

Métis Harvester's Guide

Spring / Fall Edition 2010



SUSTAINABLE MÉTIS RIGHTS



What is this Guide?

The 2010 Métis Harvesters Guide (*Guide*) has been prepared by the Métis Nation – Saskatchewan (MN-S), Department of Environment, as part of the MN-S's multilateral process on Métis harvesting.

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

- Background information on the *Powley* case;
- Information on the various Métis harvesting initiatives and/or agreements that are in place for this year;
- Provincial contact information for Métis harvesters; and
- Helpful lists on what to do if you are harvesting this fall.

It must be emphasized that this fall's harvesting season continues to be one of transition across the Province. While we have attempted to provide Métis harvesters with as much information as possible in this *Guide*, it will not answer all of your questions and should not be considered legal advice. As well, developments following the publication of this *Guide* may substantially change some of the information provided. For the most recent information on harvesting please stay up-to-date with the content on the Department of Environment's website www.mn-s.ca.

The Métis Nation – Saskatchewan does not have any formal agreement signed with the Province of Saskatchewan in regards to harvesting rights; however, it is recommended that if you do plan to harvest this fall that you first obtain your new Métis Card through the MN-S registry.





What is the *Powley* case?

On September 19, 2003, with the release of the *Powley* case, the Supreme Court of Canada affirmed what the Métis people have been saying for generations.

Namely, the Métis are a distinct Aboriginal people with rights that must be respected.

The Supreme Court confirmed that s. 35 of the *Constitution Act, 1982* is a “promise”

to the Métis people and its central purpose is to recognize them, to value distinctive Métis culture, and to enhance their survival.

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

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

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

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

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

What has been done since the release of the *Powley* Case?

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

Ultimately, the Métis Nation – Saskatchewan 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 and provincial governments.

The fall of 2010 continues to be a period of transition with respect to Métis harvesting.



Saskatchewan

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

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

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

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

To date, the Saskatchewan Ministry of Environment has not formally responded to the *Laviolette* decision or officially altered its flawed policy on Métis harvesting.



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

The MN-S urges all Métis citizens in Saskatchewan to obtain their new MN-S Citizenship Cards for identification purposes for the harvest this fall and to follow the MN-S Wildlife Act.

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

In Belhumeur Saskatchewan, the Saskatchewan Ministry of Environment maintains an approach that Métis harvesting rights are “unclear” and assesses Métis harvesters on a case-by-case basis. At this time, Métis harvesting in the south should be aware that they may be charged.






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

1. Ensure you have the appropriate identification needed for Métis harvesting within your province (Citizenship Card);
2. Ensure you have written and verbal permission to hunt on any Private or First Nation lands;
3. Contact the Métis Nation – Saskatchewan head office (**406 Jessop Avenue, Saskatoon, SK 306-343-8285** or online at **www.mn-s.ca**) in order to receive the most-up-to-date information relating to this fall's harvest;
4. Follow safety and conservation standards while harvesting; and
5. 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. Trigger the Screening Process: 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 – Saskatchewan Citizenship Card to the enforcement officer.
 4. Make it known to the Enforcement Officer that you were only harvesting for food, social or ceremonial purposes.
 5. If the Officer asks you questions like ‘what do you know about Métis rights or the Powley case?’ or ‘what Métis community you are from and when was it formed?’ – you do not need to answer. In fact, you should be aware that additional information you provide at this 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 of charges to your respective Métis Nation – Saskatchewan, Department of Environment, Harvesting Branch immediately.
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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 the Province of Saskatchewan.

Gun Registrations:

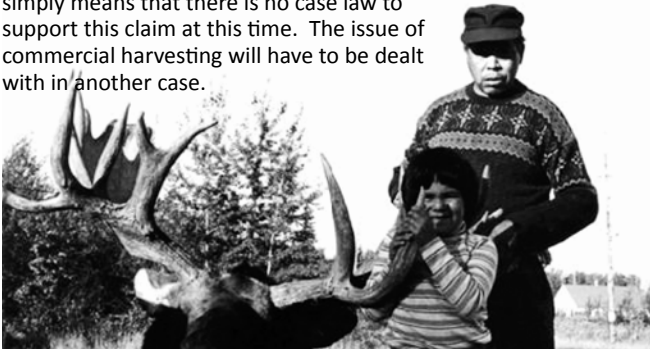
You are required to register your firearms pursuant to federal law. The *Powley* case did not exempt Métis from gun registration requirements.

Harvesting with Non-Aboriginal People:

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

Commercial Harvesting:

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





For more information on Métis harvesting in
Saskatchewan contact:

Métis Nation-Saskatchewan

406 Jessop Avenue

Saskatoon, SK S7N 2S5

1-800-343-666 (Saskatchewan only)

306-343-8285

www.mn-s.ca

