



Métis Nation of Ontario Education and Training

Powley Day – September 19th

Background: Métis inclusion in The Constitution, 1982

In 1982, after generations of fighting for justice, the existing rights of Canada's Indigenous peoples received constitutional protection.

Section 35 (s. 35) of the Constitution Act, 1982 provides:

- (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, "aboriginal peoples of Canada" includes the First Nations, Inuit and Métis peoples of Canada.

This constitutional protection was a victory for all Indigenous peoples in Canada. For the Métis Nation, the explicit inclusion of the Métis in s. 35 was viewed as a new beginning after over 100 years of denial, avoidance, and neglect by governments in Canada. Even within the Parliament of Canada, s. 35 was described as a "political watershed" and a "turning point for the status of native peoples" in Canada.

The promise of this 1982 recognition of the Métis Nation went largely unfulfilled. The federal and provincial governments in Canada took the position that the Métis had no existing Indigenous rights protected by s. 35 and refused to negotiate or deal with the Métis people. In response to these steadfast federal and provincial government positions, beginning in the early 1990s, the Métis Nation began its 'hunt for justice' by defending its citizens and their rights in the courts, as a way of breathing life into the constitutional commitment made to the Métis in 1982.

As a part of this on-going 'hunt for justice', *R. v. Powley* ["The Powley Case"] was heard by the Supreme Court of Canada in March, 2003. *Powley* was the first case to address the issues of the purpose of s. 35 for the Métis, and to question whether the Métis have existing Indigenous rights.

On September 19, 2003, the Supreme Court unanimously affirmed what the Métis people had been saying for over twenty years – that s. 35 is a substantive promise to the Métis which recognizes their distinct existence and protects their existing Indigenous rights. The *Powley* decision marked a new day for the Métis Nation in Canada. The Supreme Court's decision was a respectful affirmation of what the Métis people have always believed and stood up for. It was an opportunity for Canada to begin fulfilling its promise to the Métis.

The Powley Case

On October 22, 1993, father and son Steve and Roddy Powley killed a bull moose just outside Sault Ste Marie, Ontario. They tagged their catch with a Métis card and a note that read "harvesting my meat for winter". One week later, the Powleys were charged by Conservation

Officers for hunting moose without a license and unlawful possession of moose contrary to Ontario's *Game and Fish Act*. The Métis Nation of Ontario decided to use the charges against the Powleys as a test case, providing full political and financial support throughout. At both the Ontario Court of Appeal and the Supreme Court of Canada, the Métis National Council also intervened to support the case.

In 1998, the trial judge ruled that the Powley family has a Métis right to hunt that is protected by s. 35 of the *Constitution Act, 1982*. The charges were dismissed, but the Crown appealed the decision. In January 2000, the Ontario Superior Court of Justice confirmed the trial decision and dismissed the Crown's appeal. The Crown again appealed the decision to the Ontario Court of Appeal. On February 23, 2001 the Court of Appeal unanimously upheld the earlier decisions and confirmed that the Powley family has an Indigenous right to hunt as Métis. The Crown then appealed to the Supreme Court of Canada. On September 19, 2003, the Supreme Court of Canada, in a unanimous judgment, said that the Powleys, as members of the Sault Ste. Marie Métis community, can exercise a Métis right to hunt that is protected by section 35. Today we celebrate the day of this decision as Powley Day.

The Supreme Court Decision

The Court confirmed that the Métis were included as one of the "Aboriginal peoples of Canada" in s. 35 in order to recognize the Métis, to value their distinctive cultures, and to enhance Métis survival. Specifically, the Court set out a test for establishing Métis harvesting rights protected by s. 35 of the *Constitution Act, 1982*. The Court applied this test to the Sault Ste. Marie Métis community and to the Powley family and found that they were exercising the Sault Ste. Marie Métis community's constitutionally protected right to hunt.

This does not mean however, that the case is limited in its application only to the Sault Ste. Marie Métis community. The test applies to Métis communities across the Métis Nation Homeland. The Court also spoke about the urgent need to develop a more systematic method of identifying Métis rights-holders.

Who are the Métis in Section 35?

This question of who the Métis are was discussed at length before the Court. Many of the lawyers for the various governments argued that there were no Métis "peoples"; that there were only individuals with mixed First Nations and European heritage. The Supreme Court did not agree with these arguments, nor did it set out a comprehensive definition of who the Métis people are. Instead, the Court set out who the "Métis" are for the purposes of s. 35. The Court said that the term "Métis" in s. 35 refers to distinctive Métis collectives who, in addition to their mixed ancestry, developed their own customs, way of life, and group identity—separate from their First Nations, Inuit or European forebears.

The Powley Decision had wide ranging consequences for the Métis that are still being felt today. It opened a door to better relationships between Métis organizations and Canadian governments, and lead to a greater acknowledgement of Métis rights. Today, we celebrate this historic victory for the Métis Nation. Happy Powley Day!