

As the original peoples who had occupied the lands and territories for thousands of years throughout the region that became Canada, Aboriginal peoples have unique legal and constitutional rights. These rights arose from their initial occupation and ownership of the land, and were affirmed in the Royal Proclamation of 1763, which also decreed that the Crown had a special duty to deal fairly with, and protect, Aboriginal peoples and their lands. Subsequently, the Dominion of Canada assumed this fiduciary obligation under Section 91(24) of the *Constitution Act, 1867*, which gave Parliament legislative authority over “Indians, and lands reserved for Indians.” Section 35 of the *Constitution Act, 1982* also recognized and affirmed existing Aboriginal and Treaty rights.

In several key decisions, Canadian courts have said that the federal government must always uphold the honour of the Crown in its dealings with Aboriginal peoples. In *R. v. Sparrow* (1990), the Supreme Court ruled that “the Government has the responsibility to act in a fiduciary capacity with respect to aboriginal peoples. The relationship between the Government and aboriginals is trust-like, rather than adversarial ... the honour of the Crown is at stake in dealings with aboriginal peoples.” In *Haida Nation v. British Columbia (Minister of Forests)* (2004), the Supreme Court ruled that “in all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably,” and that “the honour of the Crown ... is not a mere incantation, but rather a core precept that finds its application in concrete practices.” In other words, the honour of the Crown is not merely an abstract principle, but one that must be applied with diligence.⁶¹

In *Manitoba Métis Nation Inc. v. Canada (Attorney General)* (2013), the Métis Nation argued that when the Métis peoples negotiated an agreement with the federal government that would enable Manitoba to enter Confederation, “they trusted Canada to act in their best interests ... [and] to treat them fairly.”⁶² The Supreme Court said that in 1870, the

broad purpose of S. 31 of the *Manitoba Act* was to reconcile the Métis community with the sovereignty of the Crown and to permit the creation of the province of Manitoba. This reconciliation was to be accomplished by a more concrete measure—the prompt and equitable transfer of the allotted public lands to the Métis children. [para. 98]

Ruling in favour of the Manitoba Métis Nation, the court observed that their “submissions went beyond the argument that the honour of the Crown gave rise to a fiduciary duty, raising the broader issue of whether the government’s conduct generally comported with the honour of the Crown” (para. 87). The court found that although Section 31 promised that land grants to Métis peoples would be implemented “in the most effectual and equitable manner,” this did not happen. “Instead, the implementation was ineffectual and inequitable. This was not a matter of occasional negligence, but of repeated mistakes and inaction that persisted for more than a decade. A government sincerely intent on fulfilling the duty that its honour demanded could and should have done better” (para. 128).