

THE POSITION OF THE MANITOBA METIS FEDERATION ON
THE PROPOSED RESOLUTION RESPECTING THE CONSTITUTION OF
CANADA

The Manitoba Metis Federation fears that the 'Proposed Resolution on the Constitution of Canada' poses a serious danger to the rights we won in 1870. The danger is that the proposal as it is presently drafted provides amendment procedures which could lead to the complete loss of our rights whenever a majority of the legislature of Manitoba and the Canadian Parliament decide to take them away from us. To those of you who argue that no combination of Canadian legislators would ever deal so harshly with a defenceless minority, let me answer with some history which refutes such naive optimism.

In the late 1860s, land hungry adventurers from Ontario entered the country of my ancestors and began to boast that soon all of the land would pass to them and their fellow Canadians. They bragged that there was no place for Half Breeds and Indians in the new regime. Sure enough, a bargain was struck between the Hudson's Bay Company and Canada and in all of it, there was no mention of protection to the actual occupants of the land, no assurance that they would have any rights at all in the new colonialism. And so my ancestors resisted. Over the winter of 1869-70, they worked out a Bill of Rights for themselves which defined their terms for admission to the Canadian Federation as a Province, not a colony.¹ Then John A. Macdonald went through the motions of conceding enough

of these rights in Ottawa in the Spring of 1870 that the delegates from our country returned home satisfied that their mission had been well accomplished.

In the meantime, the Government contrived means to undo that which had been done. Macdonald dispatched troops to Manitoba and sent a proposal to London to amend the British North America Act of 1867. Macdonald's letter to the British asked them to amend the Constitution to empower the Canadians to create new provinces in the territories and to write constitutions for these new provinces at the same time that they were admitted to the Federation. Macdonald's proposal was intended to be retroactive justification for the Manitoba Act, but his draft of the amendment also left the Canadian Parliament completely free to amend this and other such statutes in the future in any respect whatsoever.² Thus, Macdonald and his colleagues hoped to create a class of provinces whose constitutions would be vulnerable to perpetual meddling from Ottawa. He wanted colonies, not partners in Confederation. To a certain extent, the British spoiled his scheme by adding a sixth section to the amendment which Macdonald proposed; section 6 of the British North America Act

¹ The development of the 'List of Rights' is documented by the several drafts reprinted in W.L. Morton (ed.), Manitoba: The Birth of a Province, pp. 242-250.

² Letter from J.A. Macdonald to the Earl of Kimberley (Dec. 29, 1870), Department of Justice Letter Books, Public Archives of Canada, RG 13, A3, vol. 559, pp. 225-230.

of 1871 declares that the Parliament of Canada is not competent to amend the Manitoba Act or any other such statutes creating new provinces.³ In this way, the British entrenched these rights in Canada's constitution for all time. Only the British were supposed to be able to add or detract from the rights in this fundamental law.

Canada was so determined to nullify the rights of the Manitoba Metis, however, especially their rights to land, that they defied this provision of the constitution on numerous occasions between 1873 and 1885. Altogether, eight Canadian laws were passed which tended to rob important sections of the Manitoba Act of their original and intended meaning or to repeal important sections outright.⁴ As a result, most of the original population of the province in 1870 was first dispossessed and then dispersed from their homeland by 1885. The people then were both too poor and too uneducated of their legal rights to challenge these illegal amendments in court, but they did resist. A mass grave of my people killed at Batoche fighting to save Saskatchewan from the same fate as Manitoba is today the silent testimony to the depth of their frustration and distrust. Today, however, we are knowledgeable of the legal basis on which we might take action in court to recover that which was unjustly taken away from our grand-

³ 34 & 35 Vict. c. 28 (U.K.), found in R.S.C. 1970, Appendix II, no. 11, p. 289.

⁴ D.N. Sprague, "Government Lawlessness in the Administration of Manitoba Land Claims, 1870-1887", Manitoba Law Journal, 10 (1980), pp. 415-441.

parents and we are not unwilling to take this action.

Here enters the constitutional proposal now being advertised by the present Government of Canada. Assuming that the proposal is ratified by Great Britain, the interim amending procedure in section 34 and the permanent procedure contained in section 43 will empower the Canadian Senate, or the House of Commons, or the Legislative Assembly of the Province of Manitoba to initiate a resolution repealing sections 31 and 32 of the Manitoba Act. The grounds of such a repeal could be the plausible but false assertion that all of the claims which possibly could be made under either of these sections were settled long ago to the satisfaction of the Minister of the Interior, therefore, all rights defined in these two sections are now superfluous. Having been ratified by Canada and Manitoba, such a resolution would effectively destroy all rights of the Metis people to the lands owing their ancestors.

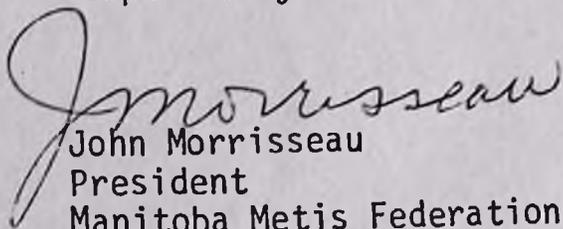
If an individual Metis person protested subsequently on grounds that section 24 of the Charter of Rights protects him or her from such arbitrary action, such a person would discover that section 24 does not protect any person's rights from the amending formula, section 24 simply asserts that nothing in the charter shall be construed as denying the existence of such rights. Even if section 24 did apply to the amending formula, it would be far from certain that Metis rights under the Manitoba Act would qualify for the protection of section 24.

Moreover, the litigant would still discover that he or she would lose since section 1 of the charter gives legislators scope to ignore all rights and do whatever is "generally accepted in a free and democratic society with a parliamentary system of government". The courts might well find it reasonable for the right in question to have been repealed since three legislative bodies would have endorsed the action.

For this reason, Mr. Chairman, I conclude that the proposed amending formula and Charter of Rights leave us with even less security than we have under the present arrangement. We do not oppose patriation on this account, but we do think that the Charter of Rights should be strengthened to give more rights to the people and the courts and less to their legislators, and the protection granted in section 24 should be extended to apply to the amending formula as well as the charter itself. In this spirit of hopeful but guarded optimism we support those persons who have already suggested alternate wording for sections 1 and section 24. Our main reason for appearing before this committee, however, is to go on record saying that we are now well informed of our rights under sections 31 and 32 of the Manitoba Act and that we have every intention of seeing that these rights are at last enforced. This may lead to litigation. If the Government of Canada were to repeal sections 31 and 32 of the Manitoba Act in the manner in which we have suggested (simply to ease the pressure of threatened legal action), we would consider such a manoeuvre to be the

greatest breach of faith ever perpetrated in the history of Canada because if the Government of Canada has made one point clear in these constitutional proceedings it is the idea that no change will or should occur which in any way puts in jeopardy the rights which any person or persons might now claim under the present constitution.

Respectfully submitted


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JM/pp