

## **The Métis in the 21<sup>st</sup> Century Conference**

**June 18-20, 2003**

**Saskatoon**

**Day 2 – Tape 2**

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**Larry Chartrand:** So we move on, then, to a consideration of, well, then does that mean that the definition in the Constitution on Métis peoples is a narrow one then? And I would say no, it's not, it's not as narrow as some proponents from the Métis Nation would argue. It doesn't automatically follow that the term Métis peoples includes just the historic Métis Nation. There may be other communities besides the historic Métis communities that could satisfy that criteria of Section 35 and possess the characteristics of Métisness. For example, given the, the nature of the legal test for proving Aboriginal rights and the historical record, it may very well be, however, that the only Métis communities that could satisfy that, that test, is the historic Métis Nation communities. But we shouldn't preclude the possibility in other parts of Canada that there are self-identifying Métis communities that have a connection to their historic Métis community prior to the effective control of the Europeans.

But the term, so the term should be abstract enough, then, to allow for that possibility and not be restricted to the historic Métis Nation of the West. So in terms of kind of thinking through these, I've come up with a, you know, a thought of what are, what Métis should be seen as in terms of this somewhat abstract concept, but not so broad as to include those who more readily identify with their non-status Indian ancestors. So the term Métis peoples ought not to refer solely to the Métis Nation of the Northwest.

There's also, of course, more to the meaning of Métis than just identifying with the label or name. Or I would add just identifying with the fact that there's an association who have mixed blood, but no other common features other than their association based on their mixed heritage. Well, I think, moreover then, for the purpose of constitutional interpretation, then,

that the Métis should be a legal concept and then, not just simply a historical faction tied to the historic Métis Nation. **[Speaks to someone else: “Did you do everyone? Okay.”]** It’s a concept, that involves, I think, a central characteristic unique to Métis heritage peoples. It matters little whether the name Métis is used to describe the community. What matters is if the community possesses the characteristics of a Métis community.

Understanding Métis from this perspective is why I think Justice Sharp in the *Powley* case agreed with the Crown, that a politically constituted Métis association is not determinative of whether there exists a contemporary Métis community for the purposes of Section 35 rights. There needs to exist a Métis community that has a factual existence in the area, and has continuity with the historic Métis community. What matters is not formal recognition, but the existence of a core of self-identifying Métis peoples who have significant roots in a particular area. The courts haven’t examined, really, the characteristics of Métis communities. They’ve been concentrated more on whether an individual Métis person belongs to a Métis community and the criteria and definition for defining a Métis person that way.

I haven’t really spent a lot of time on what are the essential characteristics of a Métis community, so I offer the following definition just for some, just for food for thought. A community that identifies with its mixed heritage nature, whether, whereby neither the European or Indian ancestors cultural values dominate to the exclusion of the other. It’s a community which has a process of identity formation which is crystallized into self-sustaining mixed heritage community, whereby political and social forces within that community are clearly aimed at perpetuating this unique mixed heritage identity and culture. And, of course, the community has to have evolved and they will need to have achieved this level of social political awareness prior to the effective control of European authority in the area. Again, whether you agree with that actual time cut-off requirement is another issue altogether. This identity, of course, would manifest in culture and values that are distinct and different from both their Indian and European backgrounds.

So that's, that's, where I wanna, wanna head, is the idea that a rational definition of the term Métis peoples in Section 35 would be broad enough, would be broad enough that only to the extent of recognizing the Métis communities that have a primary identity with their mixed heritage, so, so unique and distinct cultures and are different from the Indian and European cultures. This would not include, of course, self-identifying Métis communities that emerged as a result of *Indian Act* displacement and where such communities are predominately culturally and linguistically a part of the Indian community in the area. Métis only make sense if it reflects an, an identity with their mixed heritage nature, and that identity becomes manifest in something distinct and different from both European and Indian ancestors. If that isn't the case, then the community would be an Indian community in character, even if they, they labelled themselves as Métis.

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