Ernest (Ernie) L. Blais

Blais, a Métis, was born and raised in St.Vital, a place he calls “Louis Riel’s backyard”. Blais has served in a variety of executive positions and has participated on a number of Ministerial Advisory Boards. Blais has also served on the National Aboriginal Management Board, the Canadian Labour Force Development Board, the Manitoba Liquor Control Commission Licensing Board, member of the Aiyawin Corporation. Ernie was a board member for the Manitoba Métis Federation 1976-1977, 1979-1984 and 1990-1994. He served as President (1991-1994) and before that as a Vice President. Blais was a founding member of the Median Credit Union of Manitoba, and served as their first Vice President and later President.

Ernie Blais is currently a Commissioner with the Manitoba Police Commission. He has served since the Commission was formed in February of 2011.

Blais is most famous for his court case asserting the Métis right to hunt which went all the way to the Supreme Court of Canada in 2003.

R. *v.* Blais, [2003] 2 S.C.R. 236, 2003 SCC 44

Ernest Lionel Joseph Blais: Appellant

v.

Her Majesty the Queen: Respondent

File No.:28645.

2003: March18; 2003: September19.

Present: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel and Deschamps JJ.

on appeal from the court of appeal for Manitoba

Constitutional law — Manitoba Natural Resources Transfer Agreement — Hunting rights — Métis — Métis convicted of hunting contrary to provincial statute — Natural Resources Transfer Agreement providing that provincial laws respecting game apply to Indians subject to their continuing right to hunt, trap and fish for food on unoccupied Crown lands — Whether Métis are “Indians” under hunting rights provision of Natural Resources Transfer Agreement — Natural Resources Transfer Agreement (Manitoba), para. 13.

The appellant, a Manitoba Métis, was convicted of hunting deer out of season. He had been hunting for food on unoccupied Crown land. His appeals to the Manitoba Court of Queen’s Bench and the Manitoba Court of Appeal were based solely on the defence that, as a Métis, he was immune from conviction under the *Wildlife Act* regulations in so far as they infringed on his right to hunt for food under para. 13 of the Manitoba *Natural*

Resources Transfer Agreement (*NRTA*). This provision stipulates that the provincial laws respecting game apply to the Indians subject to the continuing right of the Indians to hunt, trap and fish for food on unoccupied Crown lands. Both appeals were unsuccessful. The issue in this appeal was whether the Métis are "Indians" under the hunting rights provision of the *NRTA*.

Held: The appeal should be dismissed.

The *NRTA* is a constitutional document which must be read generously within its contextual and historical confines and yet in such a way that its purpose is not overshot. Here, the appellant is not entitled to benefit from the protection accorded to "Indians" in the *NRTA.* First, the *NRTA*'s historical context suggested that the term "Indians" did not include the Métis. The historical documentation indicated that, in Manitoba, the Métis had been treated as a different group from "Indians" for purposes of delineating rights and protections. Second, the common usage of the term "Indian" in 1930 did not encompass the Métis. The terms "Indian" and "half-breed" had been used to refer to separate and distinguishable groups of people in Manitoba from the mid-19th century through the period in which the *NRTA* was negotiated and enacted. The location of para. 13 in the *NRTA* under the heading "Indian Reserves" further supports this interpretation. Third, the purpose of para.13 of the *NRTA* was to ensure respect for the Crown's obligations to "Indians" with respect to hunting rights, who were viewed as requiring special protection and assistance. This view did not extend to the Métis, who were considered more independent and less in need of Crown protection.

A requirement for "continuity of language" should not be imposed on the Constitution as a whole and, in any event, such an interpretation would not support the contention that the term "Indians" should include the Métis. The principle that ambiguities should be resolved in favour of Aboriginal peoples is inapplicable as the historical documentation was sufficient to support the view that the term "Indians" in para. 13 of the*NRTA* was not meant to encompass the Métis. Nor does the "living tree" doctrine expand the historical purpose of para. 13; while constitutional provisions are intended to provide "a continuing framework for the legitimate exercise of governmental power", the Court is not free to invent new obligations foreign to the original purpose of the provision at issue, but rather must anchor the analysis in the historical context of the provision.

Attorney Jean Teillet gives the following interpretation of the Blais case[1]:

> Manitoba [2003] - At trial, Ernie Blais and some friends were convicted of hunting deer out of season on unoccupied Crown land. He appealed to the Manitoba Court of Queen's Bench and then to the Manitoba Court of Appeal. Both appeals were unsuccessful. Mr. Blais argued that he had a right to hunt that was protected by paragraph 13 of Manitoba's Natural Resources Transfer Agreement (NRTA), which protects the right of 'Indians' to hunt, trap and fish for food. Mr. Blais defended himself on two fronts at trial. First, he claimed that because he

[1] Jean Teillet. "Métis Law in Canada." Published by Pape Salter Teillet, Vancouver, British Columbia, Canada. 2013. [Edited here]

was Métis, the harvesting protections in paragraph 13 of the Manitoba NRTA meant that the provincial *Wildlife Act* did not apply to him. Second, he said that because he was Métis, he had harvesting rights that were protected under s. 35 of the *Constitution Act, 1982*. At trial he lost on both defences. On appeal Mr. Blais relied solely on the NRTA defence.

Blais was argued before the Supreme Court of Canada on March 18th 2003. The only issue the Court considered was whether Métis are 'Indians' under paragraph 13 of the Manitoba NRTA. As a result, the Supreme Court of Canada made no decision in this case about whether Manitoba Métis can claim the protection of s. 35 for their harvesting rights.

> Placing para. 13 of the NRTA in its proper historical context does not involve negating the rights of the Métis. Paragraph 13 is not the only source of the Crown's or the Province's obligations towards aboriginal peoples. Other constitutional and statutory provisions are better suited, and were actually intended, to fulfill this more wide-ranging purpose.

On September 19th 2003, the Court handed down its decision that Métis are not included in the term 'Indians' in the NRTA. The NRTA is a constitutional document. The usual way to read such a constitutional document is to read it generously and within its historical setting. When the Court is interpreting a constitutional right (such as the aboriginal right to hunt protected in the Constitution) it must interpret the constitutional provision in a way that will fulfill the broad purpose of the right and ensure the full benefit intended by the constitutional protection. This is what is called a purposive interpretation.

The Court cautioned that it would not 'overshoot' the actual purpose of the right and said that the constitutional provision was not to be interpreted as if it was enacted in a vacuum… The Court found that the Métis were not considered the same as 'Indians' for determining rights and protections.

> The terms "Indian" and "half-breed" had been used to refer to separate and distinguishable groups of people in Manitoba from the mid-19th century through the period in which the NRTA was negotiated and enacted.

Also, the Court said that the Manitoba Métis were not considered wards of the Crown - either by the Métis themselves or by the Crown. The historical record showed that the difference between Indians and Métis was widely recognized and understood by the mid 19th Century. Both government and the Métis saw the Métis as a separate group with different historical entitlements.

The record suggests that the Métis were treated as a different group from "Indians" for purposes of delineating rights and protections.

The Court noted that individual Métis could identify as either Indians or as 'white.' The fact that Métis could choose either identity supported the view that a Métis person was not considered an Indian unless he or she chose to be seen as

one. The Court also took note of the submissions of the Métis National Council. While Métis were seeking the constitutional protection of the term 'Indians' under paragraph 13 of the NRTA that did not mean that they saw themselves culturally as 'Indians.' The Court then looked to the common usage of the terms in the *Constitution* in order to understand their meaning. The Court said that the term 'Indians' did not refer to both Indians and Métis. The terms 'Indians' and 'half-breed' referred to separate groups. 'Half-breed' was the term that was commonly used in the 19th and 20th centuries when speaking about the people we now know as 'Métis' (for example the *Manitoba Act, 1870* and the *Dominion Lands Acts* both use the term "half-breeds"). The Court set out examples where the Métis saw themselves as different from Indians. For example, in 1870, Riel's provisional government created a *List of Rights*, which excluded 'Indians' from voting. Also the Court noted that the local legislature in Manitoba in 1870 was a Métis-dominated body.

The Court also noted that paragraph 13 in the Manitoba NRTA is under the heading "Indian Reserves," a heading which includes two other paragraphs relating solely to reserves, which would not apply to Métis in 1930.

The Court said that "rightly or wrongly" in 1930 the Crown believed that Indians required special protection and assistance and Métis did not. Shared ancestry between the Métis and the 'colonizing population,' and the Métis' own claims to a different political status than the Indians contributed to this perception. This distinction resulted in separate arrangements for the distribution of land – treaty and scrip. Indian treaties were collective agreements about collective rights. Scrip was about individual grants of land.

The Court said that scrip was based on fundamentally different assumptions about the nature and origins of the government's relationship with Métis. The assumptions underlying treaties with Indians were not the same. The Court made no statements as to whether or not these assumptions are correct in law.

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