

**PICHE
HUMPHRIES**

Barristers & Solicitors

Ronald P. Piché B.A., LLB.

Kimberley R. Humphries B.A., LLB.

Dwayne G. Roth LLB.

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TELECOPIED

Metis Elections Commission
[REDACTED]
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[REDACTED]
S7J 0V9

ATTENTION: Ms. Nora Ritchie, Chairperson

Dear Madam:

RE: Metis Nation of Saskatchewan Elections Act, 1997
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The following is my opinion regarding the validity of the Elections Act, 1997, and its use in the upcoming general elections of the Metis Nation of Saskatchewan. At the outset, I advised that the election should be conducted pursuant to the Act. However, your initial review, with myself and the Chief Electoral Officer, of the procedure required therein revealed serious obstacles preventing full compliance with the Act.

After a careful review of the Act, the Constitution of the Metis Nation of Saskatchewan and the general developments to date, it is my opinion that the Act is not presently in force, and as such, the upcoming election may be conducted pursuant to the Election Regulations as in the past. I base this decision upon two grounds: a reading of the legislation and the intention of the legislators.

1. The Legislation

First, there is a legal issue dealing with the validity of the Act itself. The Metis Senate has the final and binding power to resolve disputes in Regions and Locals pursuant to Article 12, section 4 of the Constitution. On October 21, 1996, the Senate resolved a dispute in Western Region 2A by suspending Robert Doucette from "all rights and privileges associated with the position of Regional Director of Western Region 2A." The Senate confirmed in writing that Robert Doucette was still suspended during the Metis Nation Legislative Assembly meeting of November 14, 1997. Therefore, he did not have standing at the MNLA and thus, his motion to adopt the Act was invalid which questions the validity of the Act itself.

In any event, the Elections Act, 1997 does not effectively state whether or not it is in force. Specifically the Act:

- a) Fails to state that the older Elections Regulations are no longer in force, or otherwise repealed;
- b) Fails to state its date of operation; and
- c) Is inconsistent with the Constitution of the Metis Nation of Saskatchewan;

The Act does not indicate that it is in force when proclaimed or in force on a particular day as does other legislation. There is also the question of its affect upon the Election Regulations. I note that the Court in Hammersmith v. Metis Society Inc. (1994), endorsed the present elections process using the Regulations. There are also a number of provisions in the Act that conflict with the MNS Constitution such as:

- a) The Act allows the centralization of up to six polling divisions within each Region (S.25) while the Constitution calls for a poll in each Local (Article 8, Section 5);
- b) The Act empowers the MNLA to appoint the Chief Electoral Officers (S.4) while the Constitution empowers the Metis Elections Commission to do so (Article 8, Section 7(e));
- c) The Act empowers the Regional Council to appoint a returning officer (S.8), the returning officer is empowered to appoint a deputy returning officer and the deputy returning offer is empowered to appoint a poll clerk (S.11). The Constitution empowers the MEC to appoint all required personnel (Article 8, Section 7(e));
- d) The Act does not mention the Metis Elections Council while the Constitution empowers the MEC to oversee and conduct the election (Article 8, Section 7);
- e) The Act does not mention recounts and appeals while the Constitution provides that the MEC conducts recounts and appeals (Article 8, Section 7(f)), with a final right of appeal to the MNLA (Article 8, Section 13).

I note that the Court in Metis Elections Commission v. Dorion (1996), endorsed the MNS Constitution and particularly those portions dealing with elections.

Thus, the legislation itself casts doubt on whether or not it is presently in force. Furthermore, the intention of the legislators, as gleaned from its actions, does little to remove that doubt. The actions of the Metis Nation Legislative Assembly

indicate that it did not intend that the Act was to be in force for this election. Specifically:

- a) The MNLA did not establish a date for an advance poll despite the requirement to do so under S.65(1) of the Act;
- b) The MNLA did not provide funds to conduct an advance poll, which would have effectively doubled the current election budget, pursuant to the requirement to provide the necessary financial resources under Article 8 Section 7(n) of the Constitution;
- c) Nor did the MNLA provide a budget that included the costs to hire an Assistant Chief Electoral Officer, twelve returning officers, and one enumerator for each Local as required under the Act (S.S. 7(1), 8(1), 15(5) respectively;
- d) The MNLA did not appoint a Chief Electoral Officer pursuant to S.4 of the Act, nor an Assistant Chief Electoral Officer pursuant to S. 7 of the Act;
- e) The MNLA did not pass an "Election Proclamation" as required under S.21(1) of the Act;
- f) The MNLA did not provide the "prescribed form" for an oath or declaration required under S.11(7) of the Act;
- g) The MNLA did not provide the "prescribed form" for the ballot paper as required under S.24(1) of the Act;
- h) Nor does the MNLA provide the appropriate forms for the nomination papers (S.32), the certificate of nomination (S.33), or a voter's declaration (S.50).

The aforementioned conduct of the MNLA is consistent with an intention not to use the Act for this election. Furthermore, certain conduct of the MNLA as indicated above makes full compliance with the Act impossible (such as the advance poll). Lastly, the MNLA passed the Act a mere three months prior to the election leaving very little time to properly implement the Act and educate the election staff. In fact, the money for training of the deputy returning officers was specifically removed from of the proposed election budget. From all of the above I am of the opinion that although the Metis Nation of Saskatchewan Elections Act, 1997 was adopted by the MNLA, it is not presently in force.

I am also cognizant of the motion made by the Provincial Metis Council (PMC) on January 5, 1998, that the Act is in force. However, with all due respect to the fine individuals on the PMC

I note, that as the court stated in Dorion, the MNLA is the governing authority of the MNS and nothing in the Constitution permits the PMC to exercise the powers of the MNLA.

I trust this is satisfactory. If you have any questions or comments please do not hesitate to call.

Thank you.

Yours truly,

PICHÉ HUMPHRIES

TRUDEAU.

Per: Dwayne (Trudeau) G. Roth
Barrister and Solicitor

DGR:am

cc: Earl Pelletier, Chief Electoral Officer