

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

June 18-20, 2003

Saskatoon

Day 2 – Tape 2

**Start Clip: 01:19:42:18**

**Larry Chartrand:** It's a definite pleasure to be here and to offer some thoughts on how we should go about this task, trying to define the term Métis peoples in the Constitution. I'm gonna take a rather legalistic kind of interpretive perspective and, you know, and in a sense, Harry, I'm gonna open up that can of worms, I think, and, and, you know, explore how we should think about defining Métis in the Constitution.

Just in terms of an overview, this is, I am preparing a paper, but I wasn't able to get it done for today. And this is more like the overview of the paper, defining the Métis people, you know, the whole debate of choosing between a broad and narrow definition, some of the options that we should explore in doing that, and, and when you interpret a Constitution, one of the important things is to also see how the terms relate to the other important and central terms in the Constitution. So, of necessity, I'll be looking at defining peoples, and defining Aboriginal as well. (Hey, stuff erased in there. Anyway there is more stuff in there, but I won't even be covering that today.) The only part I'm gonna be covering is the very beginning part in terms of trying to define the Métis peoples, specifically that term. Also I will be touching on some of the other terms.

Of course, one of the, one of the ways you do that, and one of the standard principles of Constitutional interpretation is, you know, you don't just look at a term in isolation. You have to try to ensure that it's harmonious with the terms in the, in the statute and, and its overall scheme, and, of course, the intention of the drafters. And, of course, we have Harry Daniels here who was one of the, one of the drafters of the definition section in, in Section 35. So what was the intention of the drafters? Of course, that's one of the things we look at to try to define a term in the Constitution. We know

that one of the ideas was that if we expressly include the term Métis, this will prevent the risk of subsequent interpretation of the provision. You know, if it only had Aboriginal in there, it would ensure that we don't risk not being included with the term, within the meaning of Aboriginal. So that was very important to make that clarification, that Métis are an Aboriginal persons. Because there was, of course, and there continue to be those critics of Métis who deny that we are Aboriginal in the first place. And that was an important, I think, provision to clarify that.

Couple of things about the Constitutional talks and trying to get at the meaning and the attention of the drafters. We know from the discussion that there wasn't a lot of thought put into the meaning of the term Métis. Was a pretty much, a last minute endeavour during those, that really tight schedule on January 30<sup>th</sup>. So there's not a lot that we can get from that in terms of its meaning. We could look at the 1984 attempt by the Métis National Council to define Métis narrowly, as the historic Métis of the Northwest. But we know that proposal didn't succeed. Part of it had to do with the objections of the constituency of the MCC. But what does that say in terms of giving us a clue of the term Métis? Does the, does the fact that there was a failure to define it in reference to the historic Métis mean, then, by implication that it should be a broad definition? Of course one could argue that. But that's a very risky argument because we'd all know that a lot of factors go into drafting statutes and, and, and Constitution in particular. And we can't rely heavily on that kind of an implication type argument. We could also look at the fact that the Métis national accord had a narrow definition of Métis; it was specific to the historic Métis of the, of the Northwest. And that that had the support of the first ministers, and that maybe that's a clue as to how the term Métis peoples in the Constitution should be interpreted. Unfortunately, the whole Charlottetown Accord failed, and, and so did the Métis nation sub-accord.

So, we really, I'm not sure if at the end of the day we have any idea from looking at the intentions of the draft as just what was meant by the term Métis peoples in the Constitution. No general consensus emerged from

the record that I'm aware of, as to how we should interpret the term, either narrowly or broadly.

**End Clip: 01:25:32:14**