

FULFILLING CANADA'S PROMISE.
MÉTIS RIGHTS. RECOGNIZED AND AFFIRMED.



MÉTIS HARVESTER'S GUIDE

2005 EDITION (FALL)

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What is this Guide?

This *2005 Métis Harvester's Guide (Guide)* has been prepared by the Métis National Council in collaboration with its Governing Members as a part of the Métis Nation's multilateral process on Métis harvesting.

The purpose of this *Guide* is to provide Métis citizens with helpful and timely information relating to harvesting in their region of the Métis Nation for this Fall. This *Guide* includes:

- background information on the *Powley* case;
- information on the various Métis harvesting initiatives and/or agreements that are in place for this Fall;
- regional contact information for Métis harvesters; and
- helpful lists on what to do if you are harvesting this Fall.

It must be emphasized that this Fall's harvesting season continues to be one of transition across the Métis Nation. While we have attempted to provide Métis harvesters with as much information as possible in this *Guide*, it will not answer all of your questions and should not be considered legal advice. As well, developments following the publication of this *Guide* may substantially change some of the information provided.

In order to avoid any confusion or misunderstandings, all Métis harvesters should contact their regional Métis government in order to obtain the most up-to-date information available prior to going out harvesting this Fall.

What is the Powley case?



On September 19, 2003, with the release of the *Powley* case, the Supreme Court of Canada affirmed what the Métis people have been saying for generations. Namely, the Métis are a distinct Aboriginal people with rights that must be respected.

The Supreme Court confirmed that s. 35 of the *Constitution Act, 1982* is a “promise” to the Métis people and its central purpose is to recognize them, to value distinctive Métis culture, and to enhance their survival.

Specifically, in the *Powley* case, the Court set out a “test” for establishing Métis harvesting rights protected by s. 35 of the *Constitution Act, 1982*. The Court applied this test to the Sault Ste Marie Métis community and to the Powleys and found that the Powleys were exercising the Sault Ste. Marie Métis community’s constitutionally protected right to hunt.

However, this does not mean that the case is limited in its application to only the Sault Ste Marie Métis community. The test applies across the Métis Nation.

The *Powley* case also set out criteria for who can exercise a Métis right to harvest. These are: (1) you self identify as Métis; (2) you are ancestrally connected to a historic Métis community; and (3) you have been accepted as a member of a modern Métis community which has evolved from a historic Métis community.

The Supreme Court emphasized the urgent need to develop more systematic methods to identify Métis rights-holders. In answer to government claims about Métis identification problems, the Court said that this issue was not an insurmountable problem and that the difficulties must not be exaggerated in order to defeat Métis claims.

Finally, it is important to remember that the *Powley* case confirmed that Métis harvesting rights, like all Aboriginal rights, are collective rights. While Métis harvesters can exercise the collective's right as an individual, it is the collective that protects and holds the right for future generations. Therefore, Métis harvesters should be aware of and follow Métis-made laws and regulations that are in place across the Métis Nation Homeland.



What has been done since the release of the Powley case?

Since September of 2003, the Métis Nation has been working to ensure that the *Powley* case is respected by the federal and provincial governments and that it is implemented, in partnership, with the Métis Nation's governments.

Ultimately, the Métis Nation wants to ensure that legitimate Métis rights-holders, who are harvesting within Métis self-regulation regimes, are able to harvest for food without fear of harassment, screening or charges from the federal or provincial governments.

The Fall of 2005 continues to be a period of transition with respect to Métis harvesting. In some regions of the Métis Nation, much progress has been made and interim agreements are in place. In others, provincial governments continue to deny the existence of Métis rights and have unilaterally implemented policies which reflect this.

Irrespective of these short-sighted positions on the part of some governments, the Métis Nation continues to push forward on fulfilling the promise of s. 35 to the Métis people. In all regions of the Métis Nation, Métis governments are undertaking consultations on the *Powley* case as well as developing and implementing their own Métis harvesting regulatory regimes. In some regions, Métis governments are already operating their own Métis-made laws.

The sections that follow provide status reports on what is in place and happening across the Métis Nation.



Ontario

Since 1995, the Métis Nation of Ontario (MNO) has been facilitating the Métis harvest in Ontario under a *Harvesting Policy* that was developed in consultation with Métis citizens. Under the MNO's *Harvesting Policy*, Métis harvesters are issued Harvester Certificates for harvesting within their traditional territory.

On July 7th, 2004, the President of the MNO and the Minister for the Ministry of Natural Resources (MNR) in Ontario reached a *Four Point Agreement (Agreement)* whereby the MNR agreed to recognize the MNO's Harvester Certificates in all Métis traditional territories in Ontario identified by the MNO.

Unfortunately, on October 6th, 2004, the Minister for MNR unilaterally announced that the MNR would only recognize MNO Harvester Certificates north of Sudbury. At the time of printing this *Guide*, the MNO continues to implement the *Agreement* reached on July 7th - with no distinction for Harvester Certificates holders south of Sudbury. MNO also continues to urge the MNR to uphold the *Agreement* in its entirety.



What does this mean for Métis harvesters in Ontario this year?

For valid MNO Harvester Certificate holders north of Sudbury, the MNR will recognize your Harvesters Certificate as long as you are harvesting for food in your traditional territory. You will be treated the same as First Nation harvesters and not face charges unless you are harvesting in a manner not consistent with safety and conservation values set out in the MNO's *Harvesting Policy* or MNR's *Interim Enforcement Policy*.

For valid MNO Harvester Certificate holders south of Sudbury, the MNR may charge you for harvesting for food within your traditional territory. However, the MNO will support all harvesters with valid Harvesters Certificates who are harvesting within the terms of the MNO's *Harvesting Policy* against charges laid by the MNR.

For information on Métis harvesting in Ontario contact:

Métis Nation of Ontario
1-800-263-4889 (Ontario Only)
613-798-1488
www.metisnation.org



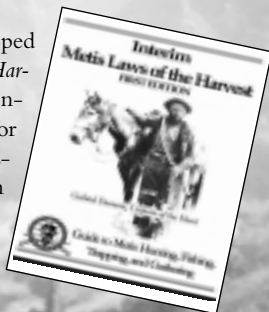
Manitoba

The Manitoba Métis Federation (MMF) is undertaking a *Métis Harvesting Initiative* to implement and protect the harvesting rights of the Manitoba Métis Community. Through extensive consultation, the Métis people have identified a series of objectives to guide the implementation of Métis harvesting rights in Manitoba.

To start, the MMF is issuing Métis Harvester Identification Cards. These Cards identify Métis harvesters and prevent the fraudulent abuse of Métis harvesting rights by non-Métis.

The MMF has also set up a Métis Conservation Trust Fund to raise and distribute funds for local and regional Métis-directed conservation initiatives and to support and safeguard Métis rights.

Finally, the MMF is committed to a Métis-developed management system and *Interim Métis Laws of the Harvest* recognizing Métis rights, jurisdiction, and responsibility. This includes surveys and management tags for gathering wildlife and fisheries data as well as Métis-made common-sense rules to protect resources such as bag limits and seasonal restrictions.



What does this mean for Métis Harvesters in Manitoba this year?

In September 2004, Manitoba Premier Gary Doer pledged his government would follow the *Powley* case and respect Métis harvesting rights. Further, Manitoba Conservation Minister, Stan Struthers, agreed his department would honour the MMF's Métis Harvester Identification Cards and the harvesting practices of the Métis would be respected.

Despite promises made, the Manitoba Government has indicated that Métis Harvester Identification Cardholders will still be charged, have property seized, or both. If such cases arise, the MMF will support all validated Métis Harvester Identification Cardholders hunting, fishing, trapping, or gathering for food or domestic purposes, while following the *Interim Métis Laws of the Harvest*. The MMF is continuing to issue Métis Harvester Identification Cards.

For information on Métis harvesting in Manitoba contact:

Manitoba Métis Federation

Natural Resources Unit

1-800-665-8474 (Manitoba Only)

204-586-8474

www.mmf.mb.ca



Saskatchewan

In 1994, the Métis Nation - Saskatchewan (MNS) passed the *Métis Wildlife and Conservation Act* and accompanying regulations. This Act provides for the facilitation of the Métis harvest in Saskatchewan by providing for the issuance of licenses to Métis harvesters as well as establishing safety and conservation standards.

Since 1996, with the *R. v. Morin & Daigneault* decision, Métis in northwest Saskatchewan have had their constitutional right to harvest for food recognized in law. Following this decision, Saskatchewan Environment (SE) unilaterally adopted a policy response that Métis, who were living north of the Northern Administration District (“NAD”) in a community they have a longstanding connection to and who were practicing a traditional lifestyle can harvest for food without a license.

In July 2005, the Provincial Court of Saskatchewan handed down its decision in *R. v. Laviolette (Laviolette)*. In this case, the court found that there was a rights-bearing Métis community throughout northwest Saskatchewan and that members of this rights-bearing Métis community can harvest throughout their traditional territory.

The Court also ruled that Mr. Laviolette, who lives in Meadow Lake, is a member of this rights-bearing Métis community. Meadow Lake is south of the NAD, therefore, the NAD can no longer be used by SE to determine who may or may not have a Métis right to harvest. Further, the court rejected that Mr. Laviolette had to prove he was living a “traditional lifestyle” in order to exercise the northwest Saskatchewan Métis community’s right to harvest. All of these findings put the legality and soundness of SE’s policy on Métis harvesting in question.

To date, SE has not formally responded to the *Laviolette* decision or officially altered its flawed policy on Métis harvesting. In addition, the Government of Saskatchewan continues to refuse to negotiate with the MNS on a province-wide Métis harvesting arrangement.



What does this mean for Métis harvesters in Saskatchewan this year?

The MNS has urged all Métis citizens in Saskatchewan to use their MNS Citizenship Cards for identification purposes for the harvest this fall and to follow the MNS Wildlife Act.

In the northern part of Saskatchewan, based on the *Laviolette* decision, Métis, who are members of the northwest Saskatchewan Métis community, which includes the areas in and around the fixed settlements of Lac La Biche, Il a la Cross and Green Lake, can hunt and fish for food without a license. However, since there is no agreement in place between the MNS and Saskatchewan, SE continues to arbitrarily apply its questionable policy and Métis harvesters should be aware that they may be charged.

In the southern part of Saskatchewan, SE maintains an approach that Métis harvesting rights are “unclear” and assesses Métis harvesters on a case-by-case basis. At this time, Métis harvesting in the south should be aware that they may be charged. A trial for a Métis harvesting test case in the Qu’Appelle Valley area (*R. v. Bellumeur*) is scheduled for the Fall of 2005.

For information on Métis harvesting in Saskatchewan contact:

Métis Nation - Saskatchewan

1-800-343-6667 (Saskatchewan Only)

306-343-8285

www.metisnation-sask.com





Alberta

On October 1st, 2004, the Métis Nation of Alberta (MNA) signed an Interim Métis Harvesting Agreement (IMHA) with the Government of Alberta, which recognizes the constitutionally protected harvesting rights of Alberta Métis. The IMHA provides for year-round harvesting for subsistence purposes only and applies to Métis harvesters who are members of the MNA or are eligible to be members. Current MNA membership cards are accepted as proof that a person is a Métis harvester under the IMHA.

The MNA is currently consulting on the development of an internal regulatory system for managing Métis harvesting in the province. Elements of this system will include tracking the types of species harvested by Alberta Métis, numbers harvested and the locations of harvesting. Alberta Métis are encouraged to participate in the process by submitting their concerns, ideas, observations and best practises to the MNA.

What does this mean for Métis harvesters in Alberta this year?

The IMHA allows Alberta Métis (i.e. members of the MNA) to hunt, fish, and trap on identified Métis harvesting lands within the province of Alberta for subsistence purposes. Métis harvesting lands include all unoccupied provincial Crown lands (as long as there is no development or activity on the lands that would make it unsafe); occupied Crown lands, such as wildland parks, natural zones and some types of provincial parks that have designated hunting areas. Métis can harvest on private land with the permission of the owner/occupants, or on leased land with the permission of the leaseholder.

Harvesting must also comply with regional conservation measures and must conform to safety laws, such as no night hunting, shooting across a road, etc. Other applicable licenses are required when using a motorized vehicle or boat, gun registration and possession of firearms and other weapons.

It is important to note that Métis who are fishing for food by net must first obtain a free Domestic Fishing Permit from Alberta Sustainable Resource Development (ASRD) which designates the lakes for fishing and acceptable gill-net size.



There is also an unresolved fishing related issue between the MNA and ASRD with respect to the IMHA. Some ASRD officers have been charging Métis who are subsistence fishing with a “rod-and-reel” under Alberta’s sport-fishing regulations. It is the MNA’s position that “rod-and-reel” fishing is covered by the IMHA. Moreover, the MNA asserts the way Métis can fish for food cannot be limited by arbitrary regulations.

The MNA has formally requested that this issue be addressed through the IMHA’s dispute resolution process and hopes a table with the Government of Alberta will be established soon to resolve this issue. In addition, the MNA will support a test case on this issue (*R. v. Trudel*) if it cannot be resolved through negotiations.

The MNA will continue to provide Alberta Métis with updates on this issue, however, until it is resolved, members should be aware that they may be charged for fishing with a “rod-and-reel”.

For information on Métis harvesting in Alberta contact:

Métis Nation of Alberta

1-800-252-7553 (Alberta Only)

780-455-2200

www.albertametis.ca







British Columbia

In 2002, the Métis Provincial Council of British Columbia (MPCBC) established the British Columbia Métis Assembly of Natural Resources (BCMANR) in order to develop natural resources policy to support the sustenance and cultural needs of the Métis people in British Columbia. BCMANR continues to engage Métis citizens in developing a harvesting policy that promotes conservation and environmental management as a top priority. Consultations on this policy are ongoing and it is anticipated that the policy will be implemented in 2006.

Unfortunately, since the release of the *Powley* case, the Government of British Columbia has refused to formally negotiate with MPCBC with respect to Métis harvesting. Therefore, MPCBC has pursued a litigation strategy in order to force the Government of British Columbia to apply the *Powley* case in the province and recognize Métis harvesting rights. To date, this strategy has been successful.

On April 8th, 2005, the British Columbia Provincial Court, in *R. v. Willison* (*Willison*), found that the Métis community within the “environs of Falkland” (i.e. Thompson/Okanagan area) have a Métis right to harvest. So far, the Government of British Columbia has refused to implement the *Willison* decision and has appealed to the British Columbia Supreme Court. This appeal is scheduled to be heard in December 2005. In addition, MPCBC is supporting another Métis harvesting rights case (*R. v. Regnier*) in the Kootenay area that is set to go to trial in 2006.

What does this mean for Métis harvesters in British Columbia this year?

MPCBC encourages Métis citizens in British Columbia to continue to exercise their harvesting rights throughout the province in a manner consistent with the *Powley* and *Willison* decisions. Since there is currently no formal Métis harvesting arrangement between MPCBC and the Government of British Columbia for this fall, Métis harvesters should be aware that they may be charged. If charged, please contact the MPCBC and/or your regional BCMANR Captain of Natural Resources immediately.

For information on Métis harvesting in British Columbia contact:

Métis Provincial Council of British Columbia

Director of Natural Resources

1-800-940-1150 (British Columbia Only)

604-801-5853

www.mpcbc.bc.ca

If I plan to harvest this Fall, what should I do?

1. Contact the Métis Nation government within the province you live in order to receive the most up-to-date information relating to this Fall's harvest;
2. Follow safety and conservation standards while harvesting;
3. Ensure you have the appropriate identification needed for Métis harvesting within your province (i.e. Citizenship Card or Harvesters Card); and
4. Bring this *Guide* with you and follow the steps outlined on the next page if you encounter an enforcement officer while harvesting.



What do I do if I encounter an enforcement officer while harvesting?

1. Be calm, polite and courteous throughout the encounter. Being confrontational will not be helpful.
2. Clearly identify yourself as Métis and state that you are exercising your Métis right to harvest for food. This is very important. If you do not identify as Métis then different law and/or regulations may be applied to your harvesting activities. As well, claiming a Métis right after you did not identify as Métis or identified as something else may be problematic for administrative and legal purposes.
3. Show your Métis Nation identification to the enforcement officer. This will depend on what part of the Métis Nation Homeland you are in. For example, some Métis Nation governments issue specific Métis harvesters cards (i.e. Métis Nation of Ontario, Manitoba Métis Federation and Métis Provincial Council of British Columbia) while others are using existing membership cards for the purposes of Métis harvester identification (i.e. Métis Nation - Saskatchewan and Métis Nation of Alberta).
4. Make it known to the enforcement officer that you were only harvesting for food, social or ceremonial purposes.

5. If the officer asks you questions like ‘what do you know about Métis rights or the *Powley* case?’ or ‘what Métis community you are from and when was it formed?’ – you do not need to answer. In fact, you should be aware that additional information you provide at that time may be used against you at a later date. All you have to say is that you are exercising a Métis right to hunt for food and provide your identification.
6. Ask for the enforcement officer’s name and identification number and write it down. Also, if you can make notes on anything that was said during the interaction.
7. Report any encounters, seizures or charges to your respective Métis Nation government immediately.

What else should I be aware of this Fall?

Conservation & Safety:

It must be remembered that no rights are absolute. In particular, there are limits on the Métis right to hunt when safety and conservation issues arise. For example, the law does not support a Métis right to harvest at night with lights or on road corridors. Métis harvesters should be familiar with conservation and safety regulations within their region of the Métis Nation.

Gun Registration:

You are required to register your firearms pursuant to federal law. The *Powley* case did not exempt Métis from gun registration requirements.

Harvesting with Non-Aboriginal People:

If you are harvesting with non-Aboriginal harvesters make sure they have the required licensing under applicable laws. Your Métis right cannot be used for the purpose of harvesting for other non-Aboriginal people or groups. This does not mean you cannot harvest with non-Aboriginal hunters – just make sure they are properly licensed.

Commercial Harvesting:

The *Powley* case dealt with the right of Métis to harvest for food. It did not deal with commercial rights. This does not mean that Métis do not have the Aboriginal right to harvest commercially, it simply means that there is no case law to support this claim at this time. The issue of commercial harvesting will have to be dealt with in another case.

Contact Information

Métis National Council

1-800-928-6330

613-232-3216

www.metisnation.ca

Métis Nation of Ontario

1-800-263-4889 (Ontario Only)

613-798-1488

www.metisnation.org

Manitoba Métis Federation

1-800-665-8474 (Manitoba Only)

204-586-8474

www.mmf.mb.ca

Métis Nation - Saskatchewan

1-800-343-6667 (Saskatchewan Only)

306-343-8285

www.metisnation-sask.com

Métis Nation of Alberta

1-800-252-7553 (Alberta Only)

780-455-2200

www.albertametis.ca

Métis Provincial Council of British Columbia

1-800-940-1150 (British Columbia Only)

604-801-5853

www.mpcbc.bc.ca



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