

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

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Saskatoon

Day 2 – Tape 3

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**Lionel Chartrand:** I'm going to take a bit of a people approach to, to the topic today. You know, I've always believed that what the law's about is, it's about people. It's not really about the law, it's about people. That's why we have the law; it's to serve the people, not the other way around. We shouldn't be here to serve the law. And you know, through the years a lot of people have asked me my opinion on, on, you know, different things and I'm gonna try to, you know, speak about the *Blais* case in the context of, of the, the identity of the Métis and the, the legal rights of the Métis. And, you know, there are, there are also misconceptions, you know, out there, and I think it's important to know that the definition of Métis and the legal rights of the Métis will not be decided by an event, either an, an like an event in 1982, or an event when the *Powley* decision comes out, or the *Blais* decision comes out. But it's really a process, and it's a process that includes people, all the people, and it includes you and our people in the community because everything is really interactive, and one thing influences the other. It's, it's, it's really a process, you know. Often people would like to see a simplistic answer, you know, people, you know, we, we, I think it's a human tendency to strive to have an answer. And I, I don't have any more of an answer for you on, on, on the legal definition of the Métis, or what their rights are than any other speaker does, and, we don't have that answer. But I'd like to talk about that process.

Ernie Blais was the President of the MMF [Manitoba Métis Federation] in 1994. I'd like to give a little history of how the case came about. In Manitoba, I, I worked on the *McPherson/Christie* case starting around 1989, 1990. In 1994, an appeal decision in the Court of Queen's Bench in Manitoba was, was given that decided that Henry Christie and Jack McPherson, as

Métis, were, had, Aboriginal rights to hunt moose, contrary to the *Wildlife Act*. So this was the, first precedent in, in Canada that really recognized Métis as, as Métis, in having Aboriginal rights to hunt. And after we won on appeal, the Crown didn't appeal further. So it stayed a decision of the Court of Queen's Bench in Manitoba, which is binding law on all trial courts hearing *Wildlife Act* matters in Manitoba, but isn't binding on other provinces. So other provincial courts in other provinces are free to come to a different conclusion. Now, that, that case was decided on the basis of common law Aboriginal rights, or Section 35 Aboriginal rights, in a similar way to the *Powley* case that Jean Teillet spoke about. Now, at that time, what happened is Ernie Blais was president and he was flooded with telephone calls, you know. A lot of people, especially in the southern part of Manitoba were saying, "Well, do I need a license? Can, can I go out and hunt?" And at that time officials from the Wildlife Enforcement Department said that they took the position that the ruling applied only to northern areas in Manitoba and not the southern parts. So they woulda, they would have enforced the *Wildlife Act* in the southern part of the province.

Now, this brings about a distinction that's pretty important. And yet, I think to understand when, when talking about Aboriginal rights and Métis Aboriginal rights, that there are different sources of, of Aboriginal rights for the Métis, and there are several, and the, the, I suppose, arguably the, the common one, or the classic one is the one that Jean Teillet and Larry spoke about. Common law Aboriginal rights, the old classic test, which comes down from *Calder* and a series of cases, *Vanderpeet* and so on, dealt with in, in, in *Powley*, basically deriving from a historic occupation of the land, and a, a practice that's integral to the culture that's been practicing in continuity by the community and practiced today. Now, with respect to Aboriginal rights, common law Aboriginal rights, the, the, the effect of, of, of going out there and winning a case like that is, is that the, the people, the Métis people from that community, are then entitled to be beneficiaries of that ruling. But rulings are done on a case by case basis, and on a, on a community basis. So that means, for example, Jack McPherson, Henry Christie, you know, they're

Métis from Big Eddy in, in northern Manitoba around The Pas area. So the rights of the Big Eddy Métis people are restricted to the traditional lands and traditional geographic areas, which, which cover areas north of The Pas and east of The Pas and certain geographical areas. So Jack McPherson, for example, can't come to southern Manitoba and, and hunt, where Ernie Blais was hunting under his common law Aboriginal rights.

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