

September 10, 2002

Tony Belcourt
Minister Responsible for Litigation
Métis Nation Cabinet
c/o Métis National Council
350 Sparks Street, Suite 201
Ottawa, ON
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forever

Dear President Belcourt:

RE: LITIGATION UPDATE FOR 2002 ANNUAL GENERAL ASSEMBLY

As requested, please accept the following as an update on the on-going litigation currently supported by the Métis National Council (MNC). I would also encourage the Assembly to review Jean Teillet's *2002 Métis Case Law Summary* which provides additional detail on many of the on-going cases as well as summaries of previously decided Métis case law which is included in the Assembly kit.

As you know, the first two cases (*R. v. Powley* and *R. v. Blais*) dealing with substantive Métis rights issues have been granted leave to appeal to the Supreme Court of Canada.

It is important to realize that these two cases will have an impact (negative or positive) on the entire Métis Nation, not just Ontario and Manitoba. The Supreme Court will use this opportunity to set out its underlying approach to the constitutionally protected rights of the Métis people within Canada. These decisions will have immediate consequences on the specific legal issues raised in these cases (i.e. Métis harvesting rights protected by s. 35 of the *Constitution Act, 1982* and whether Métis are "Indians" for the purposes of the *Natural Resources Transfer Agreement, 1930*); however, the principles and framework established by the court will also influence all on-going and future Métis litigation.

The importance of these cases is also witnessed through the number of interventions within the appeals. For example, within *Powley* alone the governments of Canada, British Columbia, Alberta, Saskatchewan, Manitoba, Québec and New Brunswick have all obtained intervener status. As well, 7 other organizations have been granted intervener status.

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As well, flowing from the "test" of whether the community has an existing Métis harvesting right, *Powley* will also deal with the question of who can exercise that community's existing harvesting right (i.e. who are the beneficiaries of the right).

Although this has been interpreted by some to give the Supreme Court the opportunity to define who are the Métis people within s. 35 for all purposes, it is hoped that the court will avoid any such large pronouncements and focus on the fact situation that is before it; namely, *"are the Powleys, who self-identify as being Metis, who are genetically connected to the historic Metis community at Ste Marie and who are accepted by the Metis community at Sault Ste. Marie able to exercise the Metis community's existing harvesting right."*

Similar to its submissions at the Ontario Court of Appeal which were positively adopted by that court, the MNC will argue that the legal test for who can exercise a Métis community's harvesting right does not and should not define who the Metis Nation and its citizens are.

The MNC, as the voice of the Métis Nation, will staunchly assert that only the Métis people themselves have the inherent right to determine who the Métis Nation and its citizens are.

Other interveners will attempt to get the court to adopt their "definitions" for their own political agendas. It is hoped that similar to the Ontario Court of Appeal, the Supreme Court will ignore these requests and solely focus on the facts and issues that it needs to decide in this case.

In addition, within *Powley* it is hoped that the Supreme Court will reinforce the judgements of the lower courts in stating that there is a positive obligation on the "Crown" (provincial or federal) to enter into negotiations with the Metis in order to reconcile their constitutional rights and interests within the Canadian federation rather than forcing Metis to resort to timely and expensive litigation.

If *Powley* is a victory and the court urges negotiations with the Metis, it is anticipated that provincial governments will, at the very least, begin negotiations with the Métis to address their constitutionally protected harvesting rights rather than forcing each community to establish a harvesting right based on the *Powley* test through litigation.

Métis communities can still have existing s. 35 harvesting rights pursuant to the "test" that will be articulated by the Supreme Court in *Powley*; however, the *NRTA* would have provided for a province-wide protection for Métis similar to that of what Indians now enjoy.

Regardless of the ultimate resolution of harvesting issues raised in *Blais*, the case will be very important because it will provide the Supreme Court its first opportunity to lay out how the Métis fit within the Canadian constitution.

Whether in laying out its general approach to constitutional interpretation vis-a-vis the Métis people or in comments made in *obiter*, the Supreme Court's statements will have a influence on all future cases dealing with whether Métis are "Indians" for the purposes of s. 91(24) of the *Constitution Act, 1867* (i.e. whether Métis fall within federal or provincial jurisdiction).

In light of this reality, the MNC be intervening to make the Supreme Court very aware of its preferred approach and the impacts the court's statements could have.

Timetable for Powley and Blais

The following timetable has been established by the Supreme Court of Canada based on a motion on consent from the parties of the two cases (Counsel for the Powleys and Blais as well as the Manitoba and Ontario Crowns):

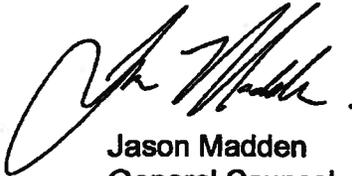
Sept. 9, 2002	Filing of Appellants' Facta
Nov. 18, 2002	Filing of Respondents' Facta and Powleys' Cross Appeal
Dec. 2, 2002	Filing of Reply Factum to Cross Appeal
Dec. 16, 2002	Filing of Intervenors' Facta
January or February, 2003	Two day hearing

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The case is in the pre-trial stage. The action is in case management with a meeting schedule for November 2003. As well, it is anticipated examinations of the plaintiffs and experts will begin in the Fall of 2003. Thomas Berger and Jim Aldridge are representing the MMF.

I hope this provides you with a sufficient update on the on-going Métis litigation. I look forward to attempting to answer any further questions at the MNC's Assembly.

Yours very truly



Jason Madden
General Counsel
Métis National Council

c.c. Gerald Morin, President, Métis National Council