Trial to Determine Métis Hunting Rights in Alberta

Three Métis men are on trial in Medicine Hat for failure to comply with provincial hunting regulations. At issue is not whether the men committed the offences, but rather the extent of Métis harvesting rights in Alberta.[1]

In 2003, the Supreme Court of Canada ruled in R v Powley that the Métis people have a constitutional right to harvest (ie., gather food, hunt and fish) without a license.[2]

An agreement between the Alberta government and the Métis Nation of Alberta was reached in 2004, producing the Interim Métis Harvesting Agreement (IMHA). The agreement allowed members of the various Métis Settlements in Alberta to harvest without licenses on Crown land.[3]

The Alberta Court of Queen's Bench, in 2007, found the IMHA to be of no legal force or effect.[4] In July of that same year, the Alberta government ended the IMHA and instituted a new policy regarding Métis harvesting rights.[5] This new policy recognized members of only eight Métis settlements and seventeen Métis communities in Alberta as having harvesting rights; none of these communities are south of Edmonton.[6]The Métis Nation of Alberta rejected the new policy in August of 2007.[7] In response, they created their own hunting laws for Métis in Alberta.[8]

All three men have pled guilty to hunting and taking parts of deer and antelope near Cypress Hills, near Medicine Hat, in 2007.[9] The act was part of a program of civil disobedience protest hunts, to force the issue of Métis harvesting rights in Alberta into the courts.

In order to establish a claim for Métis hunting rights, "[an] individual has to prove they meet the criteria of Powley"[10] said Darcy Whiteside, a spokesperson for Alberta Sustainable Resource Development. The Alberta government contends that the three men do not meet the criteria set out in Powley for establishment of Métis rights.

Crown attorney Thomas Rothwell claims this issue is more complicated than simple membership in a community: "you may be Métis but you may not be part of a rights-bearing community."[11]

Under Powley there are three criteria for establishing membership in a Métis community holding constitutionally enshrined rights. First, the claimant must self-identify as a member of a Métis community.[12] Second, the claimant must be able to prove an "ancestral connection" to an historic Métis community.[13] Third, the claimant must be accepted by the modern Métis community which has legal continuity with the historic Métis community.[14] The Supreme Court also emphasized that these criteria were only factors, and not definitive statements of whether an individual has constitutional Métis rights.[15]

Jean Teillet, the defence attorney representing the Métis hunters, stated that"[the] Métis have a history of hunting throughout the northwest. The lands in question are the lands traditionally hunted by the Métis of the northwest."[16] Teillet stated she is arguing for the harvesting rights of Métis across all the Prairies.[17]

If the three hunters win their case, Teillet does not expect the province to appeal the decision to a higher court, as that would risk a ruling that would be unfavourable to, and binding upon, other provinces.[18]

The first part of the trial involved testimony of Métis community members from all over central and southern Alberta.[19] Métis witnesses testified as to where and how their families and communities have hunted in the province throughout generations. Many also provided evidence that traces their Métis ancestry back to the late-19th century and the North West Rebellion.[20]

The first part of trial ended on May 12th, with four more sessions to deal with proving the men's constitutional claim planned for between September and the end of the year. The judgement is expected to be reserved until May 2010.[21]

---

[1] Alex McCuaig, "Métis trial could make history" *Medicine Hat News* (1 May 2009).

[2] 2003 SCC 43.
[3] Interim Métis Harvesting Agreement (September 2004).
[4] *R. v. Kelley*, 2007 ABQB 41 at para 85.
[5] Alex McCuaig, "Hunting Court Case" *Lethbridge Herald* (4 May 2009).
[6] Alex McCuaig, "Métis men on trial for hunting rules" *Canadian Press* (5 May 2009); Alberta Sustainable Resource Development, "Métis Harvesting in Alberta" (July 2007)
[7] "Backgrounder on Métis Harvesting Rights in Alberta" *Metis Nation of Alberta* (30 April 2009)
[8] *Ibid.*
[9] *Ibid*; *Supra* note 7.
[10] *Supra* note 1.
[11] *Supra* note 7.
[12] *Supra* note 3 at para 31.
[13] *Ibid* at 32.
[14] *Ibid* at 33.
[15] *Ibid* at 30.
[16] *Ibid.*
[17] *Ibid.*
[18] Alex McCuaig, "First part of Métis hunting trial ends" *Medicine Hat New* (12 May 2009).

[19] *Ibid*.
[20] *Ibid*.
[21] *Ibid*.