



Canada's Metis People Granted Indigenous Rights

By Dr. Lorne Foster

They have been called Canada's "forgotten people."

While the Métis comprise about one-third of Canada's Aboriginal population, they have never had the same "First Nations" status as Indians, who enjoy special entitlements including hunting and fishing rights, as well as tax-free status for income earned on reserves, and access to expansive natural resources.

Indeed, the struggles of the Métis people with the governments of Canada date back to the days of Louis Riel, a campaigner for Métis and Western rights who led both the Red River Rebellion in 1869 and the 1885 Northwest Rebellion. Riel, who was eventually captured and hanged for treason, proclaimed: "I have only this to say to the Métis - remain Métis, become more Métis than ever."

Now, in a recent landmark Supreme Court decision, Canada's Métis have finally secured status as "full-fledged rights bearers" putting them on par with other Aboriginals.

It all began on Oct. 22, 1993, when two Métis Nation of Ontario citizens, Steve and Roddy Powley (father and son), shot a bull moose for their winter harvest near Sault Ste. Marie. The Powleys were charged with unlawfully hunting moose and unlawful possession of moose meat. The legal challenge that ensued consumed a decade, and made the case a rallying point for a people who believe they have been abused and marginalized.

At trial before the Ontario Court (Provincial Division), the two hunters asserted they were exercising their Aboriginal right to hunt as Métis. In 1998, Ontario Court Justice Vaillancourt held that the Powleys' Métis right to hunt had been established by the protections guaranteed under Section 35 of the Constitution, and he acquitted the Powleys of all charges. The Ontario government appealed this decision to the Ontario Superior Court in 1999, only to once again have the Powleys' Métis right to hunt overwhelmingly upheld. The Ontario government then appealed to the Supreme Court of Canada and the case was heard on March 17, 2003. The federal government and eight provinces intervened in support of Ontario - including Manitoba, Alberta, British Columbia, New Brunswick, Quebec, Saskatchewan, Newfoundland and Labrador.

Government lawyers argued against allowing Métis hunting rights, on the grounds that Métis people did not exist before European contact and should not be granted aboriginal privileges. (Further) the lawyers argued, recognizing the same right for Métis people - as Status Indians, who are permitted to hunt for food without provincial licences and out of season - could wreak havoc on conservation efforts.

The Supreme Court disagreed. In its 24-page decision, the Court ruled 9-0 that the "purpose and the promise of S. 35 is to protect practices that were historically important features of these distinctive communities and that persist in the present day as integral elements of their Métis culture."

“Because the Métis are explicitly included in S. 35,” decreed the court, “it is only necessary . . . to verify that the claimants belong to an identifiable Métis community with a sufficient degree of continuity and stability to support a site-specific aboriginal right.”

With this unanimous judgment, Canada’s forgotten people have now been legally remembered.

However, now that the final judgment has been rendered, the problem of verifying Métis identity may loom very large. And as difficult as the journey to obtain their indigenous rights, it may prove even more daunting defining who is, and who is not, Métis.

Mr. Powley, for instance, who grew up with red hair and is only a fraction Métis, says he did not know of his ancestry until 15 years ago.

Consider, also, many of the 250 Métis communities across Canada disagree over what makes a person a Métis. Some of the more restrictive definitions effectively exclude hundreds of thousands of people who regard themselves as Métis. Other interpretations simply state that if a person has mixed blood, considers himself or herself to be a Métis, and has been accepted as such by the Métis community, then he or she is.

The only general consensus on both sides of the legal decision in Canada seems to be that the term Métis is reserved for people of mixed European and Indian ancestry. So, the Black Métis, for instance - the hundreds of thousands of descendants of African-Indian progenitors that reside throughout North America - do not figure prominently in this approximate equation.

Nevertheless, the court did stipulated that the difficulty in defining the Métis is no reason for governments to skirt the Constitution. And the judges stressed it is “urgent” that membership requirements become standardized so “legitimate rights holders can be identified,” preventing a possible Aboriginal entitlements quagmire.

“We would not require a minimum ‘blood quantum’,” said the ruling. “But we would require some proof that the claimant's ancestors belonged to the historic Métis community by birth, adoption, or other means.”

In the end, and despite the looming potential for confusion, resentments and definitional in-fighting that is on the horizon, it is still possible to conclude that Riel’s ambition for his people has finally been vindicated. Today, in the wake of the new Supreme Court decision, Canada’s Métis people finally have the opportunity to become more Métis than ever.

Moreover, as Canadians it is also possible to conclude that we are all more than we were before. For the empowerment of one is the empowerment of all.