

Manitoba Métis Federation Land Claim

Timeline

On April 15th, 1981, the Native Council of Canada joined the Manitoba Métis Federation (MMF)¹ in a major land claims suit against the federal government and the Government of Manitoba. In this suit, the MMF is seeking a declaration that some federal and provincial legislation that purported to amend provisions of *The Manitoba Act, 1870* are unconstitutional. On that basis the MMF may proceed with another claim (or negotiations) for compensation (a financial settlement) for the losses the Métis suffered as a result of the unconstitutional activities of the government.

The two sides went to court in January, 1987. The federal government tried to get the case thrown out. The government argued that the Métis land claim is a dead issue because it was settled a century ago.

In February 1987, a Manitoba court ruled in favor of the Métis and cleared the way for the full land claim to go to trial. However the federal government appealed the ruling, so the case went to the Manitoba Court of Appeal. The appeal took just two days to hear. A majority of the Manitoba Court of Appeal agreed that it should be struck.

The MMF then appealed this ruling to the Supreme Court of Canada. In 1990, the Supreme Court of Canada affirmed the MMF right to seek a declaration that Canada and Manitoba had, by unconstitutional measures, undermined the rights conferred by Sections 31 and 32 of The Manitoba Act of 1870.”

MMF trial in Manitoba Court of Queen’s Bench opened on April 6, 2006. On December 7, 2007 the Queen’s Bench judge handed down his decision. He denied all aspects of the MMF claim.

The MMF then appealed this decision at the Manitoba Court of Appeal. This case began on February 17th, 2009. On July 7th, 2010, this court also ruled against the MMF.

The MMF appealed this decision to the Supreme Court of Canada². On February 10, 2011 the motion to file a memorandum of argument and the application for leave of appeal for the Manitoba Métis Federation land claims case was granted in Ottawa by the Supreme Court of Canada.

On December 13, 2011 the case was heard by the Supreme Court.

¹ The plaintives on behalf of the Manitoba Métis Federation Inc., were: Yvon Dumont, Billy Jo de la Ronde, Roy Chartrand, Ron Erickson, Claire Riddle, Jack Fleming, Jack McPherson, Don Roulette, Edgar Bruce Jr., Freda Lundmark, Miles Allarie, Celia Klassen, Alma Belhumeur, Stan Guiboche, Jeanne Perrault, Marie Banks Ducharme and Earl Henderson

² Counsel: Thomas R. Berger Q.C., James R. Aldridge Q.C., Harley I. Schachter, and Joseph Magnet.

On March 8, 2013, the Supreme Court handed down their decision:

“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.”

In a six to two decision the Supreme Court ruled in favour of the MMF. The Court confirmed the MMF’s standing in a collective claim for declaratory relief for the purposes of reconciliation between the descendants of the Métis people of the Red River Valley and Canada.

Background

Funded by grants from the Secretary of State, the MMF conducted several research projects to determine whether or not the Canadian government administered sections 31 and 32 of *The Manitoba Act* in a legal and morally responsible manner.

One such project was D. Bruce Sealey’s work entitled: *Statutory Land Rights of the Manitoba Métis*, published in 1975.

Sealey, D. Bruce. *A Study of the Statutory and Aboriginal Rights of the Métis People in Manitoba. Volume 1: Statutory Land Rights of the Manitoba Métis*. Winnipeg: Manitoba Métis Federation Press, 1975.

This book documents and analyzes land holding patterns in the West prior to 1870, the lands granted to the Métis after 1870, and the impact of the new settlers on the Métis people.

_____ *A Study of the Statutory and Aboriginal Rights of the Métis People in Manitoba: Volume 2; Aboriginal Rights*. Winnipeg: Manitoba Métis Federation Press, 1975.

_____ *A Study of the Statutory and Aboriginal Rights of the Métis People in Manitoba. Volume 3: The Exploitation of Métis Lands*. Winnipeg: Manitoba Métis Federation Press, 1975.

This was followed by Emile Pelletier’s *Exploitation of Métis Lands*, which listed 6267 allotments of 240 acres made under section 31. Pelletier then categorized the sale of each grant as legal, illegal, ambiguous or speculative. In doing so, he found that 529 land grants covering 126,960 acres were sold illegally while 580 sales involving 139,200 acres were ambiguous cases. 590 land grants covering 141,600 acres consigned to Métis children were obtained by land speculators for resale who earned profits for themselves of 100 percent to 2000 percent.

Although Pelletier did not characterize the administration of sections 31 and 32 as blatant illegality, the reader was left with the impression that the federal government made a concerted effort to dispossess the Métis. Drawing from the works of Sealey, Pelletier and

others, the MMF published an official statement in 1978 in which the native political organization concluded that the federal government's record in the treatment of Métis concerning river lots and scrip was racist. According to their findings, "all elected representatives as well as members of the bureaucracy knew that the Métis were being exploited and indeed they contributed to the exploitation." Findings of the Association of Métis and Non-Status Indians of Saskatchewan confirmed those of the Manitoba Métis Federation and its paid consultants.

Pelletier, Émile. *Exploitation of Métis Lands*, 2nd Edition. Winnipeg: Manitoba Métis Federation Press, 1979.

First published in 1975, this book provides an analysis of the land granted to Métis children born prior to July 15, 1870. *The Manitoba Act* provided for 240 acres for each Métis child. An extensive research program is the basis of this analysis. This book will be of special interest to people tracing original owners of certain sections of land surrounding the City of Winnipeg.

“Although the government went through the motions of ensuring that everything was legal, its real objectives were not to protect the interests of the native people, but to get their land away from them in a way that was expedient, which cost the government little, and which would stand up in a British Law Court ... [S]uch action would create a cheap and surplus supply of labour necessary for development activities such as the construction of the railway ... One can only conclude that where the government was concerned with issues such as economics, settlement and development, these considerations took precedence over ethics and morality.”³

In 1978, the MMF hired Professor Douglas Sprague, a historian at the University of Manitoba, to undertake research into Métis land claims. Sprague began to lay the foundation of what has been called the dispossession thesis. In two articles published in 1980, “The Manitoba Land Question, 1870-1882,” and “Government Lawlessness in the Administration of Manitoba Land Claims, 1870-1887,” Sprague argued that the Manitoba Act was “nothing more than a gesture,” that the Métis were victims of a deliberate conspiracy in which John A. Macdonald and the Canadian government sought to prevent the Métis from claiming title to the land they were to receive under sections 31 and 32 of the Manitoba Act. Acting under pressure from Ontario interests, the federal government dispossessed the Red River Métis in the following way.

“Every acre of Manitoba was taken as Dominion land and the policy for its distribution was altered by legislation on no fewer than eleven occasions between 1873 and 1884. More than half of these ‘supplementary laws’ were actually amendments to sections 31 and 32 in the sense that the supplemental bill altered substantive portions of the original statute. Two of the eleven were less dubious in their constitutionality but still doubtful since they provided means for delivering

³ Association of Métis and Non-Status Indians of Saskatchewan, *A Discussion Paper: Speculation in Half-Breed Land and Scrip* (December 28, 1979), pp. 21-22.

the promises of sections 31 and 32 using precedents that tended to rob both sections of their intended meaning.”⁴

Sprague, Douglas N. “The Manitoba Land Question 1870-1881.” *Journal of Canadian Studies*, 15 (3), 1980: 74-84.

Douglas Sprague examines how the federal government failed to effectively deal with Métis land claims in Manitoba from 1870-1881. This article discusses the barriers and obstacles which prevented Métis people from obtaining their lands in Manitoba. Sprague claims that Canada did not uphold the original constitutional agreement under *The Manitoba Act*, which helped facilitate the loss of Métis lands in Manitoba. Sprague believes that the Canadian government's strategy was to avoid dealing effectively with Métis land claims in order to disperse the Métis and open their lands up for incoming settlers. He condemns the federal government for controlling all aspects of the Métis land allotment scheme. Federal control over the Métis populations was evident in their refusal to allow the Lieutenant Governor of Manitoba to implement section 31 and 32 of *The Manitoba Act* soon after the act was passed in 1870. This article provides important background information about Métis dispossession and dispersal from Manitoba.

_____ “Government Lawlessness in the Administration of Manitoba Land Claims, 1870-1887.” *Manitoba Law Journal*, 10, (4), 1980: 415-441.

_____ “Métis Land Claims.” *Native People and the Constitution of Canada: Report of the Métis and Non-Status Indian Constitutional Review Commission*. Ottawa: Mutual Press, 1981: 51-68.

In 1981, one year after the publication of Douglas Sprague’s articles, the MMF and the Native Council of Canada, which at the time represented both Métis and non-status Indians across Canada, filed a statement of claim with the Manitoba Court of Queen’s Bench contending that amendments to *The Manitoba Act* between 1873 and 1884 were illegal alterations of the law. Thomas Berger was the lawyer for the MMF.⁵

The Métis were forced to litigate at this time because their talks with the governments of Manitoba and Canada to achieve a land base and self government had not produced results.

While taking action in the courts, the MMF continued to fund Douglas Sprague’s research. The result of this financial support was a study entitled *The Genealogy of the First Métis Nation*, completed by Sprague and Ronald Frye in 1983. Through extensive use of census returns, parish registers, surveyors’ field notes, Half-breed Commission

⁴ D. N. Sprague, “Government Lawlessness in the Administration of Manitoba Land Claims, 1870-1887,” *Manitoba Law Journal*, Volume 10, Number 4 (1980), p. 68.

⁵ Former leader of the NDP in British Columbia, Justice Berger was appointed to the Supreme Court of British Columbia in 1972, he served on the bench until 1983. He may be best known for his work as the Royal Commissioner of the Mackenzie Valley Pipeline Inquiry which released its findings on May 9, 1977. His co-counsel on the MMF case is Jim Aldrich.

records and genealogical affidavits collected by Canadian government officials in 1865, Sprague and Frye compiled six genealogical tables of the Red River Métis from 1820 to 1870.

In 1985, Douglas Sprague collaborated with Philippe R. Mailhot to publish an article entitled “Persistent Settlers: The Dispersal and Resettlement of the Red River Métis, 1870-1885.”

Mailhot, P. R. and Sprague, D. “Persistent Settlers: The Dispersal and Resettlement of the Red River Métis, 1870-1885.” *Canadian Ethnic Studies*, 17, (2) (1985): 1-30.

Using quantitative techniques of family reconstitution to document the relocation of both French and English Métis from Red River to the Saskatchewan Valley, Mailhot and Sprague argued that by 1870, the Métis were committed settlers but various forms of pressure from the federal government drove them off the land. According to their statistical evidence, 550 of 938 Métis families in the 1870 census were overlooked by land surveyors between 1871 and 1873. Of that total, 501 did not receive patents. Similarly, 400 of 844 native English families were missed, 341 of which did not emerge as patentees. In their opinion, this was a result of land surveyors being “more interested in boundaries than in counting people or their improvements.”

The consequences of this action were devastating as less than 10 percent of overlooked Métis were able to pass improvement standards imposed by the Dominion government’s administration of the Manitoba Act. Métis discouraged by federal government delays and non-patentees who could not provide sufficient evidence of occupation or improvements left the province in search of available, free river front property. To Mailhot and Sprague, land-loss was a prelude to migration.

“A closer look at St. Laurent [Saskatchewan] underscores the importance of landlessness as the critical ‘push’ factor in the migration process ... [M]ore than 80 percent of the St. Laurent settlers who were heads of Manitoba families in 1870 were landless in their homeland before emigrating to the North-West. Instead of remaining as a class of landless labourers or attempting to make a complete break with the established custom of settling on river frontage by taking up section land on bald prairie, they sought continuity by migrating west and north.”

During the same year in which Mailhot and Sprague’s article was published, the MMF and the Native Council of Canada, which represented Métis nationally, sued the Canadian government on behalf of all present day Métis living in Manitoba. Known as the Dumont case, after Manitoba Métis Federation President Yvon Dumont, this lawsuit was filed to correct what they viewed as “a major inequality of law over the past 120 years.” While pursuing Métis land claims through the courts, the MMF also continued to finance the research of Douglas Sprague. This led to the completion of *Canada and the Métis, 1869-1885*, published in 1988.

Sprague, Douglas N. *Canada and the Métis, 1869-1885*. Waterloo, Ontario: Wilfrid Laurier University Press, 1988.

Historian D.N. Sprague asserts that the federal government systematically deprived the Manitoba Métis of their land base following the creation of the new province of Manitoba and that the Métis had little choice but to disperse to the Saskatchewan Country. He therefore argues that the federal government did not honour the promises made to the Métis people in *The Manitoba Act*.

For the uninitiated, Sprague has also provided a useful historiographical essay, which discusses all the classical monographs on the 1869-70 and 1885 Resistances. Such succinct summaries are also useful for professional students of Métis Studies who may not have the fortitude to read several hundred pages of dated and often lurid prose by such scholars as Giraud or Stanley. For an opposing view, consult Thomas Flanagan's controversial *Riel and the Rebellion: 1885 Reconsidered* (1983), and its re-edition (1999).

_____ “Interprétation des droits des Métis: les points de vue historiques et juridiques.” Dans Gilles Lesage (Editeur): *Riel et les Métis canadiens*. Saint-Boniface, Manitoba: La Société historique de Saint-Boniface, 1990: 59-62.

_____ “Dispossession vs. Accommodation in Plaintiff vs. Defendant Accounts of Métis Dispersal from Manitoba, 1870-1881.” *Prairie Forum*, Vol. 16 (2), 1991: 137-155.

Sprague uses research on Métis land claims and Métis migration during 1870-1881 to counter the work of Gerhard Ens and Thomas Flanagan, whom argue in their journal articles that the Manitoba Métis were not disenfranchised of their land base by the Canadian government.

_____ “Métis Land Claims.” In K. Coates (Editor): *Aboriginal Land Claims in Canada: A Regional Perspective*. Mississauga, Ontario: Copp Clark Pitman Ltd., 1992: 195-213.

Sprague, Douglas N. and R.P. Frye. *The Genealogy of the First Métis Nation: The Development and Dispersal of the Red River Settlement, 1820-1900*. Winnipeg: Pemmican Publications Inc., 1983.

Genealogy has long had a fascination for the general public. Certainly, Métis people are not immune to this desire to want to better understand their ancestors' past or to know where they came from. This was the first book to provide early census information and fur trade employment lists for the Red River Métis. Others such as Gail Morin have taken up this quest. Nonetheless, this is perhaps the most useful and accurate book. Sprague and Frye have alphabetically arranged the names of Métis and some non-Métis individuals in five tables. Looking through these tables provides an opportunity to see how certain families were particularly prominent in the fur trade or the locale of their land holdings. This book also introduces the history and development of the original Métis people who settled in the Red River district and deals with their subsequent

dispersal to points further west. It contains a compilation of families with names, identification and employment records; a record of lands which were held in the district; and what happened to those lands once the Red River district became part of Canada. This is a useful source for those searching their genealogy or as a guide to Métis land claims.

Sprague's work was followed up by Paul L.A.C. Chartrand:

Chartrand, Paul L.A.C. *Manitoba's Métis Settlement Scheme of 1870*. Saskatoon: Native Law Centre, University of Saskatchewan, 1991.

This book is a re-edited version of Paul Chartrand's LL.M. thesis. This work is a study of the constitutional provision of Section 31 of *The Manitoba Act* and is based upon the historical foundation provided by Douglas Sprague (*Canada and the Métis, 1869-1885*, 1988). Chartrand, a former commissioner for the Royal Commission on Aboriginal Peoples, provides readers with the most thorough legal analysis of the Manitoba Métis land question to date. In this treatise, the author uses legal precedents, statutes, and newspaper accounts of Manitoba's entry into Confederation and politicians' private papers to demonstrate how Section 31 of *The Manitoba Act* failed to preserve the Métis land base after 1870.

His argument is structured on an analysis of who qualified for the Métis land grant in the *Manitoba Act* (Section 31), how the land was actually allocated to the Métis, whether or not Métis corporate (group) rights are guaranteed in the Constitution and how the federal government failed in its obligation to adequately and fairly distribute land to Manitoba's Métis population. In addition, this book contains many useful appendices, including various government acts and parliamentary speeches. This work also reviews the evolving Canadian judicial principles that subtend from the court cases which clarify language rights and the Canadian Charter of Rights and uses these principles to analyse the application of the *Manitoba Act* to the Métis people. In his words:

As a matter of legal construction, the scheming designs of government policies to dispossess the Métis of their land base must be measured against the growing sensitivity to native rights. This approach requires avoiding the sanction of "sharp dealing" on the part of the Crown's ministers and requires interpretations that will not bring dishonour to the Crown whose duty it is to uphold the law (p. xii).

Court Actions:

In a preliminary move, the federal government applied to have the claim struck out of court. A majority of the Manitoba Court of Appeal agreed that it should be struck. They said that the legislation had not negatively affected Métis rights and that s. 31 of the *Manitoba Act* did not create a communal interest in land for Métis, but rather individual rights. They went on to say that because of this, the MMF did not have a case. O'Sullivan J.A. dissented:

The problem confronting us is how can the rights of the Métis people as a people be asserted. Must they turn to international bodies or to the conscience of humanity to obtain redress for their grievances as a people, or is it possible for us at the request of their representatives, to recognize their people claims as justiciable? ...

In my opinion ... the rights of the Métis people must be capable of being asserted by somebody. If not by the present plaintiffs, then by whom? It must be noted that the existence of the Métis people is asserted in the Constitution as of the present, not simply as of the past...

... I think it is important to accept that the claims asserted by the plaintiffs in the present action are justiciable and not merely political ... in the end, in my opinion it is in the development of law to deal with claims of “peoples” that lies the best hope of achieving justice and harmony in a world full of minority rights.

The amendments to the MMF’s statement of claim were significant and included:

1. that Métis are Indians within the meaning of s. 91(24) of the Constitution Act, 1867;
2. that the Crown has breached its fiduciary obligations to the Métis, which it owes to them by virtue of ss. 31 & 32 of the Manitoba Act;
3. that there was a treaty between Canada and the Provisional Government in the Red River Colony which was ratified by the Legislative Assembly of Assiniboia on June 24th 1870.

Early in 2003, the MMF plaintiffs filed a motion to discontinue the action on behalf of the individual plaintiffs. This prompted a motion by one of the individual plaintiffs to have separate counsel.

The MMF subsequently withdrew its motion and the Court dismissed the motion for separate counsel. In so doing the Court held that there is no entitlement to personal representation in a representative case, particularly where the order sought is declaratory. The Court also noted that the matter was almost ready for trial.

The Court agreed with Canada that there had to be a remedy, but did not agree with any of the remedies suggested by Canada. In particular, the judge did not want to usurp the function of the trial judge to admit or reject evidence at trial. Also, he did not agree with any order that might preclude new representatives from bringing forward the same claim. In the result, the judge stayed the proceedings until otherwise ordered by the Court. The plaintiffs can only lift the stay when they promise to disclose immediately all the materials. The defendants, Canada and Saskatchewan, have leave to apply to dismiss the action or for summary judgment. Costs were awarded to the Defendant Canada. Canada then filed (unsuccessfully) for discontinuance of the action.

The MMF trial finally opened on April 6, 2006. In his opening remarks MMF legal counsel, Thomas Berger, stated that the action was on behalf of the Manitoba Métis community and was not an action brought by any individual to vindicate individual interests in land. The case was presented in an unusual manner. The plaintiffs, the MMF

and the named individuals, are not calling any experts to speak to the historical documents. Instead, they argued that the documents (over 1000) speak for themselves. The plaintiffs made a lengthy opening statement, had the documents admitted on consent, and will make a closing statement. Canada and Manitoba called expert witnesses.

In December of 2007, the QB judge handed down his decision. He denied all aspects of the MMF claim. The plaintiffs claimed that the Métis were to have received a land base under the Manitoba Act, 1870. They asserted that they suffered an historic injustice in not receiving such land base and sue Canada and Manitoba for certain declaratory relief. The plaintiffs did not claim any specific land, nor did they bring any claim for individual or personal relief. The plaintiffs asked for the following declarations:

- (1) that certain enactments, both statutes and Orders in Council, were ultra vires the Parliament of Canada and the Legislature of Manitoba, respectively, or were otherwise unconstitutional;
- (2) that Canada failed to fulfill its obligations, properly or at all, to the Métis under sections 31 and 32 of the Act, and pursuant to the undertakings given by the Crown;
- (3) that Manitoba, by enacting certain legislation and by imposing taxes on lands referred to in section 31 of the Act prior to the grant of those lands, unconstitutionally interfered with the fulfillment of the obligations under section 31 of the Act; and
- (4) that there was a treaty made in 1870 between the Crown in Right of Canada and the Provisional Government and people of Red River.

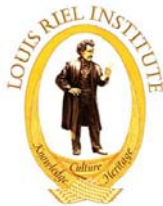
The QB Judge found that the MMF itself did not have standing to bring the action but recognized that the 17 individual plaintiffs, who are members of the Manitoba Métis community today and descendants of persons who were entitled to land and other rights under sections 31 and 32 of the Act did have standing in this action.

The judge found that the claim was statute-barred. In other words the plaintiffs were too late in bringing their suit to court. The events that founded the claim occurred from 1869-1890. The Métis leaders were knowledgeable and active and fully conversant with the rights given under the Act, including those provisions (sections 30 to 33) which pertained to the lands of the Province. Because the Métis were, according to the judge, aware of their rights and of the ability to commence action in respect of any denial of their rights, the Limitation of Actions Act applied to. The judge held that there was a “grossly unreasonable and unexplained delay on the part of the plaintiffs in the commencement of this action”. Because declaratory relief is equitable relief it must be applied for promptly. Bringing the case at this date was, according to the judge, unreasonable.

The plaintiffs argued that the result of the negotiations between the Red River delegates and Prime Minister Macdonald and his colleague Cartier was a treaty or agreement. The QB judge disagreed and held that there was no treaty or agreement. It was an Act of Parliament, which is a constitutional document and would be interpreted as such.

The judge held that as at July 15, 1870, the Métis did not hold or enjoy aboriginal title to the land and were not Indians within the meaning of s. 91(24) of the Constitution Act, 1867. The judge said that the Métis were not looked upon by those in the community as Indians and did not want to be considered as Indians. Rather, they wanted to be full citizens of the Province, as they previously had been of the Red River Settlement, a status that Indians at the time did not enjoy.

The judge held that – because Métis were not “Indians” and had no aboriginal title, there could be no fiduciary relationship existing between Canada and the Métis. Therefore, the doctrine of honour of the Crown was not implicated. Rather, Canada owed a public law duty to those entitled under sections 31 and 32 of the Act. The plaintiffs attacked the legislation enacted by Manitoba and the legislation and Orders in Council enacted by Canada on the basis that they were unconstitutional. *The Manitoba Act* is part of the constitution and the argument was that statutes cannot amend the constitution. The judge did not agree.



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