Métis Nation Saskatchewan

PRESS NOTICE/RELEASE

Date; December 29th, 2014

To; All Media

Re; Press conference – President Robert Doucette to comments on Justice J. Scherman ruling of the PMC and the calling of an MNLA.

Place; 231 Robin Crescent

Time; 10am

Attached to this correspondence is Justice Schermans ruling

231 Robin Crescent, Saskatoon SK S7L 6M8
Tel. (306) 343-8285 or 1-888-203-6959, Fax (306) 343-0171

Métis Nation Saskatchewan

PRESS RELEASE

Date; December 29th, 2014

To; All media

Re; Justice J. Scherman ruling on Métis Nation – Saskatchewan

On December 22nd, 2014, Justice J. Scherman ruled that President Doucette is mandated to call a Provincial Métis Council meeting, which will include setting a date and place for a Métis Nation Legislative Assembly.

This is important as the MNLA is comprised of Métis Community leaders, Métis Women, youth and the Provincial Métis Council. It is the supreme body of the Nation and decides on all matters of the Métis people of Saskatchewan

For last two years the some of the Regional Directors who sit on the Provincial Métis Council members and are led by Gerald Morin have steadfastly refused to set a date and a place for a Métis Nation Legislative Assembly. In October, President Robert Doucette, warned Gerald Morin and the Regional Directors that if they would not willingly sit at a PMC meeting, set a date and place for an MNLA he would go to court to get a ruling on the aforementioned.

This was necessary as the Federal government has suspended all funding to the MN-S until a MNLA has been held. If the current stalemate had not been corrected the MNS as of March 31st, 2015 would have probably seen its doors close due to a lack of funding.

Some of the key points made by Justice Scherman were;

1. There has been no PMC meeting since February of 2013 ... As a result, no properly constituted PMC meetings were held in 2013 after the February meeting.
2. Found a Prima facie proof of a breach of a constitutionally mandate duty of the PMC. The constitution requires meetings of the MNLA at least twice a year and only the PMC can schedule such a meeting. Thus the PMC has a clear duty to call such a meeting and it has been in breach of such duty...
3. The failure of the PMC to call and schedule the biennial MNLA causes irreparable harm to the MNS ... No MNLA means the members of the MNLA and the members of the MNS generally have been deprived of the reporting they are entitled to and the ability to make decisions for MNS under a democratic process.

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Métis Nation Saskatchewan

Accordingly, Justice Scherman has ordered that a 2 day PMC meeting must be held before January 23rd. The PMC has to set a date, place, and time for an MNLA before the PMC meeting adjourns.

President Doucette, would like to thank Justice Scherman for the ruling and maintains that the will of the people is the important issue here. For too long the voice of the Metis people has been silenced. Métis Citizens want to give direction on the issues of importance to Métis Citizens and this ruling is a victory for Metis citizens who live in the Province of Saskatchewan.

As the ruling indicates, today I will be sending out notice of PMC meeting slated for January 16 and 17th, 2015 to be held in Saskatoon. I am prepared to sort out any issue with the PMC members. All PMC members must follow the MNS constitution, which includes setting a date and place for an MNLA where Metis local presidents, women and youth will set the direction of the MNS. At the end of the day, we have all sworn an oath to put the interests of the Metis citizens ahead of our own political interests. Justice Scherman has given us another opportunity to do the right thing.

If you have any questions related to this correspondence please call President Robert Doucette at (306)361-2329 for additional comments.

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# QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2014 SKQB 421**

Date: **2014 12 22**
Docket: QBG 1530 of 2014
Judicial Centre: Saskatoon

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BETWEEN:

ROBERT DOUCETTE, REPRESENTING MÉTIS NATION – SASKATCHEWAN,

PLAINTIFF
(APPLICANT)

- and -

GERALD MORIN, HELEN JOHNSON, DARLENE McKAY, LENNARD MORIN, BILL KENNEDY, GLEN McCALLUM, LELA ARNOLD, MICHAEL BELL, CHESTER HERMAN, EARL COOK, and DEREK LANGAN, as members of the Provincial Métis Council of the Métis Nation Legislative Assembly, and the PROVINCIAL MÉTIS COUNCIL OF THE MÉTIS NATION LEGISLATIVE ASSEMBLY,

DEFENDANTS
(RESPONDENTS)

**Counsel:**

| | |
|---|---|
| Jay D. Watson | for Gerald Morin |
| James E. Seibel | for Robert Doucette representing Métis Nation - Saskatchewan |

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FIAT
December 22, 2014

SCHERMAN J.

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**Introduction**

[1] The court is asked to intervene in an internecine struggle that could, if alive, provide Shakespeare with inspiration for a new tragedy and interesting

commentary from Machiavelli.

[2] A claim and application brought in the names of Métis Nation – Saskatchewan [MNS], The Métis Nation - Saskatchewan Secretariat Inc. and the Métis Nation Legislative Assembly sought an interlocutory mandatory injunction directed to the named defendants, as members of the Provincial Métis Council [PMC] requiring the PMC and its individual members to meet and set a time and date for a session of the Métis Nation Legislative Assembly [MNLA]. The defendants/respondents questioned the authority of legal counsel to commence the action and to bring the application in the names of the then plaintiffs.

[3] The catalyst for these proceedings is that, effective November 1, 2014, the Minister of Aboriginal Affairs and Northern Development Canada [the Minister] suspended funding for Métis Nation - Saskatchewan because its Legislative Assembly has not held Métis Nation Legislative Assemblies as required by its Constitution. The last MNLA was held November 27/28, 2010.

[4] Under the Constitution of MNS two sessions of the MNLA and one General Assembly are to be held each year. The PMC is to set the date and place for the sessions of the MNLA.

[5] By the Constitution of MNS, the PMC consists of 18 elected members, who in effect act as the cabinet of the MNLA. These members include four individuals elected as executive members of MNS by the membership of MNS at large. These executive members are the President (Robert Doucette), the Vice President (Gerald Morin), the Treasurer (Louis Gardiner) and the Secretary (May Henderson). Each of 12 regions also elects members to the PMC and there is one

representative from each of Métis Women of Saskatchewan and Métis Youth.

[6] There is conflict among two factions of the PMC. One faction, which I designate the Doucette faction, consists of President Doucette, Treasurer Gardiner and Secretary Henderson who constitute a majority of the executive. The other faction, which I designate the Morin faction, consists of Vice President Morin and the other named defendants. This faction of 12 individuals, by virtue of their majority numbers controls the ability to assemble a quorum of the PMC and the ability to decide matters within the PMC.

[7] There has been no PMC meeting since February of 2013. Commencing in April of 2013 the Morin faction was asking for meetings of the PMC to be called with agenda items to include a review of the executive's administration of the financial affairs of MNS. President Doucette took the position that the authority to call meetings of the PMC and to set the agenda lay with him as President, or with the executive as a whole. He was prepared to call meetings of the PMC only when and pursuant to terms and/or an agenda set by him. As a result no properly constituted PMC meetings were held in 2013 after the February meeting.

[8] Commencing May 23, 2014 President Doucette wanted to call a PMC meeting with only one agenda item, being the calling of a MNLA. For various reasons the members of the Morin faction were not prepared to or were unable to attend the PMC meetings called by President Doucette. As a consequence no meeting could be held because a quorum could not be assembled.

[9] The Morin faction has taken the position that they are prepared to attend a PMC meeting called by President Doucette if it is understood that a majority of the

members of the PMC at meetings determines the agenda.

**Issues to be considered**

[10] The following issues arise in this application:

a) The Authority Issue – Were the proceedings and the application brought without proper authority and if so should the application be dismissed on that basis?

b) The Court's Jurisdiction - If Robert Doucette, in a representative capacity, has the status and authority to commence the action and bring the application, can and should the court intervene to provide interim mandatory injunctive relief in respect of a political dispute within a self-proclaimed legislative body?

c) The Appropriate Test – If the court assumes jurisdiction, what is the appropriate test to apply in determining whether mandatory injunctive relief should be granted given that political positions and democratic rights within a voluntary organization are involved?

d) The Scope of Relief - Assuming the criteria for entitlement to mandatory injunctive relief are satisfied, what is the appropriate scope of the mandatory injunctive relief to be granted?

**Background Facts**

*The Constitution of Métis Nation - Saskatchewan*

[11] *The Métis Act,* SS 2001, c M-14.01 [the *Act*] recognizes the contribution of the Métis people to Canada and Saskatchewan and in s. 3

provides that the Government of Saskatchewan and Métis Nation – Saskatchewan (an undefined term in the *Act*) will work together in a bilateral process to address various issues. The *Act* does not establish nor reference in any way the Constitution of Métis Nation - Saskatchewan.

[12] The *Act* does create a non-profit corporation called Métis Nation - Saskatchewan Secretariat Inc. to be the administrative body by which the policies and programs of Métis Nation - Saskatchewan are to be carried out and administered. Beyond these two references in the *Act* there is no further reference to Métis Nation – Saskatchewan.

[13] Métis Nation - Saskatchewan came into existence by virtue of the Constitution of Métis Nation - Saskatchewan [the Constitution] which was proclaimed by Métis people in Saskatchewan on December 3, 1993 and has been amended from time to time since. Thus MNS is a voluntarily organization and self-proclaimed nation established by individuals who self-identified as Métis in Saskatchewan. The Constitution states in Article 12 that MNS is seeking self-government as a third order of government within Canada.

[14] The Constitution spells out the organizational structure for MNS. Article 2 provides that there shall be a MNLA which is the governing authority of MNS. This body has the authority to enact legislation, regulations, rules and resolutions governing the affairs and conduct of the Métis in Saskatchewan. Among other things Article 2(11) provides that all budgets shall be determined by the MNLA based upon recommendations of the PMC.

[15] Article 3 establishes an 18 member PMC, which is composed of the elected regional representatives, the four elected members of the executive, and one representative from each of the Métis Women of Saskatchewan and the Provincial Métis Youth Council. The PMC is expressly stated to form the cabinet of the MNLA and be responsible for the portfolios assigned and recommended by the President. Article 3(5) states that the PMC shall meet at least once every two months and 11 members shall form a quorum.

[16] Article 3(7) provides that the PMC shall provide written reports to the MNLA and Article 3(10) provides the PMC shall set the date and place for each MNLA sitting. Members of the PMC are also members of the MNLA.

[17] Article 4 states that there shall be four executive members of the MNLA, elected province-wide composed of a president, vice president, secretary and treasurer. The term of office for the executive is four years. Article 4(4) states that the president shall be the head of the executive and chief political spokesperson for the organization. Article 4(4)(b) states that the president shall assign and recommend portfolios subject to the approval of the PMC and ratification by the MNLA. Article 4(5) states the executive shall meet at least once per month and three members shall constitute a quorum. Article 4(6) states that the executive shall provide written reports to the MNLA.

*Previous Disputes and Decisions of this Court*

[18] On May 5, 2013 the board of directors of Métis Nation - Saskatchewan Secretariat Inc. (composed of the same individuals as the PMC) passed resolutions

purporting to change the signing officers of the corporation from the Treasurer and one other member of the executive (which had customarily been the President) to any two of the Treasurer, Gerald Morin and Darlene McKay. This occurred in the context of differences between the Doucette faction and the Morin faction where the Morin faction was expressing concerns about the executive's financial management of MNS and lack of reporting to the PMC in regard thereto.

[19] Robert Doucette had not been calling the PMC meetings and from the perspective of the Morin faction was governing through the executive. The Morin faction, by this action, sought to take control of the financial affairs of MNS since Métis Nation - Saskatchewan Secretariat Inc. was the administrative body by which the policies and programs of MNS are carried out and administered.

[20] Métis Nation - Saskatchewan Secretariat Inc. then sought an interlocutory injunction requiring their banks to honour their directors' banking resolution. Robert Doucette was made a party to the proceedings and opposed the application for the injunction. The banks took no position.

[21] By a June 28, 2013 decision of Laing J. in *Métis Nation (Saskatchewan Secretariat Inc.) v Royal Bank of Canada*, 2013 SKQB 257, 425 Sask R 77, the request for an injunction requiring the banks to honour the directors' banking resolution was dismissed. Justice Laing found that while there was evidence of governance issues of concern within MNS determination of those issues would require a trial. He found that there was no evidence in the material before him that Mr. Doucette had caused harm or damage as signing officer for MNS and there was potential harm to MNS if its president was restrained in the manner sought in the application. Laing J. dismissed the application for an injunction on the basis that the

balance of conveniences test and the overall equities of the matter favoured denying the injunction sought.

[22] A petition was circulated purporting to call a Special Meeting of the Métis Nation - Saskatchewan Secretariat Inc. for June 29, 2013. On June 29, 2013 such a meeting was held and it purported to convene a meeting of the MNLA for September 7 and 8, 2013. This MNLA meeting was held and purported to make numerous amendments to the Constitution that were supported by the Doucette faction. The defendants in this action applied to quash the meetings and any resolutions arising therefrom. By judgment of March 20, 2014 in *Gerald Morin v Métis Nation - Saskatchewan Secretariat Inc. and Métis Nation Legislative Assembly*, QB 1519/2013, Keene J. held that under the Constitution only the PMC can call or schedule a MNLA and as such that the meetings and anything arising from the September 2013 MNLA meeting including amendments to the Constitution or the suspension of any members was a nullity.

*The context within which this application is brought*

[23] Given the differences Robert Doucette and the Doucette faction adopted the strategy of administering the affairs of MNS as the elected executive without recourse to the PMC. This they were able to continue to do by not calling PMC meetings, which Robert Doucette claimed as his right and privilege as president. This strategy avoided the, at least symbolic, *coup d'etat* that was likely to arise from a PMC meeting where the Morin faction would outvote the Doucette faction. This strategy worked until the federal government cut off funding.

[24] Requiring funding, the Doucette faction now needs a PMC meeting to

call a MNLA in the hope that the flow of federal funding can then be re-instituted. The Doucette faction no doubt hopes to carry a majority of votes at the MNLA but to avoid the Morin faction orchestrating what happens at the PMC, the Doucette faction wants a PMC meeting that deals with only one issue, the fixing of a time and place for a MNLA. For its part the Morin faction through its control of the agenda at the PMC apparently hopes to extract financial accounting or other information from the executive and set the agenda for the MNLA.

[25] The Morin faction says that it is happy to attend a PMC and fix a date and place for a MNLA, but they will not agree to a restricted agenda in the PMC. Clearly there are other matters the Morin faction wishes to make decisions on at a PMC meeting, and with their majority they will be able to control the agenda. Among other things the Morin faction hopes to impose financial reporting, accountability measures and other measures they are calling for.

[26] On this chess board of Métis Nation politics, the Doucette faction seeks a mandatory injunction to finesse the stalemate and move to "check", i.e., going directly to an MNLA without debate at the PMC. The Morin faction's opening response to this move is that there has been no valid authorization by any of the originally named plaintiffs to bring the action and seek the injunction. Therefore they say that the action should be struck out as having been commenced by legal counsel without any authority to do so.

*a) The Authority Issue - Are the proceedings brought without proper authority and if so should the application be dismissed on that basis?*

[27] The defendants/respondents cited a number of authorities that support

the proposition that *prima facie,* one director of a corporation has no power to act on behalf of a corporation and when a solicitor's right to issue a writ in the name of a corporation is questioned the onus is on the solicitor to show proper authorization to bring the proceedings. This the Morin faction says plaintiff's counsel cannot do since no authority to bring the proceedings has been authorized by any of the originally named plaintiffs.

[28] Clearly the board of Métis Nation - Saskatchewan Secretariat Inc. has not authorized these proceedings. There are, in my assessment, concerns beyond the lack of board authorization. The *Act* makes it clear that this corporation is the administrative body by which the policies and programs of MNS are to be carried out and administered. That being so it has no role to play in the political or democratic processes of MNS. Its sole role is to carry out the policies and programs of MNS from an administrative perspective.

[29] Quite apart from the arguments made by counsel for the respondents that the board of this corporation has not authorized these proceedings, I am of the opinion that Métis Nation - Saskatchewan Secretariat Inc. has no standing and no right to become involved in the democratic and political affairs of MNS. The legislation clearly intended the scope of its activities to be the administrative vehicle by which the policies and programs of MNS were implemented and delivered. It was not intended to be part of the political processes within MNS. Accordingly I order that Métis Nation - Saskatchewan Secretariat Inc. shall be struck as a plaintiff in the proceedings.

[30] The next issue is whether MNS or the MNLA must give authorization for counsel to bring this action or whether the authority of the president or a majority

of the executive suffices. With the exception of *Caribbean Cultural Committee v Toronto (City)* (2002), 21 CPC (5th) 274 (Ont Sup Ct) [*Caribbean Cultural*], the authorities cited by the respondents all deal with the issue of corporate authorization to take legal proceedings. I do not find these cases to be of assistance and on examination nor does the decision in *Caribbean Cultural* provide helpful guidance in this situation.

[31] *Caribbean Cultural* is a case where the defendant City of Toronto successfully sought to strike out proceedings against it on the basis that in fact the proceedings had not be authorized by the Caribbean Cultural Committee itself. The court reasoned that in the context of the applicable Ontario *Rules of Court* that such authorization was required. The decision is distinguishable from the present case. In *Caribbean Cultural* the organization was taking proceedings against an external entity. In such situations it is an easy matter and appropriate that the organization as a whole authorizes the proceedings. Here the proceedings involve an internal dispute where factions have manoeuvered the decision-making process into a stalemate.

[32] More helpful guidance is provided by the following decisions:

a) In *Woloshyn v Assn. of United Ukrainian Canadians*, 2013 ABQB 262, 53 Admin LR (5th) 119 [*Woloshyn*], a member of the United Ukrainian Committee applied for an injunction of the sale of a camp owned by the organization. The court started by observing that while courts should be hesitant to interfere in the private affairs of voluntary organizations it concluded it would in the circumstances of the case stating at para. 10:

> ... In *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 SCR 165, members of an Hutterite colony had

> been ordered by the colony to vacate the property. The court held that courts should be slow to exercise jurisdiction over the question of membership in a voluntary association but that "...the courts have exercised jurisdiction where a property or civil right turns on the question of membership" (para 6), where either property and contractual rights are affected, the court may intervene (para 8), and that whether it is a property or contractual right, the question is whether it is "...of sufficient importance to deserve the intervention of the court and whether the remedy sought is susceptible of enforcement by the court" (para 9).

b) In *Lee v Yeung*, 2012 ABQB 40, 531 AR 171 [*Lee*], members of the board of directors of the Photographic Arts Society of Alberta applied for an order setting aside an election of the board of directors. There were disputes surrounding the election date, and thus disputes around the elections themselves. The court stated that while the case of *Lakeside Colony of Hutterian Brethren v Hofer*, [1992] 3 SCR 165 [*Hutterian Brethren*] specifically dealt only with individual and property rights of the aggrieved members, the courts will also intervene in the private activities of non-statutory bodies where the aggrieved parties have no other remedy available to them. In such cases, the Alberta Court of Queen's Bench said judicial intervention is not only appropriate but can be expected. The court said at para. 55:

> This Court is entitled to review the impugned election to determine: whether PASA's rules have been observed; whether anything has been done contrary to natural justice; and whether the election result was reached in a *bona fide* manner.

c) In *Sandhu v Siri Guru Nanak Sikh Gurdwara of Alberta*, 2013 ABQB 646 [*Sandhu*], the court was willing to referee what they

had characterized as an internal power struggle of the organization. The court stated at paras. 55 and 56 that:

> 55 I appreciate also Justice Gonthier's reluctance to rely exclusively on the written documents without reference to the tradition and customs of the Hutterites and that voluntary associations are meant largely to govern themselves and to do so flexibly.
>
> 56 That does not mean that the jurisdiction of this court cannot extend in certain ways to supervision of organizations to which a person is voluntarily affiliated, particularly religious organizations. "[I]f there is a justiciable right, then there must be a court competent to vindicate the right ...": ...

[33] While *Hutterian Brethren* focused on the need for providing a remedy for property or contractual rights disputes within a voluntary organization, I am of the view that there is a similar need where the issue involves constitution rights or duties within a voluntary organization. The bottom line of the decisions in *Lee* and *Sandhu* is that where breaches of rights or duties are alleged within voluntary organizations the courts are competent to and have the jurisdiction to adjudicate disputes.

[34] Given that neither MNS or MNLA have in fact authorized these proceedings, it is obvious that Robert Doucette or the Doucette faction have authorized counsel to bring the proceedings in the names of MNS and MNLA. The proper procedure, in my view, would have been for Robert Doucette or the Doucette faction members of the executive to have brought the action in a representative capacity under Rule 2-10 of *The Queen's Bench Rules*. Rule 2-10 states that if numerous parties have a common interest in the subject of an intended claim, one or more of those persons may make the claim.

[35] In light of authorization concerns I expressed, counsel for the plaintiff made an application to substitute for the originally named plaintiffs in the action, Robert Doucette in a representative capacity representing Métis Nation - Saskatchewan. Robert Doucette was present in court and agreed to this. I ordered, that the amendment sought was granted and we proceeded on the basis that Robert Doucette as representative of Métis Nation - Saskatchewan was the plaintiff in the action.

[36] I am of the view that a member of an executive of a voluntary organization has standing to bring proceedings in a representative capacity to enforce constitutionally based rights or duties of other members of the organization. It has often been said by the courts that the rules are the servants not the masters of the court and this is reinforced by the foundational rules that are now part of our *Queen's Bench Rules*. As stated by Danyliuk J. in *McKinnon v Red Lily Wind Energy Corp.*, 2013 SKQB 316, 429 Sask R 26:

> 9 ... The rules are to be used to identify the real matters in dispute and to facilitate the quickest means for resolving claims at the least expense. Parties are obliged to communicate in an open, honest and timely manner. The court will also bear these foundation rules in mind when dealing with applications.

[37] The matter before the court is significant and has an urgency to it. While it was inappropriate for Robert Doucette to bring the action without acknowledging he was doing so in a representative capacity, that failing does not detract from the obligation of the parties and the court to find a way to resolve the matter in the quickest way at the least expense. This is accomplished by the amendment I have ordered.

*b) The Court's Jurisdiction - If Robert Doucette, in a representative capacity, has the status and authority to commence the action and bring the application, can and should the court intervene to provide interim mandatory injunctive relief in respect of a political dispute within a self-proclaimed legislative body?*

[38] I have already addressed and decided this question in my discussion above flowing from the decisions in *Woloshyn, Lee* and *Sandhu.* While the courts are reluctant to intervene in the internal affairs of voluntary organizations and will not become involved where the matters in dispute are of limited impact and/or lack sufficient gravitas, the matters in issue here have a significant impact on a significant number of people. The Constitution adopted for MNS creates rights and duties and where such rights or duties are breached there needs to be a remedy. The circumstances are such that the court is not only entitled to assume jurisdiction, but the court should do so.

*c) The Appropriate Test – If the court assumes jurisdiction, what is the appropriate test to apply in determining whether mandatory injunctive relief should be granted given that political positions and democratic rights within a voluntary organization are involved?*

[39] The applicants argue that usual three part test of:

a) A serious question to be tried;

b) Irreparable harm; and

c) A balance of convenience that favours the applicant;

for injunctive relief should be the test applied here.

[40] There is no question but that this is the standard test applied in most cases where injunctive relief is sought to restrain actions that are claimed to breach the applicants' rights at law. Whether the "serious question to be tried" test is the proper test to apply in cases where the applicant is seeking a mandatory order

requiring specific actions to be taken within a voluntary organization was not argued and has not been demonstrated to me. Arguably a mandatory injunction attracts a higher trigger point than a mere serious question to be tried. This may be so because a mandatory injunction in facts alters the *status quo* pending trial as opposed to preserving a *status quo*.

[41] Given the established reluctance of the courts to interfere in the internal matters of voluntary organizations, especially where the interference touches on matters of political or democratic choice it is arguable that more than a serious issue to be tried needs to be demonstrated, especially when the relief sought is a mandatory order to perform an alleged duty as opposed to an order that restrains the acts that are said to breach rules or rights. However even if the proper test, at the first stage of the inquiry, is the establishment of a *prima facie* case, I find the test at this level has been satisfied.

[42] I find there is *prima facie* proof of a breach of a constitutionally mandated duty of the PMC. The Constitution requires meetings of the MNLA at least twice a year and only the PMC can schedule such a meeting. Thus the PMC has a clear duty to call such a meeting and it has been in breach of such duty. This is clear. Who is responsible for that breach is not so clear, but it is not necessary for me to decide that.

[43] The decisions to be made with respect to the second and third tiers of the injunction test are equally clear. The failure of the PMC to call and schedule the biennial MNLA's causes irreparable harm to MNS quite apart from the fact that one of the consequences has been that the federal government has suspended funding necessary for MNS to carry out its various programs. No MNLA means the members

of MNLA and the members of MNS generally have been deprived of the reporting they are entitled to and the ability to make decisions for MNS under a democratic process. The delay or denial of the opportunity to exercise rights of democratic decision-making process is in my opinion an irreparable harm that can and should be remedied by mandatory injunctive relief.

[44] The balance of conveniences test is also met. In my opinion there is no countervailing weight whatsoever on the opposite side of this test. It can never be appropriate to ignore the requirements of the constitution of a voluntary organization and thereby emasculate its democratic decision-making process.

*d) The Scope of Relief - Assuming the criteria for entitlement to mandatory injunctive relief are satisfied, what is the appropriate scope of mandatory injunctive relief to be granted?*

[45] As I have noted above, the court must in exercising its jurisdiction and granting a remedy be careful that it does not infringe on the democratic rights of the organization and intervene no more than is necessary to right the underlying wrong or breach of duty. It is clear that within MNS there are profoundly differing political and personal views as to what is in the best interests of MNS.

[46] The court must be diligent in ensuring that the relief it grants does not compromise the ability of factions and individuals to advance their policy and political agendas, provided that in doing so they adhere to the constitutional requirements and the embedded principles of democratic decision-making. Accordingly, the relief that I grant will be no broader than is necessary to enforce performance of the constitutional duty that applies to all members of the PMC.

[47] I order as follows:

a) Within seven days of the date of this order Robert Doucette as president shall give notice of date, time and place for the commencement of a meeting of the PMC. This notice shall provide a minimum of seven days' notice for a PMC meeting to occur no later than January 23, 2015.

b) The meeting shall be scheduled for at least two consecutive days.

c) MNS shall pay the expenses of those members of the PMC who attend in person in accordance with their usual policy or protocol. To the extent possible such monies shall be paid in advance.

d) No one shall attach any conditions restricting the agenda of the meeting nor make determinations as to whether potentially disputed members of the PMC are qualified to participate. All decisions with respect to whether any individual is properly a member of the PMC shall be made by a majority of the acknowledged proper members of the PMC and when any such issues are decided the agenda for the meeting of the PMC shall be settled by a majority vote of the members of the PMC present.

e) The agenda for the PMC meeting shall be determined by a majority vote of the members of PMC. The first item on the agenda, after addressing any issues arising in respect of (d) above, shall be the fixing of date, time and place for the next meeting of MNLA. A decision shall be made by PMC to fix a date, time and place for the next meeting of MNLA before the meeting adjourns.

f) *Robert's Rules of Order* shall govern the proceedings of the PMC meeting.

g) Members of the PMC who are unable, for good and proper reason, to

attend in person shall be entitled to participate by telephone and conference call capabilities to permit this shall be provided.

**Additional Comments**

[48] I was invited by counsel for both parties to go beyond making specific orders and provide guidance for the consideration of the parties. While hesitant, I offer additional thoughts knowing it is understood by all that these reflections are guidance only and not matters I order. In providing relief by way of mandatory order, I have been careful not to intrude upon the ultimate right of members of the PMC, MNLA and MNS to exercise their democratic rights to decide.

[49] What I offer is not profound. It is simple common sense reflections on principles and processes that must be adhered to if Métis Nation – Saskatchewan is to survive. It appears that with their intense focus on the conflicts at hand, the parties have lost sight of how Métis Nation – Saskatchewan was intended to operate. I remind the parties that MNS was created to be a democratically governed political action group committed to the betterment of the Métis people of Saskatchewan. Read your Constitution and focus on the big picture. The Constitution created an organization that was clearly intended to be democratic at every level. This principle must be accepted at every level.

[50] I do not profess to have insights into the originating cause(s) or actions that have led to the present toxic situation. I do know that the limited orders that I have made will not purge the conflict; they simply require the parties to do what the Constitution requires. MNS cannot survive unless the principles of democratic decision-making are accepted by all, at each level with MNS.

[51] No one person or group of persons is entitled to dictate what the PMC can consider or will do. The decisions of the majority will decide issues and all parties must respect those decisions. Only the MNLA at meetings properly convened, on issues properly before it, can override the collective decisions of the PMC. The Constitution so provides. The democratic decision-making process must be respected at all levels within the MNLA or the present death spiral will steepen and the organization will be torn apart.

[52] While the core principle is that the majority decides, a complementary principle of the democratic process is the right of a strong minority to call on the majority to deliberate – that is to make good faith decisions after a full and fair debate or discussion of the issues. Without respect by the majority, for minority views, the rule of the majority risks becoming a tyranny of the majority. If the rule of the majority becomes tyranny of the majority then you have failed.

[53] In the hope of achieving respectful deliberations I have, knowing they have been used in the past within MNS, ordered that *Robert's Rules of Order* shall be used to govern the process of decision-making within the meeting of PMC I have ordered. Once the decision is made by the majority following this process, accept the decisions made and move on.

J.
B. SCHERMAN