The Métis in the 21st Century Conference

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Saskatoon

Day 2 – Tape 3

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Lionel Chartrand: It'll be in future cases that, you know, that, that, you know, that the boundaries will be pushed of exactly what, what the definition is of Métis, but the, the legal, the thrust of the legal argument is that we have to use principles of Constitutional interpretation in deciding what a Constitutional Indian is. We're not, we're not dealing with an *Indian Act* Indian. There had been an earlier case, the *Laprise* decision from Saskatchewan, where the court, in that decision, the Saskatchewan Court of Appeal, didn't realize at the time it was hearing it that the, the, the NRTA was Constitutionalized. And that issue was revisited in *Grumbo*, and the Court of Appeal here admitted that it was in error in failing to recognize it was a Constitutional document. The rules of Constitutional interpretation is different from statutory interpretation. Unlike statutory interpretation, Constitutional interpretation is, as Larry said, it's like a living and growing tree, it evolves with, with time. And, and, so some of the errors committed, you know, by the courts and the lower courts on the *Blais* case was that they used principles of statutory interpretation, not Constitutional interpretation. And, and, and I think the biggest part of the argument is, is, you know, we have to look at the Constitution together. We can't just take an isolated piece. We, we, we have to look at the intention and the framers of the whole Constitution from 19-, from 1857 to 1982. And what we find, well, I think it's obvious. You look, you look at Section 37 and 37.1, which we, which we heard about from the previous speakers, and, and how, how clear can the intention of parliament and the provinces be when they expressly state, under Section 37—and there's a little reprint on page nine of my paper—it's, it says among other things, included on the Constitutional conference

agenda, is, number one, the identification of, and number two, the definition of the rights of those peoples.

So, clearly, in 1982, they put in a Constitutional provision that, that the Aboriginal people of Canada include the, the Indians, the Inuit, and the Métis. And, and, and that they recognize and affirm their Aboriginal treaty rights, and they don't go on to define their Aboriginal treaty rights. And they don't go on and define the Métis people, but then they go on and to say, here's a process over the next three years or over the next five years, we're, we're gonna call in the Aboriginal leadership, we're gonna call in the First Ministers, we're gonna call in the prime minister, and, and we're gonna sit around a round table and, and, and, and we're gonna have on the agenda the identification of those rights, and the definition of them. Well, what does that mean? I don't think you have to be a scholar to figure that out. It's obvious. They intended that the answer to all of this is that, is that, that they wanted to make it known that the Métis are an Aboriginal people with Aboriginal rights, and, and there was no question of that, and it was a recognition of the thorny issues that existed and, and of putting together a mechanism by which to solve them now. History shows that it wasn't solved, and the answer in our Canadian judicial, Canadian legal system is that if, if parliament, if, and the legislatures together can't, can't resolve those questions of interpretation, then it's for the courts to, to, to interpret.

And for Ernie Blais, being the president at the time of the Manitoba Métis Federation, how can you argue that he's not accepted as a member of the Métis people? There was genealogical evidence, which admitted by the Crown, he's descended of, of, persons who received scrip. The judge found this to be a fact, that he was Métis. And I submit that, that should be enough to, to, to determine that, that, that Ernie Blais is a, is, is Métis within the Constitutional definition, and that the Constitution includes the 1930 NRTA. The, the courts, historically, when they made rulings, they, they tried to restrict their ruling on the particular facts of the case. So, clearly, when the decisions come up for both *Powley* and *Blais*, they're not going to draft comprehensive definitions of, of anything. But it'll be, it'll be for all of us to

drive the future road to the definition and identification of, of those rights, and whatever forms that could be. Nothing prevents the different levels of government and the leadership from getting together and looking at the Constitutional amendments in the future. Nothing prevents our people from, from lobbying and, and speaking out on, and letting, letting the political leadership know what their rights are. Nothing prevents that, so we all have the ability. And often on thorny issues, whether in other fields of law in addition to Aboriginal rights, often the issues are, are avoided, and when, and when that happens it ends up being the courts, through a series of decisions that really identify and, and define what those are. So, I think, in reality, the future for the identification of Métis and their rights, lies, probably to a good measure, to future litigation. And in a way this might be unfortunate, you know, because there should probably be a better process, but, you know, than letting the judges decide, but when there's no alternative, you know, that's, that's normally, what happens. So it's probably gonna be a long road, and after the *Powley* and *Blais* decisions, there's going to probably be more questions than answers given by the court, and the subject will be of continuing debate for many years to come.

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