

The Métis in the 21st Century Conference

June 18-20, 2003

Saskatoon

Day 2 – Tape 2

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Jean Teillet: So what happens is they very quickly get booted off because of the marriage out rules and all that horrible history of the *Indian Act* with which you are all completely familiar, I'm sure. So, the Powleys are directly descended to the historic community. They moved in to the Indian community briefly, and out again. Now that's a story that is common all across the Métis Nation. We almost all have ancestors or cousins or brothers and sisters who married into the reserves, married out. In fact, some of the evidence that I think Dr. Tough has shown is that some people move in and out of treaty three times within their lifetime or something. They take scrip, move into treaty, go off, go back in, go off. I mean it, it, none of it affects your identity. It is this, it's about, usually, it's about benefits. If you can get some money or you can get some land or you can get health benefits or whatever, you take this. And then it doesn't work anymore and there's an opportunity over here, say, take that.

But what happened in the Powleys, then? So what's happening is most people are focusing on the fact that the Powleys were once registered members under the *Indian Act*, and then they only want to look at that, and they only then want to say the *Powley* case is different from the Métis on the Prairies, and therefore they're just a bunch of non-status Indians and it's not a Métis case, and it's just a non-status Indian case and they're all just about people who lost their status. And that's the way *Powley* is being diminished, and many times it's being diminished by our own Métis people. And I think that's really sad because, in fact, I think *Powley* is going to provide a test that will be usable all across the Métis Nation.

Now we've been to the Supreme Court already. We were there in March, and we argued—we don't have an answer yet, we don't expect one

even at any time before the fall—but what I do expect will happen is that regardless of what the court finds about the Powleys themselves, and I'm pretty sure they'll find the Pow-, that there was a historic Métis community and that the Powleys are members of it and that they have a right because there was no contradictory evidence. Like, there was nothing to say that they weren't or that it wasn't right. And the Crown, indeed, did not argue clear and palpable error at trial or at any of the other levels, so the facts stand.

And, but what's gonna come out of this is, who can exercise harvesting rights? What's the test for that? Now, when we went to the Supremes, everybody always knows that the big issue on, is the contact test, right? What are you gonna do about the contact test? And for those of you who don't know, that's the test that the Supreme Court of Canada itself invented in *Vanderpeet* in order to try and establish Indi-, the Aboriginal rights claimed by Indians. And they promised in *Vanderpeet* that they wouldn't hold that against the Métis when we got up there. And so I literally rubbed that in their nose right off the top of talking to them, and said, "You promised, you know, and we're here relying on that promise that you said you wouldn't do that." Now the Crowns all argued it, and the, it appeared to my eye that the court didn't like the argument at all. Crowns all tried to argue that the contact test precluded Métis from claiming Aboriginal rights, and the courts didn't like it. They didn't like it at all, and I don't think they're gonna go there, nor do I think they're gonna go with the sovereignty test because I think, in their minds, they've already wiped it out, and the only reason it has arisen again for discussion is because *Mitchell* was about crossing the border. And so they raised the issue of sovereignty because borders, of course, touch on sovereignty. Well, hunting a moose in Sault Ste. Marie doesn't touch on anybody's sovereignty, and when I said that to the court, Justice Binney and Justice McLaughlin kind of nodded at, okay, yeah, they agreed that this isn't about sovereignty. So I don't think the contact test is gonna come out and I don't think the sovereignty test is.

So 'kay, what is gonna come out? We put forward a theory that we think would hold for the Métis Nation, by that the Métis Nation that is already

dealing with treaty, and what we said was this: the Crown's obligation to deal with Aboriginal people comes into play, it exists in the broad scope of things the minute they, they're, you know, the Aboriginal people and everybody are in the same area. But it really comes into play. There are obligations to actually do something, come into play when they start to authorize the use of the land in a way that conflicts with Aboriginal peoples' use of the land. So, from, in other words, if there's a trading post there from the Hudson's Bay Company, that doesn't conflict with the way Métis use the land or, or the way the Indians use the land, nor does a Jesuit mission. That doesn't, it might change their religion, but it doesn't change how they hunt and fish right? So none of those things really changed the people's life, but when they do things as in Sault Ste. Marie, like issue mining leases, and mining companies start to move in, or they issue forestry leases, or they start surveying as they did in Manitoba, or they start opening it up for homestead, or letting people settle there, that's when they've got to sit down and deal with the Aboriginal peoples who are there. And that's what we say is the test that should be governing everybody. It makes sense. It's pragmatic, it's practical, it's on the ground. You don't have to deal with, okay, when was the assertion of sovereignty 'cause we can argue about that one till we're blue in the face. When was, when was contact, because that's another one Dr. Ray really took on in the contact test in the *Powley* case.

So that's the theory we put forward to the Supreme Court about when the obligation to deal with them would come into play. We think it works for Métis who are sort of, at least from Sault Ste. Marie west, because the Royal Proclamation had already come into play. The government knew about their obligations. They had implemented already, that's what they were doing in 1850 was following up on that exact obligation, and we're saying they should have dealt with the Métis, too. Now, what you have to understand is that the Métis came forward as a separate group in Sault Ste. Marie asking to be included in the treaty. They wanted a special clause, or their own separate negotiation, and that again is another marker of a people who are taking political action as a self-identified group to preserve their rights and their life

and their land and their existence as a people, and clearly see themselves as different from the Indians, because they approached politically as a group separately. Robinson didn't say, "No, no, no, you don't have any rights and I, no." He just said, "I don't have a mandate to deal with you. I only have a mandate to deal with the chiefs." So what we're left with is, and all of you who know the Aboriginal rights test, is that Métis rights simply haven't been extinguished in that area. The Métis community, by the historical evidence, showed that it continued to exist. They continued to hunt. They continued to live their lifestyle in that area. They never came under, they didn't all come under treaty, although some members did. But they didn't all. The community as a whole has never had its rights extinguished. So therefore, under Canadian law, they still exist. And that's what three courts to date have found.

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