The Métis in the 21st Century Conference

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Saskatoon

Day 2 – Tape 2

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Larry Chartrand: So we have to kind of look at other factors, then, to assist us in defining what it means to be Métis. One, one, of course, approach, of course, is to support a broad definition. There are now groups that self-identify as Métis by default, due to the historical application of the enfranchisement provisions of the *Indian Act* and its related policies. No further enquiry, of course, will have to be undertaken to determine whether particular groups, a particular group who self-identifies as Métis is self-identified primarily in name only, or there's some, you know, specific Métis manifestations of culture and values. Nonetheless, of course, these groups may very well have strong and genuine feelings regarding the Métis identity even though historically their identity came about through the negative implications of the *Indian Act*. And if we rely on, for example, the principle of constitutional interpretation, then the Constitution should be seen as a living tree, that it evolves with the changing values and ideas of Canadian society. An argument could be made now that, you know, the term Métis in Section 35 should embrace a fairly broad and inclusive definition. After all, in many of these situations, it wasn't their fault that they were, what I would call, de-Indianized—it's like de-icing—de-Indianized from being able to legally identify as, as Indians in the Constitution or as Indians in the *Indian Act*. The article by Paul Chartrand and, and John Jilkason **[sp?]** in his recently released book, I think, provides a fairly good overview of the historical circumstances that have given rise to some of these, what he calls the boundary Indian identity, or the boundary Métis identity, those people that are kind of at the fringes of Métis/Indian identity.

And there are, of course, I don't want to go into the whole historical overview, but there are a number of different factors and different regions of

Canada that gave rise to a self-identification as being Métis, by communities, who may very well be more culturally and linguistically similar to the Indian communities in the area, yet now label themselves and identify themselves as Métis. That, of course, gives us, gives rise to a problem, though. And it's a problem that arises out of how the cases have interpreted the meaning of Section 35. The problem being that a broad definition is not consistent with the test for establishing Aboriginal rights and title now. The tests require a continuity between the current Métis community, identified as Métis, with a historic Métis community, in order to establish Métis rights. And I would, I would say, in the last sentence there, before Aboriginal there, that should be Métis Aboriginal rights, because it's still possible for those fringe Métis communities, those boundary Métis communities, to still prove they have Aboriginal rights. But it will not be through their Métis identity, but rather through their connection with their, with the Indian community in the area.

So we, we move on to the observation that some of these communities, they identify themselves as Métis, but for constitutional purposes and just constitutional purposes, they would more appropriately fall within the category of Indian if they wish to assert Aboriginal rights. Politically and socially, they still may have very deep-rooted feelings of being Métis, and because of the history of Canada, that is very much legitimate. But in terms of how the, the courts have been interpreting the provision, and the requirement of, of, of continuity, they may be able to more appropriately establish their Aboriginal rights through to, from their Indian ancestries, heritage.

Now, of course, whether we agree with this or not is another question. And, of course, there's a lot of critical commentary coming from legal scholars about the whole idea of the cut-off date, and the, the assertion of sovereignty test, and the denial of, really, communities to evolve and change over time. That's, that's another factor altogether. But we don't really want to, I think, include in the term Métis peoples those kinds of communities that really have more in common with their Indian ancestry side, but identify as Métis because they've been excluded from legally identifying as Indian. We

don't want to necessarily include them in the term Métis because what will that do? It won't get them anything. It'll be like window-dressing, but with no substance 'cause of the way the courts require that direct continuity with the pre-existing historic Métis community. It's better, I think, for them to try to establish their Aboriginal rights by identifying as Indian.

One of the reasons why, why, this may be the case is, and we can support that argument, is the fact that it's no longer imperative anymore, or as imperative to include boundary Métis, for lack of a better word, with the term Métis, because the term Indian has evolved and broadened in scope, so that the risk of such communities now falling into the constitutional cracks has diminished significantly. Non-status Indians, for example, have been increasingly successful on proving their entitlement to Aboriginal rights, and to their inclusion within the meaning of Indian under the Natural Resources Transfer Agreement that we'll probably hear a bit from Lionel. The *Grumbo* case, for example, was instrumental in finally putting to rest the myth that the term Indian means Indian as defined in the *Indian Act*. Rather the term Indian has a broader factual aspect to it, and includes others who don't have legal status as Indians. And that many of these people are increasingly becoming more successful in bringing Aboriginal rights claims as Indians under the Constitution, but not necessarily Indians under the *Indian Act*, and, and that will, will, I think, be a positive feature of ensuring that the terms Métis and Indian, you know, are fairly well-defined and don't have as much grey in between them.

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