Supreme Court Allows Saskatchewan Métis to Continue Challenge of Uranium Permits

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On February 28, 2025, the Supreme Court of Canada issued a unanimous decision allowing the Métis Nation – Saskatchewan ("MNS") to continue its application for judicial review of the Government of Saskatchewan's decision to issue uranium exploration permits in Northern Saskatchewan, based on a refusal to consult with MNS.

Saskatchewan had tried to block portions of the MNS application. It alleged that the application raised many of the same issues already raised by MNS in other outstanding court proceedings. Saskatchewan took the position that this was an abuse of court process.

1. History of Proceedings

MNS has long asserted that it has Aboriginal title and rights, to hunt, fish and trap for commercial purposes on lands in Northern Saskatchewan. According to MNS, this gave rise to a duty of consultation with respect to any government decisions that might have adverse impacts on the exercise of those rights. Saskatchewan has consistently denied the assertions of MNS.

In 1994, MNS first sought a court declaration of Aboriginal title and commercial harvesting rights. A judge of the Saskatchewan Court of Queen's Bench (as it then was) stayed those proceedings when MNS failed to comply with a court order requiring it to produce certain documents. Neither party took steps to further advance or end the proceeding.

In 2020, MNS brought a new action to seek to invalidate Saskatchewan's new Indigenous consultation policy. MNS claimed that Saskatchewan had a duty to consult on matters of Aboriginal title and commercial harvesting rights, while Saskatchewan took the position that it owed no such duty to the Métis.

When, in 2021, Saskatchewan issued three uranium exploration permits on lands over which MNS was asserting rights, MNS brought the application at issue.

2. The Lower Courts

On Saskatchewan's application in 2021, a Court of Queen's Bench judge struck out certain claims made in the 2021 proceedings, holding that the same issues had already been raised in the earlier proceedings.

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The Saskatchewan Court of Appeal sided with MNS; it held that the proceedings were not identical and, although they covered many of the same issues, there was no abuse of process.

3. The Supreme Court of Canada

Justice Rowe wrote the unanimous decision of the Court. The Court agreed with MNS and the result from the Court of Appeal. The 2021 application did not constitute an abuse of process. Justice Rowe wrote:

...The fact that there are two or more ongoing legal proceedings which involve the same, or similar, parties or legal issues, is in itself not sufficient for an abuse of process. There may be instances where multiple proceedings will enhance, rather than impeach, the integrity of the judicial system, or where parties have a valid reason for bringing separate, but related, proceedings. The analysis should focus on whether allowing the litigation to proceed would violate the principles of judicial economy, consistency, finality, or the integrity of the administration of justice.

He differentiated the application to determine whether Saskatchewan has a positive duty to consult when Indigenous rights are asserted with the 1994 action, which seeks to "vindicate" and firmly establish the MNS claim to Aboriginal title and commercial harvesting rights. On those terms, the issues are not identical.

Justice Rowe then considered obvious overlap between the 2020 and 2021 applications. He wrote:

…Such overlap does not give rise to concerns about the integrity of the adjudicative process or another fundamental principle, such as consistency, finality, or judicial economy. The 2021 Application is a proper mechanism for MNS to challenge the permits and for MNS to pursue an interim remedy for the potential breach of its claimed Aboriginal title and commercial harvesting rights. It would be a misuse of the doctrine of abuse of process to immunize from judicial review actions taken by Saskatchewan that might impact MNS's claims. Regarding the finality of litigation, there is potential for inconsistent outcomes should the 2020 Action and the 2021 Application continue in parallel and yield different answers to the question of whether Saskatchewan has a duty to consult on Aboriginal title and commercial harvesting rights.

He went on to say that the potential for conflicting court decisions could be avoided through the use of case management in the proceedings.

4. Lessons Learned

This decision is unremarkable in its restatement of the circumstances under which a court will dismiss an action as being an abuse of process. The considerations are whether the duplication will put unacceptable pressure on court resources, the potential for conflicting

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results on similar facts and issues, having some kind of finality in legal proceedings, and whether the duplication would call the integrity of the judicial system into question.

The decision also goes to remind the Crown that there is a difference between its obligation to engage in consultation with Indigenous groups when Aboriginal rights are asserted and the determination of whether those asserted rights have been proved. The right to consultation (as stated by the courts in previous decisions) does not require that there be proof of the Aboriginal and Treaty rights that might be impacted by the government decision or action.

Although there is no statement of the sort contained in the reasons, it is arguable that the Court is signalling that actions asserting Indigenous rights will not be dismissed without compelling reasons.

At the end of the day, the Saskatchewan uranium exploration permits remain at issue, as does the validity of Saskatchewan's Consultation Policy Framework, and the questions of Métis Aboriginal title and harvesting rights in Northern Saskatchewan remain unsettled.

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