

THE HONOUR OF THE CROWN IN ABORIGINAL LAND ISSUES: MANITOBA MÉTIS FEDERATION INC. V. R., 2013

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Promises of land allotments that the Crown made to Métis children in 1870 were fulfilled for some eligible children and partially fulfilled for others. This led to the Manitoba Métis Federation and seventeen individuals initiating action against the federal Crown, claiming that the Crown had breached a fiduciary obligation to the Métis and had failed to uphold the honour of the Crown by not executing its obligation diligently, which, in turn, had caused injury to a number of the children. At trial, upheld on appeal, the case was dismissed. The fiduciary obligation was deemed not to exist, the honour of the Crown had not been breached, and the action was barred by both statutes of limitations and the doctrine of laches. Overturning the decision, the Supreme Court of Canada, however, held that the honour of the Crown had been breached and statutes of limitations and the doctrine of laches did not apply. The case contributes to Canadian jurisprudence regarding the honour of the Crown in Aboriginal land matters. It is also of interest in international land administration and land restitution, given the current high incidence of grabbing of customary/Aboriginal land in many countries.



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Les promesses faites par la Couronne en 1870 aux enfants métis concernant des parcelles de terre ont été respectées pour certains enfants admissibles et respectées en partie pour d'autres. Cette situation a incité la Fédération des Métis du Manitoba et dix-sept personnes à titre individuel à entamer des poursuites contre la Couronne fédérale, revendiquant que la Couronne avait violé une obligation fiduciaire envers les Métis et bafoué l'honneur de la Couronne en ne donnant pas suite de façon diligente à ses obligations, ce qui, en fin de compte, avait causé des préjudices à un certain nombre d'enfants. Lors du procès, l'affaire a été rejetée et la décision confirmée en appel. Le tribunal a déterminé que l'obligation fiduciaire n'existait pas, que l'honneur de la Couronne n'avait pas été bafoué et la demande a donc été éteinte tant par prescription que par la doctrine de l'inertie. Infirmant cette décision, la Cour suprême du Canada a toutefois confirmé que l'honneur de la Couronne avait été bafoué et que le délai de prescription et la doctrine de l'inertie ne s'appliquaient pas. L'affaire fait partie de la jurisprudence canadienne concernant l'honneur de la Couronne relativement aux revendications territoriales autochtones. C'est aussi une affaire intéressante pour la gestion internationale des terres et la restitution des terres, étant donné l'incidence élevée actuelle de l'accapement de terres coutumières/autochtones dans plusieurs pays.

Introduction

Both the Canadian federal and provincial governments have a duty to consult Aboriginal peoples in matters which affect their interests or way of life. A key concept in Aboriginal Law which underlies this duty is the honour of the Crown [Townsend and McClurg 2014], which flows from the Royal Proclamation of 1763 and the guarantee of Aboriginal rights set out in s. 35(1) of the Constitution Act. In *Manitoba Métis Federation Inc. v. R.*, 2013, the Supreme Court of Canada ruled that the honour of the Crown applies to the diligent performance of undertakings that form part of these consultations. Furthermore, it applies to events that may have occurred more than a century ago, as the

honour of the Crown is neither barred by statutes of limitations nor the doctrine of laches (legal negligence) in Aboriginal land cases.

The case should be viewed in the context of the status of the Métis in Canadian society and initiatives by the Métis to clarify whether the federal or provincial governments have jurisdiction over them. The historical context of how the federal and provincial governments have handled matters relating to the Métis was considered in the recent Federal Court of Appeal decision *Canada v. Daniels*, 2014, which upheld the part of the claim relating to the Métis in *Daniels v. Canada*, 2013. *Canada v. Daniels*, 2014, ruled that Métis are identified as Indians under