Métis Harvesting in Alberta

In the 2003 *R. v. Powley*[1]decision, the Supreme Court of Canada recognized for the first time that the Métis have an Aboriginal right to hunt for food under section 35(1) of the *Constitution Act, 1982*.[2]

In 2004, the Métis Nation of Alberta (MNA) and the Government of Alberta agreed to the implementation of the Interim Métis Harvesting Agreement (IMHA).[3] The IMHA provided that members of the MNA could engage in year-round hunting, trapping, or domestic fishing ("harvesting") for subsistence on all unoccupied provincial Crown lands in Alberta (subject to conservation and safety restrictions).

In 2007, the IMHA was replaced by the Sustainable Resource Development "Métis Harvesting in Alberta" Policy (the "SRD Policy").[4] The unilateral development and implementation of the SRD Policy by the Alberta government has been rejected by the MNA on the grounds that it fails to fully recognize the Métis right to harvest.

In particular, the MNA argues that the SRD Policy only allows some Métis to exercise their right to harvest, under limited circumstances, and only within small, designated areas across Alberta. What the MNA seeks is provincial codification of the *Powley* decision allowing *all members* of the MNA the right to harvest on *all unoccupied Crown lands* (a substantial portion of land in Alberta).

Since the termination of the IMHA, approximately twenty-five members of the MNA have been charged with offences under the *Wildlife Act*[5]and the *Fisheries (Alberta) Act*[6] while engaging in hunting and fishing activities. In the context of the above-noted charges, the MNA has filed a suit in the Court of Queen's Bench of Alberta challenging the constitutional validity regulatory regime embodied in the SRD Policy.

Some of the members charged are scheduled to appear in provincial court on February 10, 2009.

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[1] *R v Powley*, 2003 SCC 43, [2003] 2 SCR 207.
[2] *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982 c. 11.
[3] Interim Métis Harvesting Agreement (31 September 2004).
[4] Alberta Sustainable Resource Development, Métis Harvesting in Alberta (5 July 2007).

[5] *Wildlife Act*, RSA 2000, c W-10.
[6] *Fisheries (Alberta) Act*, RSA 2000, c F-16.