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Memorandum

Date: March 3, 2025
From: Lorenzo Rose, firm partner, and Jeremy Coleman, articled student
Case Brief: ***Saskatchewan (Environment) v Métis Nation – Saskatchewan*, 2025 SCC 4**

On Feb 28, 2025 the Supreme Court of Canada (the "**SCC**") released a unanimous decision in favour of the Métis Nation – Saskatchewan (the "**MNS**") in the case of *Saskatchewan (Environment) v Métis Nation – Saskatchewan*, 2025 SCC 4 ("***Saskatchewan v MNS***").

What was the case about?

The MNS asserts Métis rights in the Province of Saskatchewan. For over 20 years, MNS have been engaged in a series of legal proceedings with the Government of Saskatchewan ("**Saskatchewan**").

In 1994, MNS commenced an action seeking declarations of Aboriginal title and commercial harvesting rights over land in northwestern Saskatchewan (the "**1994 Action**"). The 1994 Action was stayed (i.e. temporarily suspended) in 2005, on the basis of MNS's failure to disclose certain documents to Canada and Saskatchewan.

In 2010, Saskatchewan adopted the *First Nation and Métis Consultation Policy Framework* (the "**2010 Policy**"), which stated that Saskatchewan would not recognize Aboriginal title or commercial harvesting rights and, accordingly, would not consult with First Nations or Métis regarding these matters. In 2020, MNS commenced an action against Saskatchewan with respect to the 2010 Policy (the "**2020 Action**") and sought declarations that: the 2010 Policy was invalid; reliance on the 2010 Policy breached the honour of the Crown; and Saskatchewan's duty to consult includes claims to Aboriginal title and to commercial harvesting rights. A decision in the 2020 Action is pending.

In July 2021, Saskatchewan issued three uranium exploration permits to NexGen Energy Ltd. to conduct mineral exploration work near Patterson Lake in northwestern Saskatchewan (the "Decision"). In March 2021, MNS received notice from Saskatchewan that it intended to consult MNS with respect to the permits and Aboriginal rights to fish, trap and hunt. However, Saskatchewan refused to consult MNS with respect to the permits and Aboriginal title or commercial harvesting rights.

In August 2021, MNS initiated an application for judicial review of the Decision, arguing that Saskatchewan breached its duty to consult MNS, including with respect to Aboriginal title and commercial harvesting rights (the "**2021 Application**"). In response, Saskatchewan sought to strike specific paragraphs of the 2021 Application which referred to Aboriginal title and commercial harvesting rights, arguing that such paragraphs constituted an "abuse of process" in light of the 1994 Action and 2020 Action.

The doctrine of abuse of process is concerned with the administration of justice and preserving the fairness of legal proceedings. It is a flexible doctrine that can arise where there is an attempt to relitigate a claim that has already been decided, where there are a multiplicity of proceedings that engage the same issues, or where there is inordinate delay that causes serious prejudice to a party to the proceeding.

How was the case decided?

Saskatchewan argued that the challenged paragraphs in the 2021 Application constituted an abuse of process because it raised the same issues raised in the 1994 Action and 2020 Action, and due to the passage of time since the 1994 Action was stayed in 2005.

The SCC rejected Saskatchewan's argument that MNS' Aboriginal title and commercial harvesting rights claims "may be presumed abandoned" due to MNS' inaction in the 1994 Action. The SCC held that "the 1994 Action is not, in and of itself, MNS's asserted claim. Rather, it is the legal vehicle which MNS selected in order to *vindicate* the claim" (at para 53, emphasis in original).

Further, the SCC held that the challenged paragraphs in the 2021 Application also did not constitute an abuse of process because of potential overlapping issues across the 1994 Action, the 2020 Action and the 2021 Application. Abuse of process requires more than mere similarity of issues – "it must threaten the integrity of the adjudicative process or another fundamental principle, such as consistency, finality or judicial economy." The SCC held that it "would be a misuse of abuse of process, in effect, to immunize from judicial

review actions taken by Saskatchewan that might impact MNS's claimed Aboriginal title and commercial harvesting rights" (at para 59).

The SCC concluded that while "abuse of process is possible in proceedings involving Indigenous litigants, as it is for others…the unique context of litigation to vindicate Aboriginal rights must always be borne in mind, both as to whether an abuse exists, and if so, what follows from that – i.e., what order would be appropriate. Court procedures should facilitate, not impede, the just resolution of Aboriginal claims" (at para 62).

Why is the case important?

The decision in *Saskatchewan v MNS* confirms that the duty to consult protects Aboriginal rights and title even when a claim to establish those rights and title is not being actively pursued. In addition, the decision confirms that Indigenous peoples who choose to bring actions to protect their asserted Aboriginal rights are not prevented from bringing judicial reviews challenging the Crown's failure to properly consult pending completion of the action.

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