Update on Métis Legal Issues

For: Métis Nation of Ontario Annual General Assembly
August 18, 2018

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Recent Legal Cases and Ones to Watch
Mikisew Cree First Nation v. Canada

• This case is about the legislative changes the Harper Government made to the Canadian Environmental Assessment Act in 2012.

• The legal question is whether the Crown’s duty to consult and accommodate applies to legislative action (i.e., whether there is a duty to consult on legislation that will affect Aboriginal rights).

• The Supreme Court of Canada heard the case in January 2018. The Manitoba Métis Federation was an intervener in the case. The decision is expected soon.
The Cindy Gladue Case

• This case is about a horrific murder of a Métis woman in Alberta—and the re-victimization of her—by the justice system itself.

• The Supreme Court of Canada will hear this case in the fall of 2018.

• The Women of the Métis Nation along with other Indigenous groups have been granted intervener status.
McCargar v. Métis Nation of Alberta

• On July 20, 2018, the Alberta Court of Queen’s Bench rejected a lawsuit brought by one MNA member against two special resolutions passed by the 2016 MNA Assembly. These two special resolutions:
  • added the objective of negotiating a modern day treaty relationship with the Crown;
  • added a new Oath of Membership to provide clarity on the MNA’s authorization for negotiation on Métis rights, Crown consultation, etc.
McCargar v. Métis Nation of Alberta

[19] In sum, the Association represents its registered members on the terms and for the purposes set out in the bylaws.

[38] The oath of membership is properly limited to the Association and members of the Association, and allows the Association to assert a representative capacity on behalf of the members of the Association; it does not impede other Métis groups from also asserting representative capacity for other Métis persons, for other purposes, at other times.
Manitoba Métis Federation v. Brian Pallister

• This case is about the Manitoba Government acting outside its authority and breaching a negotiated $67.5M agreement between the Manitoba Métis Federation (MMF) and Manitoba Hydro.

• In the process, the Premier of Manitoba (Brian Pallister) referred to the MMF as a “special interest group” and the negotiated agreement to address Métis rights with respect to a series of projects as “persuasion money.”
R. v. Corneau et al.

- On July 20, 2018, the Quebec Court of Appeal upheld a lower court decision that rejected the rights claim of a “Métis” community in western Quebec.

- The Court of Appeal rejected the existence of a historic Métis community.

“To establish the existence of a historic Métis community, one must, in addition to proving biological interbreeding, prove that the group in question shared customs, traditions and a collective identity. [Translation] (para. 68)”
R. v. Corneau et al.

• Specifically, the trial judge rejected three “waves of interbreeding” as creating a “Métis community”:

  • The first consisted of the children of Nicolas Peltier, a Frenchman who sired 13 children by 3 Innu wives beginning in 1675.
  • The second was comprised of two Innu-Canadian families that lived in the region in the 19th century.
  • 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.
Advancing Métis Rights
R. v. Powley: The Timeline

- 1993: Steve & Roddy Powley charged under Game and Fish Act
- 1998: Powley Case: Trial Judgment
- 2000: Powley Case: Superior Court of Justice Judgment
- 2001: Powley Case: Ontario Court of Appeal Judgment
- 2003: Powley Case: Supreme Court of Canada Judgment
The Four Point Agreement

1. MNO and MNR agree that MNO will issue a maximum of 1250 Harvester’s Cards for this year. The number of 1250 is for this year only. A mutually agreeable process for a change in this number will be developed subject to research and evaluation of the Harvesters Card system.

2. The MNR will apply the *Interim Enforcement Policy* (IEP) to those valid Harvesters Card holders who are harvesting for food, within their traditional territories and pursuant to the safety and conservation values set out in the IEP.

3. This Interim Agreement will be for two years with the intention that it will be extended by mutual consent until a final agreement is in place.

4. Both sides agree that an independent evaluation of the MNO Harvesters Card system will be performed based on mutually agreeable terms of reference.
Getting to an Independent Review

STEP #1 – Arrive at common understanding of whether there are historic Métis communities in Ontario

STEP #2 - Identifying “who” made up those historic Métis communities (i.e., the “Root Ancestors”)

STEP #3 - Verifying that the MNO Harvesters Card holders ancestrally connect to these historic Métis communities through Root Ancestors
WHO ARE “ROOT ANCESTORS”?

- **Moore Family**
- **Belisle Family**
- **MNO Citizen X (MNO Harvesters Certificate Holder)**

**EFFECTIVE CONTROL**

- **Verified Metis Family Line**
- **Supporting Documentation Linking Generations**

**HISTORIC COMMUNITY**

- **CONTEMPORARY COMMUNITY**

**Root Ancestor**

- **Thomas Moore**
WHY ARE ROOT ANCESTORS IMPORTANT?

MNO HARVESTER CARD HOLDERS

ROOT ANCESTORS

CONTEMPORARY COMMUNITY

HISTORIC COMMUNITY
Identification of Historic Communities (August 2017)

- Rainy River / Lake of the Woods Historic Métis Community
- Northern Lake Superior Historic Métis Community
- Abitibi Inland Historic Métis Community
- Sault Ste. Marie Historic Métis Community
- Mattawa/Ottawa River Historic Métis Community
- Killarney Historic Métis Community
- Georgian Bay Historic Métis Community
Release of Root Ancestor Work (August 2017)

• Response to MNO Province-Wide Consultations (2010/11) & What We Heard Report

• 89 Métis Root Ancestors

• Over 50,000 Historic Records

• Largest Publicly Available Documentary Source of Ontario Métis Research
DESMULONS VERIFIED FAMILY LINE
(FL2017)
AN INDEPENDENT REVIEW OF THE MÉTIS NATION OF ONTARIO’S HARVESTER CARD SYSTEM (OSS_00645442)

Final Report

Submitted to:
THE GOVERNMENT OF ONTARIO
AND
THE MÉTIS NATION OF ONTARIO

Prepared by:
INTERGROUP CONSULTANTS LTD.
500-280 Smith Street
Winnipeg, MB R3C 1K2

January 12, 2018
Independent Review (January 2018)

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January 12, 2018
Framework Agreement on Métis Harvesting (April 2018)

• No Cap on Harvester Cards Issued
• Process for Additional Métis Root Ancestors
• Negotiations Process on Mobility, New Map
• Agreement is Legally Enforceable and Justiciable
Historic Metis Communities*

This map reflects the cooperative work of Ontario and MNO. It maps key fur trade posts and areas of harvesting activities based on the currently available historic information.

Schedule B

Before using this map, please read the disclaimer below.

Legend:

- Historical community markers
- Historic Métis Communities in Ontario identified cooperatively by the MNO and Ontario

Harvesting Activities

- Berries
- Hunting
- Fishing
- Trading Post

Disclaimer: The historic communities included on this map are subject to any further information or evidence obtained by the Crown. For illustrative purposes only. Areas shown here are approximate. The Ministry of Natural Resources and Forestry and the Métis Nation of Ontario disclaim all responsibility for errors, omissions or inaccuracies.

Projection: North American Lambert Conformal Conic
Datum: NAD 1983
Updated: April 24, 2018
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Advancing Métis Self Government
Canada’s Six Stage Claims Process

Stage 1
- Filing of a ‘Statement of Claim’ by Aboriginal Group

Stage 2
- Acceptance of ‘Claim’ for Exploratory Discussions

Stage 3
- Formal Negotiations on ‘Claim’ based on a Framework Agreement with Subject Matters

Stage 4
- Negotiations based on Framework Agreement & Initialing of Agreement-in-Principle ("AIP")

Stage 5
- Negotiation of Final Agreement and Ratification Process

Stage 6
- Implementation of Final Agreement
Outstanding Métis Claims (MMF-2013)

- Métis Section Rights (Powley-2003)
- Jurisdiction for the Métis (Daniels-2016)

Reconciliation with Métis thru "just and lasting settlements" with the Metis
Pre-Existing Métis Rights and Outstanding Métis Claims
Recent Developments
“Work, on a nation-to-nation basis, with the Métis Nation to advance reconciliation and renew the relationship, based on cooperation, respect for rights, our international obligations, and a commitment to end the status quo.”
Métis Nation of Ontario Act, 2016

• The passage of the MNO Act was a significant accomplishment in solidifying the recognition of the MNO in Ontario.

• The Act has been key to discussions with other governments and industry with respect to the legitimacy and credibility of the MNO’s governance structures versus other “Métis” groups in Ontario.
Ministerial Special Representative Report (July 2016)

“It is recommended that Canada either amend its existing Comprehensive Land Claims and Specific Claims Policies, or develop a new policy, that expressly addresses Métis Section 35 rights claims and related issues, and that the basis for such amended policies or a new policy be founded on the legal principles of reconciliation and the honour of the Crown. It is also recommended that Canada should work with the appropriate provinces and territories to develop a joint process by which to address unresolved Métis Section 35 rights claims and related issues.” (Isaac Report, Recommendation #9)
Formal Negotiation Processes with Métis

- Manitoba Métis Federation-Canada Framework Agreement on Advancing Reconciliation (November 15, 2016)
- Métis Nation of Alberta-Canada Framework Agreement on Advancing Reconciliation (November 16, 2017)
- Métis Nation of Ontario-Canada-Ontario Framework Agreement on Advancing Reconciliation (December 2017)
- Métis Nation of Ontario-Canada Agreement on Advancing Reconciliation with the Northwestern Ontario Métis Community (December 2017)
- Métis Nation-Saskatchewan-Canada Framework Agreement on Advancing Reconciliation (July 2018)
MNO-Canada-Ontario Framework Agreement on Advancing Reconciliation
MNO-CA-ON Framework Agreement signed on December 11, 2017
Purpose of the Framework Agreement

The Framework Agreement sets out three main ways that it is going to advance reconciliation consistent with section 35:

1. Recognize the MNO as a Métis government
2. Establish processes to recognize Métis rights and claims
3. Reach arrangements that support and enhance the well-being of Métis communities in Ontario

It is intended to create that “just and lasting settlement” promised by section 35 of the Constitution Act, 1982 and the Powley, Daniels, and MMF cases.
The Purpose of the Negotiation

1. THE PURPOSE OF THE NEGOTIATIONS

1.1 The Parties agree that the Purpose of the Negotiation Process contemplated under this Framework Agreement is to jointly develop a government-to-government relationship between the Crown and Métis communities in Ontario represented by the MNO that advances reconciliation between the Parties consistent with the purpose of section 35 of the Constitution Act, 1982, including by;

1.1.1 recognizing the MNO as a Métis government with decision-making authority over its own roles and functions, processes and relationships with its Citizens and Communities; and

1.1.2 establishing processes wherein the collectively-held rights and credible claims of Métis communities in Ontario represented by the MNO may be determined, recognized and respected; and

1.1.3 working towards reaching bilateral or trilateral arrangements that invest in, support and enhance the cultural, social, physical, emotional, spiritual and economic well-being of Métis communities in Ontario represented by the MNO as well as Ontario Métis generally.
Priorities Identified

3.6 Consistent with the results-oriented negotiation approach set out above, the Parties agree to focus their initial efforts and resources on reaching the following Interim Measures and Incremental Agreements that are consistent with the Purpose of the Framework Agreement:

3.6.1 A core governance recognition agreement that recognizes the role and functions of the MNO as a Métis government, including its relationship to its Citizens and Communities as well as to Canada and Ontario, and confirms the MNO’s decision-making authority over its own processes. An overview of the elements of a potential MNO core governance agreement is attached as Appendix B.

3.6.2 A trilateral agreement between the Parties that sets out a mutually agreeable process for addressing Crown consultation owing to rights-bearing Métis communities represented by the MNO as well as a map defining the geographic area over which consultation will be undertaken, including the provision of provincial and federal consultation capacity funding for the MNO’s consultation processes.
Métis Land Related Claims Processes
4. OTHER RECONCILIATION RELATED PROCESSES

4.1 The Parties recognize that there may be other discrete reconciliation related processes, discussions or negotiations that the Parties may agree to engage in that are specific to one or several of the Communities represented by the MNO. Nothing in this Framework Agreement precludes the MNO from agreeing to enter into bilateral or trilateral processes or agreements on these issues that attempt to find a shared solution that advances reconciliation.

4.2 Any process or agreement agreed to between the Parties flowing from section 4.1 will complement and not affect the Negotiations Process set out in this Framework Agreement. Conversely, the Negotiations Process set out in this Framework Agreement will not limit or affect any process or agreement flowing from section 4.1.
MNO-ON Agreement on Reconciliation with Northwestern Ontario Métis Community signed on December 11, 2017
Purpose of the Negotiations

- The Parties agree that the Purpose of the negotiations held pursuant to this Agreement is to further the commitments in the Framework Agreement as well as advance reconciliation between the Parties consistent with the purpose of section 35 of the Constitution Act, 1982, including by;
  - exploring with a view to settling any outstanding claims of the Northwestern Ontario Métis Community, including, but not limited to, any Métis collective claims relating to the Treaty 3 Halfbreed Adhesion.
The Treaty 3 Adhesion with the Halfbreeds and Rainy Lake and River
Georgian Bay Métis Recognition and Assertions

• January 27, 1840 petition to the Governor General from “the undersigned half breeds residing in Town of Penetanguishene”, stating:
  • “That your Petitioners are generally speaking, in poor circumstances, and that they do not share in any advantage in presents issued to the Indians as a number of the half breeds, from the Sault St Marie and other places on the shores of Lake Huron have done for the last two years…”

• No government response exists, but Indian Officer Samuel Jarvis commented on February 1, 1840:
  • “Upon every occasion that I have visited the Lake Huron tribes an appeal has been made to me to remove the disability imposed upon the Class of Half-Breeds not only by the elder members of the Indian Communities but also by the Half-Breeds themselves”
Robinson Huron Treaty Negotiations

Robinson’s diary entry for September 9, 1850 records the following:

Went over to the Council early with the treaty prepared for signature. Explained it to all the chiefs present, who were satisfied & ready to sign. Shinguacouse and Nebenaigoching’s came later in the day, objected to the sign [sic] unless I pledged the Govt to give the halfbreeds mentioned in the list handed to me free grant of 100 acres of land. I confirmed certain old residents in the free & full possession of their lands on which they now reside. I told them I had nothing to do with anybody but the Indians & could not make a promise of land. The Chiefs had kept a large reserve & might if they pleased give their locations. Govt itself had no power to give free grants. I then had the treaty again read over aloud to them all & explained, when they all signed in Shinguacouse & Nebengoching signing first.
Negotiating Self-Government
Métis Jurisdiction

- Territory
- Citizenship
- Laws
- Language
- Government
- Relations (Crown and First Nations)
Negotiating Self-Government

How do our different self-government jurisdictions work together?

- Métis Jurisdiction
- Provincial Government’s Jurisdiction
- Federal Government’s Jurisdiction

Negotiations
Current Reality

Members

Bylaws

Governance Structures & Institutions
Constitution as a bridge to Métis Government

Citizens

Constitution (Ratified by Citizens)

Métis Government (Third Order of Govt in Canada)
The Métis are at a point of metamorphosis

From Associations, Secretariats, and Incorporations…

…to Authentic, Representative Recognized, Durable Métis Governments
Who You Represent As A Government

Your Values, Rights and Freedoms

Constitution

How You Represent Your People

How You Interface with Others
A Core Governance Agreement builds the trunk of the tree that is Metis self-government in Ontario.

- Recognition of MNO as a Metis Government
- Recognition of MNO constitution
- Recognition of MNO decision-making authorities
- Legal status and capacity of MNO

- Fiscal relations
  - MNO-Canada Financial Transfer Agreement

- Appendix B of the Framework Agreement sets out other subject matters for a core governance agreement
Metis Jurisdiction builds off the trunk. Branches grow as Metis Self-Government builds the necessary institutions, capacity, etc.

- Health
- Education
- Housing
- Child and family services
- Harvesting
- Other subject matters such as those set out in Appendix A to the Framework Agreement
Inherent Right of Self-Government & Self-Determination

Framework Agreement Negotiations

• Constitution
• Self-Government Agreement
• Recognition of Rights & Lands

Economic Development

Education

Health

Infrastructure

Sectoral Agreements

Métis Jurisdiction

Child & Family Services

Health

Housing

Justice

Economic Development

Education

Infrastructure

Sectoral Agreements

Métis Jurisdiction

Child & Family Services

Inherent Right of Self-Government & Self-Determination
Regional Claims

- The MNO Framework Agreement contemplates that specific Métis communities may advance unique claims.

- An example of this is the agreement that the Northwestern Ontario Métis Community (Region 1) signed with Canada on December 11, 2017.

- The MNO is undertaking work to research and develop other regional claims for negotiation.
MNO Statement of Prime Purpose

We, the Métis are a people of the lands, which gave rise to our history and tradition and culture.

We call those lands the Métis Homelands. The Homelands stretch from the lakes and rivers of Ontario; cross the wide prairies, traverse the mountains into British Columbia and into the northern reaches of the Northwest Territories. They include the hills and valleys of the north-central American States.
MNO Registry Created

After decades of being a part of pan-Aboriginal organizations, Ontario Métis come together to form a Métis-specific government – the MNO. Métis citizens and rights-bearing Métis communities begin to be represented through democratic governance structures at the local, regional and provincial levels, which are all a part of the MNO.

Changes to the MNO Definition of Métis

The initial definition of Métis in the MNO bylaws from 1993 to 1997 was someone who self-identified as Métis and had aboriginal ancestry. In '97 and '98, the PCMNO and MNO AGAs changed the definition to require that someone self-identity as Métis, have Métis ancestry (i.e., not just aboriginal ancestry) and be distinct from Indian and Inuit.

The Powley Case

In Powley, the Supreme Court of Canada affirmed the fundamental principles on which MNO and its Registry are based – that rights-bearing Métis people are not just mixed aboriginal ancestry individuals, but are descendants of distinctive Métis communities.

The Interim Registry Policy

To provide clarity on the National Definition an Interim Registry Policy was developed and approved by the PCMNO in May 2008. The Interim Registry Policy did not change the National Definition in any way. It simply provided clarity to the principles on how the National Definition should be applied based on the Statement of Prime Purpose, the By-Laws, the Harvesters Policy and other MNO governance documents.

1993

Métis Nation of Ontario Registry Timeline

1995

A Genealogy required for MNO Registration

Prior to 1995, individuals were not required to provide a completed genealogy. In 1995, the PCMNO directs the Registry to ensure all applicants provide a completed genealogy.

1997

MNO issues 5,000th citizenship card

2003

The National Definition

The National Definition was adopted by all the MNO’s Governing Members and is in place across the Métis Nation. The National Definition is important because it focuses on Métis citizens being the descendants of Métis or “halfbreed” ancestors – not just Indian ancestors.

MNO issues 10,000th citizenship card

2008

2010 and Beyond

Ongoing and Future Developments

Changes to the Indian Act

Upcoming court cases

Dealing with Appeals

Protecting Métis Rights
MNO Registry Evolution

**CREATION OF THE MNO**
The continual strengthening of MNO Registry processes as it relates to the objective review of Citizenship application.

**ADOPTED DEFINITION OF MÉTIS**
The AGA adopted a definition of Métis that is consistent with identifying Métis rights-holders. At this point, however, there was little guidance for the MNO Registry on how to implement this new definition, and consistent standards were not yet in place to evaluate citizenship applications.

**PROCEDURES AND STANDARDS**
With the adoption of the Registry Policy by the AGA, the MNO put in place procedures and standards to ensure that every application was evaluated objectively and against the same criteria, consistent with identifying Métis rights-holders and the MNO’s Bylaws.
4. Citizenship in the MNO shall be limited to individuals interested in furthering the objects of the MNO and who are Metis within the definition adopted by the MNO, which is as follows:

“Metis means a person who self-identifies as Metis, is distinct from other Aboriginal peoples, is of historic Metis Nation ancestry, and is accepted by the Metis Nation.”
Requirements for Citizenship (MNO Bylaws, Section 5)

“A person is entitled to be registered as a citizen ... who:

a) provides sufficient documentation that he or she is Metis within the meaning of 4(a);

b) is not enrolled on any other Aboriginal registry; and

c) applied for admission as a citizen and has been approved through the Registry process of the MNO as amended from time to time.”

All three requirements must be met (i.e., documented Metis, not on another Registry and gone through Registry process)