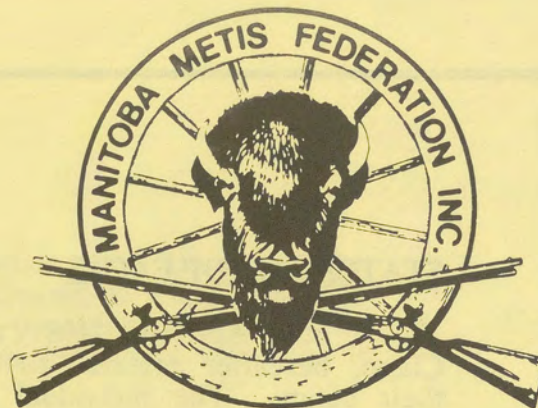


LE MÉTIS



SPECIAL SUPPLEMENT — APRIL, 1990

MEMORANDUM FOR THE COURT

BETWEEN:

Yvon Dumont, Roy Chartrand, Ron Erickson,
Claire Riddle, Billyjo De La Ronde, Jack
Fleming, Jack McPherson, Don Roulette,
Edgar Bruce Jr., Freda Lundmark, Miles Allarie,
Celia Klassen, Alma Belhumeur, Stan Guiboche,
Jeanne Perrault, Marie Banks Ducharme, Earl
Henderson, Manitoba Métis Federation Inc.,
suing on their behalf and behalf of all
other descendants of Métis persons entitled to
land and other rights under Section 31 and 32 of
the *Manitoba Act*, 1870, and Native Council of Canada Inc.

Applicants

- and -

Attorney General of Canada

Respondent

APPLICATION FOR LEAVE TO APPEAL

Nature of the case:

Indians and Indian Land - Constitutional Law
- Civil Procedure - *Manitoba Act*, S.C.
1870, c. 3 - *Constitution Act*, 1982-
Applicants' Statement of Claim seeks
declaration that certain legislation was not
validly enacted - Claim struck out as not
raising justiciable issue - Whether
Statement of Claim properly struck out.

Judgment on application:
(Barkman, J.)

February 18, 1987
(application for order striking out Statement
of Claim denied)

Judgment on appeal:
(O'Sullivan (dissenting), Huband,
Philp, Twaddle and Lyon, JJ.A.)

June 17, 1988
(appeal allowed)

Application filed on:

August 29, 1988

STATEMENT OF FACTS

On April 15, 1981 the Applicants filed a Further Amended Statement of Claim, hereafter referred to as the Statement of Claim, setting out the nature of their claim. The individual Applicants are Métis and are descendants of persons referred to in the *Manitoba Act* as Half Breeds. The corporate Applicants represent the interests of Métis and non-status Indians in Canada. The Statement of Claim against the Respondent and the Attorney General of Manitoba claims that some 32 federal and provincial statutes and orders-in-council, enacted pursuant to the *Manitoba Act* are unconstitutional measures. The specific enactments are listed in the Appendix to this summary.

Sections 31, 32, and 33 of the *Manitoba Act* conferred certain rights upon the Métis people of Manitoba with regard to land rights:

31. And whereas, it is expedient, towards the extinguishment of the Indian Title to the lands in the Province, to appropriate a portion of such ungranted lands, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents, it is hereby enacted, that, under regulations to be from time to time made by the Governor General in council, the Lieutenant-Governor shall select such lots or tracts in such parts of the Province as he may deem expedient, to the extent aforesaid, and divide the same among the children of the half-breed heads of families residing in the Province at the time of the said transfer to Canada, and the same shall be granted to the said children respectively, in such mode and on such conditions as to settlement and otherwise, as the Governor General in Council may from time to time determine.

32. For the quieting of titles, and assuring to the settlers in the Province the peaceable possession of the lands now held by them, it is enacted as follows:

(1) - (3) {these subsections deal with the confirmation of land grants from the Hudson's Bay Company}

(4) All persons in peaceable possession of tracts of land at the time of the transfer to Canada, in those parts of the Province in which the Indian Title has not been extinguished, shall have the right of pre-emption of the same, on such terms and conditions as may be determined by the Governor in Council.

(5) The Lieutenant-Governor is hereby authorized under regulations to be made from time to time by the Governor General in Council, to make all such provisions for ascertaining and adjusting on fair and equitable terms, the rights of Common, and rights of cutting Hay held and enjoyed by the settlers in the Province, and for the commutation of the same by grants of land from the Crown.

33. The Governor General in Council shall from time to time settle and appoint the mode and form of Grants of Land from the Crown, and any Order in Council for that purpose when published in the *Canada Gazette*, shall have the same force and effect as if it were a portion of this Act.

Subsequent to the passage of the *Manitoba Act*, the British Parliament passed the *Constitution Act, 1871*, which provided for the retroactive validation of the *Manitoba Act*. The impugned legislation regulated the allocation of land to half-breeds and the making of land claims. The Applicants claim that the impugned legislation had the effect of altering the legislation.

Negotiations have been entered into between the Métis people and the federal government concerning the establishment of a land base for the Métis. The Applicants seek in the Statement of Claim to get a declaration that the impugned legislation and orders referred to were unconstitutional as being beyond the constitutional competence of the enacting governments.

The Respondent brought an application to have the Statement of Claim struck out. This was unsuccessful in the Court of Queen's Bench. The Respondent appealed and the Court of Appeal allowed the appeal. The Applicants seek leave to appeal from that decision.

JUDGMENTS

Court of Queen's Bench (Barkman, J.)

The trial judge noted that in an application to strike out a Statement of Claim it is necessary to assume that the facts pleaded are true. Further he stated that an application can be successful only in cases that are "plain and obvious", following *The Attorney General of Canada v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735. This principle was expanded in *Operation Dismantle Inc. v. R.*, [1985] 1 S.C.R. 441 where it was noted that generally the Courts would hesitate to strike out a Statement of Claim as disclosing no reasonable cause of action.

Barkman, J. held, that although the impugned legislation was spent legislation, the Court has jurisdiction to grant a declaratory order where the parties "share a legal relationship in respect of which a real issue concerning the relative interests of each has been raised and falls to be determined, following *Solosky v. The Queen*, [1980] 1 S.C.R. 821. He found that there were real issues to be decided, and that the declaration sought would, if granted, support the Applicants in their claims during the negotiations with the federal government. Accordingly, he refused to order that the Statement of Claim be struck out.

Court of Appeal (Twaddle, J.A. for the majority)

The Court found that the Applicants were seeking a declaration concerning certain legislation affecting the statutory rights of persons now deceased, not by their legal representatives, but generally by descendants who do not specify a degree of relationship. It found that the declaration sought would be in respect of an academic issue. The Court held that a declaration in aid of an extra-judicial claim could only be granted if it was clear that it would affect

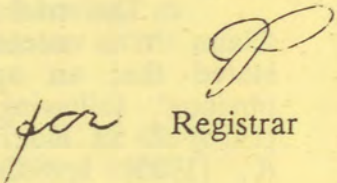
settlement of the extra-judicial claim. In the case at bar, the Court held that the constitutional validity of the impugned legislation would not affect the outcome of the land claim because the government would be able to consider the effects of the legislation regardless of its constitutional validity. Therefore, the Applicant's Statement of Claim was struck out.

O'Sullivan, J.A.(dissenting)

In his dissent, O'Sullivan, J.A. stated that he would dismiss the application to strike out the Statement of Claim. He found that the Applicants had standing to bring the action to assert the rights of the Métis people in regard to their claims concerning the land grants. He stated that he felt that it was "important to accept that the claims asserted by the plaintiffs in the present action are justiciable and not merely political."

GROUND FOR LEAVE TO APPEAL

1. This case involves legal and constitutional issues of national importance.
2. The Court of Appeal of Manitoba erred in holding that the granting of the declaration sought by the Applicants would not be useful in any real sense in their negotiations with the federal government.
3. Unless leave is granted, justice cannot be done to the Applicants.


Registrar

SUPREME COURT OF CANADA CASE MANAGEMENT SYSTEM DOCKET

March 03, 1990

1870 and the Constitution Act of 1871 and the effect of the impugned ancillary legislation upon them would appear to be better determined at trial where a proper factual base can be laid. The Court is of the view also that the subject matter of the dispute, inasmuch as it involves the constitutionality of legislation ancillary to the Manitoba Act, is justiciable in the courts and that declaratory relief may be granted in the discretion of the court in aid of extra-judicial claims in an appropriate case. We see no reason, therefore, why the action should not proceed to trial. The appeal is accordingly allowed and the order of the Court of Appeal striking out the appellants' claim against the Attorney General of Canada is set aside. A120 A 8 clemen

*** end of report ***