

## The Alberta Dis-Advantage

### Métis Issues and the Public Discourse in Wild Rose Country

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#### Abstract

In the past two decades there has been an explosion of innovative scholarship devoted to Métis ethnohistory. In Alberta, however, this research is not necessarily reflected in the quality or quantity of public discourse on Métis issues. Recent controversies over public commemoration of Métis history and the right of Métis to exercise their indigenous harvesting rights have served to question the very existence of Métis people as an aboriginal group in Alberta. This presentation explores these controversies and their future ramifications for the Alberta Métis.<sup>1</sup>

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#### Introduction

Can you remember the times  
That you have held your head high  
And told all of your friends of your Indian claim  
Proud good lady and proud good man  
Some great great grandfather from Indian blood came  
And you feel in your heart for these ones. . .

*"Now that the Buffalo's Gone"  
Buffy Sainte Marie<sup>2</sup>*

Buffy Sainte Marie's song of 1964, now almost fifty years old, evokes in our minds the trope of the Vanishing Indian. The plains hunter, resplendent in buckskin and feathers, galloping across the open

prairie in pursuit of the buffalo, was, and continues to be, the iconic image that comes to mind when the term “Indian” is mentioned. The earliest constructions of this romantic and nostalgic vision of a glorious past began in the late nineteenth century, as the remnants of the aboriginal populations in both Canada and the United States continued their precipitous decline due to famine, disease and cultural breakdown.

As Frederick Jackson Turner observed in his seminal essay the “Frontier in American History”(1893) the violent displacement of “savagery” by “civilization” as Americans pushed westward onto indigenous land, became an essential element in the construction of a unique and separate American personality.<sup>3</sup> Little by little, Turner argued, the European was forced to venture further westward into the wilderness of America, in order to claim more land. In the process of defeating savagery (in both its human and natural forms), an entirely new national *persona* emerged, one that was distinct from its European origins. The quintessential American – self-reliant, resourceful, acquisitive, individualistic and aggressive – became the ultimate product of the frontier struggle.

The Canadian frontier experience was different, of course. Although it can be argued that the outcomes were the same, i.e. the indigenous people were displaced by newcomers and their lands taken over – the process of displacement evolved differently. First of all, the Canadian government was compelled to contend with *two* categories of aboriginal people in its western territories: the various First Nations tribal groups and the Métis, a distinct and separate indigenous group of mixed European and aboriginal ancestry that had emerged in the west with the fluorescence of the fur trade.<sup>4</sup>

We do not know precisely when the first Métis child was born in what is now Southern Alberta. During the waning years of the French régime, *Canadien* traders from Montreal established Fort La Jonquière, the westernmost post on the plains, around 1751, in what is now central Saskatchewan.

Although there is evidence in the correspondence of Jacques Legardeur de Saint-Pierre to suggest that he ordered his men to press further to the foot of the Rocky Mountains, there is no conclusive evidence that this ever took place. Nor is there evidence to suggest a permanent post in this area prior to 1800.<sup>5</sup>

However, this does not necessarily imply that there were no traders, or no métis children born, in the area. By the 1770s, itinerant traders, or “pedlars” representing Montreal-based companies were living in the foothills of the Rocky Mountains. One of these pedlars, a expatriate Scot named James Finlay and his Saulteaux country wife had a son named James Raphael, (a.k.a Jaco), who was born in 1768 at a small post named Fort Finlay on the Saskatchewan River. By 1794 Jaco had entered the fur trade himself. He first appears in North West Company records as a clerk at Upper Bow House on the South Saskatchewan River near the present-day city of Medicine Hat, Alberta, a site situated squarely on the northern plains in territory shared by various plains groups, including the various Blackfoot peoples, the Gros Ventre, the Assiniboine, the Cree, and the Shoshone.<sup>6</sup> By 1802, the North West Company had established a post at the foot of the Rockies, east of Banff in what is now the Stoney Reserve near Morley, Alberta. Bow River Fort, as the post was named, was described by Voorhis (1930) as being

On north bank of Bow river at mouth of Old Fort creek, 115°W latitude, east of present Banff and about 50 miles west of site of old Fort Lajonquière. It was built about 1802 and closed about 1823 after the coalition of 1821.<sup>7</sup>

Over the years Jaco and his large extended family provided faithful, if somewhat erratic, service to the North West Company. During Jaco’s life, he and his fur trade colleagues encountered regular

harassment from local Blackfoot, Peigan, and Gros Ventre bands living in the region, who attacked the small posts and stole their horses and other property whenever possible.

Despite the danger, Jaco and his fellow traders did not leave the region. Instead, they and their families established temporary and permanent trade agreements and kinship links with various First Nations groups in order to conduct trade. He eventually settled in the vicinity of Spokane House, where he had served as clerk. There he had taken a Spokane Indian woman as his country wife Teshwentichina. It was here that Jaco eventually passed away, in 1828. <sup>8</sup>

The earliest Métis trading families in central Alberta were descended from Northwest Company and Hudson's Bay Company *engagés* who married into Blackfoot communities and established the family ties necessary to conduct business unmolested. Four families that fit this profile include the Birds, the Munros, the Salois, and the Dumonts.

James "Jimmy Jock" Bird was the métis son of Hudson's Bay Company Chief Factor James Bird of Fort Edmonton and a Cree woman. Jimmy Jock travelled and lived with Blackfoot groups during the 1820s, marrying a Peigan woman, Sarah, in 1825. He spent the next three decades shuttling back and forth between the Hudson's Bay Company and the American Fur Company, acting as an intermediary between these firms when not pursuing his own personal and commercial goals.<sup>9</sup>

Hugh Munro (ca. 1802-1896), a Montrealer of Scots extraction, started his career with the Hudson's Bay Company in 1815, and died on the Blackfeet Reservaton at Browning, Montana, after a long life on the plains.<sup>10</sup>

Joseph Salois (ca. 1800) was a *Canadien* from Yamaska, Québec who entered the service of the Northwest Company in 1816 and joined the Hudson's Bay Company after the 1821 coalition.<sup>11</sup> He established a country union with Angelique Lucier, the métis daughter of a former NWCo servant

François Lucier, Sr. who later joined the Hudson's Bay Company at Edmonton and became a freeman by 1829.<sup>12</sup> Jean-Baptiste Dumont and Josette Carcy (Sarsi) similarly established a large extended family of bison hunters, the most notable being Gabriel Dumont.<sup>13</sup>

From this nucleus of individuals, all of whom had established an early presence in Central Alberta by the 1820s, grew a loosely knit community comprised of a minimum of fifty Métis families living in the general vicinity of Central Alberta by the 1870s. As an old man, Jimmy Jock Bird used to boast of being the first resident of Calgary, having occupied Old Bow Fort in the 1830s.

Years of ruinous competition in the trade had resulted in the collapse of western Canada's fur-bearing animal populations due to overtrapping. By the 1820s, the two major fur trading firms merged to form one corporate monopoly, the Hudson's Bay Company. Corporate restructuring after the amalgamation resulted in the closure of posts, the development of a more efficient transportation network and the introduction of stricter trading and trapping regulations.<sup>14</sup> The result was the dismissal of redundant employees, many of whom were Canadian *engagés* (contract labourers) and their Métis offspring. They left the forests of Rupert's Land to move onto the plains, where they established small settlements and engaged in large, semiannual bison hunting expeditions. They manufactured pemmican and processed bison robes to trade to the Hudson's Bay Company, which also acquired the products from the resident Indian bands of the region.

The intense pursuit of bison significantly reduced their numbers throughout the Great Plains of North America by mid-century.<sup>15</sup> The result was escalating levels of violence among aboriginal groups invading each other's hunting territories in pursuit of the waning herds. The Métis were always prepared to follow the buffalo into whatever territory the herds should wander, and would fight other aboriginal groups – usually the Dakota, but occasionally the Blackfoot - for the privilege. As a result,

the Métis buffalo hunt was as much a military operation as it was a hunting expedition, the brigades moving across the plains in large, heavily armed cart trains organized upon military lines. Their military prowess in dealing with the Yanktonai Dakota resulted in that group suing for peace with the Métis by the mid-nineteenth century. The success of the Métis in moving across the northern plains unmolested was noted by the U.S. government, who described the Canadian Métis as an “increasingly organized and belligerent” group.<sup>16</sup>

By the 1870s the large bison herds had been reduced to near extinction, and a third major smallpox epidemic had weakened the aboriginal tribes on the plains. The Blackfoot and Cree approached the Canadian government to negotiate treaties in 1874, 1876, and 1877, ceding their territory in order to receive regular assistance and protection while making the transition to an agricultural society.

In comparison to their aboriginal counterparts in U.S. territory, the First Nations in Western Canada made a relatively peaceful transition to settlement, largely due to their weakened condition and the relative absence of settlers encroaching on their former territories. When violent resistance to the Canadian government *did* occur, it was the Plains Métis who fought back, first in Manitoba, and later in Saskatchewan in 1885.

### **Métis Harvesting After 1885**

The Plains Métis of the post-1885 era found themselves in a predicament unique from that of other aboriginal peoples on the northern prairie. Unlike their First Nations cousins, the Métis were not confined to reserves. Indeed, those Métis who had signed treaties as Indians prior to 1885 were

encouraged (and also coerced) to take Métis scrip, a process aided by changes to the Indian Act that provided scrip for treaty Indians of mixed race to induce them to withdraw from treaty.<sup>17</sup>

In the decades that followed, the Métis found themselves exposed to a rapidly-changing settler society where the skills of the hunt were overshadowed by the need to practise agriculture, and the interpersonal skills needed in the fur and robe trade were not sufficient for success in businesses requiring literacy and numeracy. Moreover, because of the ill-fated 1885 rebellion led by Louis Riel, there was widespread discrimination against these mixed-race people with brown skins, who spoke French or Cree or broken English and who were often Roman Catholic.

The initial Métis response was to flee northward and westward, to sparsely populated areas where they could continue to carry on with their traditional subsistence activities unmolested by the authorities. After 1885, responsibilities for the management of wildlife populations were a federal responsibility, and, because of the logistical factors involved, enforcement of any federal wildlife legislation during this period was moot. In fact, the Canadian government's attitude to northern aboriginal populations at this time was one of benign neglect. The only time that the federal government attempted to assert any responsibilities for governing was to deal with possible social unrest (as in the case of negotiating Treaty 8 in response to the social upheavals of the 1898 gold rush) or when it was felt that Canada's sovereignty was threatened.

The federal government's attitude towards managing wildlife, however, was to change as a result of American legislation, rather than Canadian legislation. The rapid disappearance of the passenger pigeon, a species that once filled the skies in their millions, shocked the American government into implementing the Weeks-McLean Act of 1913, a piece of legislation to protect migratory birds, which came too late to prevent the passenger pigeon's extinction by 1914.<sup>18</sup> Because

bird populations do travel long distances, the Americans had to seek agreement from its neighbors on the North American continent to enact complementary legislation. The Migratory Bird Treaty Act, an agreement first negotiated between the U.S. and Great Britain (on behalf of Canada), was enacted in 1918.<sup>19</sup>

The Constitution Act of 1930, of which the Natural Resources Transfer Agreements were a part, shifted responsibility for wildlife resource management from the federal government to the Western Canadian provinces. It was then that rigorous enforcement of the wildlife management began and it was then that the Métis, who did not have a constitutionally - recognized right to subsistence hunt, were essentially criminalized for engaging in survival practices that they had practiced for generations.

Unlike their First Nations cousins, the Métis did not enjoy aboriginal hunting rights that would provide them with year round, unlicensed access to subsistence hunting on crown land. Instead, they were considered non-Native under both federal and provincial law, which meant that they were required to purchase licenses in order to hunt and fish and were restricted to specific hunting and fishing seasons.

This ban on Métis subsistence hunting in the 1930s – the fines and other penalties for hunting out of season – were causal factors in the rapid deterioration in living conditions among the Métis and non-status Indian population of northern Alberta in the 1930s – a situation that reached such crisis proportions that the Alberta government established the Ewing Commission to investigate the matter further.

The result of the Ewing Commission was the passing of the Métis Population Betterment Act in 1938, and the subsequent creation of eight Métis settlements covering over 500,000 hectares, at that time “the only constitutionally-protected Métis land base in Canada”.<sup>20</sup> These settlements, located in



Northern Alberta, were intended to serve the needs of indigent Métis in the boreal northern portion of the province, not those of the southern Alberta Métis who by this time had established small farms and businesses and quietly settled into a mainstream Albertan lifestyle while keeping outward manifestations of their Métis heritage safely away from the scrutiny of their neighbors.

Unlike the remote northern portion of the province, central and southern Alberta was inundated with agricultural settlers shortly after the Northwest Rebellion was quelled due to an ambitious settlement initiative promoted by the federal government and facilitated by the expanding Canadian Pacific Railway. By the outbreak of World War One, thousands of European and American settlers had arrived in Alberta, vastly outnumbering the indigenous inhabitants.

In Alberta and Saskatchewan during the 1920s and 30s, cultural pressure on the prairie Métis was further exacerbated by the arrival of the Ku Klux Klan, the American secret society which saw in Western Canada an opportunity to expand its influence by fomenting racial discord against immigrants and Native people in the rural areas.<sup>21</sup>

With no Indian Act to provide even a semblance of physical protection (in the form of the much-maligned regulations designed to restrict interaction between Treaty Indians and the surrounding non-Native population) the Métis were vulnerable to intimidation, if not to outright physical assault. Because of this relentless prejudice, those Métis who could adapt to the changing social order did so as quickly as possible.

Denial of heritage is a survival mechanism that has been used by marginalized groups since time immemorial to hide from enemies and to function in hostile environments. Denial of heritage takes many forms. For those Métis who can “pass” as a member of another group, adopting an Italian or French persona may suffice to deflect awkward questions about one’s origins. It may mean moving

away from a Native community into a city where there are many visible minorities, and where one can lose oneself. For some families, it may mean making specific decisions to keep hidden all material evidence of aboriginal identity (e.g. language, customs, artifacts, folklore) from outsiders. In even more extreme instances, it may mean deliberately withholding or denying information about aboriginal heritage to the children of the family.

Given the levels of discrimination and the difficulties facing most Native people, it should not be surprising that the Plains Métis appear to have “vanished” from the Western Canadian consciousness, if not the very landscape of the northern plains, by the 1930s. For the very few people who may have actually pondered the whereabouts of the Plains Métis in the twentieth century, the prevailing assumption was that the 1885 defeat of the Métis at Batoche had effectively destroyed the Métis as a distinctive group. The defeated Métis, their collective spirit broken, drifted away and were eventually assimilated into the Canadian mainstream, never to emerge again.

Thus was created the trope of the vanishing Métis, an idea as persistent in its own Western Canadian setting as the trope of the vanishing Native was in the American western imagination of the 1890s. Indeed, the two notions are similar in terms of the images they evoke - a buckskinned, moccasined Métis hunter on horseback chasing bison, a person that is as extinct as the painted war-bonnetted Plains warrior on horseback with a lance and a hide shield.

The comparative obscurity of the southern Alberta Métis and the negative political consequences of this ethnic invisibility would not be apparent until late in the 20<sup>th</sup> century, when Métis communities across western Canada began to reassert their cultural identities in the wake of the centenary of the Northwest Rebellion of 1885 and Louis Riel’s execution. The revival of political activism and the successful achievement of constitutionally-protected hunting rights for the Métis

would not benefit the Métis of southern Alberta without a fight to reestablish their presence in Southern Alberta – a fight that did not take place until the 21<sup>st</sup> century.

### **The Powley Decision**

The landmark Supreme Court decision known as *R vs. Powley* would cause a seismic shift in constitutional relations between the Métis and the Canadian government in terms of indigenous harvesting rights. The story of the incident that prompted the Powley litigation is posted on virtually every Métis organization website in Canada. To wit:

On the morning of October 22, 1993, Steve Powley and his son, Roddy, set out hunting. They headed north from their residence in Sault Ste. Marie, and at about 9 a.m., they shot and killed a bull moose near Old Goulais Bay Road. After shooting the bull moose near Old Goulais Bay Road, Steve and Roddy Powley transported it to their residence in Sault Ste. Marie. Neither of them had a valid Outdoor Card, a valid hunting licence to hunt moose or a validation tag issued by the MNR. In lieu of these documents, Steve Powley affixed a handwritten tag to the ear of the moose. The tag indicated the date, time, and location of the kill, as required by the hunting regulations. It stated that the animal was to provide meat for the winter. Steve Powley signed the tag, and wrote his Ontario Métis and Aboriginal Association membership number on it. Later that day, two conservation officers arrived at the Powleys' residence. The Powleys told the officers they had shot the moose. One week later, the Powleys were charged with unlawfully hunting moose and knowingly possessing game hunted in contravention of the Game and Fish Act, R.S.O. 1990, c. G-1. They both entered pleas of not guilty."<sup>22</sup>

Excerpted from *R. v. Powley*, [2003] 2 S.C.R. 207, 2003 SCC 43

The response of the Powleys was to appeal their conviction on the grounds that the Ontario hunting regulation infringed upon their Aboriginal right to hunt. The Ontario Court of Justice agreed with the argument and subsequently quashed the initial charge. However, the Ontario Attorney-General sought to appeal the ruling to the Ontario Superior Court of Justice, but was denied. The Ontario Attorney-General's office then sought to appeal the ruling of the Ontario Superior Court of Justice to an even higher court, the Ontario Court of Appeal, where the Powley acquittals were upheld, denying Attorney-General's appeal once again. Finally, the Ontario Attorney-General's office took the case to the Supreme Court of Canada, where a unanimous decision upheld the lower courts' previous rulings in favour of the Powleys. The Supreme Court decision established a legal precedent for the recognition of Métis hunting rights as aboriginal rights under the Canadian Constitution.

### **Métis Harvesting Rights in the Wake of the Powley Decision**

Because the Powley case had worked its way through a series of appellate courts to a final, overwhelming Supreme Court decision in favour of Metis hunting rights, it was difficult for provincial governments to openly reject the Supreme Court ruling, though provincial governments did do their best to undermine the new legislation.

The strategy for undercutting the Powley ruling was inadvertently provided by the Supreme Court decision itself, in the form of the Powley Test, a set of ten provable points that would be used by lower courts to define Métis rights. The Powley Test, an adaptation of an earlier ten-point test developed to define First Nations rights, requires the following proofs:

1. **CHARACTERIZATION OF THE RIGHT**-For a harvesting right, the term "characterization" refers to the ultimate use of the harvest. Is it for food, exchange or commercial purposes? The Court said

that the Métis right to hunt is not limited to moose just because that is what the Powleys were hunting. Métis don't have to separately prove a right to hunt every species of wildlife or fish they depend on. The right to hunt is not species-specific. It is a general right to hunt for food in the traditional hunting grounds of the Métis community.

2. **IDENTIFICATION OF THE HISTORIC RIGHTS BEARING COMMUNITY-** A historic Métis community was a group of Métis with a distinctive collective identity, who lived together in the same geographic area and shared a common way of life. The historic Métis community must be shown to have existed as an identifiable Métis community prior to the time when Europeans effectively established political and legal control in a particular area.
3. **IDENTIFICATION OF THE CONTEMPORARY RIGHTS BEARING COMMUNITY -** Métis community identification requires two things. First, the community must self-identify as a Métis community. Second, there must be proof that the contemporary Métis community is a continuation of the historic Métis community.
4. **VERIFICATION OF MEMBERSHIP IN THE CONTEMPORARY MÉTIS COMMUNITY -** There must be an “objectively verifiable process” to identify members of the community. This means a process that is based on reasonable principles and historical fact that can be documented. The Court did not set out a comprehensive definition of Métis for all purposes. However, it set out three components to guide the identification of Métis rights-holders: self-identification, ancestral connection to the historic Métis community, and community acceptance. Difficulty in

determining membership in the Métis community does not mean that Métis people do not have rights.

5. **IDENTIFICATION OF THE RELEVANT TIME** - In order to identify whether a practice was “integral” to the historic Aboriginal community, the Court looks for a relevant time. Ideally, this is a time when the practice can be identified and before it is forever changed by European influence. For Indians, the Court looks to a “pre-contact” time. The Court modified this test for Métis in recognition of the fact that Métis arose as an Aboriginal people after contact with Europeans. The Court called the appropriate time test for Métis the “post contact but pre-control” test and said that the focus should be on the period after a particular Métis community arose and before it came under the effective control and influence of European laws and customs.
  
6. **WAS THE PRACTICE INTEGRAL TO THE CLAIMANT’S DISTINCTIVE CULTURE** - The Court asks whether the practice - subsistence hunting - is an important aspect of Métis life and a defining feature of their special relationship to the land. The Court specifically noted that the availability of a particular species over time is not relevant. So even though the case may be about moose hunting, as it was with the Powleys, the issue is really about the right to hunt generally. The Court found that, for the historic Sault Ste Marie Métis community, hunting for food was an important and defining feature of their special relationship with the land.

7. **CONTINUITY BETWEEN THE HISTORIC PRACTICE AND THE CONTEMPORARY RIGHT** - There must be some evidence to support the claim that the contemporary practice is in continuity with the historic practice. Aboriginal practices can evolve and develop over time. The Court found that the Sault Ste Marie Métis community had shown sufficient evidence to prove that hunting for food continues to be an integral practice
  
8. **EXTINGUISHMENT**-The doctrine of extinguishment applies equally to Métis and First Nation claims. Extinguishment means that the Crown has eliminated the Aboriginal right. Before 1982, this could be done by the constitution, legislation or by agreement with the Aboriginal people. In the case of the Sault Ste Marie Métis community, there was no evidence of extinguishment by any of these means. The Robinson Huron Treaty did not extinguish the Aboriginal rights of the Métis because they were, as a collective, explicitly excluded from the treaty. A Métis individual, who is ancestrally connected to the historic Métis community, can claim Métis identity or rights even if he or she had ancestors who took treaty benefits in the past.
  
9. **INFRINGEMENT**-No rights are absolute and this is as true for Métis rights as for any other rights. This means that Métis rights can be limited (infringed) for various reasons. If the infringement is found to have happened, then the government may be able to justify (excuse) its action. The Court said here that the total failure to recognize any Métis right to hunt for food or any special access rights to natural resources was an infringement of the Métis right to hunt.

10. **JUSTIFICATION** - Conservation, health and safety are all reasons that government can use to justify infringing an Aboriginal right. But they have to prove that there is a real threat. Here there was no evidence that the moose population was under threat. Even if it was, the Court said that the Métis would still be entitled to a priority allocation to satisfy their subsistence needs in accordance with the criteria set out by the Supreme Court in *R. v. Sparrow*. Ontario's blanket denial of any Métis right to hunt for food could not be justified.<sup>23</sup>

Of the conditions within the Powley Test, the most contentious are those that revolve around the definition of a Métis community<sup>24</sup> and those that determine the nature and extent of a Métis community's traditional hunting territory. In the Powley ruling, a Métis community, as defined by the Supreme Court was "a group of Métis with a distinctive collective identity, living together in the same geographic area and sharing a common way of life" (Teillet, 2010, p.17). In terms of defining a community's traditional hunting territory "courts are to look at the 'actual pattern of such an activity'" (Teillet, 2010, p. 31).

Since the Powley ruling was derived from a First Nations constitutional ruling adapted for use in a case involving a boreal forest Métis community in central Canada, it was inevitable that the legislation would be an awkward cultural and historical "fit" to the circumstances of the Alberta Métis living in the non-boreal south.

Initially, however, the Alberta government's response to the Powley ruling was positive and proactive. By September 2004 the Alberta government, led by then-Premier Ralph Klein, had negotiated an Interim Métis Harvesting Agreement (IMHA) with the Métis Nation of Alberta. The IMHA was intended to be a temporary accord to regulate Métis hunting in Alberta until a formalized



framework for managing the right could be developed. However, opposition to the agreement began almost immediately. Objections were raised regarding the possible threat to wildlife populations from overhunting, a campaign led by non-Native hunters and fishers.<sup>25</sup>

By June of 2005 it was clear that the subject of Métis harvesting rights, and the negotiation of the IMHA in particular, had also created a deep rift within the governing Conservative Party of Alberta. In order to address concerns raised by hunting lobbyists and conservationists, a decision was made to establish a special caucus committee to gather information on the agreement and make recommendations to the provincial government as how best to proceed in the development of Métis harvesting policy.<sup>26</sup> When responding to media questions regarding internal dissention among Conservatives over Métis harvesting,

Ducharme [Denis Ducharme, Conservative Party whip and chair of the committee,] admitted there is tension over the issue, but denied there is a clear urban-rural split. Other insiders say the caucus is deeply split, largely along north-south lines. Southern MLAs, led by Calgary's Ted Morton, are advocating ignoring the court decision, while northern MLAs, where most Métis reside, support making the interim agreement permanent. Morton, an avid hunter and angler himself, has been among the caucus' most vocal critics of the agreement. (Baxter 2005).

By February of 2006, the rancor over the IMHA had touched the office of Premier Ralph Klein. An article published by the *Western Standard*, a political magazine based in Calgary, claimed that Premier Klein's wife Colleen, who is Métis, had too much influence over the Premier and his office. The article went on to quote an unnamed source, who stated, "once she [Colleen] stops being the premier's wife, she goes back to being just another Indian".<sup>27</sup>

On 14 March of 2006, Ralph Klein had announced his intention to resign as Alberta premier by October 2007, but leave the office officially in early 2008. Klein was forced to speed up the timetable for his resignation, however, as a secret vote on his leadership during the Alberta Progressive Conservative Party Convention on 31 March of 2006 revealed that he had lost a critical mass of delegate support. Almost immediately, leadership hopefuls began their campaigns to replace Klein.

Klein's announcement of his intention to resign coincided, interestingly enough, with the tabling of the caucus committee report on Métis Harvesting.<sup>28</sup> The report recommended that the Alberta government initiate a "thorough consultation process" involving the Métis Nation of Alberta, the Métis Settlements General Council and the First Nations, in order to assist the government in developing a policy framework for negotiating further agreements in response to evolving judicial recognition of aboriginal rights, and changing conservation requirements for Alberta's wildlife. Conversely, however, the report also suggested that a "unilateral approach" might also be instituted, whereby the Alberta government would set out its own criteria for implementing a Métis harvesting policy for the province. The government would be responsible for setting standards to identify Métis communities and harvesters and would determine the scope and extent of Métis harvesting.<sup>29</sup> The vague, contradictory nature of the committee's recommendations were understandable, in retrospect, given the building sense of anticipation in political circles for the upcoming Conservative leadership convention set for December of 2006, followed shortly thereafter by a provincial election.

Unfortunately for the Métis, it was almost inevitable that their aboriginal rights would become a political issue during the months leading up to the provincial leadership convention. What they could not have expected was the shifting of the debate over Métis rights from the bush and parkland of central and northern Alberta to the urban heart of southern Alberta, Calgary.

### The Métis Trail Controversy – Summer 2006

In 2006 a Calgary freeway was completed on a stretch of 36<sup>th</sup> Street N.E., north of McKnight Boulevard, as part of the city's ring-road system. In June of that year, the City of Calgary decided to name the new freeway Métis Trail, a not-unreasonable decision, considering the previous existence of a 19<sup>th</sup> century Métis supply route that ran from the Hudson's Bay company post of Fort Edmonton, southward to the Buffalo Lake Métis settlements in central Alberta, on to the North West Mounted Police post of Fort Calgary, to eventually cross the Canada/U.S. border into Montana. Several freeways in the city are named in honour of aboriginal peoples, including the Deerfoot Freeway, Blackfoot Trail, and Sarcee Trail. Given the existence of a plethora of indigenous place names in the city, the furore that met the decision to name Métis Trail caught everyone by surprise.

First of all, there was heated opposition from local community leagues. Mr. Greg Steiner, President of the Saddleridge Community Association in Calgary's northeast, claimed there was no historical proof that Métis were ever in the area. "Some people can think it's racial, but let's put things into historical context," he said. "Who were here before the Métis? Well, the Métis weren't here. There were roaming native bands looking for food and they moved along the Bow River corridor and up and around and hunted." The Martindale Community Association also expressed objections to the new name. In the face of this sudden surge of opposition, Calgary City Council began to reconsider their naming decision and had begun their own informal investigations into the historicity of the matter.<sup>30</sup>

By July of 2006, the Chiefs of Treaty 7 had also expressed opposition to the naming of Métis Trail. They issued a joint statement arguing that they should have been consulted, that they were the

original inhabitants of the site – indeed of all of Southern Alberta - and that the City had “violated protocol” and shown “disrespect”.<sup>31</sup>

By this time however, Dave Bronconnier, Mayor of Calgary, had received ample evidence that the Métis *did* have a long history in the Calgary area, and refused to reconsider the naming decision. Métis Trail was duly named shortly thereafter. But the damage had already been done. Serious doubts had been raised publicly about the nature and extent of Métis residence in Calgary and, by extension, in southern Alberta. In doing so, the validity of the Métis constitutional right to harvest in Southern Alberta was also put into question, at a time when political platforms were being articulated in preparation for the impending Conservative leadership convention in December of 2006.

#### **The Conservative Leadership Convention – December 2006**

Political discourse across Alberta in anticipation of the provincial Conservative leadership race was characterized by rancour on several fronts. There were ideological splits between rural and urban voters, Edmonton and Calgary voters, and northern and southern residents of Alberta, rifts not unlike those that existed in the provincial Conservative party itself. By late autumn of 2006, the electoral field had been whittled down to eight leadership candidates. Of these candidates, there were two front-runners: Jim Dinning and Ted Morton, representing the central and right-wing elements of the party respectively. Jim Dinning, former provincial Treasurer, was the initial front-runner, having the most support of fellow caucus members. Dinning was viewed by his colleagues, and by most Albertans, as the centrist politician most able to lead the party in its current fractious political state. Ted Morton, whose support came largely from federal Conservative MPs and members of the former Reform Party

and Canadian Alliance, was his chief rival, along with Lyle Oberg, a former cabinet minister who also courted the right wing of the party.

As the leadership campaign progressed into December of 2006, urban and moderate Albertans, many of whom were not Conservative Party members, became increasingly alarmed as the right wing-elements in the party gained ascendancy in the race. In order to have some form of input into the election of the leader who would automatically become Alberta's unelected premier at the end of the convention, many Alberta citizens took advantage of Conservative party policy that permitted the purchase of five dollar party memberships. This rather questionable practice allowed new members to vote in the provincial leadership convention without a time requirement. A second key element of the leadership election was the system of preferential voting, which allowed voters to indicate their first and second choice for leader, respectively, on the ballot.<sup>32</sup>

During the leadership vote on 1 December of 2006, a close three-way race emerged between the leaders at the end of the first ballot. The two front-runners, Jim Dinning and Ted Morton, were followed in third place by Intergovernmental Affairs minister Ed Stelmach (who received the bulk of his support from northern MLAs).

Since no single person had managed to receive more than 50% of the votes, only the top three candidates were permitted to go on to a second round of balloting on December 2. Three of the five remaining candidates endorsed Ed Stelmach; one chose to support Dinning, while a lone candidate declined to endorse any of the final choices. By the end of the second round of balloting, it was Stelmach with 35.9% of the vote, followed closely by Dinning with 35.6% and Morton with 28.6%. Morton, as the third place candidate, was automatically dropped off the ballot for the automatic runoff between the remaining two voters. To determine the winner, the "second choice" votes on the ballots

cast for Morton were used to determine the final outcome. Because of the party's ideological split between central and right-wing elements, the "second choice" of many voters for the two front-runners, Dinning and Morton, were intended to offset the chances of their first choice candidate's principle rival. In the end, it was the dark-horse candidate from northern Alberta, Ed Stelmach, who came up the middle to win the tight three-way race to become Premier of Alberta.<sup>33</sup>

On 15 December 2006, Ted Morton, who had campaigned for the provincial leadership on a platform to "tear up" the Interim Harvesting Agreement, was named the Minister of Sustainable Resources Development.<sup>34</sup> By January 2007 a Court of Queen's Bench judge ruled that the Métis Interim Hunting Agreement was not enforceable, and that the provincial cabinet ministers who had ratified the agreement in 2006 had done so illegally. Instead, the government announced that they would impose a regulatory structure that would take effect by 1 July 2007. The Métis hunting rights that emerged restricted Métis hunting rights to a 170-kilometre radius of the province's eight Métis settlements, and seventeen other locations in central and northern Alberta, arbitrarily excluding all other Métis in the province.<sup>35</sup>

In the wake of this decision, the provincial Métis organization sought to revive negotiations with the province, but were rebuffed repeatedly by Sustainable Development Minister Ted Morton, who had finally fulfilled his vow, made years earlier, to suspend aboriginal hunting rights for Alberta Métis if he was given the opportunity to do so.

The response of the Métis Nation of Alberta, rightly or wrongly, was an attempt to force the provincial government back to the negotiating table by staging a series of illegal (i.e. unlicensed) hunts in order to get Métis harvesters arrested, have the case taken to court and then request intervenor status in order to challenge the arrests on constitutional grounds.

By the fall of 2007 a Métis hunter, Garry Hirsekorn of Medicine Hat, Alberta, was arrested for killing a mule deer near Elkwater, Alberta. Another Métis hunter, Ron Jones of Leduc, Alberta, was charged with killing a pronghorn antelope near Suffield on January 26, 2008.<sup>36</sup>

The Métis Nation of Alberta began its preparations by appointing the legal team that other provincial Métis organizations had engaged in the wake of the *Powley* decision – Jean Teillet and Jason Madden. The legalists, in turn, engaged a team of expert witnesses used in previous successful constitutional litigations of Métis rights, led by Drs. Arthur Ray and Frank Tough, two historical geographers, and Gwynneth Jones, a historian. During 2009 and 2010, researchers fanned out across southern Alberta, identifying descendants of southern Alberta Métis families, gathering genealogical and historical data to support the contention that the Métis has maintained a subsistence presence in southern Alberta. The trial itself started in the spring of 2009.

The legal team intended to argue the case in a way designed to challenge the prevailing legal interpretations of Métis rights emanating from previous challenges to *Powley*. Previous provincial rulings successfully limited Métis hunting rights by identifying contemporary Métis communities and establishing a “radius” of hunting privileges adjacent to these communities – a pattern of subsistence at odds with plains Métis hunting patterns, which ranged over hundreds of miles in any direction. As lawyer Jean Teillet notes in *Métis Law in Canada 2010*,

It is a peculiar and most unwelcome twist of logic if a highly mobile hunter/gatherer/trader society that never lived in small, stable, continuous, localized communities is now required to prove the existence of just such an entity in order to exercise harvesting rights in the near vicinity.<sup>37</sup>

For the Alberta case, it was decided to challenge this historically and culturally inaccurate ruling, in order to establish a precedent that would lead to a broader, and culturally accurate, legal interpretation of Métis hunting territory and Métis rights overall.

After forty-five days in court over a period of fourteen months, the Métis hunting rights trail of Ron Hirsekorn and Ron Jones came to an end in late June of 2010. The legal team and the Métis nation as a whole began the long wait for the judge to deliver his final ruling on the argument that the Métis, as a nomadic hunting people, had the right to hunt anywhere in western Canada, a strategy described as “go big or go home.”<sup>38</sup>

On December 1 of 2010, Provincial Court Judge Ted Fisher delivered his final ruling in Medicine Hat. In a bitter blow to the Alberta Métis, who were highly optimistic that they would win their case, the judge quashed their legal argument for wide-ranging hunting rights in a lengthy ruling that sought to chastise the Métis organizations as well as reinforce the Powley Test.

Much of Judge Fisher’s ruling attacked the Métis on procedural grounds, arguing that the hunts did not take place for subsistence or spiritual reasons, but to goad the court into a constitutional battle over hunting rights that could have been initiated through other, more appropriate, legal channels. The judge also did not accept the evidence that Métis hunting parties had regularly visited southern Alberta to pursue bison, arguing that historic references to “the plains” were too vague to identify the area as the plains of southern Alberta. Because there was no evidence of permanent settlements he argued that the threat of attack by Blackfoot had effectively kept the Métis out of southern Alberta in the nineteenth century, until the arrival of the North West Mounted Police in the 1870s.<sup>39</sup> This conclusion ignores the collected and published accounts of both Métis and non-Métis travelers on the plains, who were familiar with the strict social and military organization of Métis hunting parties while



on the plains and were aware of their formidable success in warring against the Yanktonai Dakota, further east, for the right to hunt bison in contested territories.<sup>40</sup>

After what seemed like an interminable wait for action, the Métis Nation of Alberta launched a formal appeal of the ruling in *R vs. Hirsekorn* in late December of 2010.<sup>41</sup> Interestingly enough, two Blackfoot First Nations, the Siksika Nation and the Blood Tribe, have been granted intervener status during the appeal, which began its hearings on June 21, 2011.<sup>42</sup>

### **The Rescinding of Métis Hunting Rights and the Calgary School**

At this point, the reader might wonder how it was possible for the government of Alberta to ignore the Canadian constitution and, almost effortlessly, eradicate Métis hunting rights in the province. And why does the Alberta government think it will get away with it?

The answer, for many, has its origins on the seventh floor of the Social Sciences Building on the University of Calgary campus, where the Department of Political Science is located. For this has also been the spiritual home of a neo-conservative, libertarian doctrine espoused by a loosely-connected cadre of academics known colloquially as “the Calgary School”.<sup>43</sup>

According to Dr. Shadia Drury, Canada Research Chair in Social Justice at the University of Regina, “The Calgary School is a Canadian appropriation of American neo-conservatism”.<sup>44</sup> This loosely-associated group of academics based at the University of Calgary, comprised of political theorists, historians and economists, is noted for its active resistance against federal control of provincial statutes, particularly those involving constitutionally-defined rights. Most members of the group are either American-born or American-educated. Unlike most theorists, they are intellectuals *and* activists, subscribing to the notion that their direct influence over political policy is both necessary and desirable.

What are the beliefs of the Calgary School as they apply to aboriginal peoples, particularly their view of indigenous rights? Since the libertarian philosophy to which they subscribe stresses self-reliance, individual initiative, personal autonomy, freedom from government intervention and equality for all, it could be inferred that the Calgary School is not in favour of special rights for anyone, particularly aboriginal rights based on historic treaty relationships established in the nineteenth century.

But rather than make assumptions about beliefs, it is easier to evaluate members of the Calgary School by their actions and their words. When considering the situation of Métis rights in Western Canada and Alberta in particular, two individuals quickly come to mind: Dr. Tom Flanagan and Dr. Ted Morton.

Tom Flanagan's interest in aboriginal issues began when he started to investigate the religious beliefs of Louis Riel, a fascination that became the basis of a crusade to deny Riel a posthumous judicial pardon and acknowledgement as a Father of Confederation. Over the past thirty years Dr. Flanagan has been an active participant in Métis and First Nations land claims litigation as an expert witness for the government side. He is particularly outspoken on the question of Métis rights, which he believes should not exist at all, particularly as he believes the distribution of scrip to Métis people was handled fairly.

From a national perspective none of this would be of great consequence, if it were not for the fact that both Flanagan and Morton share a former student who faithfully absorbed their ideas and has since successfully transferred them to the national stage - Canadian Prime Minister Stephen Harper. In 2001, Tom Flanagan, Ted Morton, and Stephen Harper jointly penned an open letter to then-Premier Ralph Klein, which was published in the *National Post*. The letter called on Klein to take control of

taxation, pensions, policing, and health care away from federal government control, in order to “limit the extent to which an aggressive and hostile federal government can encroach upon legitimate provincial jurisdiction.” The document, which has since gone down in history as the infamous “Firewall Letter”, was a prescient example of what aboriginal Albertans might expect should Conservative party elements both provincially and nationally decide to challenge recent constitutional gains by Native people.<sup>45</sup>

Journalist Marci Macdonald noted that, prior to the June 2004 Federal election:

Most voters had never heard of Flanagan, who has managed to elude the media while helping choreograph Harper’s shrewd, three-year consolidation of power. But among aboriginal activists, his name sets off alarms. For the past three decades, Flanagan has churned out scholarly studies debunking the heroism of Métis icon Louis Riel, arguing against native land claims, and calling for an end to aboriginal rights. Those stands have already made him a controversial figure. But four years ago his book, *First Nations? Second Thoughts*, sent tempers off the charts. In it, Flanagan dismissed the continent’s First Nations as merely its “first immigrants” who trekked across the Bering Strait from Siberia, preceding the French, British et al by a few thousand years – a rewrite which neatly eliminates any indigenous entitlement. Then, invoking the spectre of a country decimated by land claims, he argued that the only sensible native policy was outright assimilation.<sup>46</sup>

Ted Morton’s attitudes toward Métis rights did not become public knowledge until after 2003, when *R vs Powley* Supreme Court decision granted the Métis of Canada a limited form of aboriginal hunting rights. He has been involved with various right-of-centre political parties since the 1980s, particularly the federal Reform Party and its later incarnation as the Canadian Alliance. By 2004, Ted Morton had taken extended leave from his academic position at the University of Calgary, having

successfully run for the newly-created Calgary constituency of Foothills-Rockyview in the Alberta provincial election. A central tenet of his campaign platform was to scrap the Interim Métis Hunting Agreement that had been established with the Alberta Métis in the wake of the Powley Decision, based on concerns over excessive hunting and “special rights” that the Métis did not deserve. Although it is difficult to ascertain exactly where Dr. Morton’s concerns originate, it may have been his own personal interest as a hunter and fisher - and his professional and moral concern over wildlife conservation – that prompted Morton to enter provincial politics in the first place and eventually to run for the provincial leadership of the Alberta Conservative Party in 2006.

Since assuming the leadership in early 2007, Premier Ed Stelmach, like his predecessor Ralph Klein, has been undermined by forces within his own party. Again, like his predecessor, Stelmach is leaving the office of Premier before the end of his mandate in order to permit a Conservative leadership convention to take place before the provincial election. And, in a final case of history repeating itself, Dr. Ted Morton has declared his intention to run for the leadership of the Conservative Party of Alberta. Interestingly enough, the upcoming leadership campaign should be concluding in late spring of 2011, around the time when the Métis will be appealing their provincial hunting rights verdict.

### **Conclusion**

The suspension of Métis harvesting rights in Alberta and the subsequent failure of the provincial courts to recognize Métis hunting rights in Southern Alberta, has very little to do with wildlife conservation, just as the Métis Trail controversy is not really about disgruntled white suburbanites or offended Blackfoot protocols. It is about the reluctance to extend aboriginal rights to the Métis, rights that

might expand with each court decision to resemble those currently enjoyed by First Nations communities. The publicly-voiced objections of Treaty 7 Chiefs to the idea of the Métis Trail was not really about the naming of a freeway. It was about entrenching the trope that central and southern Alberta is traditional Blackfoot land, and always has been. It was about ensuring that other aboriginal rights will not have to be shared with the Métis. So the Alberta Métis know that they can count on very little support from their First Nations cousins in the coming fight over harvesting rights.

Nor can the Métis expect any concessions from the provincial government, which has assumed a typically conservative stance when drafting legislation restricting access. In the case of Métis hunting, the fear was that every individual with an Indian ancestor somewhere in their background would decide to arm themselves and bag a moose – in essence, exercising their aboriginal right to kill animals because they could.

From a purely bureaucratic point of view, it is easier to say no rather than say yes. The Ontario government response to the Powleys' successful appeal of their arrest was to ban Métis hunting outright – a position that government held through all the different appellate courts until their final defeat at the Supreme Court level. It is also easier to “sell” to the electorate. The non-hunters will either not care or will take an anti-hunting stance. The hunters of non-Native ancestry will resent what they see as unfair largesse extended to individuals whom they see as being no different, culturally, from themselves. It is an ahistorical, populist stance – and a perspective that Ted Morton and other neo-conservatives support. This is the kind of opposition the Métis are currently facing in Alberta.

How one views the Calgary School and their pet projects – the abolition of gay and aboriginal rights, the neutering of the powers of the Supreme Court, the introduction of an elected Senate – depends largely on whether one feels that the federal Conservative Party under Stephen Harper will

attempt to implement a right-wing social and political agenda now that they have finally achieved a parliamentary majority in the recent federal election of May 2011.

In regard to the political influence of the Calgary School, the public portrayals of this cadre swing from one extreme to the other. On the one hand, the friends and allies of the Calgary School tend to portray its members in benign, even humorous terms, as a group of rambunctious, irreverent upstarts – overgrown teenagers - who just like to raise a little hell once in awhile. At the other end of the spectrum, they have been portrayed as the kind of scary neo-conservatives more closely associated with the excesses of the Bush regime than anything remotely possible in Canada.

For those who wonder what could happen if the federal Conservatives exercise their hubris federally, I suggest that they look to Alberta. Ted Morton, in his former role as Minister of Sustainable Development, was able to abolish Métis harvesting rights with virtually no opposition. The provincial Conservative party has an overwhelming majority in the Alberta legislature and has governed the province since 1971. Morton can rely on the on the slowness of the courts to allow the situation to drag along indefinitely until the Métis are bankrupt, or until a more permanent solution is developed at the federal level.

Although Ted Morton was also playing to his “constituency” – the religious conservatives and the hunting lobby – he already had their support. So the Métis harvesting case cannot be viewed as simply a dog-and-pony show to keep Alberta’s ultra-right wing happy and quiet. Should Morton be successful in his run for the leadership of the Conservative Party of Alberta, he would be able to give free rein to other personal irritants.<sup>47</sup> Should Morton fail, there is always the future prospect of running for a seat federally. And now that Stephen Harper, the former student of the Calgary School, has won his parliamentary majority, he might be happy to see his former mentor join him in Ottawa.

Together, they could pursue the dismantling of the legislative checks and balances now in place to protect minority rights in the province of Alberta and in Canada as a whole.

Certainly Clement Chartier, President of the Métis National Council, had no illusions as what might be in store for the Métis if the Harper Conservatives won a federal majority and his words continue to resonate. "It's our existence as a people that's at stake."<sup>48</sup>

First Nations groups who think that they are invulnerable, that their aboriginal rights are not under threat, would be wise to watch the fallout from the Métis hunting debacle as it plays out in Alberta. The outcome of the Alberta Métis harvesting situation is the "canary in the coalmine", regarding the fate of aboriginal rights across Canada. More importantly, students of aboriginal history have to understand that there is a war going on, for the hearts and minds of the Canadian public, regarding the government's responsibility for the wellbeing of Canadian Native people. There are powerful interests in this country who would like to see the treaties abrogated, the aboriginal land base expropriated, to see the unique rights that aboriginal people negotiated in exchange of their traditional territories obliterated. These special interests use a variety of plausible, even rational arguments to justify this point of view.

The arguments against aboriginal rights are parsed in the language of the courtroom and are evaluated within a legal framework that obfuscates history and culture while ostensibly striving for a definitive "truth". And these courtroom "truths" eventually take on a legal life that snuffs out the authentic historical narrative. As sociologist Chris Andersen observed in a recent essay devoted to court decisions based on *R vs Powley*,

Courts operate as a powerful field of knowledge production that, given their tremendous symbolic power in Canadian society, accords them a broader cultural power (though, of course, not a

monopoly) outside the juridical field to shape our understandings about who we are and how we relate to others.<sup>49</sup>

Regardless of the Métis organizations' intention to appeal *R vs. Hirsekorn*, the damage has already been done. The judge has concluded that the Métis did not establish permanent settlements in southern Alberta and therefore did not hunt in southern Alberta (a rather bizarre piece of logic, given that the plains Métis, by definition, were a semi-nomadic group that followed the buffalo and returned to their various permanent settlements after their hunting trips).

And now the Métis find themselves, once again, having to battle for their very survival as a people. Except that today, it is not rival hunters or blizzards or bison extinctions that are the enemy. Instead, it is the shrewd disinformation campaigns of political theorists and politicians that may prove more lethal, in the end, than any Blackfoot war party.

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<sup>1</sup> The author would like to acknowledge the Social Sciences and Humanities Research Foundation, which provided funding that supported the research for this paper.

<sup>2</sup> Saint-Marie, B, 1964. "Now that the buffalo's gone" (lyrics). *Buffy Saint-Marie* [online]. Available at: [http://www.creative-native.com/albums.php?song\\_id=1&album\\_id=1&](http://www.creative-native.com/albums.php?song_id=1&album_id=1&). [Accessed 29 January 2011].

<sup>3</sup> Frederick Jackson Turner. "The Significance of the Frontier in American History." In Frederick Jackson Turner, *The Frontier in American History* (New York: Henry Holt and Co. 1921), pp. 1-38.

<sup>4</sup> The Canadian government uses a number of collective terms to define the various groups of aboriginal people living in Canada. The term 'aboriginal people' or 'indigenous people' as used in Canada, refers to the descendants of the original inhabitants of North America. The Canadian Constitution recognizes three separate groups of aboriginal people – the First Nations (a.k.a. 'Indians'); the Métis; and the Inuit (a.k.a. 'Eskimos'). The First Nations peoples of Canada can be further subdivided into Status Indians, non-Status Indians, and Treaty Indians. The Métis are people of mixed First Nation and European ancestry who identify themselves as Métis, as distinct from First Nations people, Inuit or non-Aboriginal people. The Inuit are the aboriginal people who inhabit the far northern areas of Canada (Nunavut, Northwest Territories, Northern Quebec, and Northern Labrador). Each of these groups is comprised of numerous communities with unique histories, languages, cultural practices and spiritual beliefs, and enjoy a variety of inherited and negotiated aboriginal rights based on their ancestors' traditional use and occupancy of the land. For detailed discussion of terms, see Indian and Northern Affairs Canada, 2011. "Aboriginal Peoples and Communities". *Indian and Northern Affairs Canada* [online] 29 January. Available at: <http://www.ainc-inac.gc.ca/ap/index-eng.asp>. [Accessed 29 January, 2011].



<sup>5</sup> There has been considerable debate over the exact location of Fort La Jonquiere. While earlier writers situated the post near the present location of Calgary, later writers have concluded that the more likely location was near the middle of what is now the province of Saskatchewan, near Nipawin. However, W.J. Eccles suggested that Jacques Legardeur de Saint-Pierre ordered Niverville to travel 300 leagues west of Fort Paskoya to the Rocky Mountains, a claim that remains unsupported. See Champagne, Fr. A. 1968. "The Vérendryes and their successors, 1727-1760". *Manitoba Historical Society* [online]. Available at: <http://www.mhs.mb.ca/docs/transactions/3/verendryes.shtml> . [Accessed 30 January 2011]. Peyser, J.L., *Jacques Legardeur de Saint-Pierre: officer, gentleman, entrepreneur*. East Lansing: Michigan State University Press, 1996, pp. 197-198.

<sup>6</sup> Nisbet, J. *Visible bones: journeys across time in the Columbia River valley*. Seattle: Sasquatch Books, 2003, p. 207.

<sup>7</sup> Voorhis, E. *Historic forts and trading posts of the French régime and of the English fur trading companies*. Ottawa: Department of the Interior, 1930, p. 43.

<sup>8</sup> Jaco eventually traveled into what is now the Pacific northwest, settling in the vicinity of Spokane House, where he had served as clerk. There he had taken a Spokane Indian woman as his country wife, Teshwentichina. It was here that Jaco eventually passed away, in 1828. See Holmgren, E.J. "Finlay, Jacques-Raphaël (often referred to as Jaco Finlay)". *Dictionary of Canadian Biography Online*, 2000 [online]. Available at: [http://www.biographi.ca/009004-119.01-e.php?&id\\_nbr=2869&interval=25&&PHPSESSID=q5b3to8evl6hnup7teoc3qf8s4](http://www.biographi.ca/009004-119.01-e.php?&id_nbr=2869&interval=25&&PHPSESSID=q5b3to8evl6hnup7teoc3qf8s4) . [Accessed 1 February, 2011].

<sup>9</sup> See Jackson, J., *Jemmy Jock Bird: Marginal Man on the Blackfoot Frontier*. Calgary: University of Calgary Press, 2004. See also Hudson's Bay Company Archives. 2011. "James Bird, Jr. (a.k.a. Jimmy Jock Bird)" (employee biographical sheet). Hudson's Bay Company Archives [online]. Available at: [http://www.gov.mb.ca/chc/archives/hbca/biographical/b/bird\\_james\\_jr.pdf](http://www.gov.mb.ca/chc/archives/hbca/biographical/b/bird_james_jr.pdf) .[Accessed 29 January, 2011]; and Smyth, D. 2000. "Bird, James (also known as Jimmy Jock)". *Dictionary of Canadian Biography Online* [online]. Available at: [http://www.biographi.ca/009004-119.01e.php?&id\\_nbr=5977&interval=20&&PHPSESSID=ipq3da8llkenucs1sume3m4qf6](http://www.biographi.ca/009004-119.01e.php?&id_nbr=5977&interval=20&&PHPSESSID=ipq3da8llkenucs1sume3m4qf6) . [Accessed 29 January 2011].

<sup>10</sup> See Hudson's Bay Company Archives. "Hugh Munro" (employee biographical sheet) *Hudson's Bay Company Archives* [online]. Available at: [http://www.gov.mb.ca/chc/archives/hbca/biographical/m/munroe\\_hugh.pdf](http://www.gov.mb.ca/chc/archives/hbca/biographical/m/munroe_hugh.pdf) . [Accessed 29 January 2011].

<sup>11</sup> See Hudson's Bay Company Archives, 2011. "Joseph Salois" (employee biographical sheet) *Hudson's Bay Company Archives* [online]. Available at: [http://www.gov.mb.ca/chc/archives/hbca/biographical/s/salois\\_joseph.pdf](http://www.gov.mb.ca/chc/archives/hbca/biographical/s/salois_joseph.pdf) . [Accessed 29 January, 2011].

<sup>12</sup> See Hudson's Bay Company Archives. "François Lucier"

<sup>13</sup> See Macleod, R.C., "Gabriel Dumont". *Dictionary of Canadian Biography Online*, 2000 [online]. Available at: <http://www.biographi.ca/009004-119.01-e.php?Bioid=40814> . [Accessed 29 January 2011].

<sup>14</sup> Devine, H., 'Economy must now be the order of the day': George Simpson and the reorganization of the fur trade to 1826. Don Wetherell, Catherine Cavanaugh, and Michael Payne, eds. 2005. *Alberta Formed – Alberta Transformed* (2 vols.) Edmonton: 2005, University of Alberta Press, pp. 161-178.

<sup>15</sup> Dobak, William A., Killing the Canadian buffalo. *The Western Historical Quarterly*, 27 (1), 1996, pp. 33-52.

<sup>16</sup> Thomas M. Ingersoll. *To intermix With Our White Brothers: Indian mixed bloods in the United States from earliest times to the Indian removals*. Albuquerque 2005: University of New Mexico Press, 2005, pp. 80-82.

<sup>17</sup> Eligible Métis people were issued certificates (i.e. 'scrip') which could be redeemed for a land grant or a cash settlement in recognition – and extinguishment - of their aboriginal rights. Scrip was distributed at different times in different places; during the 1870 Manitoba Scrip Commission, the North West Commission of 1885, the Athabasca Half-Breed Commission of 1899, and the adhesions to these commissions. See Jeffrey S. Murray. 1996. A guide to the records of the Métis scrip commissions in the National Archives of Canada. Ottawa: 1996 National Archives of Canada, iii-iv. Indexed summaries of Métis scrip records can now be accessed and search on-line, at

<sup>18</sup> Department of Vertebrate Zoology, Smithsonian Institution. The passenger pigeon. *Encyclopedia Smithsonian*, 2011 [online]. Available at: [http://www.si.edu/encyclopedia\\_Si/nmnh/passpig.htm](http://www.si.edu/encyclopedia_Si/nmnh/passpig.htm) .[Accessed 6 February, 2011].

<sup>19</sup> U.S. Fish and Wildlife Service. Migratory Bird Treaty Act of 1918. *Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service*, 2011 [online]. Available at: <http://www.fws.gov/laws/lawsdigest/migtrea.html> .[Accessed 6 February 2011].

<sup>20</sup> Gadacz, R. Métis settlements. *The Canadian Encyclopedia*, 2011 [online]. Available at: <http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0005260> . [Accessed 1 February, 2011].

<sup>21</sup> See Applied History Research Group. [1997]. A province of immigrants: the face of prejudice. Available at: [http://www.ucalgary.ca/applied\\_history/tutor/calgary/FRAMEethnic.html](http://www.ucalgary.ca/applied_history/tutor/calgary/FRAMEethnic.html) . Accessed 6 February, 2011.

<sup>22</sup> Supreme Court of Canada. R. v. Powley, 2003 SCC 43, [2003]. *Judgments of the Supreme Court of Canada* [online]. 19<sup>th</sup> September 2003. Available at: <http://scc.lexum.umontreal.ca/en/2003/2003scc43/2003scc43.html> . Accessed 29 January, 2011].

<sup>23</sup> See Metis Nation of Alberta. [2011]. Establishing a Metis right – the Powley test. Available at: <http://www.albertametis.com/getdoc/0e7e171f-1cb0-4382-b4ca-ce5bd45f9548/thepowleytest.aspx> . [Accessed 6 February 2011].

<sup>24</sup> Teillet, J., What is a Métis community? 2009. *Métis Law in Canada 2010*. Available at: <http://www.pstlaw.ca/resources/MLIC-2010.pdf>

[Accessed 31 February 2011], 17.

<sup>25</sup> Semmons, G. Métis, non-native hunters clash over new deal. *Calgary Herald*, 31 March, 2005, p. B3.

<sup>26</sup> See Baxter, J. Klein caucus deeply torn over Métis hunting rights. June 2005. As posted to *TheBowzone.ca* [online]. June 2005. Available at: <http://www.bowzone.ca/forum/showthread.php?t=2199> . [Accessed 13 February 2011]. See also Young, G. Will more Métis take to the woods because of Powley? *Windspeaker*. June 2005, p. 19. See also Friday 15 February 2006. Comments on Klein's wife spark new controversy over Western Standard. *CBC News Canada* [online]. Available at: <http://www.cbc.ca/canada/story/2006/02/15/western-standard-060215.html> . [accessed 13 February 2011].

<sup>27</sup> CBC News Canada. 2006.

<sup>28</sup> Government of Alberta. Report of the MLA committee on Métis harvesting – March 2006.

<sup>29</sup> MLA committee on Métis harvesting – March 2006, pp. 4-6.

<sup>30</sup> CBC News Edmonton. Council takes second look at Metis Trail name. *CBC News Edmonton* [online] Friday 23 June, 2006. Available at: <http://www.cbc.ca/canada/edmonton/story/2006/06/23/ed-metistrail-20060623.html>. [accessed 29 January 2011].

<sup>31</sup> CBC News Calgary. Chiefs raise new objections to name Métis Trail. *CBC News Calgary* [online] Wednesday 19 July, 2006. Available at: <http://www.cbc.ca/canada/calgary/story/2006/07/19/chiefs-metistrail.html>. [Accessed 19 January, 2011].

<sup>32</sup> Wikipedia. Progressive Conservative Association of Alberta leadership election, 2006. *Wikipedia, the Free Encyclopedia* [online]. Available at: [http://en.wikipedia.org/wiki/Progressive\\_Conservative\\_Association\\_of\\_Alberta\\_leadership\\_election,\\_2006](http://en.wikipedia.org/wiki/Progressive_Conservative_Association_of_Alberta_leadership_election,_2006). [Accessed 3 April 2011].

<sup>33</sup> CBC News Edmonton. Alberta politicians pick sides in leadership race. *CBC News Edmonton* [online] Tuesday 26 November. Available at:

<http://www.cbc.ca/news/canada/edmonton/story/2006/11/28/tory-endorse.html>. [Accessed 3 April 2011].

<sup>34</sup> Henton, Darcy. Passion for politics in blood of aboriginal rights lawyer. *Edmonton Journal* 28 June 2010. Available at: <http://www2.canada.com/edmontonjournal/news/cityplus/story.html?id=02635fbb-5738-4401-baa5-89f9b44241fd> [Accessed 15 May 2011].

<sup>35</sup> Henton, Darcy. Final arguments begin in landmark Métis hunting trial: Alberta Métis confident rights will be protected. *Edmonton Journal* 22 June 2010. Available at:

<http://greatlakesvoyageurs.com/Documents/MNO%20Memo%20re%20MNA%20Case%20-%20June%2029%202010.pdf>

[Accessed 15 May, 2011].

<sup>36</sup> Ron Jones died in a murder-suicide a short time later and therefore charges against him were dropped before the case came to trial.

<sup>37</sup> Teillet, Jean. *Métis Law in Canada, 2010*. Vancouver: Author, 2010 (on-line). Available at:

<http://www.pstlaw.ca/resources/MLIC-2010.pdf>

[Accessed 13 May, 2011].

<sup>38</sup> See Henton, Darcy. Métis expect to win hunting fight: historically nomadic people seek wide-ranging right to harvest animals. *The Edmonton Journal*, 2010 [on-line]. Available at:

[http://www2.canada.com/edmontonjournal/news/cityplus\\_alberta/story.html?id=87f390af-477d-4cf8-ba2b-9527014e2d67&p=1](http://www2.canada.com/edmontonjournal/news/cityplus_alberta/story.html?id=87f390af-477d-4cf8-ba2b-9527014e2d67&p=1)

[Accessed 15 May, 2011].

<sup>39</sup> See Provincial Court of Alberta. 2010. Reasons for judgment of the honourable Judge F.C. Fisher. *R v. Hirsekorn, 2010 ABPC 385*, pp.1-25. See also Henton, Darcy. 2010. Judge rejects Métis hunting argument: Judge convicts Métis hunter for hunting out of season in southern Alberta. *The Edmonton Journal* [on-line]. Available at:

<http://www.edmontonjournal.com/technology/Judge+rejects+M%C3%A9tis+hunting+argum\ent/3912404/story.html>

[Accessed 2 December 2010].

<sup>40</sup> An elderly Métis woman, Mrs. Isabelle (née Fayant) McGillis, discussed her youthful journeys as part of a Métis hunting brigade near Milk River in southern Alberta during the mid- nineteenth century. During an interview by Maria and Zachary Hamilton in 1928, she was asked whether the Métis were afraid of attacks from the Blackfoot in the Milk River region. She replied that the Métis always traveled in large parties, so the Blackfoot left them alone. And she should know, as she had traveled the plains in large, mobile hunting parties since childhood, and was familiar with the various dangers that might be encountered. As a thirteen year old girl in 1851, she was part of a relief party that came to the aid of a small group of Métis hunting families from St. François-Xavier who had successfully held off hundreds of Dakota warriors at the Grand Coteau of the Missouri River for a period of two days. Isabelle Fayant McGillis's eyewitness account of this battle was passed down through her family, who eventually published the recollection. See Larry Haag, comp., "Eyewitness Account of the Battle of the Grand Coteau by Melvin Beaudry as told by Agnes Smith née McGillis Beaudry", in *The Virtual Museum of Métis History and Culture*, Gabriel Dumont Institute of Native History and Applied Research, on-line at: <http://www.metismuseum.ca/resource.php/11684> (Accessed 18 September, 2011). There are several additional published accounts of this battle; the most well-known of these is W.L. Morton, "The Battle at the Grand Coteau, July 13 and 14, 1851" (*MHS Transactions*, Series 3, 1959-60 Series). Available on-line at : <http://www.mhs.mb.ca/docs/transactions/3/grandcoteau.shtm> (Accessed 18 September, 2011). See also Maria A. Hamilton and Zachary Hamilton, *These are the Prairies* (Regina: School Aids, 1948).

<sup>41</sup> See Court of Queen's Bench of Alberta (Judicial District of Medicine Hat). Notice of appeal. *R. v Hirsekorn*, A01061852Y-25(1)WA; A01061863Y-55(1)WA, 2010

<sup>42</sup> McCuaig, Alex. 2011. Native groups allowed into Métis appeal. *Medicine Hat News*, 9 March 2011 [on-line]. Available at: <http://www.medicinehatnews.com/local-news/native-groups-allowed-into-meacutetis-appeal-03092011.html>

[Accessed 15 May, 2011].

<sup>43</sup> For detailed identification and discussion of members of the Calgary School, see McDonald, M., The man behind Stephen Harper. *The Walrus* [online]. October 2004. Available at:

<http://www.walrusmagazine.com/articles/the-man-behind-stephen-harper-tom-flanagan/>

[Accessed 15 May 2011].

[Accessed 29 January 2011]; and Ibbitson, J. Educating Stephen. 26 June, 2004. *The Globe and Mail* [online]. Available at: <http://www.theglobeandmail.com/archives/article931875.ece>

[Accessed 29 January 2011].

<sup>44</sup> Ibbitson, "Educating Stephen". *Globe and Mail*, 26 June 2004.

<sup>45</sup> See "The Famous Alberta Firewall Letter", [On-Line], at:

<http://www.cbc.ca/canadavotes2004/leadersparties/leaders/pdf/firewall.pdf>

[Accessed 15 May, 2011].

<sup>46</sup> McDonald, M., The man behind Stephen Harper. *The Walrus* [online]. October 2004. Available at:

<http://www.walrusmagazine.com/articles/the-man-behind-stephen-harper-tom-flanagan/>

[Accessed 15 May 2011].

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<sup>47</sup> As of September 18, 2011, Ted Morton's quest to become Alberta Conservative Party leader has failed. The former Minister of Sustainable Development went down to defeat in the first ballot of the Conservative leadership vote, coming in at a distant fourth place, with only 12% of the votes cast. Since only the top three leadership contenders are eligible for the second ballot (i.e. the 'runoff vote'), Morton is officially out of the running to become Alberta Premier. See Jason Markusoff, Mar Tops Alberta PC Leadership Vote but Faces Runoff Against Redford, Horner. *Calgary Herald*, 18 September, 2011[online]. Available at:

<http://www.calgaryherald.com/tops+Alberta+leadership+vote+faces+runoff+against+Redford+Horner/5419737/story.html>

[Accessed 18 September, 2011]; see also Canadian Press, Mar leads as Alberta PCs head to 2nd ballot. *Globe and Mail*, 18 September 2011 [online]. Available at: <http://www.cbc.ca/news/canada/calgary/story/2011/09/18/edm-tory-leadership.html>

[Accessed 18 September , 2011].

<sup>48</sup> McDonald, M., The man behind Stephen Harper. *The Walrus*, October 2004 [online].

<sup>49</sup> See Chris Andersen. "Settling for community? Juridical visions of historical Métis collectivity in and after *R. v. Powley*. In Nicole St.-Onge, Carolyn Podruchny, and Brenda Macdougall, eds. *Family Mobility and Territoriality in Métis History* (Norman: University of Oklahoma Press, 2011 (forthcoming), pp. 452-492.

An elderly Métis woman, Mrs. Isabelle (née Fayant) McGillis, discussed her youthful journeys as part of a Métis hunting brigade near Milk River in southern Alberta during the mid-nineteenth century. When asked whether they were afraid of being attacked by the Blackfoot, she replied that the Métis always traveled in large parties, so the Blackfoot left them alone. See Hamilton, Maria A. and Zachary M. Hamilton. 1948. *These are the prairies*. (Regina: School Aids, 1948)