

The Métis in the 21st Century Conference

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Saskatoon

Day 2 – Tape 3

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Lionel Chartrand: Now, on the Prairies we have a bit of a unique situation. And in Alberta, Saskatchewan, and Manitoba, any First Nations person with a status card can hunt anywhere on unoccupied Crown lands for subsistence without, without further proof. So if they encounter a Wildlife official, the Wildlife official never says, "Sir, are you hunting in your traditional lands? Can you prove that to me? Have you, have you kept up your connection with the community? Has your community been a cohesive unit through history?" At least, I've never heard any such stories. I, I, I invite anyone if, you know, if there's such an inquiry, I want to know, you know. So, so, you know, I think that's, that's, you know, that's a real issue because, again, we're talking with, about people, and, and if the Métis are gonna have real rights, real hunting rights, that means real enforceable, real practical rights, because our people don't want to go to court every time they're charged with hunting out of season, you know. So we have to accept the limitations of, of, of findings of common law Aboriginal rights, as, as we know there are hundreds of different Métis communities. Are we gonna have a test case on every single community? Are we gonna spend all the resources to have experts, expert witnesses, and anthropologists talk about the culture and the history of all, all the people?

On the Prairies, the reason, the reason for the enforcement policy on First Nations is that in 1930 the Natural Resources Transfer Agreement was signed, which transferred ownership of the resources, minerals, and so on, the, the, the lands from the federal government to the provincial government, and in so, in doing so, the federal government wanted to wash its hands of its legal obligations to, to the Aboriginal people that had, that had entered into treaties, and, and, and so on. And so part of the deal was

that in accepting ownership of the lands, the province had to promise to the federal government that it would, that it would reserve for, for the Indians, the right to hunt for subsistence at all seasons. So this provision applies only on the Prairies and doesn't apply in Ontario, Quebec, and Maritimes, or, or the, the Territories. So, so that was, that's another source of First Nations rights. I don't want to get too far into it, but First Nations rights on the Prairies also come from many different sources—common law, from treaties, and from the NRTA (the Natural Resources Transfer Agreement), but it's, the rights are greater geographically, and, and it's a simpler task to, to, to deal with the NRTA.

So, so, given the practical limitations, Ernie Blais and I got together and talked about it. And, you know, we figured, well, the Métis shouldn't be second-class citizens, you know. If it's okay for a First Nations person to just have their status card, and that's good enough, then, you know, you know, the Métis, should, should also have that, you know, that ability. That if they can show to the satisfaction of the Wildlife officials that they are, in fact, generally a Métis person, then, you know, then they, they too should have the benefit of the Natural Resources Transfer Agreement. So that, that was the, you know, that, that was the impetus for, for the case. He was the political leader at the Manitoba Métis Federation at the time. He was responsible to the Métis. The people wanted answers. The hunters wanted to know, "Can I, can I go and hunt?" So, with the uncertainty, again, of the different communities, and the, and the legal tests on common law, we decided to, to, to try to prove, in, in, in the courts that the Métis are Constitutional Indians and have the benefit of the NRTA. So the practical result is that, that it would, a win, a win under that legal source would be a real, like, a real actual, real world win, and would result with meat on the table. So that's a real benefit that can be had. Unfortunately, you know, that source doesn't extend beyond the, the boundaries of the Prairies, you know, but, you know, now.

So here we have the concept of a Constitutional Indian. Most people, you know, when they hear the word Indian, you know, think of the, the, an

Indian as defined under the *Indian Act*, which is a piece of federal, you know, legislation. The term Indian in federal legislation is a defined term. It goes on for, for many paragraphs and is very technical. The term Indian was never defined in the Constitution. It never was. It appeared under the *BNA* [British North America] *Act*, under the Division of Powers clause, Section 91(24). And, and then it appeared in the Natural Resources Transfer Agreement in, in 1930. And it appears in, in, in 1982.

So the, the, the arguments in the *Blais* case, which I have summarized in the paper—it's about twelve pages long—and, and, so with the shortage of time, I don't want to go really in depth, but I just want to touch on it briefly. That, that the basis for the argument is that, and what the issue is really, similar to what Jean Teillet said, you know, like the issue of the court, we didn't go to court and ask for reference on, on, on, on, on defining the Métis or anything like that. The issue is, is Mr. Blais, by virtue of being Métis, as a Métis person, does Ernie Blais fall within the definition of the 1930 Constitution or the NRTA? So the court doesn't have to look at the boundaries of the identity of the Métis, all those thorny issues that exist out there, but on the facts of this particular case on the facts of Ernie Blais himself, with, on his mother's side, as families from the historic Métis community of St. Laurent where, where some famous people come from. And, so that's, that's the issue.

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