



MÉTIS NATION OF ONTARIO - FACT SHEET

Evidence and Key Findings in the *Powley* Case



Fourteen judges across four levels of court—i.e., the Ontario Court of Justice (OCJ), Superior Court of Justice (SCJ), Ontario Court of Appeal (ONCA), and Supreme Court of Canada (SCC)¹—agreed that the Powleys have s. 35 Métis harvesting rights by virtue of their ancestral connection to the Sault Ste. Marie Métis community. In arriving at this conclusion, the courts made several key findings related to the community’s distinctness, geographic scope, recognition, and connections to the Métis Nation and Upper Great Lakes region.

(a) Emergence as a Distinct Métis Community in the Mid-17th Century

The trial judge found that a distinctive Métis community (the “*Powley* Community”) emerged in the Upper Great Lakes region in the mid-17th century, peaking around 1850:

It is clear from the totality of the historical documentation and evidence in connection thereto that the Metis people were a recognizable group that was closely associated with the local Indians. The Metis had created a distinctive lifestyle that was recognized by others...In the mid 17th Century, Jesuits and French fur traders appeared in the Upper Great Lakes region. The arrival of the French fur traders soon led to marriages between the Ojibway women in the area with the traders. The resultant family groups of mixed-blood families evolved into a new group of Aboriginal people, now known as the Metis. Although the Metis shared many customs, practices and traditions of the Ojibway, they were distinctive and separate from the Ojibway...The evidence at trial suggests that the visibility of the Metis at Sault Ste Marie waned after the treaty in 1850 and...[s]ometime between 1815 and 1850, [in] the [Upper Great Lakes] area...effective control passed from the Aboriginal peoples of the area (Ojibway and Metis) to European control (paras 59, 78, 81, 93)

In arriving at this conclusion, the OCJ also referenced the report by the Royal Commission on Aboriginal Peoples (“RCAP Report”), which concluded:

It is indisputable that the distinct Metis communities of Ontario [included] locations as widespread as Burleigh Falls (near Peterborough), Moose Factory (on James Bay), Sault Ste Marie and Rainy River (in the north and west of Thunder Bay)...The Metis community at Sault Ste Marie, a hub of early fur-trade activity, has a particularly long and eventful history. It would appear, in fact, that the area was largely under Metis control from the late seventeenth to the mid-nineteenth century (para 80)

These findings of fact were upheld by the SCJ, ONCA, and SCC. In particular, the ONCA held:

In the late 1700s, the mixed-blood families began to evolve into a new and distinct aboriginal people through a process known as ethnogenesis. The high-water mark for the Great Lakes Métis at Sault Ste. Marie was the first half of the 19th century. During

¹ See: *R v Powley*, [1998] OJ No 5310 (OCJ); [2000] OJ No 99 (SCJ); [2001] OJ No 607 (ONCA); 2003 SCC 43

this period, the majority of the inhabitants of Sault Ste. Marie were of mixed ancestry, commonly referred to at the time as "half-breeds". Sault Ste. Marie is mentioned in the [RCAP Report]...as one of "the better known" Métis settlements. Sault Ste. Marie was an important focal point for the Métis culture during this era...The trial judge found that there was a visually, culturally and ethnically distinct Métis community in the area in and around Sault Ste. Marie that traced its roots to the marriages between early French fur traders and indigenous Objibway women...It was found by the trial judge, and it is more or less common ground between the parties, that the Métis society flourished in the Sault Ste. Marie area from the early years of the 19th century until 1850 and the signing of the Robinson-Huron Treaty (paras 18, 30, 95)

On this point, the SCC summarized:

The trial judge found that a distinctive Métis community emerged in the Upper Great Lakes region in the mid-17th century, and peaked around 1850. We find no reviewable error in the trial judge's findings on this matter, which were confirmed by the Court of Appeal. The record indicates the following: In the mid-17th century, the Jesuits established a mission at Sainte-Marie-du-Sault, in an area characterized by heavy competition among fur traders. In 1750, the French established a fixed trading post on the south bank of the Saint Mary's River. The Sault Ste. Marie post attracted settlement by Métis — the children of unions between European traders and Indian women, and their descendants...According to Dr. Ray, by the early nineteenth century, "[t]he settlement at Sault Ste. Marie was one of the oldest and most important [Métis settlements] in the upper lakes area"... we find no basis for overturning the trial judge's finding of a historic Métis community at Sault Ste. Marie. This finding is supported by the record and must be upheld (paras 21, 23; see also 40)

(b) Geographic Scope Beyond Sault Ste. Marie Proper

The trial court dismissed the Crown's attempt to restrict the Métis community to Sault Ste. Marie proper, instead recognizing the broader regional nature of the Powley Community:

The Crown has gone to great pains to narrow the issues in this trial to Sault Ste Marie proper. I find that such a limited regional focus does not provide a reasonable frame of reference when considering the concept of a Metis community at Sault Ste Marie. A more realistic interpretation of Sault Ste Marie for the purposes of considering the Metis identity and existence should encompass the surrounding environs of the town site proper... including Batchewana, Goulais Bay, Garden River, Bruce Mines, Desbarates, Bar River, St. Joseph's Island, Sugar Island and into Northern Michigan (paras 71, 73)

In upholding this finding, the SCJ referred to specific witness testimony given by Art Bennett, William Bouchard, and Olaf Bjornaa at trial confirming that the Métis community at Sault Ste. Marie resembled "family clusterings" that extended to other parts of the region (paras 34-36). On this point, the SCJ also quoted Dr. Arthur Ray's expert testimony:

The idea of communities is a difficult one because there are two kinds of communities... You look at maps and you look for little clusters of settlements and say, ah, there's a community, now who's living in it? But the reality is also there's a larger community, it's a community of related families and individuals who are moving around a lot ... you have some coalescing of people together into small communities taking place but it would be also wrong to suppose that that is the only place the Métis live because, for example ... as we'll see here in the case of Sault Ste. Marie, Sault Ste. Marie... was the home base for some of these families, but members of the family could be spread across the country for years and years before they came back (para 32)

These findings of fact were also upheld by the ONCA (para 35, 129, 136) and SCC (para 28).

(c) Recognition by Other Governments and Indigenous Communities

The OCJ noted the recognition of the Powley Community by other governments and Indigenous communities:

From 1824 to 1857, the American government identified and included the Metis of the Upper Great Lakes as beneficiaries of land and/or annuities in at least fifteen different treaties in what is now Michigan, Wisconsin and Minnesota... [The Metis at Sault Ste. Marie] were recognized by the Ojibway and it is clear that the Ojibway attempted to have them included in the annual gifts and in the Robinson Treaties. It is equally clear that although Robinson recognized the distinctive Metis group he restricted his dealings with the Indians. Robinson noted that: "As the half-breeds of Sault Ste Marie and other places may seek to be recognized by the Government in future payments...". The text of the Robinson Huron Treaty contains the following passage:

When at Sault Ste Marie last May (1850) I took measures for ascertaining...the number of Indians inhabiting the North shores of the two lakes....The number on [Lake Superior] including eighty-four half breeds is only twelve hundred and forty, and on Lake Huron about fourteen hundred and twenty two, including probably two hundred half breeds (paras 52, 57-58)

The ONCA also referred to the Crown's responsiveness to Métis demands and pressures in relation to the Mica Bay occupation, which prompted Canada to negotiate the Robinson-Huron Treaty in 1850, and the Crown's sale of lands to the Métis in 1852 (paras 21-23).

(d) Connections to the Métis Nation and Upper Great Lakes Region

The ONCA expressly recognized the Powley Community's connection to the Métis Nation:

The historic Métis community of Sault Ste. Marie is considered by the Métis National Council, and was accepted by the RCAP Report, as being part of the Métis Nation, the historic collective of Métis people who lived and still live in the "Métis Homeland" of north central North America (para 18)

Although the claim in *Powley* was strategically limited to the Métis community at Sault Ste. Marie, the evidence before the court also supported a connection to a broader community in the Upper Great Lakes region—a determination that was expressly left open by the SCC:

It is not necessary for us to decide, and we did not receive submissions on, whether [the Sault Ste. Marie Métis] community is also a Métis "people", or whether it forms part of a larger Métis people that extends over a wider area such as the Upper Great Lakes (para 12)