

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

MANITOBA METIS FEDERATION INC., YVON DUMONT,
BILLY JO DE LA RONDE, ROY CHARTRAND, RON
ERICKSON, CLAIRE RIDDLE, JACK FLEMING, JACK
McPHERSON, DON ROULETTE, EDGAR BRUCE JR., FRED A
LUNDMARK, MILES ALLARIE, CELIA KLASSEN, ALMA
BELHUMEUR, STAN GUITBOCHE, JEANNE PERRAULT,
MARIE BANKS DUCHARME and EARL HENDERSON

Plaintiffs

AND

ATTORNEY GENERAL OF CANADA and
ATTORNEY GENERAL OF MANITOBA

Defendants

AMENDED STATEMENT OF CLAIM

Filed Nov 12, 2004

ROSENBLOOM & ALDRIDGE

440 - 355 Burrard Street
Vancouver, B.C. V6C 2G8
Ph: (604) 605-5555 Fx: (604) 684-6402

Counsel for the Plaintiffs

Thomas R. Berger, Q.C.

James R. Aldridge, Q.C.

Harley I. Schachter

Winnipeg Telephone: 942-3361

Winnipeg Telefax: 942-3362

Winnipeg File No. 940273 / 9415 - Box 71

Service of a copy hereof admitted
this 12th day of Nov. 2004

Dee A. ...
Solicitor for Canada

Service of a copy hereof admitted
this 16 day of Nov 2004

H. L. ...
Solicitor for AG MB

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PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA and
ATTORNEY GENERAL OF MANITOBA

DEFENDANTS

April 15, 1981

W. H. WATSON
Deputy Prothonotary

STATEMENT OF CLAIM

I INTRODUCTION

1. The Plaintiff, MANITOBA METIS FEDERATION INC. (MMF), is a body corporate created under the laws of Manitoba, representing approximately 127,000 Métis people in Manitoba. Its principal office is in Winnipeg, Manitoba.

Amended this 11 day of December 1980
in Winnipeg under order of Mr. Justice Leask
the 12 day of December 1980
B. D. P. Leask
DEPUTY REGISTRAR

2. At all material times, and in any event in 1870 and ever since 1870, the Manitoba Métis have constituted a Métis community. The Manitoba Métis community is a part of the Métis Nation of the prairie provinces.
- 2A. The Manitoba Métis community comprises local Métis communities throughout Manitoba.
- 2B. The Plaintiff MMF is the representative body of the Manitoba Métis community.
3. The following persons are also Plaintiffs, and all of them, except the last three named, are Métis and are or have been members of the Board of Directors of the MMF and their places of residence are as follows:

YVON DUMONT, 702 - 504 Main Street, Winnipeg, Manitoba

ROY CHARTRAND, P.O. Box 292, Fisher Branch, Manitoba

RON ERICKSON, 656 - 6th Street, Brandon, Manitoba

CLAIRE RIDDLE, 309 Burrows Avenue, Winnipeg, Manitoba

BILLYJO DE LA RONDE, 311 - 250 Colony Street, Winnipeg, Manitoba

JACK FLEMING, Box 930, Dauphin, Manitoba

JACK McPHERSON, P.O. Box 2467, The Pas, Manitoba

EDGAR BRUCE JR., General Delivery, St. Laurent, Manitoba

CELIA KLASSEN, General Delivery, Deloraine, Manitoba

ALMA BELHUMEUR, Box 1074 Russell, Manitoba

DON ROULETTE, 215 - 4th Avenue S.E., Dauphin, Manitoba

FREDA LUNDMARK, 71 Juniper Drive, Thompson, Manitoba

MILES ALLARIE, 108 Brandon Crescent, Thompson, Manitoba

STAN GUIBOCHE, Box 2114, The Pas, Manitoba

JEANNE PERRAULT, 835 Lemay, St. Norbert, Manitoba

MARIE BANKS DUCHARME, 127 Yourville Street, St. Boniface, Manitoba

EARL HENDERSON, 3570 Lansdowne Road, Prince George, B.C.

4. The individual Plaintiffs are members of the Manitoba Métis community, descendants of persons (referred to in the *Manitoba Act, 1870* as "half-breeds") entitled to land and other rights pursuant to Sections 31 and 32 of the *Manitoba Act, 1870* (S.C. 1870) (hereinafter referred to as "the *Manitoba Act*"), or both.
- 4A. The Plaintiff MMF, the individual Plaintiffs and the Manitoba Métis community have an interest in the declaratory relief sought herein. No relief is sought in respect of any individual loss.
5. The Defendant, ATTORNEY GENERAL OF CANADA, is the Minister of Her Majesty the Queen in the Right of Canada who is responsible for the Statutes of Canada and the Constitution of Canada, and who represents Her Majesty and the Government of Canada in litigation concerning the Constitution of Canada.
6. The Defendant, ATTORNEY GENERAL OF MANITOBA, is the Minister of Her Majesty the Queen in the Right of Manitoba who is responsible for the Statutes of Manitoba and the Constitution of Manitoba, and who represents Her Majesty and the Government of Manitoba in litigation concerning the Constitution of Canada or the Constitution of Manitoba.
7. In this Statement of Claim "Canada" refers to the Crown in right of Canada, or Parliament, as the context requires; and "Manitoba" refers to the Crown in right of Manitoba, or the Legislature of Manitoba, as the context requires.
8. The Métis or "half-breeds" referred to in the *Manitoba Act, 1870* were a distinct aboriginal people at the time of the enactment of the *Manitoba Act*, being of mixed Indian and European ancestry; they remain a distinct aboriginal people today.
9. The Métis are "Indians" within the meaning of subsection 91(24) of the *Constitution Act, 1867*. The 1,400,000 acres of land referred to in section 31 of the *Manitoba Act* were

"lands reserved for the Indians" within the meaning of subsection 91(24) of the *Constitution Act, 1867*, until those lands were granted to the "children of the half-breed heads of families", in accordance with that section.

10. The Plaintiff MMF has since 1979 from time to time approached representatives of the Government of Canada and the Government of Manitoba concerning the claims of the Métis pursuant to sections 31 and 32 of the *Manitoba Act*, and has been provided with funds by the Government of Canada to research said claims.
11. On April 17, 1982, the *Constitution Act, 1982* came into force. Under subsection 35(1) of the *Constitution Act, 1982*, the existing rights of the aboriginal peoples of Canada are recognized and affirmed, and under subsection 35(2) it is provided that aboriginal peoples of Canada includes the Métis people of Canada. Furthermore, pursuant to sections 37 and 37.1 of the *Constitution Act, 1982*, constitutional conferences were held. At the constitutional conference held under section 37.1, in March, 1985, the Prime Minister of Canada, the Right Honourable Brian Mulroney, stated that the federal government is ready to discuss with the Métis their need for a land base. The achievement of a land base for the Métis is the goal of the MMF, one shared by Canada's other aboriginal peoples, the Indians and the Inuit. In the pursuit of this goal, it would be greatly to the advantage of the Métis, in seeking to achieve a land claims agreement pursuant to subsection 35(3) of the *Constitution Act, 1982*, to obtain the declarations sought in this action.
12. In particular, for the purpose of clarifying the legal position of the Plaintiffs and the people they represent in these negotiations, it is necessary to:
 - a. determine the constitutional validity of the enactments impugned in this action; and

- b. determine if the obligations set out in sections 31 and 32 of the *Manitoba Act*, and those otherwise assumed by the Crown, were fulfilled.

II THE MANITOBA ACT

13. The *Manitoba Act*, which created the Province of Manitoba in 1870, resulted from negotiations between a delegation from the Provisional Government in the Red River colony, including the Abbé N. J. Ritchot, Judge John Black, and Alfred Scott, (hereinafter "the Red River delegation") and representatives of Her Majesty's Privy Council, Sir John A. Macdonald and Sir Georges Etienne Cartier. Among other things, the *Manitoba Act* conferred certain land rights on the people of Manitoba. These rights were set out in sections 31 and 32 of the Act. Section 31 was for the benefit of "families of half-breed residents" while section 32 conferred rights on all settlers in the Province who had interests in land, the majority of whom were Métis or "half-breeds". Sections 31 and 32 read:

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) All grants of land in freehold made by the Hudson's Bay Company up to the eighth day of March, in the year 1869, shall, if required by the owner, be confirmed by grant from the Crown.

- (2) All grants of estates less than freehold in land made by the Hudson's Bay Company up to the eighth day of March aforesaid, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.
 - (3) All titles by occupancy with the sanction and under the licence and authority of the Hudson's Bay Company up to the eighth day of March aforesaid, of land in that part of the Province in which the Indian Title has been extinguished, shall if required by the owner, be converted into an estate in freehold by grant from the Crown.
 - (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.
14. The *Manitoba Act* was debated in Parliament between May 2, 1870 and May 11, 1870. During the debate, Macdonald and Cartier explained the purpose and intent of the Bill. Among other things, they stated that the land referred to in section 31 was for the purpose of settlement by the half-breed residents and their children, and that there would be conditions of settlement imposed on the grants to ensure that it was not for the benefit of "white speculators".
 15. The *Manitoba Act* received royal assent on May 12, 1870.
 16. On May 18, 1870 Ritchot wrote to Cartier in respect of agreements that had been reached during negotiations, but were not expressly set out in the *Manitoba Act*. In particular, in respect of section 31, he referred to the agreement that the Governor in Council would authorize:

... a Committee composed of men whom we ourselves were to propose to select these lands and divide them among the children of the half-breeds.

In respect of subsection 32(4), he referred to the agreement that lands:

... so held were also to be left free of charge to persons now in possession... The measure is of the greatest importance for us.

17. On May 19, 1870 Ritchot and Cartier met with the Governor General of Canada about these matters. The Governor General provided certain reassurances to Ritchot, that are set out in Ritchot's diary, and authorized Cartier to give Ritchot in writing a promise to put into effect what had been promised in relation to these lands.
18. On May 23, 1870 Cartier wrote a letter to Ritchot, in respect of these assurances. The letter stated:

Gentlemen, - With reference to the representations you have submitted respecting the fourth paragraph of Section 32 of the Act to establish and provide for the Government of Manitoba, in which it is stated that "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," I am in a position to give you the assurance, on the part of the members of the Government, that so soon as the Government can grant the necessary titles, no payment shall be required from any of the persons mentioned in that paragraph, but that they shall be placed upon the same footing as the persons mentioned in the three preceding paragraphs.

I desire to call your attention to the interview you had with His Excellency the Governor General on the 19th instant, at which I was present, and in which His Excellency was pleased to state that the liberal policy which the Government proposed to follow in relation to the persons for whom you are interesting yourself is correct, and is that which ought to be adopted.

There was a postscript:

P.S. - You may at any time make use of this letter, in such manner as you shall think proper, in any explanation you may have to give connected with the object for which you were sent as delegates to the Canadian Government.

A second postscript was added on May 28, 1870:

I have, moreover, the honour to assure you, as well on my own behalf as on behalf of my colleagues, that as to the million four hundred thousand acres of

land reserved by the 31st section of the *Manitoba Act*, for the benefit of the families of half-breed residents; the regulations to be established from time to time by the Governor General in Council, respecting that reserve, will be of a nature to meet the wishes of the half-breed residents, and to guarantee, in the most effectual and equitable manner, the division of that extent of land amongst the children of the heads of families of the half-breeds residing in the Province of Manitoba at the time when the transfer is to be made to Canada.

19. On June 24, 1870, at a special session of the Legislative Assembly of Assiniboia, the Provisional Government, Ritchot described the agreement that had been reached including the provisions of the *Manitoba Act*. Cartier's letter was read aloud with both postscripts. The Legislative Assembly unanimously ratified the agreement.
20. The *British North America Act, 1871*, (now known as the *Constitution Act, 1871*), 34 and 35 Vict. c. 28 U.K., confirmed the *Manitoba Act*. Section 6 of the *British North America Act, 1871* provides:
 6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said Parliament in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly and to make laws respecting elections in the said Province.
21. Pursuant to subsection 52(1) of the *Constitution Act, 1982*, the Constitution of Canada is the supreme law of Canada; pursuant to subsection 52(2) of the *Constitution Act, 1982*, and the schedule thereto, the Constitution of Canada includes the *Manitoba Act* and the *Constitution Act, 1871*.
22. The Plaintiffs say that sections 31 and 32 of the *Manitoba Act* imposed a number of obligations on the Crown, and further say that these are fiduciary obligations. The nature and extent of those obligations is to be determined from the wording of the Act, the statements made in the House of Commons by Sir John A. Macdonald and Sir Georges

Etienne Cartier, the correspondence between Cartier and Ritchot, and the record of the negotiations kept by Ritchot.

23. The Plaintiffs further say that Canada assumed obligations of a fiduciary nature to ensure that federal regulations to be passed under the *Manitoba Act* would fulfil undertakings that had been made to the Red River delegation, including:
- a. a liberal policy for the implementation of the *Manitoba Act* would be adopted;
 - b. regulations under section 31 would be of a nature to meet the wishes of the half-breed residents; and
 - c. no payment would be required from any of the persons mentioned in subsection 32(4), and those persons would be placed upon the same footing as the persons mentioned in subsections 32(1), (2) and (3).

The nature and extent of those obligations is to be determined by the wording of the Act, statements made in the House of Commons by Sir John A. Macdonald and Sir Georges Etienne Cartier, and by the correspondence between Cartier and Ritchot.

III OBLIGATIONS - General

24. Generally, the Plaintiffs say that Canada's obligations in respect of the lands referred to in section 31 included the obligations to ensure that:
- a. a liberal policy for the implementation of section 31 would be adopted;
 - b. the lands would be for the benefit of the families of the half-breed residents;
 - c. the grants would be made with reasonable dispatch;
 - d. the lands would be granted to all of the children of the half-breed heads of families residing in the Province at the time of the transfer to Canada;
 - e. the lands would be selected and divided in accordance with the wishes of the half-breeds;

- f. the interests of the half-breed families and children in the lands would have priority over interests acquired by settlers arriving after the date of the transfer to Canada;
 - g. conditions of settlement would be attached to the grants;
 - h. there would be no assignment or other disposition of the interests in the lands prior to grant;
 - i. the lands would not be subject to taxation prior to grant;
 - j. the grants would not be issued until the children reached the age of majority; and
 - k. the grants would be inalienable until the children reached the age of majority.
25. Generally, the Plaintiffs say that Manitoba's obligations in respect of the lands referred to in section 31 included the obligations to ensure that:
- a. provincial laws would not interfere with the fulfilment of Canada's obligations under section 31; and
 - b. there would be no taxation of the lands referred to in section 31 prior to grant.
26. Generally, the Plaintiffs say that Canada's obligations in respect of the lands referred to in section 32 included the obligations to ensure that:
- a. a liberal policy for the implementation of section 32 would be adopted;
 - b. the grants would be made with reasonable dispatch;
 - c. the interests of the persons referred to in section 32 would have priority over interests acquired by settlers arriving after the date of the transfer to Canada;
 - d. persons referred to in subsection 32(4) would be protected in their possession of lands without having to establish a title by occupancy to those lands;
 - e. persons referred to in subsection 32(4) would not be required to pay for their grants of land, but would be placed on the same footing as persons mentioned in subsections 32(1) to (3);
 - f. the rights of Common and the rights of cutting Hay referred to in subsection 32(5) would be ascertained and adjusted on fair and equitable terms, and commutated

by grants of land from the Crown, bearing in mind the value of these rights to adjacent properties referred to in subsections 32(1) to (4).

27. The Plaintiffs say that the obligations to the Métis were not fulfilled, as a result of federal and provincial legislation, federal Orders in Council and administrative and judicial action and inaction.

IV OBLIGATIONS IN RESPECT OF SELECTION OF THE LANDS REFERRED TO IN SECTION 31 AND THE FAILURE TO FULFIL THOSE OBLIGATIONS

28. Without restricting the generality of paragraphs 23 and 24, the Plaintiffs say that the selection of the 1.4 million acres referred to in section 31 was to be governed by the following:
- a. section 31 states that:
 - i. it is towards the extinguishment of the Indian Title to the lands in the Province,
 - ii. the land is for the benefit of the families,
 - iii. the Lieutenant-Governor shall, under regulations to be made by the Governor in Council, select such "lots and tracts in such parts of the province as he may deem expedient";
 - b. in his letter to Cartier of May 19, 1870, Ritchot referred, *inter alia*, to the agreement that the selection and division of the land would be performed by a local committee;
 - c. in his subsequent letter of May 23, 1870, and the postscript of May 28, 1870, Cartier promised Ritchot that the regulations would be of a nature "... to meet the wishes of the half-breed residents, and to guarantee, in the most effectual and equitable manner, the division of that extent of land amongst the children...";
 - d. *OIC April 25, 1871* paragraph 4 stated:
 - 4. The Lieutenant Governor of Manitoba shall designate the Townships or parts of Townships in which the allotments to the half-breeds shall be made.

- e. On June 17, 1871 by publishing his letter dated June 9, 1871, in *The Manitoban* newspaper, Lieutenant Governor Archibald proclaimed the method that he would use to select lands in accordance with "the wishes of the half-breeds".
29. The half-breeds wished to receive lands that were in blocks adjacent to their respective parishes, and that comprised river lots, wooded areas, hay lands and other areas of value to the half-breed families.
30. The lands desired by the half-breeds were of the sort identified by various parishes shortly before and after Lieutenant Governor Archibald's proclamation of the method of selection in June 1872.
31. Canada failed to fulfil its obligations, properly or at all, in respect of selection of lands in the following ways:
- a. unreasonable delay;
 - b. interference by the federal executive with the exercise of the Lieutenant Governor's discretion under the Act;
 - c. the failure to establish a local committee to select the lands;
 - d. the subsequent decision that selections made pursuant to Lieutenant Governor Archibald's proclamation had no legal effect;
 - e. the decision that entire townships (other than Hudson's Bay Company and school reservations) must be selected, rather than just the desired parts of those townships;
 - f. the exclusion from selection of land occupied by new settlers between the date of transfer and April 15, 1872;
 - g. the exclusion from selection of more than "a due proportion" of woodlands;
 - h. the exclusion from selection of land within the settlement belt;
 - i. the exclusion from selection of land within the Outer Two Miles; and
 - j. the exclusion from selection of lands that were "too valuable", such as claims from High Bluff and Poplar Point.

32. The result was to replace a method of self-selection of desirable lands with a method of selection of lands that largely comprised bald prairie.
33. The deprivation of the Métis caused by the failure of Canada to fulfil its obligations in respect of selection is the extent to which the value to the Métis of the final selection differed from the value to the Métis of the land they requested. More specifically, the deprivation includes each and every "lot or tract" of land that was excluded from selection because of the factors listed in paragraph 31 above. It is impossible to identify all of these exclusions.
34. By virtue of the selection by Lieutenant Governor Archibald of the 1.4 million acres, or part thereof, the families acquired a beneficial interest in the specific lots or tracts of land so selected. Removal of this interest, by ignoring or overruling these selections, constituted an expropriation of the interest.
35. The substitution of a less valuable lot or tract of land for a lot or tract selected by Archibald, or in accordance with his proclamation, could not and did not constitute fulfilment of the obligation.

V OBLIGATIONS IN RESPECT OF THE DIVISION AND GRANTS OF THE LANDS REFERRED TO IN SECTION 31 AND THE FAILURE TO FULFIL THOSE OBLIGATIONS

36. Without restricting the generality of paragraphs 23 and 24, the Plaintiffs say that the division and granting of the 1.4 million acres referred to in section 31 was to be governed by the following:
 - a. section 31 states that:

under regulations to be from time to time made by the Governor General in Council... the Lieutenant Governor shall ... divide the same among the children of the half-breed heads of families ... 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.

- b. in his letter to Cartier of May 19, 1870, Ritchot referred, *inter alia*, to the agreement that the selection and division of the land would be performed by a local committee;
- c. in his subsequent letter of May 23, 1870, and the postscript of May 28, 1870, Cartier promised Ritchot that the regulations would be of a nature "... to meet the wishes of the half-breed residents, and to guarantee, in the most effectual and equitable manner, the division of that extent of land amongst the children..."

37. Canada failed to fulfil its obligations, properly or at all, in respect of the division or allotment of lands in the following ways:

- a. unreasonable delay;
- b. the failure to establish a local committee to perform the division;
- c. the division by lottery, or random selection, rather than in accordance with the wishes of the "half-breeds";
- d. the disentitlement of children on the grounds that they were "half-breed mothers" or "married children";
- e. the unreasonable alteration in the estimate of the number of children that led to a change from 190 acre grants to 240 acre grants;
- f. the cancellation of allotments initially drawn by Lieutenant Governor Morris;
- g. the issuance of scrip instead of grants of land to wrongfully excluded children referred to in (d);
- h. the establishment of a final date for claiming lands under section 31;
- i. the issuance of scrip instead of grants of land to persons claiming after the final date for claiming land.

38. The deprivation of the Métis caused by Canada's failure to fulfil its obligations in respect of allotment is:

- a. the extent to which all children suffered loss of the enjoyment of the lands as a result of the delay;
 - b. the extent to which all children suffered from receiving random allotments rather than locations of their family's choice and location, or as determined by a local committee;
 - c. the number of "half-breed mothers" and "married children" who were disqualified, regardless of whether they subsequently received scrip;
 - d. the number of allotments, drawn by Morris under *OIC April 15, 1872*, that were cancelled. Upon allotment each child acquired the equitable title to those lands to him or her. While these allotments could have been added to, to ensure the correct share, they could not be "cancelled" without constituting an expropriation of that title;
 - e. the number of children whose claims were brought after the cut off date, regardless of whether they subsequently received scrip.
39. Canada failed to fulfil its obligations, properly or at all, in respect of granting of the lands to the children in the following ways:
- a. unreasonable delay;
 - b. the failure to prohibit assignments or other dispositions of claims prior to allotment;
 - c. the failure to prohibit assignments or other dispositions of allotments prior to grant;
 - d. the failure to impose conditions of settlement on the patents;
 - e. the granting of patents to children regardless of their age;
 - f. the failure to disallow or challenge the provincial legislation referred to in subparagraphs 40 (a) and (c);
 - g. the failure to disallow or challenge the imposition of taxes referred to in subparagraph 40 (d).
40. Manitoba interfered with the granting of land to the children by:

- a. the passage of legislation facilitating sales of half-breed infants' land;
 - b. allowing improprieties or irregularities in the judicial approval of sales of half-breed children's interests in the land;
 - c. the passage of legislation retroactively validating unauthorized, improper or irregular approvals by the Courts of sales of half-breed children's interests in the land;
 - d. the imposition of provincial taxes on land prior to grant.
41. The deprivation of the Métis caused by the failure of Canada to fulfil its obligations in respect of granting the land to the children, and Manitoba's interference with the granting of the land to the children is:
- a. the extent to which delay in issuing patents encouraged children or their parents to sell or otherwise dispose of their claims;
 - b. the number of parcels of land that were sold or otherwise disposed of prior to allotment or prior to grant. Approximately 8,000 children were entitled to a grant of land from the reserve of 1.4 million acres. Federal records report that 7,027 claims were recorded. Of these 6,034 patents were issued in the names of individual children, and 993 claimants received scrip after the cut off date. Most of the lands had been sold prior to the issuance of the patents;
 - c. the extent to which sales were facilitated by the lack of conditions of settlement;
 - d. the number of parcels of land sold by infants, whether before or after patent, under provincial legislation that dealt solely with half-breed infant lands;
 - e. the number of parcels of land sold under irregular court orders that were subsequently validated by provincial legislation;
 - f. the value of the provincial taxes collected on unpatented allotments;
 - g. the number of parcels of land that were forfeited due to non-payment of provincial taxes.

VI OBLIGATIONS IN RESPECT OF THE GRANTS OF THE LANDS REFERRED TO IN SUBSECTIONS 32(3) AND (4) AND THE FAILURE TO FULFIL THOSE OBLIGATIONS

42. Without restricting the generality of paragraph 23, the Plaintiffs say that the basic legal framework for the protection of settlers who held land without a grant or lease from the Hudson's Bay Company was established by the following:
- a. subsection 32(3) provided that, in respect of land in the settlement belt, titles by occupancy up to March 8, 1869 shall, if required by the owner, be converted into an estate in freehold by grant from the Crown;
 - b. subsection 32(4) provided that, in respect of land outside of the settlement belt, persons in peaceable possession on July 15, 1870 shall have the right of pre-emption on terms and conditions determined by the Governor in Council;
 - c. Cartier's promise that no payment would be required from any persons having the right of pre-emption under subsection 32(4);
 - d. the understanding of what constituted a "title by occupancy" and "peaceable possession" in the colony, prior to 1870.
43. Canada failed to fulfil its obligations, properly or at all, in respect of the granting of lands referred to in subsections 32(3) and (4) in the following ways:
- a. unreasonable delay in making grants;
 - b. the failure to ensure that new settlers did not occupy lands described in subsections 32(3) and (4);
 - c. the confusion of the dates for eligibility under subsections 32(3) and (4);
 - d. the imposition of a more restrictive test than peaceable possession for claims under subsection 32(4);
 - e. the rejection of claims under subsections 32(3) and (4) by land officers in the absence of any appeal rights;
 - f. the decision not to give the conflicting claims commission authority to hear disputes between old settlers and the Crown;

- g. the authorization of the conflicting claims commission to rule in favour of a new settler over a person claiming under section 32, having regard to the equities of the case;
- h. the establishment of cut off dates by which claims had to be established to the satisfaction of the Minister, and the surrounding confusion about those dates.

44. The deprivation of the Métis caused by Canada's failure to fulfil its obligations in respect of the granting of lands referred to in subsections 32(3) and (4) is:

- a. the difference between the number of Métis individuals, mostly "heads of families", in the colony at the time of transfer (see 1870 census), who had an interest in land, whether by grant from the Hudson's Bay Company, title by occupancy, or peaceable possession, and the number of patents of section 32 lands that were ultimately granted to Métis individuals;
- b. the extent to which delays in the process, including lengthy delays while claims were considered by the Department of Justice, frustrated Métis claimants and encouraged them to sell their claims to speculators;
- c. the extent to which claims made by Métis under subsection 32(4), on the basis of staking or other methods of establishing possession before the transfer, were refused or discouraged as a result of the imposition of the more restrictive test of undisturbed occupancy;
- d. the extent to which Métis individuals' lots were settled on as "vacant" by new settlers, who were protected in their possession;
- e. the number of cases in which the conflicting claims commission ruled in favour of a new settler over the claim of a Métis under section 32, on the equities of the case, rather than on the legal entitlement;
- f. the extent to which Métis individuals were prevented or discouraged from pursuing their claims after the various cut-off dates;

bearing in mind the majority of the old settlers were Métis.

45. By the time rules for establishing possession were relaxed in the 1880's most Métis had departed the province.

VII OBLIGATIONS IN RESPECT OF THE RIGHTS OF COMMON AND OF CUTTING HAY REFERRED TO IN SUBSECTION 32(5) AND THE FAILURE TO FULFIL THOSE OBLIGATIONS

46. Without limiting the generality of paragraph 23, the Plaintiffs say that the basic legal framework for the protection of settlers who held rights of common, and rights of cutting hay was established by the following:
- a. under subsection 32(5) settlers were entitled to have their rights of common and rights of cutting hay commuted by grants of land. These rights were, for the most part, in the Outer Two Miles;
 - b. the rights were appurtenant to, or associated with, the adjacent lots in the settlement belt, and were essential to the value of those lots;
 - c. the fair and equitable adjustment and commutation of the rights required that the grants of land be in the Outer Two Miles;
 - d. the reasons for, and importance of the rights of common and right of hay cutting were a specific part of the negotiations and agreement between the delegates and the government.
47. Canada failed to fulfil its obligations, properly or at all, in respect of the rights of common and rights of cutting hay in the following ways:
- a. unreasonable delay in the commutation of the right;
 - b. the opening of the Outer Two Miles for settlement by newcomers;
 - c. the confirmation of the rights of newcomers in the Outer Two Miles over those of the old settlers;
 - d. the decision to issue scrip, redeemable elsewhere than the Outer Two Miles, in lieu of the land in the Outer Two Miles itself.

48. The deprivation of the Métis who had rights under subsection 32(5), caused by Canada's failure to fulfil its obligations in respect of the rights of common and rights of cutting hay is:
- a. the amount of land in the Outer Two Miles that was taken by new settlers;
 - b. the loss of value of a river lot when stripped from adjacent rights of cutting hay;
 - c. the difference in the value of two separate pieces of land and one combined parcel of land;
 - d. the lesser value of scrip (personal property) redeemable for land distant from an adjacent river lot instead of adjacent hay land;
- bearing in mind the majority of the old settlers were Métis.

VIII IMPUGNED ENACTMENTS

49. As to the lands, to which Métis were entitled under section 31 of the *Manitoba Act*, the Plaintiffs say that the following federal enactments are unconstitutional:
- a. *Order-in-Council dated April 25, 1871;*
 - b. *Order in Council dated May 26, 1871;*
 - c. *Dominion Lands Act, S.C. 1872, C. 23, sec. 108;*
 - d. *Order in Council dated April 15, 1872;*
 - e. *Order-in-Council dated April 3, 1873;*
 - f. *Order in Council dated September 6, 1873;*
 - g. *An Act to Remove Doubts as to the Constructions of S.31 and to Amend S.108 of the Dominion Lands Act, S.C. 1873, C.38;*
 - h. *An Act Respecting the Appropriation of Certain Dominion Lands in Manitoba, S.C. 1874, C. 20;*
 - i. *Order-in-Council dated February 7, 1874;*
 - j. *Order-in-Council dated May 21, 1874;*
 - k. *Order-in-Council dated September 7, 1876;*
 - l. *Order-in-Council dated July 4, 1878;*

- m. *An Act to Explain and Amend the Act Respecting the Appropriation of Certain Dominion Lands in Manitoba S.C. 1879, C. 32;*
- n. *Order-in-Council dated April 20, 1885;*
- o. *An Act Respecting the Revised Statutes of Canada, R.S.C. 1886.*

50. As to the lands to which Métis were entitled under section 31 of the *Manitoba Act*, the Plaintiffs say that the following provincial enactments are unconstitutional:
- a. *An Act to amend the Act passed in the 37th year of Her Majesty's reign, entitled "The Half-Breed Land Protection Act" S.M. 1877, C.5;*
 - b. *An Act to Enable Certain Children of Half-breed Heads of Families to Convey their Land, S.M. 1878, C.20;*
 - c. *An Act to amend the Act intituled: An Act to enable certain children of half-breed heads of families to convey their land, S.M. 1879, C.11;*
 - d. *An Act Respecting Half-breed Lands and quieting certain titles thereto, S.M. 1881, C.19;*
 - e. *An Act to explain certain portions of the Half-Breed Lands Act, S.M. 1883, C.29;*
 - f. *An Act Concerning Decrees and Orders of the Court of Queen's Bench, Manitoba, S.M. 1884, C.8;*
 - g. *An Act Relating to the Titles of Half-Breed Lands Act, S.M. 1885, C.30;*
 - h. *An Act to Provide for the Payment to Half-Breeds of the amounts to which they are entitled, and which are invested in securities which cannot be realized, S.M. 1885 C.34;*
 - i. every enactment under which, and to the extent that, taxation was imposed in respect of section 31 lands prior to grant.

51. As to the lands to which the Métis were entitled under section 32 of the *Manitoba Act*, the Plaintiffs say that the following federal enactments are unconstitutional:
- a. *Order-in-Council dated April 25, 1871;*
 - b. *Order-in-Council dated May 26, 1871;*
 - c. *Dominion Lands Act, S.C. 1872, C. 23, sec. 108;*

- d. *An Act Representing the Appropriation of Certain Lands in Manitoba*, S.C. 1874, C.20;
- e. *An Act to Amend "An Act Representing the Appropriation of Certain Lands in Manitoba"*, S.C. 1875, C.52;
- f. *An Act Respecting Conflicting Claims to Lands of Occupants in Manitoba*, S.C. 1875, C.53;
- g. *Order-in-Council dated April 20, 1876*;
- h. *Order-in-Council dated December 15, 1876*;
- i. *Order in Council dated April 12, 1880*;
- j. *An Act for the Final Settlement of Claims to Lands in Manitoba by Occupancy Under the Manitoba Act*, S.C. 1880, C.7;
- k. *Order-in-Council dated February 25, 1881*;
- l. *An Act to Extend the Limitation of Time for the Final Settlement of Claims to Lands in Manitoba by Occupancy*, S.C. 1884, C.26;
- m. *An Act Respecting the Revised Statutes of Canada*, R.S.C. 1886.

52. As to the rights of cutting hay and rights of common under subsection 32(5), the Plaintiffs say that the following federal enactments are unconstitutional:

- a. *Order-in-Council dated April 25, 1871*;
- b. *Order-in-Council dated May 26, 1871*;
- c. *Order-in-Council dated April 3 and April 17, 1874*.

53. The Plaintiffs say that, to the extent that the above enactments altered the obligations set out in sections 31 and 32 of the *Manitoba Act*, the enactments were, by reason of section 6 of the *British North America Act, 1871* (34 and 35 Vict. c.28), beyond the constitutional competence of Parliament and the Legislature and were therefore invalid and of no force and effect.

54. The Plaintiffs further say that, to the extent that the above enactments failed to implement or were inconsistent with the undertakings given by the Crown and referred to as

obligations of Canada in paragraph 23 above, they constituted breaches of the obligations owed to the Métis.

55. In addition, the Plaintiffs say that the Manitoba statutes listed in paragraph 50 were beyond the constitutional competence of the Legislature of Manitoba for the reason that they were in relation to subjects within the exclusive legislative jurisdiction of Parliament under sub-section 91(24) of the *Constitution Act, 1867*.
56. The majority, or in the alternative, a substantial number of Métis persons entitled to rights under sections 31 and 32 of the *Manitoba Act* and to the benefit of the other fiduciary obligations imposed by the Act or otherwise assumed by the Crown, failed to receive or were deprived of such rights by reason of Canada's failure to fulfil its obligations, Manitoba's interference with the fulfilment of the obligations and the unconstitutional federal and provincial legislation purporting to alter those obligations. The Métis people of today continue to suffer from that deprivation.
57. The Plaintiffs say that a treaty was reached between the Crown in right of Canada and the Provisional Government and people of the Red River colony. The parties exchanged solemn promises. The terms of the treaty are to be ascertained from the provisions of the Manitoba Act, the correspondence between Cartier and Ritchot, the statements made in the House of Commons by Macdonald and Cartier, and the record of the negotiations kept by Ritchot. The Provisional Government and people of the Red River colony agreed to end the insurrection, to dissolve the Provisional Government, to accept the transfer of the territory to Canada, and to accept Canadian sovereignty.
58. The Plaintiffs therefore claim:
 - a. a declaration that the enactments listed in paragraphs 49, 50, 51 and 52 were *ultra vires* the Parliament of Canada and the Legislature of Manitoba or were otherwise unconstitutional;

- b. a declaration that Canada failed to fulfil its obligations, properly or at all, to the Métis under section 31 and section 32 of the *Manitoba Act*, and pursuant to the undertakings given by the Crown;
- c. a declaration that Manitoba, by enacting the legislation listed in paragraph 50, and by imposing taxes on lands referred to in section 31 of the *Manitoba Act* prior to the grant of those lands, unconstitutionally interfered with the fulfilment of the obligations under section 31 of that Act;
- d. a declaration that there was a treaty made in 1870 between the Crown in right of Canada and the Provisional Government and people of Red River;
- e. such other relief as this Honourable Court may deem appropriate;
- f. the costs of this action.

[ISSUED the 15th day of April, A.D. 1981 by R.D. GIBSON, solicitor for the Manitoba Métis Federation Inc., and V. SAVINO, solicitor for the Native Council of Canada Inc., of the City of Winnipeg, in Manitoba.]