acres; the second step was to divide the land among the children. There were numerous problems, errors and delays. Changes of government, inaccurate census information, botched allotment processes and land speculation combined to entirely defeat the purpose of s. 31. In the result, virtually no children actually received land.

During the same time, the position of the Métis in Red River deteriorated. The new settlers from Ontario were hostile, there was a “reign of terror” against the Métis, the lands were being taken up by the Ontario settlers, and no lands were forthcoming for the Métis. As a result, many Métis sold their promised interests in the land and moved outside of the province they helped to create.

The MMF: “The Body Representing the Collective Métis Interest”



In court cases, standing refers to an individual or a group having the capacity and authority to bring a legal claim. The plaintiffs in the case are the MMF and several named individuals. The individuals were or are members of the MMF Board of Directors. The Crown took no issue with the individual plaintiffs, but fought vigorously to keep the MMF out of the claim. The Crown argued that the MMF had no interest in the litigation because the lands were not set aside for the MMF or any representative body; rather, the matter was strictly about individual entitlements. The Crown also said that the MMF’s membership was broader than the descendants of s. 31 beneficiaries, making the MMF an inappropriate plaintiff.

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The Supreme Court rejected this argument, holding that the presence of other claimants does not preclude standing. The question was whether this litigation was a reasonable and effective means to bring a challenge to court. The Court held that the requirements for public interest standing should be flexible and generous and considered in light of the underlying purposes of setting limits on who has standing in court.

“This collective claim merits allowing the body representing the collective Métis interest to come before the court. We would grant the MMF standing.”

– MMF Case, para. 44

The Court held that this case was not a series of claims for individual relief; rather, it was a collective claim for declarations for the purposes of advancing reconciliation between the descendants of the the Red River Métis and Canada. While the *Manitoba Act* provided for individual entitlements, that did not negate the fact that the appellants advanced a collective claim of the Manitoba Métis. This claim was based on a promise made in return for their agreement to recognize Canada's sovereignty. The collective claim merited the body representing the collective Métis interest coming before the court. The Supreme Court, therefore, granted the MMF standing.

The MMF Claim: A Crown-Métis Fiduciary Relationship Exists, But No Fiduciary Duty

The MMF claimed that Canada had a fiduciary duty to implement ss. 31 and 32 of the *Manitoba Act* as trustee for the Métis, arguing that this duty arose out of the Métis aboriginal interests in the lands in question or directly from the promises made in ss. 31 and 32. The Supreme Court did not agree with these legal arguments.

A fiduciary is required to act in the best interests of the person on whose behalf he is acting, to avoid all conflicts of interest and to strictly account for all property held or administered on behalf of that person. The Supreme Court held that the relationship between the Métis and the Crown was and is fiduciary in nature; however, that does not mean all dealings between the Crown and Métis give rise to fiduciary duties. Fiduciary duties will generally arise only where the fiduciary has control over specific aboriginal interests or from an explicit undertaking.

There was no dispute that the Crown undertook discretionary control over the administration of land grants under ss. 31 and 32; the question was whether there was a specific collective aboriginal interest in the lands involved in this control. The trial judge said no and the Court of Appeal declined to decide the point. The Supreme Court said that in order to give rise to a fiduciary duty the collectively-held interest must be distinctly aboriginal: the fact that the Métis are aboriginal and had an interest in the lands did not make their interest a collectively-held "Aboriginal interest in land." An aboriginal interest in land requires a "communal aboriginal interest in the land that is integral to the nature of the Métis distinctive community and their relationship to the land."

The key question was whether the Métis—as a collective—held a specific aboriginal collective interest in the ss. 31 and 32 lands. Since the trial judge's findings of fact showed that the Red River Métis held their lands individually (i.e., in a river lot system), they were not a collectively-held "Aboriginal interest in the land". The Métis held individual interests in land that arose from their personal histories, not from their shared Métis identity. The facts of how the Métis in the Red River held their land interests were incompatible with a claimed collective aboriginal interest in land.

The Supreme Court also dismissed the idea that the language of s. 31 meant that the Métis had a collective interest in the lands. While s. 31 stated that the land grants were "towards the extinguishment of the Indian Title to the lands in the Province" and that the land grant was for "the benefit of the families of the half-breed residents," the lack of any underlying collective aboriginal interest in land being proven resulted in a specific fiduciary duty not being established.

The Supreme Court held a fiduciary duty to an aboriginal group could not simply be established by language in legislation or treaty. It must be based on historic use and occupation as an aboriginal collective, and neither the evidence nor the words of s. 31 established that historic use and occupation. While s. 31 shows an intention to benefit the Métis children, it does not demonstrate an undertaking to act in their best interests above all others.

For these reasons, the Supreme Court held that the federal government was not under a fiduciary duty in its administration of the children's lands (s. 31) or the s. 32 lands.

The MMF Claim: The Federal Government Breached the Honour of the Crown in Implementing Section 31 of the *Manitoba Act*

The honour of the Crown is a principle that requires servants of the Crown to act with honour on behalf of the sovereign. The honour of the Crown arises from the Crown's assertion of sovereignty over aboriginal people and its actual control of land and resources that were formerly in the control of that people. The honour of the Crown is a very old idea and stretches back to the Royal Proclamation of 1763. It is not a paternalistic concept; instead, it reflects the reality that the Crown often needed to persuade aboriginal peoples, at times when they still had considerable military capacity and constituted a majority of the population in various regions of the province, that their rights and interests were better protected by reliance on the Crown than fighting against it. The purpose of the doctrine is the reconciliation of pre-existing aboriginal societies with the assertion of Crown sovereignty.

"The ultimate purpose of the honour of the Crown is the reconciliation of pre-existing Aboriginal societies with the assertion of Crown sovereignty."

– MMF Case, para 66

"The Constitution is not a mere statute; ... It is at the root of the honour of the Crown, and an explicit obligation to an Aboriginal group placed therein engages the honour of the Crown at its core."

– MMF Case, para. 70

The honour of the Crown imposes a heavy obligation on the Crown, but it is not at play in every Crown-Aboriginal interaction. The Supreme Court noted that in previous cases it has recognized that the honour of the Crown gives rise to specific Crown duties, including, (1) a fiduciary duty when discretionary control over a specific Aboriginal interest is assumed by the Crown, (2) a duty to consult and accommodate when the Crown contemplates an action that will affect a claimed but yet unproven aboriginal interest, (3) an obligation to act honorably in treaty negotiation and implementation, (4) an obligation to act in a way that In the MMF case, the Supreme Court recognized another type of situation where the honour of the Crown is implicated; namely,

in relation to the implementation of explicit obligation solely to an aboriginal group that is enshrined in the Constitution. The Court recognized that s. 31 invoked this type of obligation. It found that s. 32 did not engage this obligation because it was not exclusively made to the Métis as an aboriginal group, since other non-aboriginal settlers in the Red River were eligible for s. 32 lands.

The Supreme Court drew analogies between treaty and constitutional obligations, saying that an intention to create obligations and a certain measure of solemnity should attach to both. Both types of promises are made for the overarching purpose of reconciling aboriginal interests with Crown sovereignty. The obligation, however, must be explicitly owed to an aboriginal group; a strong aboriginal interest in the obligation is not enough. Only a constitutional obligation explicitly directed at an aboriginal group invokes that group's special relationship with the Crown.

The Court held that the honour of the Crown requires the Crown to act in a way that accomplishes the intended purposes of treaty and statutory grants to aboriginal peoples. When the issue is the implementation of a constitutional obligation to an aboriginal people, the honour of the Crown requires that the Crown take a broad, purposive approach to the interpretation of the promise and act diligently to fulfill it. An honourable interpretation cannot be a legalistic one that severs the words from their purpose. The law assumes that the Crown intends to fulfill its solemn promises, including constitutional obligations, and requires the Crown to endeavor to ensure its obligations are fulfilled. The duty applies whether the obligation arises in a treaty or in the Constitution, the latter being the situation with the MMF. Because the *Manitoba Act* became part of Canada's Constitution in 1871, section 31 engaged this constitutional duty.

To fulfill its duty, Crown servants needed to perform the obligation in a way that pursues the purpose behind the promise. The aboriginal group must not be left with an "empty shell" of a promise. The Court called the duty set out in s. 31 a "narrow and circumscribed duty" based on "extraordinary facts". The Court noted that breach of the Crown's duty would not be found based on a single mistake or negligent act in implementation. However, "a persistent pattern of errors and indifference that substantially frustrates the purposes of a

"Not every mistake or negligent act in implementing a constitutional obligation to an Aboriginal people brings dishonour to the Crown. ... However, a persistent pattern of errors and indifference that substantially frustrates the purposes of a solemn promise may amount to a betrayal of the Crown's duty to act honourably in fulfilling its promise."

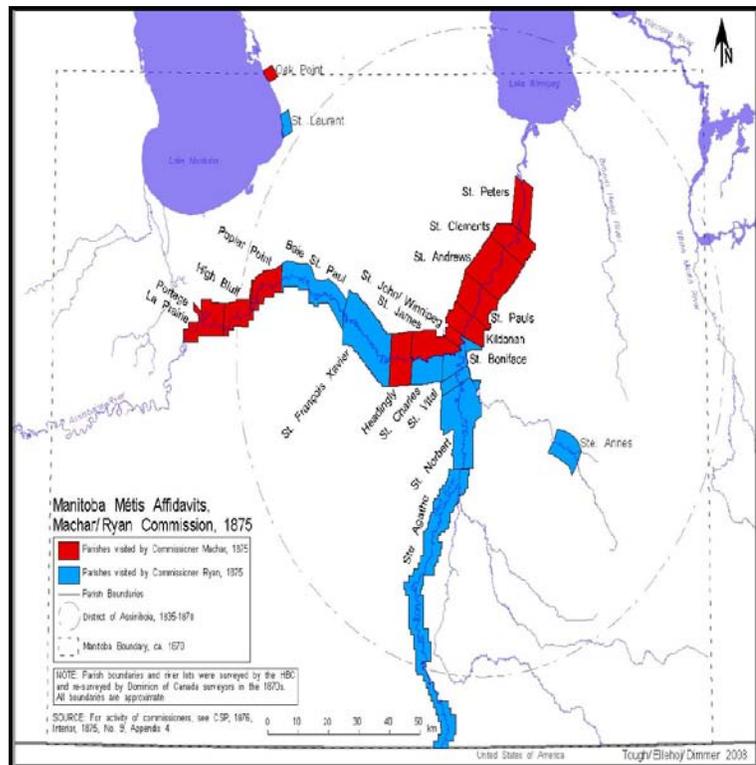
– MMF Case, para. 82

solemn promise may amount to a betrayal of the Crown's duty to act honourably in fulfilling its promise." The honour of the Crown does not guarantee that the purposes of the promise will be achieved because events may prevent fulfillment despite the Crown's diligent efforts. But the question before courts will be this: "Viewing the Crown's conduct as a whole in the context of the case, did the Crown act with diligence to pursue the fulfillment of the purposes of the obligation?"

The Supreme Court held that the honour of the Crown was at the heart of this litigation. The MMF argued at all levels of court that the conduct of the government in implementing s. 31 breached the duty that arose from the honour of the Crown. In support of the MMF claim, the intervener, Métis Nation of Alberta, argued that s. 31 is an unfulfilled promise which the honour of the Crown demanded be fulfilled by reconciliation through negotiation. The intervener, Métis Nation of Ontario, argued that s. 31 could not be honoured by a process that ultimately defeated the purpose of the provision. In general, these submissions raised the broader issue of whether the government's conduct generally met the requirements of the honour of the Crown.

The Application of the Honour of the Crown to the Constitutional Promise made to the Manitoba Métis

Section 31 gave land rights to the Métis children of the Red River Settlement. There is no doubt that this was a promise to the Métis people collectively in recognition of their distinct community. This constitutional promise engaged the honour of the Crown. The court looked at what it called s. 31's "treaty-like" history and character. Like a treaty, s. 31 was adopted with the intention to create Crown obligations "of the highest order". Section 31 was conceived during the negotiations to create the new province of Manitoba and with a view to reconciling the aboriginal interests of the Red River Métis (that were not grounded in collectively-held aboriginal lands, but in their individuals land holdings and their pre-existence as a distinct community) with the Crown's claim to sovereignty.



The broad purpose of s. 31 was to reconcile the Manitoba Métis community with the sovereignty of the Crown and to permit the creation of the province of Manitoba. This reconciliation was to be accomplished by a concrete measure—the prompt and equitable transfer of 1.4 million acres of public lands to the Métis children. It was designed to give the Métis children a “head start” in the race for land and “a lasting place in the new province” that their parents and grandparents helped to create. This required the land grants be made while a “head start” was still possible. Everyone knew that a wave of settlement was coming and Minister Cartier assured the Métis that the grants would “be of a nature to meet the wishes of the half-breed residents” and that the division of land would be done “in the most effectual and equitable manner.” The Supreme Court recognized that nothing even remotely like an effectual and equitable process happened.

“Section 31, though, is not a treaty. The trial judge correctly described s. 31 as a constitutional provision crafted for the purpose of resolving Aboriginal concerns and permitting the creation of the province of Manitoba.”

– MMF Case, para. 93.

The MMF claimed that Canada failed to fulfill its duties to the Métis people in relation to the children's grants in four ways: (1) by the inexcusable delay in distributing the lands; (2) by using random selection rather than ensuring family members got adjoining parcels; (3) failing to protect the Métis from land speculators; and (4) giving some Métis children scrip instead of a direct land grant.

Delay

It took over 10 years to make the land allotments to the Métis children and the scrip distributions did not occur until 1885 (15 years later). The Supreme Court held that this delay substantially defeated the purpose of s. 31: because the purpose was to give the children a “head start” over anticipated immigrants, time was plainly of the essence. Minister Cartier promised the Métis that the land would be distributed “as soon as practicable” and in “the most effectual and equitable manner.” The intent of the promise was not met.

In fact, the delays were huge and recognized by everyone, including, government officials at the time. Meanwhile, the Manitoba legislature passed a series of acts intended to frustrate the purpose of s. 31, and the settlers poured into the province and were allowed to take up the lands intended for the Métis children. Petitions were sent to Ottawa complaining about the delay and its damaging effects. The Deputy Minister of the Interior called it a “disgraceful delay”.

The Supreme Court held the delay was inconsistent with the duty imposed by the honour of the Crown to act diligently to fulfill the purpose of s. 31. The facts in this case showed a “persistent pattern of inattention [that] frustrates the purpose of the constitutional obligation.” Of particular note, the Court held that the fact of a new government coming to power was no excuse for delays that defeated the promise: “[t]he Crown’s obligations cannot be suspended simply because there is a change in government.”

The trial judge found that there was no bad faith or misconduct on the part of the Crown employees, but the Supreme Court said diligence requires more than simply the absence of bad faith. The record showed that there was consistent inattention and a consequent lack of diligence in implementing s. 31. The Court held that the delay in completing the s. 31 distribution was inconsistent with the behavior demanded by the honour of the Crown.

Sales to Speculators

The MMF argued that Canada breached its duty by failing to protect the Métis from land speculators and that Canada should not have permitted sales before the land was actually granted to the children or before they reached their age of majority. The Supreme Court held that the 10-year delay in implementation increased sales to speculators. As the years went on and the land was not forthcoming, a cash offer from a speculator would appear attractive. Also, protecting timber or other resources on lands they might someday receive became more and more difficult and those lands became less valuable. The Manitoba legislature passed acts that aided this land speculation. The facts showed that those who sold after receiving the land received about twice that received by those who sold before allotment. The Supreme Court held that while the grants could be sold, the delay encouraged speculation.

“The prompt and equitable implementation of s. 31 was fundamental to the project of reconciliation ... s. 31 was designed to give the Métis a head start in the race for land and a place in the new province. This required that the grants be made while a head start was still possible.”

– MMF Case, para. 99

Scrip

Because the government miscalculated the number of eligible children, 993 were left out of the allotment and in the end they got scrip redeemable for land instead of a land grant. Scrip could be sold for cash, but it was worth about half its face value. The MMF argued that the delivery of scrip breached s. 31. The Supreme Court did not agree. It said that as long as the 1.4 million acres was set aside and distributed with reasonable equity, the scheme of the *Manitoba Act* was not offended. The MMF also argued that the value of scrip issued was deficient. The children got \$240 of scrip, based on an estimate that the land cost \$1.00 per acre. While this may have been the price in 1879, by the time scrip was issued in 1885 land was \$2 or \$2.50 per acre. Therefore, the children who received scrip got a grant equivalent to 96-120 acres, which was significantly less than the 240 acres provided to the children who got land grants. The delay thus resulted in the 993 children receiving less land than the others. The Court said this was a “departure from the s. 31 promise that the land would be divided in a roughly equal fashion,” and concluded that the delay in issuing scrip was a further demonstration of the “persistent pattern of inattention inconsistent with the honour of the Crown.”



Random Allotment

The MMF claimed that the s. 31 lands should have been allotted so that the children’s lots were contiguous to or in the vicinity of their parents’ lots. At a minimum, the sibling’s lands should have been clustered together because this was necessary to facilitate actual settlement rather than sales. This was necessary to establish a Métis homeland. The trial judge found that the grant was intended to benefit the individual children, not to establish a Métis land base. The Supreme Court accepted this and held that the random selection within each parish was an acceptable way to distribute the land consistent with the purpose of s. 31. That said, the Court noted that the delay in distribution and consequential sales prior to patent may have made it more difficult for the Métis to trade land and achieve contiguous parcels.

The Court’s Conclusion on the Honour of the Crown

The Supreme Court concluded that the s. 31 obligation made to the Métis was part of Canada’s Constitution and so engaged the honour of the Crown, requiring the federal government to interpret s. 31 purposively and diligently pursue fulfillment of the purposes of its obligation. According to the Supreme Court, “[t]his was not done. The Métis were promised implementation of the s. 31 land grants in ‘the most effectual and equitable manner’. Instead, the implementation was ineffectual and inequitable.” The Court concluded that “[a] government sincerely intent on fulfilling the duty that its honour demanded could and should have done better.”

The MMF Claim: Other Legal and Constitutional Issues

The Constitutionality of Manitoba's Implementation Statutes

The MMF sought a declaration that five statutes enacted by Manitoba between 1877 and 1885, regulating the means by which sales of s. 31 lands could take place, were unconstitutional. The Supreme Court rejected this argument, holding that the statutes were long since repealed and could have no future impact. In short, the Court said they had no relevance to determining the MMF's modern-day claim.

Statutes of Limitations

The Supreme Court rejected Crown arguments that the Métis claim for declaratory relief was barred by Manitoba's limitations legislation. While limitations legislation can bar personal remedies flowing from the striking down of unconstitutional legislation, the Court held that such legislation cannot prevent the courts from issuing declarations on the constitutionality of legislation or the Crown's conduct.

The Supreme Court held that while Manitoba's limitations legislation would apply to aboriginal claims for breach of fiduciary duty with respect to the administration of aboriginal property, what was at issue in this case was a declaration that the Crown did not act honourably in implementing the constitutional obligation in s. 31 of the *Manitoba Act*. The Court held that "[l]imitations acts cannot bar claims of this nature."

Importantly, the Court recognized that "[t]he ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Métis people with Canadian sovereignty is a matter of national and constitutional import." As such, the courts "cannot be barred by mere statutes from issuing a declaration on a fundamental constitutional matter." The Court concluded that "[t]he principle of reconciliation demands that such declarations not be barred."

Laches

Laches is an equitable legal doctrine that requires a claimant to pursue his claim without delay. Unlike statutes of limitations, laches involves no fixed time period; rather, the circumstances of each specific case determines the appropriateness of any delay. Generally, there are two considerations involved in determining when a delay amounts to laches: (1) the claimant's acquiescence or acceptance of the delay; and (2) whether the defendant (i.e., the Crown in this case) changed its position in reliance on the claimant's (i.e., the Manitoba Métis in this case) acceptance of what happened.

On the first part of the test for laches, the Supreme Court held that acceptance depends on knowledge, capacity and freedom, which, in the context of historical injustices suffered by Métis, the power imbalance following Crown sovereignty, and the negative consequences following delays in allocating grants, meant that the delay itself could not be interpreted "as some clear act by the [Métis] which amounts to acquiescence or waiver." The Court also held that "in this rapidly evolving area of the law, it is rather unrealistic to suggest that the Métis sat on their rights before the courts were prepared to recognize those rights." The second part of the test was whether there was any change in the Crown's position as a result of the delay. The Supreme Court dismissed this outright: "[t]he answer is no." Of particular note, the Court went on to say, "[i]t is difficult to see how a court, in its role as guardian of the Constitution, could apply an equitable doctrine to defeat a claim for a declaration that a provision of the Constitution has not been fulfilled as required by the honour of the Crown. ... The Constitution is the supreme law of our country, and it demands that courts be empowered to protect its substance and uphold its promises."

Conclusion: Dealing with the “Unfinished Business” of Confederation

Ultimately, the Supreme Court allowed the MMF’s appeal in part and issued the following declaration: “[t]hat the federal Crown failed to implement the land grant provision set out in s. 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown.”

The Court recognized that as long as the constitutional grievance relating to the failed implementation of s. 31 remains outstanding, the goal of reconciliation with the Manitoba Métis, which is mandated by s. 35 of the *Constitution Act, 1982* and underlies the purpose of s. 31 of the *Manitoba Act*, remains unachieved. Notably, the Court recognized that the purpose of the MMF’s claim was to secure a declaration that would assist in securing future negotiations with the federal government in order to advance the “constitutional goal of reconciliation that is reflected in s. 35 of the Constitution.” For over 30 years, the MMF has been consistent that the goal of the litigation is to assist with future negotiations to achieve a modern day land claims agreement for the Manitoba Métis community.

In previously decided cases, the Supreme Court has also recognized that “[t]he fundamental objective of the modern law of aboriginal and treaty rights is the reconciliation of aboriginal peoples and non-aboriginal peoples and their respective claims, interests and ambitions” and that “[r]econciliation is not a final legal remedy in the usual sense. Rather, it is a process flowing from rights guaranteed by s. 35(1) of the *Constitution Act, 1982*.”

It is an inescapable conclusion that the legal framework set out by the Supreme Court in relation to s. 35 and reconciliation, combined with the Supreme Court’s recognition of the outstanding constitutional claim of the Manitoba Métis, demands future negotiations between the MMF and the federal government in order to address this “unfinished business” of confederation and to advance reconciliation. Only time will tell “when” and “how” these required negotiations will ultimately take place. However, regardless of any future delays, excuses or avoidance tactics that may be used by the federal government, the Supreme Court’s declaration and conclusions with respect to the need for this outstanding constitutional grievance to be resolved in order to bring constitutional harmony to Canada will remain. In the words of MMF President David Chartrand, the Manitoba Métis Community is “waiting for its partner in confederation to come back to the negotiating table.”

“What is at issue is a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in s. 35 of the Charter and underlying s. 31 of the Manitoba Act, remains unachieved. The ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Métis people with Canadian sovereignty is a matter of national and constitutional import.”

– MMF Case, para. 140

About the Authors

Jean Teillet and Jason Madden are both partners in the law firm Pape Salter Teillet LLP with offices in Toronto and Vancouver. In the MMF case, Ms. Teillet represented the intervener Métis Nation of Ontario and Mr. Madden represented the intervener Métis Nation of Alberta at the Supreme Court. For more information about their legal work on Aboriginal issues and the firm visit www.pstlaw.ca.

Jean Teillet, Partner
Pape Salter Teillet LLP
460-220 Cambie Street
Vancouver, BC, V6B 2M9
Tel: 604-681-3002
Email: jteillet@pstlaw.ca

Jason Madden, Partner
Pape Salter Teillet LLP
546 Euclid Avenue
Toronto, ON, M6G 2T2
Tel: 416-916-2989
Email: jmadden@pstlaw.ca