March 2006 **by Mark L. Stevenson**

Métis Nation and Métis Aboriginal Rights

Who are the Métis?

The Métis are an Aboriginal people of Canada and are distinct from the Indians, and the Inuit. Not everyone of mixed European and Aboriginal ancestry is Métis.

At the most basic level, the term "Métis" refers to peoples of mixed Aboriginal and European (mainly French/British) heritage who historically developed distinct cultural practices and institutions.[1] According to the Royal Commission on Aboriginal Peoples (Royal Commission), the common theme is that Métis "embrace both sides of their heritage".[2] But Métis are more than that. The Métis are a "people" defined by their rich and distinct heritage and culture, their special relationship with the land, and their connection with the fur trade. More importantly, they are a nation that emerged from the collectivity of Métis communities living around the Hudson's Bay trading posts in the Prairie Provinces, and the large Red River Settlement in Manitoba.

What Criteria are used to determine who is a Métis?

According to the Supreme Court of Canada[3], there are three criteria used to determine who is a Métis.

[1] Canada, *Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Back*, vol. 1 (Ottawa: Supply and Services Canada, 1996) at 634-37 [RRCAP, vol. 1]; Paul L.A.H. Chartrand, "Introduction" in Paul L.A.H. Chartrand, ed., *Who are Canada's Aboriginal Peoples? Recognition, Definition, and Jurisdiction* (Saskatoon: Purich, 2002) 1. According to Chartrand, "The original meaning of the term *Métis* evokes the idea of a 'mixed' or 'in-between' people" (at 24).

[2] RRCAP, vol. 1, *ibid.* at 637.

[3] Refer to paper entitled *The Métis Nation and Métis Aboriginal Rights by Mark L. Stevenson* for background with respect *to R.v. Powley.*

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> First, the claimant must *self-identify* as a member of a Métis community. The self-identification should not be of recent vintage: While an individual's self-identification need not be static or monolithic, claims that are made belatedly in order to benefit from a s.35 right will not satisfy the self-identification requirement.
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> Second, the claimant must present evidence of an *ancestral connection* to a historic Métis community. This objective requirement ensures that beneficiaries of s35 rights have a real link to the historic community whose practices ground the right being claimed. We would not require a minimum "blood quantum", but we would require some proof that the claimant's ancestors belonged to the historic Métis community by birth, adoption, or other means. Like the trial judge, we would abstain from further defining this requirement in the absence of more extensive argument by the parties in a case where this issue is determinative. In this case, the Powleys' Métis ancestry is not disputed.
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> Third, the claimant must demonstrate that he or she is *accepted by the modern community* whose continuity with the historic community provides the legal foundation for the right being claimed. Membership in a Métis political organization may be relevant to the question of community acceptance, but it is not sufficient in the absence of a contextual understanding of the membership requirements of the organization and its role in the Métis community. The core of community acceptance is past and ongoing participation in a shared culture, in the customs and traditions that constitute a Métis community's identity and distinguish it from other groups.[4]

On September 27, 2002, at a gathering of the Métis Nation, as represented by the Métis National Council and the affiliate organizations, an agreement was reached on the definition of Métis. The definition provides that:

> Métis means a person who self-identifies as Métis, is of historic Métis Nation Ancestry, is distinct from other Aboriginal Peoples and is accepted by the Métis Nation.

What constitutes the Métis Nation?

> The Métis Nation grounds its assertion of Aboriginal nationhood on the well-recognized international principles. It has a shared history, a common culture (song, dance, national symbols, etc.), and unique

[4] 2003 SCC 43 paras. 31-33.

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> language (Michief with various regional dialects), extensive kinship connections from Ontario westward, a distinct way of life, territory and a collective consciousness.[5]

The Métis Nation is represented at the national level by the Métis National Council. The MNC is composed of representatives from each of the five democratically elected provincial governing bodies: the Métis Nation of Ontario, the Manitoba Métis Federation, the Métis Nation of Saskatchewan, the Alberta Métis Nation and the Métis Nation of British Columbia.

Where is the Métis Homeland?

The Métis Homeland encompasses the three Prairie Provinces, northwestern Ontario and northeastern British Columbia. Modern Métis communities are scattered throughout the Homeland. Some of these communities have their own land base, as in the Métis settlements in Alberta as well as Kelly Lake in northeastern British Columbia. However, most Métis communities do not have a formally recognized land base, and consequently, the establishment of a land claims process is at the top of the agenda for the Métis Nation. While the numbers of Métis will vary with the definition of Métis, according to the MNC website, there are approximately 400,000 Métis people. The collectivity of Métis people, living in Métis communities within the Métis Homeland constitutes the Métis Nation.

Future (or Anticipated) Court Clarifications

Métis are not status Indians regulated under the *Indian Act*. Through the application of section 88 of the *Indian Act*, Indian Aboriginal rights to harvesting wildlife are regulated by provincial wildlife legislation. Therefore it can be argued that the Aboriginal rights of Métis wildlife harvesters to hunt for food are not subject to a provincial wildlife regime. This difference between

[5] *Supra*, note 11.

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regulations governing the Aboriginal rights of Indians and Métis will likely lead to further court disputes between provincial governments and Métis communities.

What is important to remember in *R v. Powley*?

Métis have constitutional Aboriginal rights under the *Constitution Act, 1982* including the right to hunt for food. The underlying purposes of section 35 of the *Constitution Act, 1982* with regard to the Métis is to provide protection for the Métis Aboriginal rights that flow from the emergence of distinct Métis communities between the period of first contact and the time when "effective control" was exercised by the authorities established by European settlers.

To be able to exercise an Aboriginal right, Métis claimants must be able to prove that they are members of a modern Métis community that has ancestral links to an historic-rights-bearing Métis community that emerged in the period between first contact with European settlers and the establishment of effective control by the settler authorities.

Métis Aboriginal rights, once established, are given the same constitutional protection and status as are the rights of Indians and Inuit.

About the Scow Institute

The Scow Institute is a non-partisan organization that is dedicated to addressing public misconceptions about various issues relating to Aboriginal people and Aboriginal rights. For additional information, please visit our website at www.scowinstitute.ca.

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