

Métis Rights.
Recognized and affirmed.



MÉTIS HARVESTER'S GUIDE

2011



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What is this Guide?

This 2011 Métis Harvester's Guide (Guide) has been prepared by the Métis National Council (MNC).

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

- background information on the *Powley* case;
- updates on the legal recognition of Métis harvesting rights across the Métis Nation Homeland (i.e. Ontario westward);
- information on the various Métis harvesting initiatives and/or agreements that are in place or on-going across the Métis Nation Homeland;
- regional contact information for Métis harvesters; and
- helpful lists on what to do if you are harvesting.

It must be noted that, while the MNC has attempted to provide information that is as up-to-date as possible, there may be future developments that change the realities in each province. As well, this *Guide* may not answer all of your questions and should not be considered legal advice. In order to avoid any confusion or misunderstandings, all Métis harvesters should contact their regional Métis government in order to obtain current information and updates.

What is the current state of affairs?

Even though it is now seven years since the release of the *Powley* decision, many provincial governments remain resistant to fully respecting and recognizing Métis harvesting rights in partnership with Métis Nation governments.

At the beginning of 2011, there is only one negotiated harvesting agreement in place (Ontario) and only one set of formal negotiations ongoing (Saskatchewan). This means that much of the promise of s. 35 of the *Constitution Act, 1982* and *Powley* remains unfulfilled throughout the Métis Nation Homeland.

However, Métis Nation governments continue to aggressively advance on Métis harvesting rights issues by pursuing litigation in the courts (Alberta) as well as implementing their own Métis harvesting laws and harvester identification systems (British Columbia), and then defending their harvesters if they are charged by other governments while exercising their rights under Métis laws and systems (Manitoba). These approaches continue to apply pressure to provincial governments that ignore the implications of *Powley* and subsequent court rulings on Métis harvesting. These approaches also enable Métis harvesters to continue to exercise their rights until negotiated agreements are reached between Métis Nation governments and other governments.

While the current state of affairs in 2011 is somewhat disheartening, Métis Nation governments refuse to let provincial government indifference stop the advancement of Métis harvesting rights. The Métis Nation's "hunt for justice" continues in various forms throughout the Homeland. It is hoped that, through continued litigation, exercise of Métis jurisdiction by implementing Métis harvesting laws and continued political pressure, other levels of government will ultimately begin to act honourably and uphold the honour of the Crown by entering into negotiations and arriving at mutually agreeable harvesting arrangements with Métis Nation governments.

What is the *Powley* case?

On September 19, 2003, with the release of the *Powley* case, the Supreme Court of Canada affirmed what Métis people have been saying for generations. Namely, that 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 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. It is the Métis Nation’s position that the *Powley* test can be met by Métis communities throughout the Métis Nation and governments should enter into negotiated agreements with Métis in order to implement the *Powley* decision.

The *Powley* case also set out criteria for who can exercise a Métis right to harvest. You are a rights-holder if: (1) you self identify as Métis and are a part of a rights-bearing Métis community; (2) you are ancestrally connected to a historic Métis community that held a harvesting right; and (3) you have been accepted as a member of a modern day Métis community that is a continuation of the historic rights-bearing Métis community.

Notably, 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 Supreme 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 *Powley* decision?

Since September of 2003, the Métis Nation has been working to ensure that the *Powley* case is respected by both 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.

In 2011, the Métis Nation continues to push other levels of government to fully respect and implement the *Powley* decision. While there has been some progress in some jurisdictions, provincial governments continue to act unilaterally and arbitrarily by largely denying the existence of Métis harvesting rights even in the face of historic facts and successful court victories.

Regardless 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 of the *Constitution Act, 1982* to the Métis people. In all regions of the Métis Nation, Métis governments have undertaken consultations on the *Powley* case, and a majority have developed and implemented their own Métis harvesting regulatory regimes.

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



the Métis
Nation of
Ontario
Ontario

Since 1995, the Métis Nation of Ontario (MNO) has been facilitating the Métis harvest in Ontario under a MNO Harvesters Policy that was developed in consultation with Métis citizens. Under the MNO Harvesters Policy, Métis harvesters are issued Harvesters Certificates for their identified harvesting territories.

On July 7, 2004, the MNO and Ontario reached a Four Point Agreement (Agreement) whereby Ontario agreed to recognize the MNO's Harvester's Certificates in all of the MNO's identified harvesting territories. The Agreement included a 1250 cap on MNO Harvesters Cards for the first year of the Agreement only, with a commitment that this number would be increased based on mutual agreement. The Agreement also committed to joint research and an independent review of the MNO Harvesters Card system.

Unfortunately, in the Fall of 2004, Ontario began to breach the Agreement and started charging MNO harvesters. The MNO went to court against Ontario in *R. v. Laurin and Lemieux*. In June 2007, the court found against Ontario and upheld the Agreement. Ontario did not appeal this court decision and this Agreement remains the only negotiated harvesting agreement in the Métis Nation. However, because of the litigation, years were lost and the timeline for research and an independent review was pushed back.

Recently, the MNO, Ontario and Canada have initiated a joint research project in the Mattawa/Nipissing region of the province, and discussions on an independent review of the MNO Harvesters Card system have been re-engaged.

What does this mean for Métis Harvesters in Ontario?

MNO Harvesters Certificate holders who are harvesting for food in their identified harvesting territory are not charged by Ontario, unless a Métis harvester is harvesting in a manner that is not consistent with safety and conservation values set out in the MNO's Harvesting Policy or Ontario's Interim Enforcement Policy. Essentially, MNO Harvesters Card holders are treated the same as First Nation harvesters in their traditional territories.

The MNO has issued all of the 1250 Harvesters Cards it is presently allowed to under the Agreement. It cannot issue new Harvesters Cards at this time, unless existing Harvesters Cards become available through natural attrition. The MNO continues to press Ontario to agree to the increase of this number since constitutional rights cannot be capped. As well, the MNO is working with Ontario to address the Agreement's research and independent review components.

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

Based on its province-wide consultations following the release of *Powley*, the Manitoba Metis Federation (MMF) has implemented a Metis Harvesting Initiative that consists of: (1) the Metis Laws of the Hunt (2nd Edition), (2) the Metis Harvester Identification Card system, and, (3) the Metis Conservation Trust Fund. (The 3rd Edition is in editing at the time of this printing).

The MMF defends all Métis harvesters, who have obtained Metis Harvester Identification Cards and who follow the Metis Laws of the Hunt, if charged by the Province of Manitoba for harvesting without provincial approval. Presently, these charges are put in a “parking lot” in the Manitoba courts.

The MMF has also successfully advanced a Métis harvesting rights test case for the Manitoba Métis community. In January 2009, in the *R. v. Goodon* case, the courts affirmed that Métis in Manitoba have a Métis right to hunt for food. It is MMF’s position that this right can be proven throughout all of the province, but Manitoba continues to deny Métis harvesting rights in some parts of the province.

Since the release of the *Goodon* decision, the MMF has pushed Manitoba for negotiations on implementing the *Powley* and *Goodon* decisions in Manitoba, consistent with the honour of the Crown. These formal requests continue to be refused, but the MMF continues to press for action on Métis harvesting rights.

What does this mean for Métis Harvesters in Manitoba?

Métis harvesters who have valid Metis Harvester Identification Cards are encouraged to harvest throughout Manitoba within Metis Laws of the Hunt. The MMF will continue to defend all of its harvesters, regardless of Manitoba's positions on Métis harvesting rights. If a harvester is charged, legal representation is provided and the case is put in a "parking lot" with other cases.

Manitoba presently recognizes Métis harvesting rights in specific regions of the province. It also relies on Metis Harvester Identification Cards to identify legitimate Métis harvesters. If a Métis harvester is stopped in one of these regions with a Metis Harvester Identification Card, it is likely that they will not be charged.

Unity is very important in this continued battle for recognition of our Métis Rights. It is all Métis exercising our Rights together that has forced the province to move as much as they have today. It will be the pressure of the entire Manitoba Métis community that will move us towards the ultimate goal of province-wide recognition.

For information on Métis harvesting in Manitoba contact:

Manitoba Metis Federation
Natural Resources Department
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. Due to limited capacity, licenses under this *Act* have never been issued.

There have been several court cases confirming Métis harvesting rights in Saskatchewan. More specifically,

- In 1996, with the *R. v. Morin & Daigneault* decision, Métis in northwest Saskatchewan had their constitutional right to harvest for food recognized. Following this decision, Saskatchewan 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, can harvest for food without a license.
- In 2005, the courts in *R. v. Laviolette* confirmed that Saskatchewan's use of the NAD was arbitrary and it could not be relied upon to define Métis harvesting rights. The court confirmed again that Métis throughout Northwest Saskatchewan have a right to harvest for food, and that this includes areas south of the NAD (i.e. Meadow Lake, etc.).

- In 2007, the courts in *R. v. Belhumeur* affirmed that Métis in southern Saskatchewan also have Métis harvesting rights. Specifically, the court found a rights-bearing Métis community spans the Qu'Appelle Valley and includes Regina.

Based on *Powley* and the court cases that confirm Métis harvesting rights in southern and northern Saskatchewan, the MNS and Saskatchewan signed a Memorandum of Understanding (MOU) in November 2010 to begin formal negotiations on Métis harvesting. The MOU sets targets to arrive at an interim agreement by the Fall of 2011 and a longer-term agreement by the Fall of 2012. These negotiations are ongoing.



What does this mean for Métis harvesters in Saskatchewan?

Métis who are connected to northern Saskatchewan can continue to harvest consistent with *R. v. Morin and Daigneault*, *R. v. Laviolette* and Saskatchewan's policies. As well, Métis connected to the Qu'Appelle Valley can continue to harvest in that region consistent with *R. v. Belhumeur*.

For other areas, MNS has a screening process in place with the Government of Saskatchewan. A copy of the screening process is available by contacting the MNS head office. This screening process is only triggered if a Métis harvester requests it to be applied and signs a consent form so information about an investigation or charge can be shared with the MNS. This allows MNS and Saskatchewan's Ministry of Environment to work together to see if the charge should not be laid or can be withdrawn.

Unfortunately, in its present form, the screening process does not commit to the charges not being laid or being withdrawn by the Province. It only sets out a mutually agreeable process for MNS and the Government of Saskatchewan to work together on these issues with a view to having no charges laid or existing charges withdrawn.

It is hoped that the formal negotiations between MNS and the Government of Saskatchewan will be successful and an interim agreement will be reached by the Fall of 2011. The MNS will continue to update its citizens on progress from the negotiations and Métis citizens should contact their Local, or Regional Directors of the MNS for updates.

For information on Métis harvesting in Saskatchewan contact:

Métis Nation - Saskatchewan
1-800-343-6667 (Saskatchewan Only)
306-343-8285
www.mn-s.ca



Alberta

In 2004, following the release of the *Powley* decision, the Métis Nation of Alberta (MNA) signed an Interim Métis Harvesting Agreement (IMHA) with Alberta. The IMHA recognized the right of MNA members to harvest for food throughout the province. In 2007, under new political leadership, Alberta unilaterally cancelled the IMHA and implemented an arbitrary Métis Harvesting Policy.

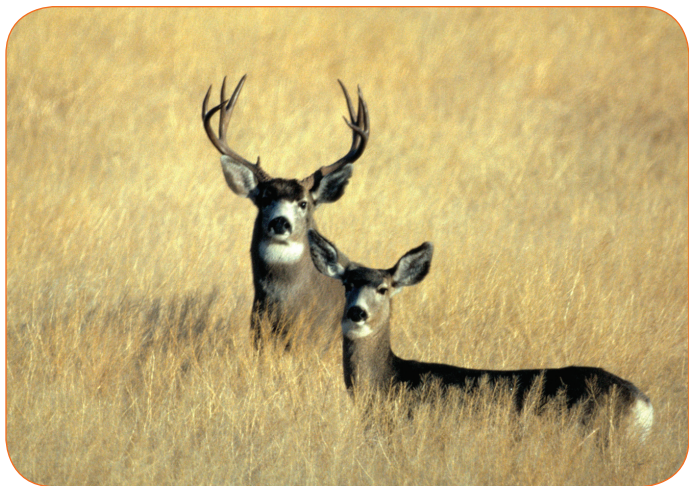
Alberta's new policy only recognizes 17 site-specific locations in northern Alberta and requires an individual to prove to Alberta that they are ancestrally connected to those site-specific locations. If an individual proves to Alberta that they are Métis pursuant to its policy, an individual receives a letter that authorizes them to harvest in a 160 kilometer radius of those site-specific locations.

The MNA rejected Alberta's policy and adopted a Métis Harvesting Action Plan. This plan included passing a MNA Harvesting Policy and organizing community hunts across the province in order to get the issue of Métis harvesting rights before the Alberta courts. The MNA's test case, *R. v. Hirsekorn*, focuses on having Métis harvesting rights confirmed in areas where Alberta currently refuses to recognize Métis rights such as southern and central Alberta.

In December 2010, the courts ruled against Alberta Métis and found Métis did not have harvesting rights in southern Alberta. However, the trial judge did find a regional rights-bearing Métis community in central Alberta (i.e. along the North Saskatchewan river system). The MNA has

appealed the trial judge's finding with respect to southern Alberta to the Alberta Court of Queen's Bench. The appeal of the case is set to be heard in June 2011.

It is expected that this test case will ultimately be appealed to the Supreme Court of Canada, since it raises unique issues that were not addressed in the fact situation in *Powley*.



What does this mean for Métis harvesters in Alberta?

Métis harvesters who want to apply through Alberta's policy can do so, and likely will not be charged if they are following Alberta rules. Additional information about this policy is available through Alberta Sustainable Resource Development or www.srd.alberta.ca.

Based on the current state of the law and policy in Alberta, Métis individuals who can connect to a recognized Métis ancestor in central or northern Alberta in the late 1800s or prior should be able to harvest for food without obtaining an appropriate license, as long as conservation and safety are not at issue. However, Alberta has not clearly stated its position on these issues in light of the court's decision in *R. v. Hirsekorn*.

Based on the trial judge's decision in *Hirsekorn* and the fact that the MNA is focusing its efforts on its appeal in order to address Métis harvesting rights throughout Alberta, it is not encouraging individuals to harvest without a license in southern Alberta. The MNA still believes that Métis have harvesting rights in southern Alberta and throughout the province, but it cannot afford to take on more cases until the appeal in the *Hirsekorn* case is resolved.

The MNA's new Métis Harvesting Policy Guidelines on Métis harvesting in Alberta effective February 2011 are available on its website at www.albertametis.ca. As well, a Frequently Asked Questions document for Métis harvesters is also available on the MNA's website as well as through its head office and regional offices.

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 Nation British Columbia (MNBC) established the British Columbia Métis Assembly of Natural Resources (BCMANR) in order to develop natural resources legislation to support the sustenance and cultural needs of the Métis people in British Columbia.

In 2008, the MNBC Annual General Assembly passed the MNBC *Natural Resources Act*. This legislation regulates the Métis harvest in British Columbia. It also gives authority to the seven Regional Captains of the Hunt as well as a MNBC Harvester Cards system, which identifies MNBC citizens who are harvesters.

Unfortunately, since the release of the *Powley* case, British Columbia has refused to formally negotiate with MNBC with respect to Métis harvesting rights. In response, MNBC has been collecting and collating research on the historic presence of Métis and Métis communities throughout the province with a view of ultimately taking a Métis harvesting rights test case.

Through negotiations or litigation (if need be), MNBC continues to push to have its legislation and Harvester Cards recognized by British Columbia, so Métis harvesters can harvest pursuant to Métis law without fear of harassment or charges. Starting in 2011, the MNBC is undertaking a Harvesting Card drive in order to increase the number of card-holders in the province. During this drive, applying for a Harvesting Card is of no cost to MNBC citizens. Its goal is to issue 800-1000 Harvester Cards.

What does this mean for Métis harvesters in British Columbia?

MNBC understands that Métis citizens in British Columbia continue to exercise their harvesting rights throughout the province in a manner consistent with the *Powley* decision. However, since there is currently no formal Métis harvesting agreement in place between MNBC and British Columbia, Métis harvesters should be aware that they may be ticketed or charged.

Presently, the MNBC cannot afford to defend Métis harvesters if they are charged. MNBC urges its citizens to conduct their harvesting in a manner that limits the potential of being charged by government enforcement officers. MNBC is in the process of developing a test case in order to establish Métis harvesting rights in the province and asks that its harvesters to allow time to complete this work and move forward with a winnable Métis Rights case.

Under federal guidelines, MNBC Harvester Cards can be used for the purposes of Aboriginal harvesting pursuant to the *Migratory Bird Convention Act*.

If Métis harvesters are ticketed or charged, MNBC asks its citizens to contact the MNBC Director of Natural Resources or their respective Captain of the Hunt.

For information on Métis harvesting in British Columbia contact:

Métis Nation British Columbia

Director of Natural Resources

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

604-557-5851

www.mnbc.ca

If I plan to harvest, 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 the Métis 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 Metis Federation and Métis Nation 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 ‘which 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.

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 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 Metis 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.mn-s.ca

Métis Nation of Alberta

1-800-252-7553 (Alberta Only)

780-455-2200

www.albertametis.ca

Métis Nation British Columbia

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

604-557-5851

www.mnbc.ca

2011 to 2020 has been declared
by the Métis Nation as the
“Decade of the Métis Nation”



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