

MEMO

To: Gary Lipinski, MNO President

Date: February 25, 2015

Re: Québec (Procureur général) v. Corneau

Matter No.: MNO-100

From: Jason Madden

The following is a summary of the *Québec (Procureur général) (Ministère des Ressources naturelles) v. Corneau*¹ case, which was released by the Quebec Superior Court on February 10, 2015.

Overview of Case

The named defendant, Ghislain Corneau, is one of several of individuals who for a number of years have maintained hunting camps on Crown land in and around the judicial district of Chicoutimi. The location of this region—in eastern Quebec—is generally identified on the map that is included at the end of this memo.

Section 54 of the *Act Respecting Lands in the Domain of the State*² forbids individuals from erecting or maintaining such camps except with ministerial authorization, but specifies that authorization is not required “for the exercise of a right”. In 1999, the province brought proceedings to dispossess Mr. Corneau of his camp on the grounds that he lacked the requisite authorization. In response, Mr. Corneau claimed that he required the camp for the exercise of his aboriginal rights.

Initially, Mr. Corneau claimed aboriginal rights by reason of his Innu ancestry. In 2006, however, in the wake of the Supreme Court of Canada’s decision in *R v. Powley*, Mr. Corneau amended his defence and claimed aboriginal rights as a Métis person within the meaning of s. 35 of the *Constitution Act, 1982*. In May 2009, the proceedings against Mr. Corneau were united with similar proceedings against 16 other individuals occupying Crown land in the district of Chicoutimi, 13 of whom also claimed aboriginal rights as Métis people.

¹ 2015 QCCS 482.

² CQLR c T-8.1.

The Communauté Métisse de Domaine-du-Roy et de la Seigneurie de Mingan (CMDRSM), an organization established to advocate for Métis rights in the Saguenay—Lac-Saint-Jean region, intervened in support of Mr. Corneau and the other defendants. Both the defendants and the intervenor CMDRSM were supported by an order for advanced costs.³

The Innu First Nations of Mashteuiatsh and Essipit intervened against the claim of the defendants.

The case turned on whether a rights-bearing Métis community could be identified in the Saguenay—Lac-Saint-Jean basin. The Court found that no such community could be identified, either historically or at present. Mr. Corneau’s claim to aboriginal rights thus failed.

Characterization of the Right

The right being claimed was the right to maintain a hunting cabin as an incident of the right to hunt, fish, trap, and gather berries for subsistence purposes (para. 36). The manner in which the right was characterized was not contested.

Identification of the Historic Rights-Bearing Community

Although there was evidence of children of mixed European and Innu ancestry being born in the territory in question over an extended period of time, the Court found no evidence that these individuals ever developed a collective identity or shared customs and traditions. Put simply, there was no evidence of the ethnogenesis required to create a Métis community as set out in *Powley*.⁴

Specifically, the Court examined in detail three “waves of interbreeding” (“vagues de métissages”) in the territory.

- The first consisted of the children of Nicolas Peltier, a Frenchman who sired 13 children by 3 Innu wives beginning in 1675 (para. 121).
- The second was comprised of two Innu-Canadian families that lived in the region at the turn of the 19th century (para. 158).
- The third consisted of seven families of varied ancestry living in the Saguenay just prior to 1842, when Euro-Canadian settlement of the region began in earnest (para. 173).

In every case for which evidence was available, the Court determined that the children of mixed ancestry born in the region adopted either an Innu or European way of life. None of the “waves of interbreeding” created a distinct Métis community.

³ *Québec (Procureure générale) c. Corneau*, 2010 QCCS 463; *Québec (Procureure générale) c. Corneau*, 2011 QCCS 781.

⁴ As noted above, the defendants received an advance costs order to financially support some of this litigation and the historic research presented. Notably, even with funding available for them to commission historic evidence on Métis in the region, the defendants were unable to provide sufficient evidence documenting a historic Métis community.

Ultimately, the Court concluded,

[Translation] All of this information taken together failed to reveal any objective evidence pointing to a historic collectivity, on the territory in question, having any particular form of social organization distinguishing it from either the first inhabitants or the Euro-Canadians that followed. Nothing allowed individuals of mixed ancestry to be distinguished from their biological authors, be it by their clothes, language, specific cultural practices, religion or folklore; not a behavior, thought, or interest in anyway different and unique to a group that was neither native nor white. (para. 256)

The defendants, through the testimony of an expert anthropologist, Emmanuel Michaux, argued that it was inconsistent with constructivist social theory to require them to establish the existence of a distinct historic Métis ethnic group in the territory in question. Rather, they argued, evidence of a diffuse and dispersed cultural community ought to be sufficient. The Court rejected this argument out of hand.

[Translation] In the expert's mind, it would no doubt suffice for a group of individuals, each having a genetic link to a native ancestor and sharing a common interest for hunting, to constitute a contemporary Métis community and to have some link to the fruits of historic interbreeding spread out across the territory, the historic community.

Such a conception of a virtual aboriginal people would lead to an unacceptable, inequitable deterioration of the notion of aboriginal people within the meaning of s. 35. (paras. 233 & 234)

Although the Court noted that the defendants' failure to establish the existence of a historic Métis community in the territory in question was sufficient to dispose of the case, it nonetheless went on to address the other elements of the *Powley* test.

Identification of the Contemporary Rights-Bearing Community

The Court found no evidence of the existence of a contemporary rights-bearing Métis community in the Saguenay—Lac-Saint-Jean. The Court reviewed documents from the colonial period that referred to “Métis” individuals in the region, but found that in every case the term was used to describe individuals of mixed ethnic origin and not individuals belonging to a distinct community.

Although the Court acknowledged the relevance of the existence of the CMDRSM, it found that such an organization could not constitute a contemporary community capable of inheriting a historic community's cultural practices and resulting rights (para. 290). It noted in this regard the organization's relatively lax membership criteria, which require only the completion of a form, the provision of proof of a genealogical connection to an aboriginal person, and the payment of a \$30 annual fee.

Finally, the Court drew a negative inference from the fact that neither the defendants nor their key witness, historian Russel Bouchard, had expressed any sense of belonging to a local Métis community until after the *Powley* decision (para. 322).

Identification of the Relevant Time Frame

The Court found that the Saguenay–Lac-Saint-Jean only came under effective control of European laws and customs in the years between 1842, when the Hudson’s Bay Company’s lease to the area was not renewed, and 1850, when government institutions for the administration of the region were created (paras. 351 & 352). As a result, the defendants bore the burden of establishing that the practice grounding the right they claimed was distinctive and integral to the relevant historic community at this time. Since no historic community could be identified, the determination of the relevant time period was moot.

Verification of the Claimant’s Membership in the Relevant Contemporary Community

Mr. Corneau failed to demonstrate that he was a member of the relevant Métis community. He failed to demonstrate that he identified as Métis before, as an adult, his hunting activities put him at odds with the authorities (para. 371). Before then, he had no knowledge of or interest in his aboriginal ancestry. The only aboriginal ancestor he was able to locate, an Innu man born in 1785, was orphaned at the age of 3, was raised by French-Canadians, married a French-Canadian woman, and had children who chose an agrarian lifestyle (paras. 379-381). The only evidence Mr. Corneau offered to show that he was accepted by the contemporary Métis community was his membership in the CMDRSM, which the Court found not to be determinative.

Other Elements of the *Powley* Test

For the reasons set out above, the Court rejected Mr. Corneau’s claim to aboriginal rights. The Court, however, indicated that had it decided matters differently, it would have come to the following conclusions on the remaining elements of the *Powley* test:

- a) the practice of maintaining a camp for hunting and fishing for subsistence purposes was part of the defendant’s distinctive culture;
- b) the continuity between the historic practice and the contemporary claimed right is established by presumption;
- c) the claimed right had not been extinguished;
- d) section 54 of the *Act Respecting Lands in the Domain of the State* infringes on the defendant’s right to maintain a camp for hunting and fishing for subsistence purposes; and
- e) this infringement is not justified (para. 393).

Conclusion

The Court rejected Mr. Corneau’s claim to a right to maintain a camp on Crown land as an incident of his aboriginal harvesting rights. The Court found that Mr. Corneau’s camp violated s. 54 of the *Act Respecting Lands in the Domain of the State*, as it had not been authorized by the Minister. Mr. Corneau was ordered to abandon the camp, to hand over possession of it to the province, and to restore the premises to their former condition within 120 days.

The Court further ordered that, after 130 days of the judgment coming into effect, all property remaining at the campsite shall devolve, without indemnity and in full ownership, to the domain of the state.

We hope you find this memo of assistance. If you require any further, please feel free to contact us.

