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Native and the Gravelton (Barry) DE  
1982-83 Bx 7B

PROVINCIAL ARCHIVES OF ALBERTA	
ACC.	85.401
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METIS PEOPLES - METIS SETTLEMENT ASSOCIATIONS

In 1938 the first Metis Population Betterment Act was passed by the Alberta Legislature. Under the Act public lands were set aside "for the settlement of the members of any association" "composed of the Metis population of the Province who are unable to secure out of their own resources a reasonable standard of living". In 1974 a Statement of Claim was filed on behalf of the Metis Settlement Associations alleging, in part, that all money accrued or hereafter accruing from petroleum and natural gas from the lands set aside for Metis Settlement Associations should be held for the Settlement Associations. This claim is based on the wording of an Order-in-Council passed pursuant to the Act in 1951. The lawsuit is at the Examination for Discovery stage.

THE CONSTITUTION ACT, 1982

The above describes the situation in Alberta when the Constitution Act, 1982 was passed. With respect to Native Rights this Act states:

"s. 25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.

s. 35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, 'aboriginal peoples of Canada' includes the Indian, Inuit and Metis peoples of Canada.

s. 37 (1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by

the Prime Minister of Canada within one year after this Part comes into force.

(2) The conference convened under subsection (1) shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item.

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#### PRESENT POSITIONS

##### METIS PEOPLES - GENERAL

According to the position adopted by the Native Council of Canada, set out above, the Metis peoples would likely take the position that their rights are "existing aboriginal rights". We would maintain the position as set out above in this memorandum.

##### METIS PEOPLES - METIS SETTLEMENT ASSOCIATIONS

After the passing of the Constitution Act, 1982 the Federation of Metis Settlement Associations published a position paper entitled "Metisism - A Canadian Identity" in which it is argued that the Metis Betterment Act recognized Metis aboriginal rights similar to the Manitoba Act and Dominion Lands Act. The position paper goes on to state:

"... Where an aboriginal population has a claim to aboriginal rights and lands are set aside for their use by the government, the courts have ruled that the aboriginal population has ownership rights to the land that has been set aside. ..."

It is also alleged that such lands are the same as Indian Reserve lands. Mines and minerals are also to be included.

These arguments seem to be an attempt to bring Metis Settlement Association lands within the term "existing aboriginal rights" in section 35.

SECTION 37 PROCESS

The position we have always taken is that the Metis Population Betterment Act was a provincial measure to alleviate conditions caused by the depression in the 1930's and had nothing to do with "Metis aboriginal rights". What is more the reference to "natural resources" in one Order-in-Council, which appears to be the foundation of this suit, first appeared in 1951, i.e. 13 years after the legislation was first passed.

EFFECT OF SECTIONS IN CONSTITUTIONGENERALLY

We take the position that the Metis population do not have any existing legal aboriginal rights and up until their inclusion in section 35 (2) were not aboriginal peoples. As such, the only aboriginal rights they will have are those to be acquired through the section 37 process.

METIS LITIGATION

If our view, that this lawsuit is based on the definition of certain words in a 1951 Order-in-Council, is correct, the new constitutional provisions, at the present time, should have no effect on the lawsuit. To date, these arguments expressed by the Federation of Metis Settlement Associations have not arisen in the Action nor do the pleadings disclose them, although, their documents disclose some attempt at research on the history of old Metis scrip.

It is possible that an amendment could be sought or a new Action commenced basing their claims on existing aboriginal rights. Should the position, put forward by the Metis Settlement Associations, be accepted they may have an existing aboriginal right to the land and resources. However, the interpretation the Federation of Metis Settlement Associations has placed on the Metis Betterment Act and the historical background is not dependent on the new constitutional provisions and could have been made in any claim for Metis aboriginal rights notwithstanding section 35. Should the section 37 process not clarify the meaning of section 35, it is possible that a variety of interpretations could be placed on the wording of section 35 which may affect the Province's position vis a vis the Metis peoples. However, it is impossible to speculate on such interpretations at this point in time.

SECTION 37 PROCESS

In section 37, set out above, provision is made for the "identification and definition of" aboriginal rights. As a result of this process the Metis people may acquire aboriginal rights, one of which they claim to be a right to land and resources. Should they be accorded such a right the Federation of Metis Settlement Associations feels that, at least, the Settlement Association lands and the resources associated with them will be theirs.

It is difficult to speculate on what the form and substance of aboriginal rights to land and resources will be, if any, but the result could conceivably entitle the Metis peoples, in general, to land and resources in Alberta and the Metis Settlement Associations, in particular, to the Settlement Association lands and resources.

CONCLUSION

1. Both the Metis peoples, in general, and the Federation of Metis Settlement Associations believe they have aboriginal rights and both would argue that section 35 of the Constitution protects those rights.
2. Our position has always been that Metis peoples are not "aboriginal peoples" and only became so by virtue of section 35 (2) of the Constitution Act, 1982. As such we feel that they do not have any existing aboriginal rights but may acquire them through the section 37 process.
3. At present, the Metis lawsuit is basically a question of interpretation of a particular Order-in-Council and is not based on aboriginal rights. As such it is not presently affected by the new constitutional provisions or the constitutional discussions going on.
4. The Federation of Metis Settlement Associations could attempt, by way of amendment to the existing pleadings, to base their claim on aboriginal rights. It is also possible that it could file a further suit based on aboriginal rights. However, it would seem that neither of these two courses of action would be dependent upon section 35 of the Constitution Act, 1982 unless section 35 were to be given an interpretation consistent with the Metis views.

5. Through the section 37 process the Metis peoples may acquire aboriginal rights which relate to land and resources. It is possible that such rights may have some effect upon the present lawsuit or perhaps could encourage further lawsuits should the province be unwilling to provide the Federation of Metis Settlement Associations with, at least, the Settlement Association lands and the resources associated with them.

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