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Who are the Métis and Why are We Asking the Question?

For: The Canadian Institute for the Administration of Justice
October 15, 2015 (Saskatoon, SK)

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Pape Salter Teillet LLP
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The “Métis Question” in Different Legal Contexts

- Section 35 Rights (Aboriginal and/or Treaty)
- Membership in Legislatively Recognized Métis Communities (*e.g.*, modern day land claim agreements, Alberta Métis Settlements) or in Métis Communities with Negotiated Agreements with the Crown (*e.g.*, harvesting agreements)
- Access to Statutory Benefits and Entitlements (*e.g.*, Indian Act, government programs and services, *etc.*)
- Sentencing Considerations
- Charter Rights Claims
- Child and Family Services
- Legislative Jurisdiction (Provincial or Federal)

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Who Are The Métis?

R. v. Powley, [2003] 2 S.C.R. 207

[10] The term “Métis” in s. 35 does not encompass all individuals with mixed Indian and European heritage; rather, it refers to distinctive peoples who, in addition to their mixed ancestry, developed their own customs, way of life, and recognizable group identity separate from their Indian or Inuit and European forebears. Métis communities evolved and flourished prior to the entrenchment of European control, when the influence of European settlers and political institutions became pre-eminent. ... The Métis developed separate and distinct identities, not reducible to the mere fact of their mixed ancestry.

R. v. Powley, [2003] 2 S.C.R. 207

[11] The Métis of Canada share the common experience of having forged a new culture and a distinctive group identity from their Indian or Inuit and European roots. This enables us to speak in general terms of “the Métis”. **However, particularly given the vast territory of what is now Canada, we should not be surprised to find that different groups of Métis exhibit their own distinctive traits and traditions.** This diversity among groups of Métis may enable us to speak of Métis “peoples”, a possibility left open by the language of s. 35(2), which speaks of the “Indian, Inuit and Métis peoples of Canada”.



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[17] ... The inclusion of the Métis in s. 35 represents Canada's commitment to recognize and value the distinctive Métis cultures, which **grew up in areas not yet open to colonization**, and which the framers of the *Constitution Act, 1982* recognized can only survive if the Métis are protected along with other aboriginal communities.

The Old Northwest



R. v. Powley, [2003] 2 S.C.R. 207

[21] The trial judge found that a distinctive Métis community emerged in the Upper Great Lakes region in the mid-17th century, and peaked around 1850. We find no reviewable error in the trial judge's findings on this matter, which were confirmed by the Court of Appeal.

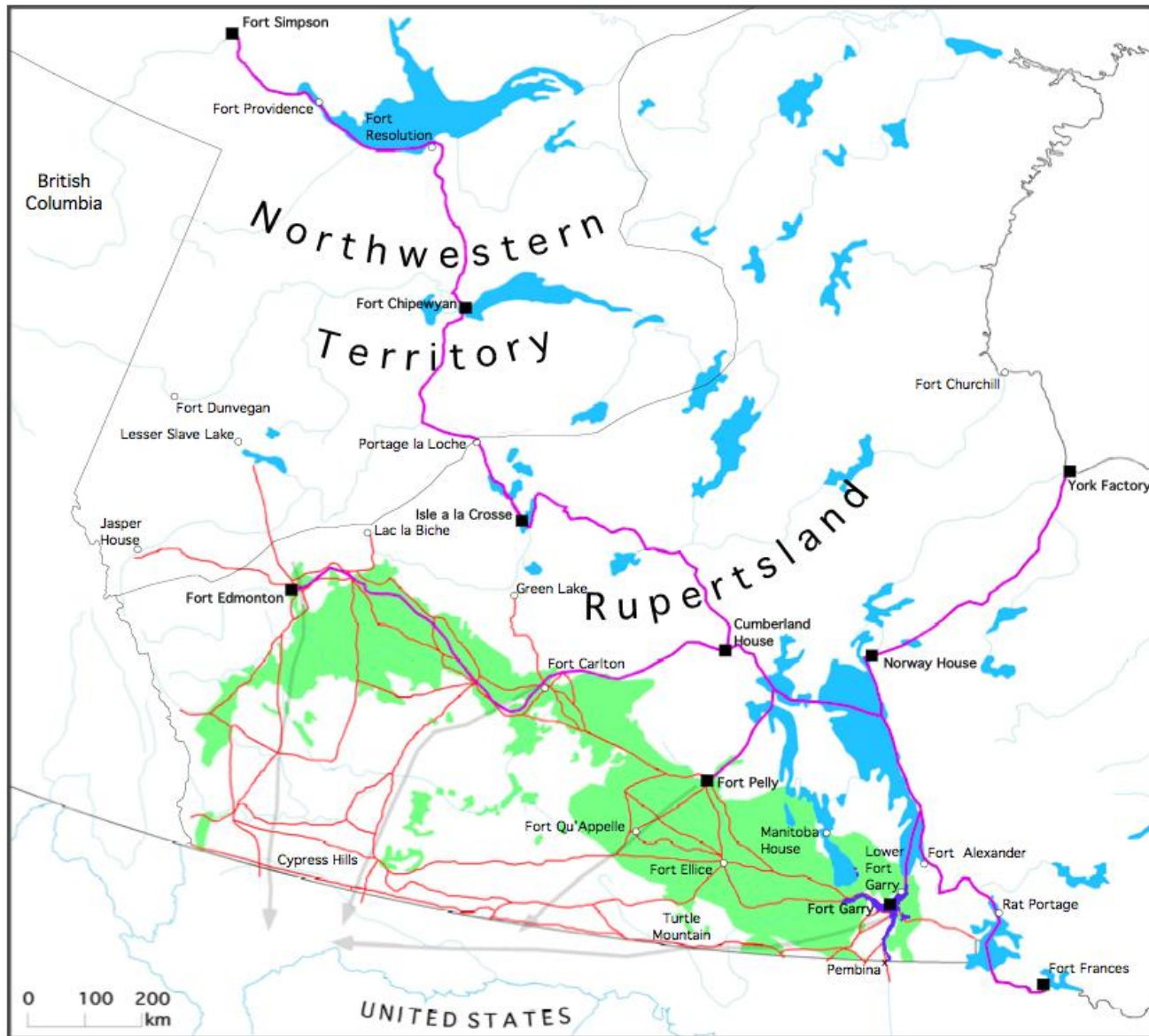


Manitoba Métis Federation v. Canada, [2013] 1 S.C.R. 623

[1] ... The Canadian government, led by Prime Minister John A. Macdonald, embarked on a policy aimed at bringing the western territories within the boundaries of Canada, and opening them up to settlement.

[2] This meant dealing with the indigenous peoples who were living in the western territories. **On the prairies, these consisted mainly of two groups -- the First Nations, and the ... Métis.**





Métis Economic Activity During the Fur Trade of the Western Interior ca. 1866

- Major HBC Posts
- HBC District Headquarters
- Major York Boat Traffic
- Major Cart Trails
- ← General Movement for Summer Buffalo Hunt
- Parklands
- Pre-1870 Manitoba River Lot Lands

Sources: Hudson's Bay Company Archives, B.154/k1; Library and Archives Canada, National Map Collection, NMC0190221.

Credits: Tough/Ellehoj 2007

The Geography of the Métis: The Fur Trade Routes in Ontario and the “Western Territories”



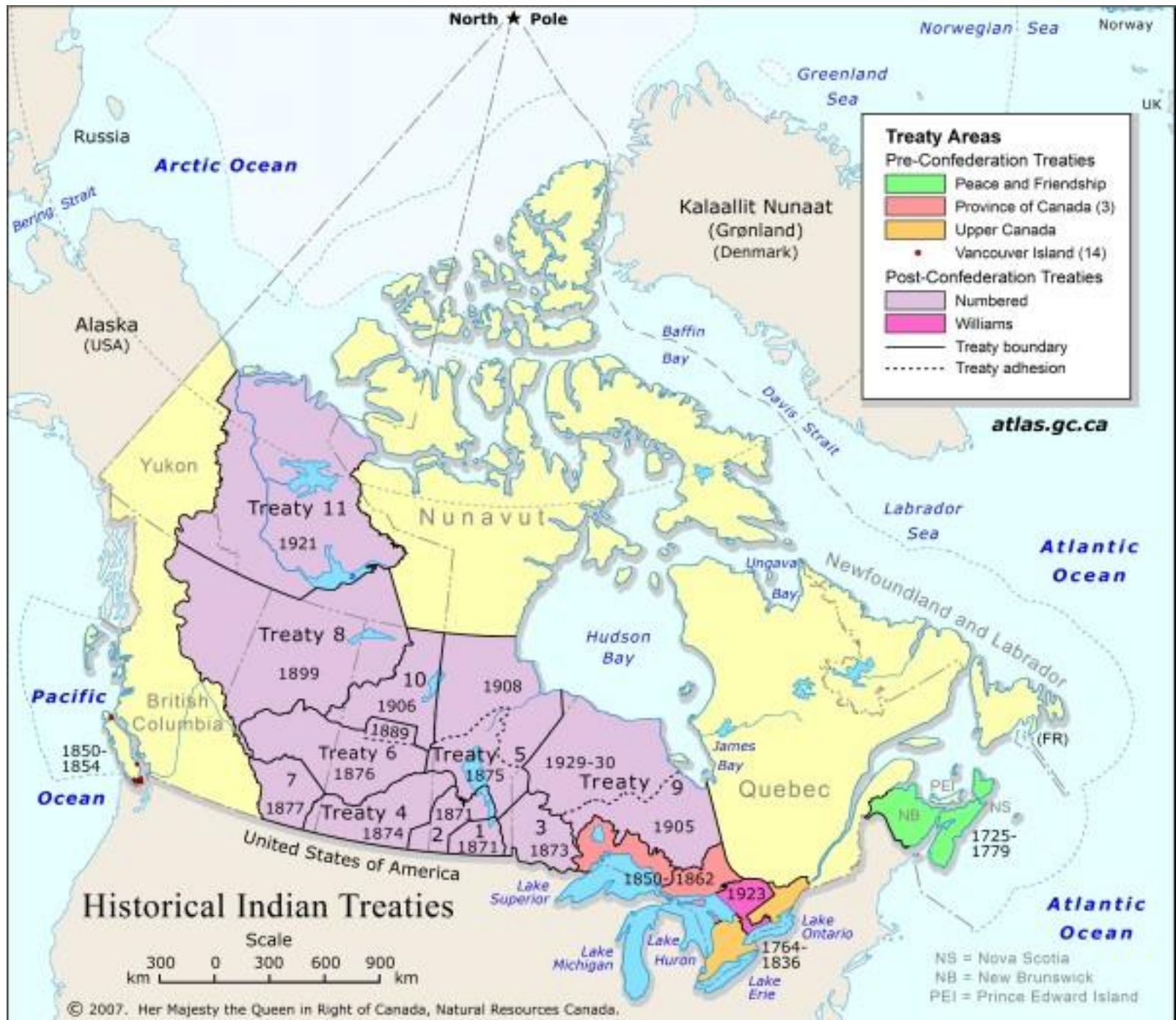
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How Did Canada Deal with the Métis?

Manitoba Métis Federation v. Canada, [2013] 1 S.C.R. 623

[3] The government policy regarding the First Nations was to enter into treaties with the various bands, whereby they agreed to settlement of their lands in exchange for reservations of land and other promises.

[4] The government policy with respect to the Métis population ... was less clear.



Cunningham v. Alberta, [2011] 2 S.C.R. 670

[7] The Crown did not apply to the Métis its policy of treating with the Indians and establishing reservations and other benefits in exchange for lands. ... Métis communities were not given a collective reservation or land base; they did not enjoy the protections of the *Indian Act* or any equivalent. Although widely recognized as a culturally-distinct Aboriginal people living in culturally-distinct communities, the law remained blind to the unique history of the Métis and their unique needs.

Cunningham v. Alberta, [2011] 2 S.C.R. 670

[8] Governments slowly awoke to this legal lacuna. ... The landscape shifted dramatically in 1982, with the passage of the *Constitution Act, 1982*. ... Section 35 of the *Constitution Act, 1982* entrenched existing Aboriginal and treaty rights and recognized three Aboriginal groups — Indians, Inuit, and Métis. **For the first time, the Métis were acknowledged as a distinct rights-holding group.**

[70] The history of the Métis is one of struggle for recognition of their unique identity as the mixed race descendants of Europeans and Indians. Caught between two larger identities and cultures, the Métis have struggled for more than two centuries for recognition of their own unique identity, culture and governance. **The constitutional amendments of 1982 ... signal that the time has finally come for recognition of the Métis as a unique and distinct people.**

The Constitution Act, 1982

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.

Yukon First Nation Traditional Territories
Territoires Traditionnels des Premières Nations du Yukon

- Settled Traditional Territories / Territoires Traditionnels - Ententes conclues:**
- Y1 - Champagne & Ahnikik First Nations (Isteeva Junction)
 - Y2 - First Nation of Na-Cho Nyak Dun (Meyie)
 - Y3 - Lina Samon (Karmoon First Nation)
 - Y4 - Selkirk First Nation (Pelly Crossing)
 - Y5 - Teah Tsiigi Council
 - Y6 - Tsih Daa' Hweh'ni First Nations (Cawston)
 - Y7 - Vuntut Gwitchin First Nation (Old Crow)
 - Y12 - Tlein Kweh'niin Council (Lika Lakaeng)
 - Y13 - Teti Gwich'in Tribal Council
- Unsettled Traditional Territories / Territoires Traditionnels - Non résolues:**
- Y8 - White River (Barnes Creek) / Xaana (Barnes Landing) First Nation
 - Y9 - Carcross / Tagish First Nation
 - Y10 - Ikwadon First Nation (Whitehorse)
 - Y11 - Kaseka First Nation

B.C. Treaty Negotiations - Land Claims
Négociations du traité de la C.-B. - Revendications territoriales

- Settled Land Claims / Revendications territoriales - Ententes conclues:**
- 04 - Nigah's Liara Government
- Unsettled Land Claims / Revendications territoriales - Non résolues:**
- B1 - Achso Deer Iow First Nation
 - B2 - Carleton Place First Nation
 - B3 - Carleton Place Tribal Council
 - B4 - Carleton Place Tribal Council
 - B5 - Champagne and Ahnikik First Nations
 - B6 - Chehalis Center Nation
 - B7 - Inlet Nation
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 - B9 - Oostana First Nation
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Vancouver Island Treaties (Douglas)
Traité de l'île de Vancouver (Douglas)

- D1 - Gwaikheh 1851
- D2 - Kwakwaka'wakw 1851
- D3 - Saik'ya 1854
- D4 - North Saanich 1862
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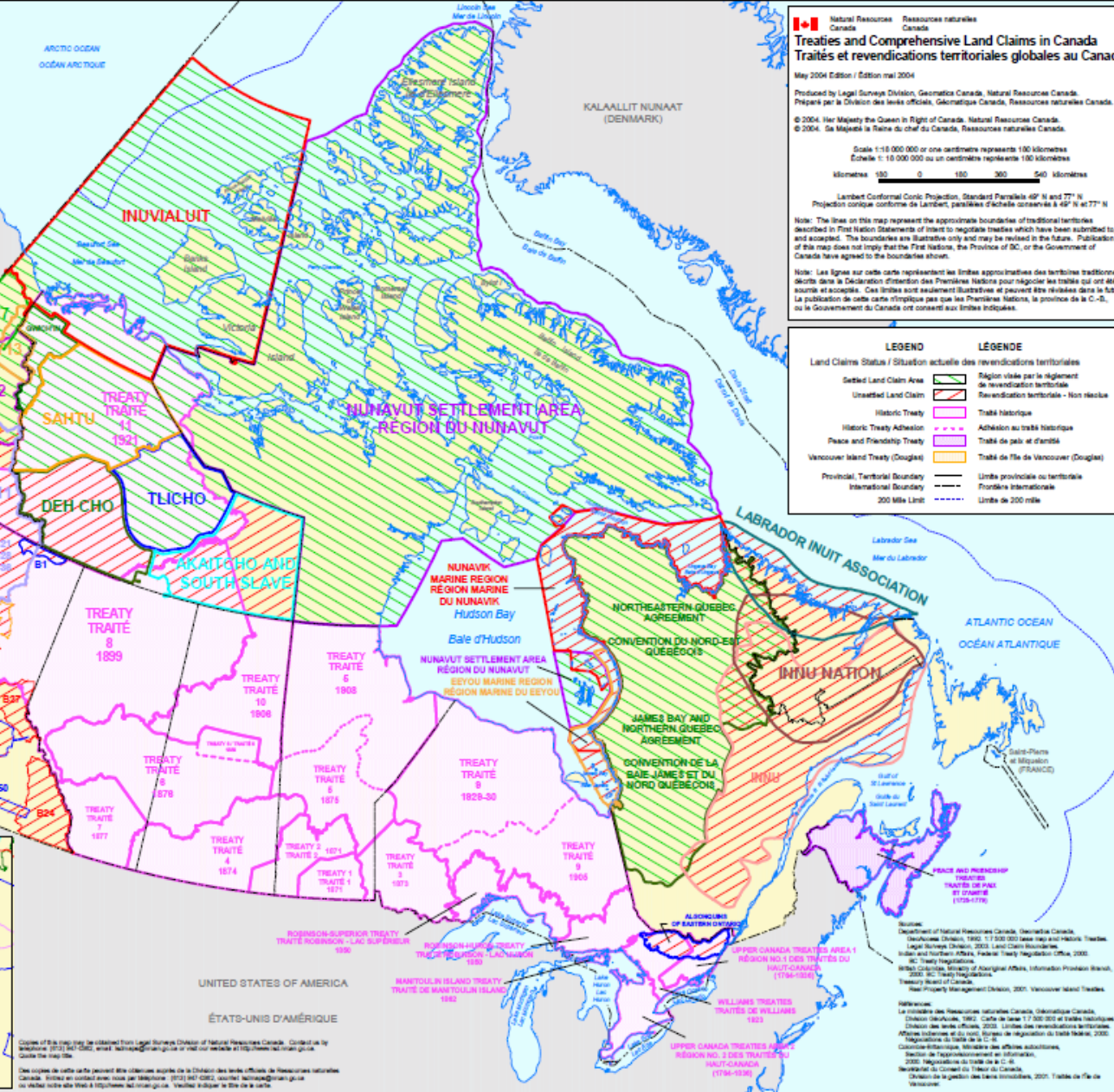
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Treaties and Comprehensive Land Claims in Canada
Traité et revendications territoriales globales au Canada

May 2004 Edition / Edition mai 2004

Produced by Legal Services Division, Geomatics Canada, Natural Resources Canada.
 Préparé par le Division des services juridiques, Géomatique Canada, Ressources naturelles Canada.

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Scale 1:10 000 000 or one centimetre represents 100 kilometres
 Echelle 1: 10 000 000 ou un centimètre représente 100 kilomètres

Lambert Conformal Conic Projection, Standard Parallels 49° N and 77° N
 Projection conique conforme de Lambert, parallèles d'échelle conservés à 49° N et 77° N

Note: The lines on this map represent the approximate boundaries of traditional territories described in First Nation Statements of Intent to negotiate treaties which have been submitted to and accepted. The boundaries are illustrative only and may be revised in the future. Publication of this map does not imply that the First Nations, the Province of BC, or the Government of Canada have agreed to the boundaries shown.

Note: Les lignes sur cette carte représentent les limites approximatives des territoires traditionnels décrits dans la Déclaration d'intention des Premières Nations pour négocier les traités qui ont été soumis et acceptés. Ces limites sont seulement illustratives et peuvent être révisées dans le futur. La publication de cette carte n'implique pas que les Premières Nations, la province de la C.-B., ou le Gouvernement du Canada ont consenti aux limites indiquées.

LEGEND	LÉGENDE
Land Claims Status / Situation actuelle des revendications territoriales	
Settled Land Claim Area / Région visée par le règlement de revendication territoriale	[Green box]
Unsettled Land Claim / Revendication territoriale - Non résolue	[Red box]
Historic Treaty / Traité historique	[Pink box]
Historic Treaty Adhesion / Adhésion au traité historique	[Dashed pink line]
Peace and Friendship Treaty / Traité de paix et d'amitié	[Purple box]
Vancouver Island Treaty (Douglas) / Traité de l'île de Vancouver (Douglas)	[Yellow box]
Provincial, Territorial Boundary / Frontière provinciale ou territoriale	[Blue dashed line]
International Boundary / Frontière internationale	[Red dashed line]
200 Mile Limit / Limite de 200 milles	[Blue dashed line]

Copies of this map may be obtained from Legal Services Division of Natural Resources Canada. Contact us by telephone (514) 947-0882, email: natres@natres.gc.ca or visit our website at http://www.natres.gc.ca

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Yukon First Nation Traditional Territories
Territoires Traditionnels des Premières Nations du Yukon

Settled Traditional Territories /
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- D6 - Chosoon 1862
- D7 - Oklawich 1869
- D8 - Swengthing 1880
- D9 - Kowampan 1890
- D10 - Kalyakaa 1900
- D11 - Chewanquam 1900
- D12 - Soka 1900
- D13 - Tachonkwa 1900
- D14 - Whyweth 1900

B.C. Treaty Negotiations - Land Claims
Négociations de traité de la C.-B. - Revendications territoriales

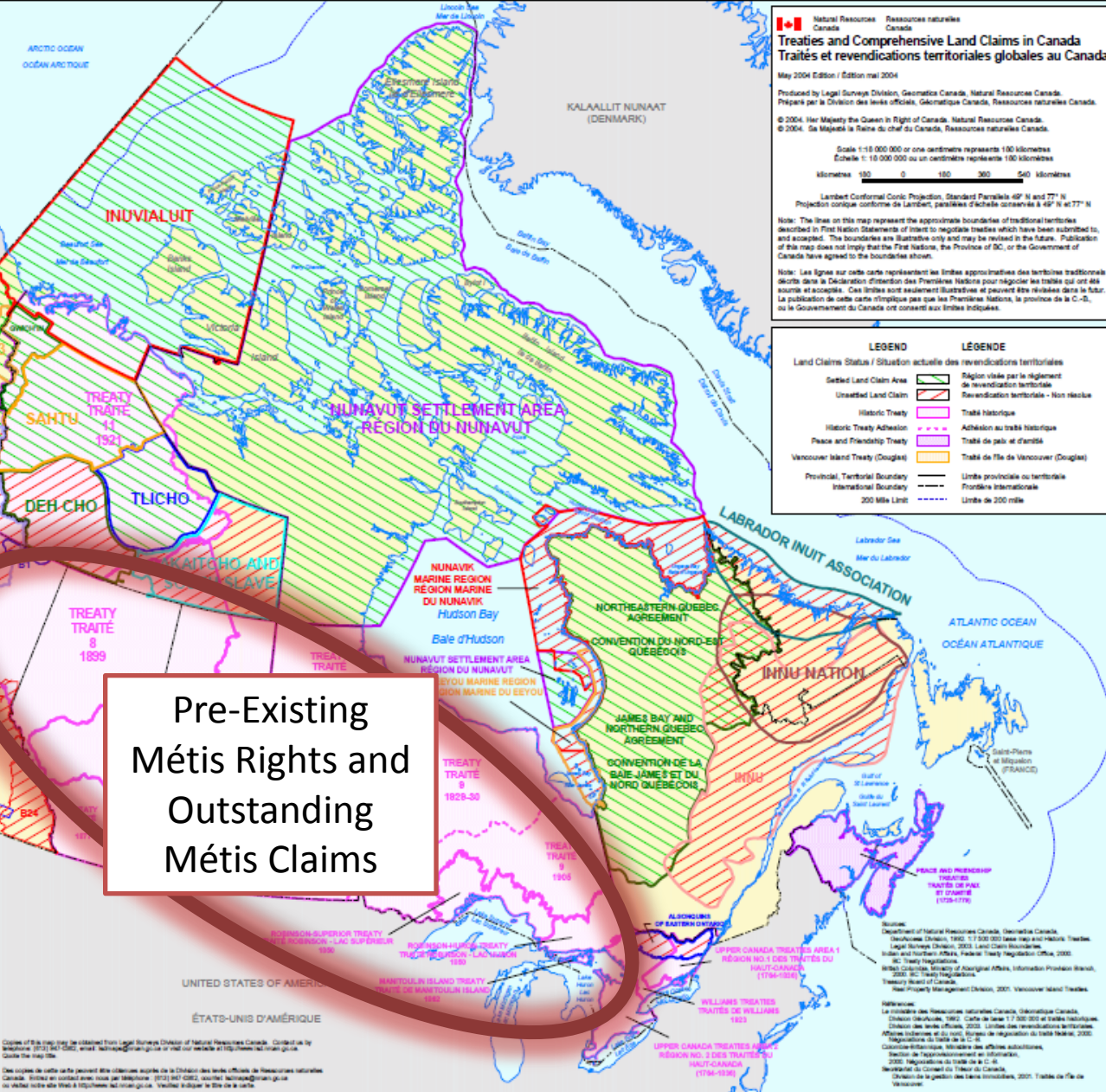
Settled Land Claims / Revendications territoriales - Ententes conclues:

04 - N'gaya L'itso Government

Unsettled Land Claims / Revendications territoriales - Non résolus:

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**Pre-Existing
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 Outstanding
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 Projection conique conforme de Lambert; parallèles d'échelle conservés à 49° N et 77° N

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LEGEND	LÉGENDE
Land Claims Status / Situation actuelle des revendications territoriales	
Settled Land Claim Area	Région visée par le règlement de revendication territoriale
Unsettled Land Claim	Revendication territoriale - Non résolue
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Historic Treaty Adhesion	Adhésion au traité historique
Peace and Friendship Treaty	Traité de paix et d'amitié
Vancouver Island Treaty (Douglas)	Traité de l'île de Vancouver (Douglas)
Provincial, Territorial Boundary	Limite provinciale ou territoriale
International Boundary	Frontière internationale
200 Mile Limit	Limite de 200 milles

Source of this map was obtained from Legal Services Division of Natural Resources Canada. Contact us by telephone (313) 947-0882, email: natres@natres.gc.ca or visit our website at natres.natres.gc.ca

Source des données de cette carte provient des services officiels de la Division des services officiels, Ressources naturelles Canada. Contactez-nous par téléphone (313) 947-0882, courriel: natres@natres.gc.ca ou visitez notre site Web à natres.natres.gc.ca

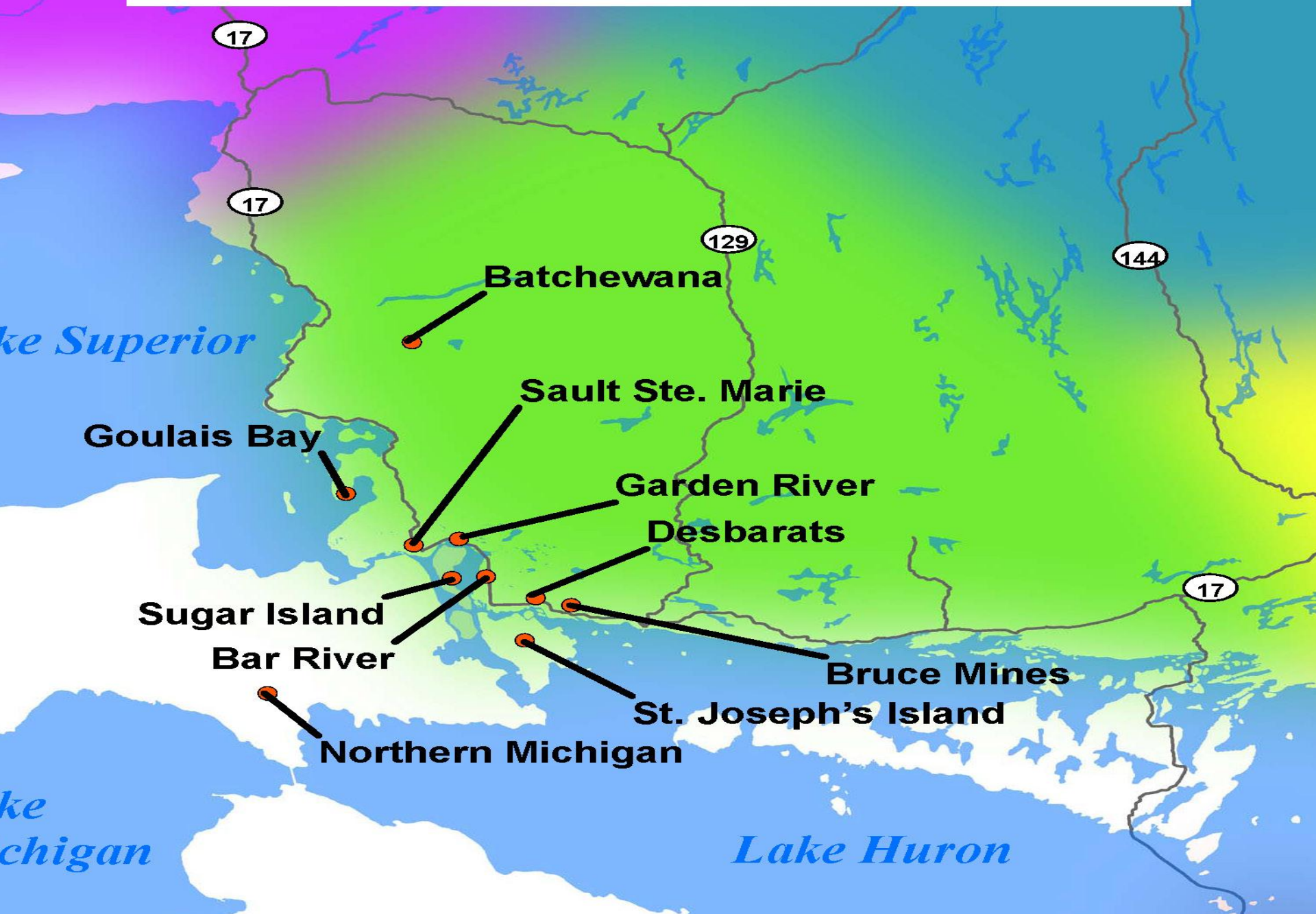
PAPE
SALTER
TEILLET LLP BARRISTERS AND SOLICITORS

Where Are The Métis Today?

What is a Métis Community?

[68] The Crown has gone to great pains to narrow the issues in this trial to Sault Ste Marie proper. **I find that such a limited regional focus does not provide a reasonable frame of reference when considering the concept of a Métis community at Sault Ste Marie.** ... [I]t would seem more reasonable to find the existence of the Métis on the fringes of the geographical boundaries of Sault Ste Marie ... including Batchewana, Goulais Bay, Garden River, Bruce Mines, Desbarates, Bar River, St. Joseph's Island, Sugar Island and into Northern Michigan. (R. v. Powley, [1998] O.J. No. 5310)

SAULT STE. MARIE MÉTIS COMMUNITY



R. v. Powley, [2001] 53 O.R. (3d) 35 (C.A.)

[101] The constitution formally recognizes the existence of distinct "Métis peoples", who, like the Indian and Inuit, are a discrete and equal subset of the larger class of "aboriginal peoples of Canada." ... **The rights of one people should not be subsumed under the rights of another.** To make Métis rights entirely derivative of and dependant upon the precise pre-contact activities of their Indian ancestors would, in my view, ignore the distinctive history and culture of the Métis and the explicit recognition of distinct "Métis peoples" in s. 35.

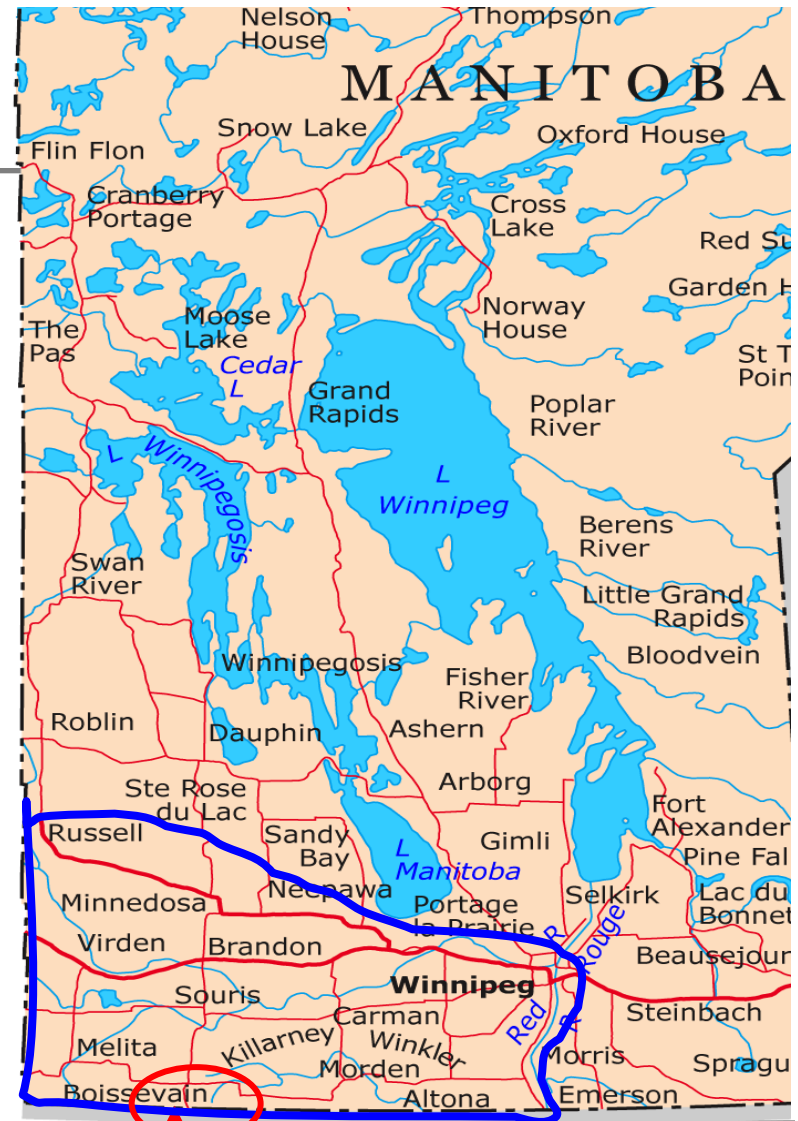
R. v. Powley, [2003] 2 S.C.R. 207

[23] Here, we find no basis for overturning the trial judge's finding of a historic Métis community at Sault Ste. Marie. This finding is supported by the record and must be upheld. ...

[28] The trial judge's finding of a contemporary Métis community in and around Sault Ste. Marie is supported by the evidence and must be upheld.

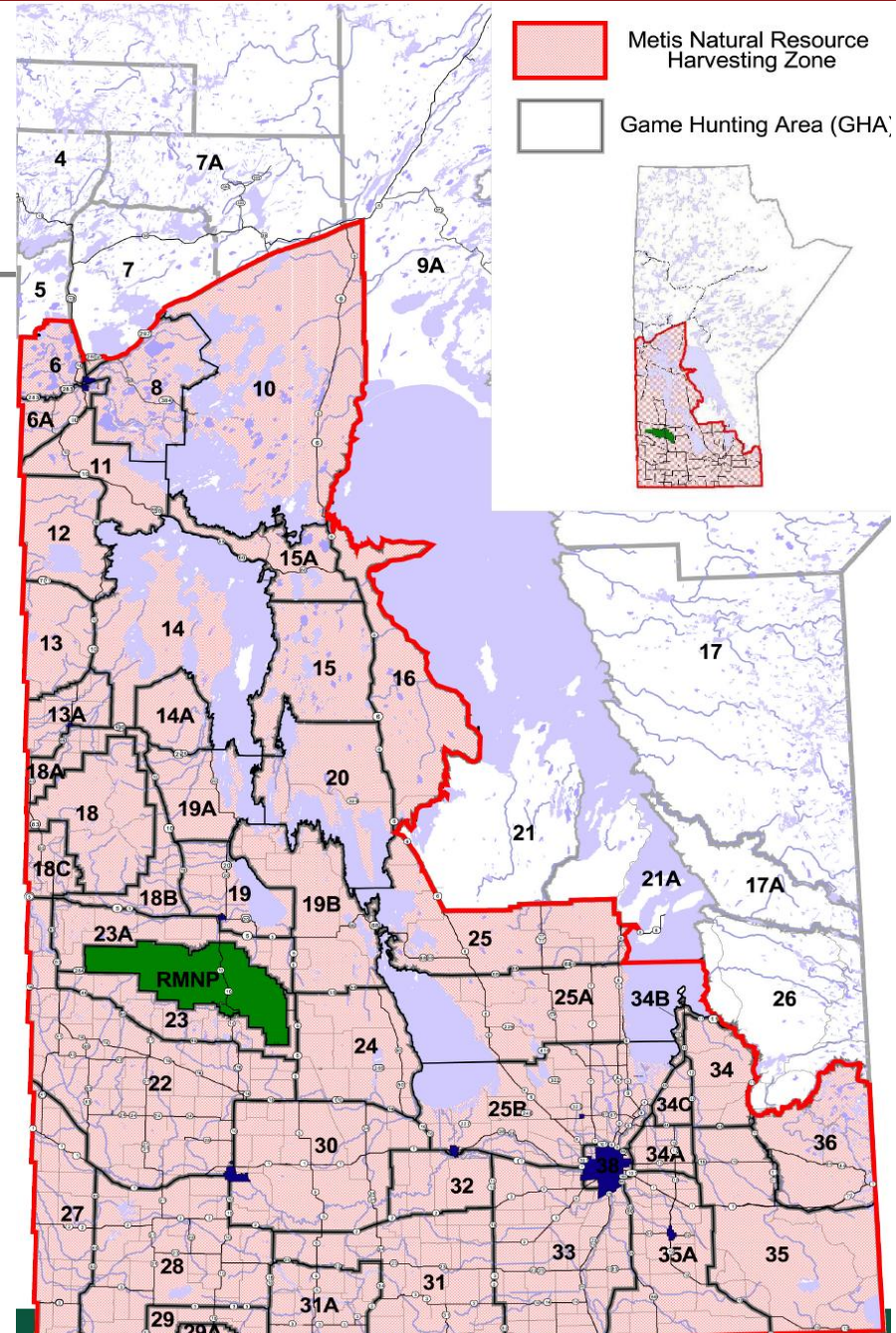
Manitoba

- In *R. v. Goodon*, 2008 MBPC 58, the Manitoba Provincial Court found a “regional rights-bearing Métis community” that spanned southwestern Manitoba which possessed a right to hunt for food.
- The map to the right roughly outlines the area recognized by the court. It encompasses approximately 45,000 km² and includes many settlements and locations.

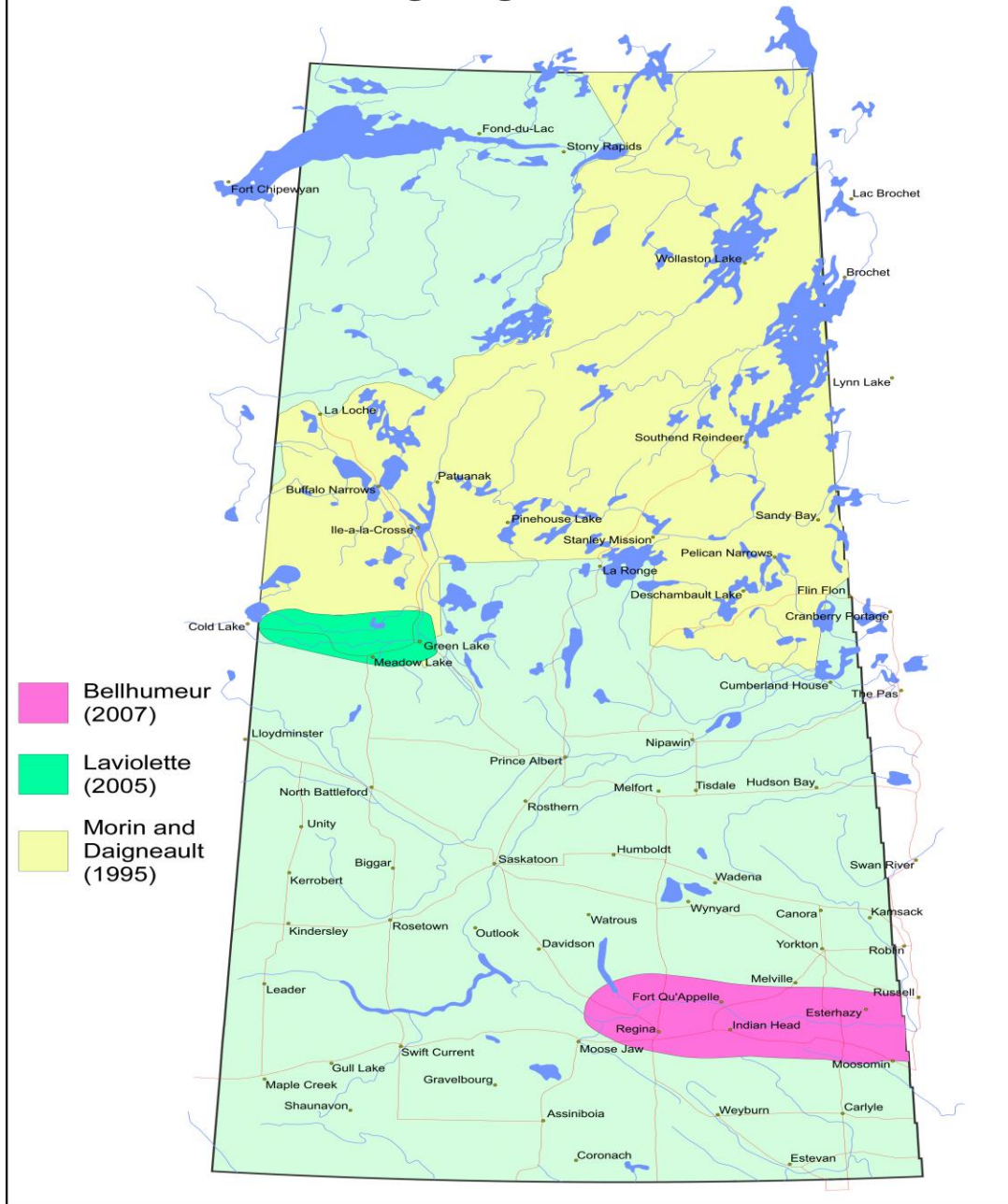


Manitoba

- In September 2012, the Manitoba Métis Federation (“MMF”) and Manitoba executed the first Métis harvesting rights-recognition agreement.
- Key aspects of the agreement are: (1) recognition of Métis harvesting rights throughout defined area; (2) reliance on MMF for identification of Métis harvesters and MMF’s Laws of the Hunt for management and conservation; (3) commitment to enact provincial regulations consistent with the agreement and MMF Laws of the Hunt.

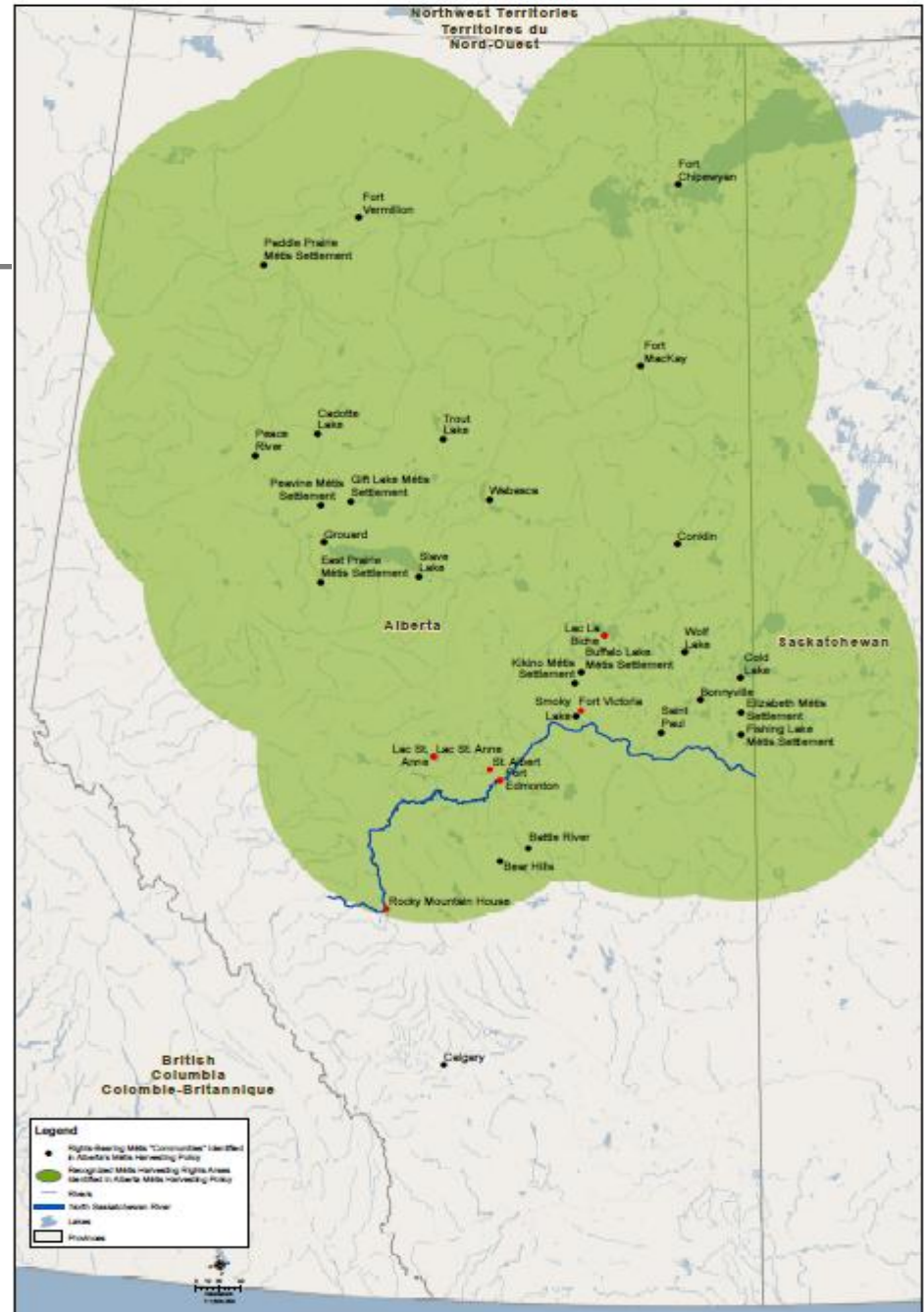


Métis Harvesting Rights in Saskatchewan

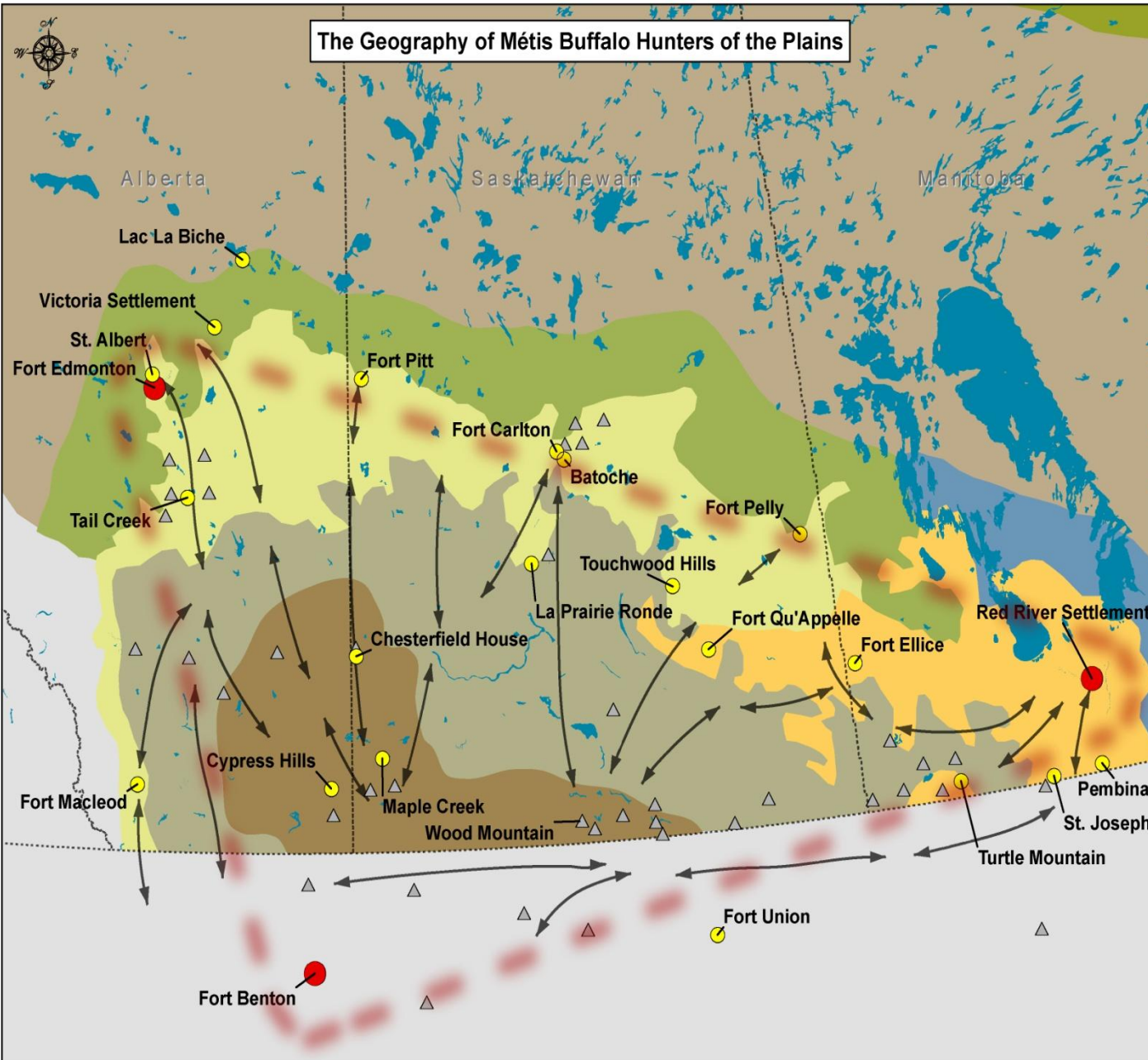


Alberta

- Alberta has recognized 17 “settlements” in central and northern Alberta as historic and contemporary “Métis communities”, along with a 160 km radius harvesting area around those settlements.
- The Hirsekorn litigation focused on establishing a rights-bearing Métis community in southern Alberta as well as a prairie-wide Métis community.



The Geography of Métis Buffalo Hunters of the Plains



- Relevant General and Specific Locations
- ▭ General Area Used by Métis Buffalo Hunters
- ▲ Métis Wintering Site
- ↔ Métis Movement
- 🌊 Water Bodies
- Provincial Boundaries

Vegetation

- Aspen Grove
- Aspen-oak Grove
- Manitoba Lowlands Forest
- Mixed Grass Prairie
- Mixed Wood Forest
- Northern Forest Densely Wooded
- Northern Forest Not Densely Wooded
- Short-grass Prairie

Based on Gerhard Ens' map, "Métis Wintering Sites 1840s to 1870s" in his book *Homeland to Hinterland*, (1996) at p. 79. Vegetation data based on F.B. Watts' map, "The Natural Vegetation of the Southern Great Plains of Canada" from the periodical *Geographical Bulletin*, No 14, (1960) at p. 25. Areas outside the Southern Plains from the *National Atlas of Canada, 1st Edition*, (1906) at p. 8. All boundaries are approximate. Basemapping from Natural Resources Canada.

R. v. Hirsekorn, 2010 ABPC 385

[115] The evidence has shown that an historical Métis community existed in the region of what is present day Edmonton and district. This group of North Saskatchewan Métis included the settlements of Fort Edmonton, St. Albert, Lac St. Anne, Victoria, Lac La Biche, and Rocky Mountain House. The Métis people in this region had a distinctive collective identity, lived together in the same geographical area and shared a common way of life.

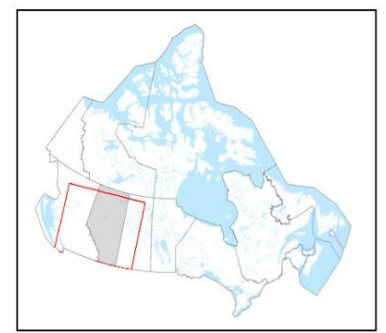
R. v. Hirsekorn, 2013 ABCA 242

[63] I conclude that the historical rights bearing communities of the plains Métis are best considered as regional in nature, as opposed to settlement-based.

[98] Having reviewed the evidence and fact findings in this case with this test and these indicia in mind, I conclude that it falls short of meeting this lower threshold to establish a right to hunt in the environs of the Cypress Hills.



DISCLAIMER: The map has been created to provide a visual representation of some of the trial judge's conclusions in R. v. Hirsekorn as well as the "Métis communities" currently identified in the SRD Métis Harvesting Policy. The creation of this map does not indicate that the MNA agrees with the limited recognition of Métis harvesting rights that currently exists in Alberta. The MNA is supporting the appeal of R. v. Hirsekorn in order to challenge the SRD Métis Harvesting Policy and to address Métis harvesting rights in southern Alberta, along with mobility issues relating to Métis harvesting rights. The map was created to assist MNA members to understand where they can exercise their harvesting rights. At the time of publication, the SRD Métis Harvesting Policy had not been changed to include the settlements indicated by yellow stars as recognized Métis communities. This map should not be relied upon for undertaking harvesting activities in Alberta and is not legal advice. For the MNA's recently updated directions and policies on Métis harvesting please contact the MNA or visit www.albertametis.com.



- Legend**
- Métis "Communities" Currently Recognized in SRD Métis Harvesting Policy [NOTE: Alberta Government's Identification of Historic Métis Communities is Inconsistent with R. v. Hirsekorn]
 - ★ Locations Recognized in R. v. Hirsekorn as being a part of a Regional Rights-Bearing Métis Community (North Saskatchewan Métis Community)
 - Athabasca River
 - Battle River
 - North Saskatchewan River
- Treaty Territories**
- Treaty 4
 - Treaty 6
 - Treaty 7
 - Treaty 8
 - Treaty 10

SRD Métis Harvesting Rights in Alberta

January 2011	Figure 1

Yukon First Nation Traditional Territories
Territoires Traditionnels des Premières Nations du Yukon

Settled Traditional Territories /
 Territoires Traditionnels - Ententes conclues:

- Y1 - Champagne & Ahnikik First Nations (Isteva Junction)
- Y2 - First Nation of Na-Cho Nyak Dun (Meyie)
- Y3 - Lutsi Samson (Kamaxon First Nation)
- Y4 - Selkirk First Nation (Pelly Crossing)
- Y5 - Tashii Thaglit Council
- Y6 - Tron Deh Inawit'In First Nations (Lawson)
- Y7 - Vuntut Gwitchin First Nation (Old Crow)
- Y12 - Tucki Kwadl'In Council (Lika Lalang)
- Y13 - Tetli Gwich'in Tribal Council

Unsettled Traditional Territories /
 Territoires Traditionnels - Non résolus:

- Y8 - White River (Barnes Creek) / K'axane (Burwash Landing) First Nation
- Y9 - Carcross / Tagish First Nation
- Y10 - Ikroavut First Nation (Whitehorse)
- Y11 - Kaseca First Nation

Vancouver Island Treaties (Douglas)
Traité de l'île de Vancouver (Douglas)

D1 - Quakwaka 1851	D6 - Swonghling 1850
D2 - Quakwaka 1851	D8 - Kowampan 1850
D3 - Saikwagan 1854	D10 - Kalyakwan 1850
D4 - North Saanich 1852	D11 - Chiewahyem 1850
D5 - South Saanich 1852	D12 - Soka 1850
D6 - Chosoon 1850	D13 - Tachemilwa 1850
D7 - Ohkwasich 1850	D14 - Whywenth 1850

B.C. Treaty Negotiations - Land Claims
Négociations de traité de la C.-B. - Revendications territoriales

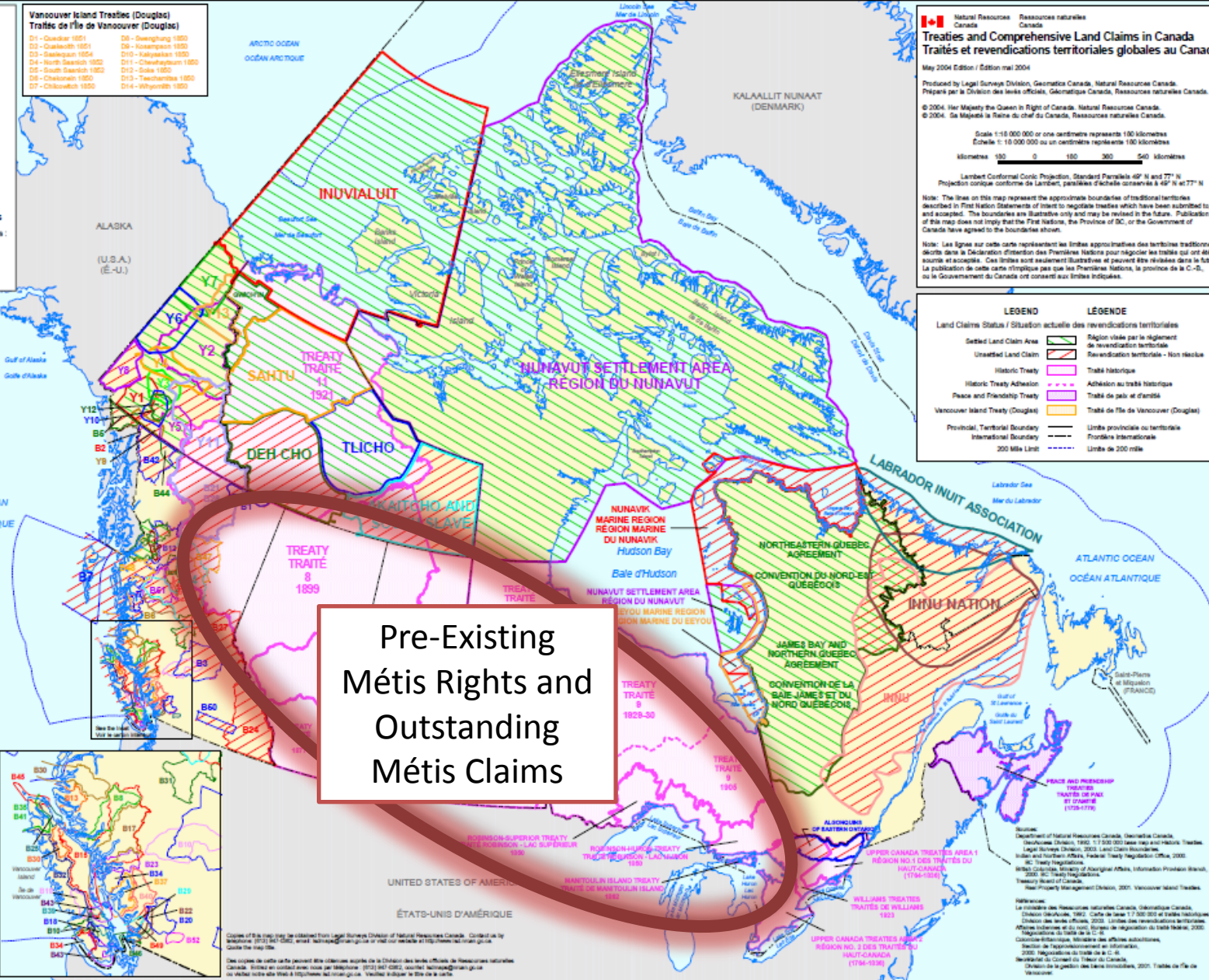
Settled Land Claims / Revendications territoriales - Ententes conclues:

04 - N'gaya L'itna Government

Unsettled Land Claims / Revendications territoriales - Non résolus:

- B1 - Aho Dewa Iow First Nation
- B2 - Cariboo Tribal Council
- B4 - Carleton Place Tribal Council
- B5 - Champagne and Ahnikik First Nations
- B6 - Chehalis Center Nation
- B7 - Islate Nation
- B8 - Debraudew'iw / Awastada Nation
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Vancouver Island Treaties (Douglas)
Traité de l'île de Vancouver (Douglas)



**Pre-Existing
 Métis Rights and
 Outstanding
 Métis Claims**

Treaties and Comprehensive Land Claims in Canada
Traité et revendications territoriales globales au Canada

May 2004 Edition / Édition mai 2004

Produced by Legal Surveys Division, Geomatics Canada, Natural Resources Canada.
 Préparé par la Division des levés officiels, Géomatique Canada, Ressources naturelles Canada.

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Quebec

- A “Métis” harvesting rights test case (*R. v. Corneau*) in the Saguenay—Lac-Saint-Jean region of Quebec was granted an advance costs in 2011.

- In 2015, the Quebec court found that no historic Métis community had been established based on the evidence. The case has been appealed to the Quebec Court of Appeal.

- Based on the evidence, the trial judge concluded: “[a]ll of this information taken together failed to reveal any objective evidence pointing to a historic collectivity, on the territory in question, having any particular form of social organization distinguishing it from either the first inhabitants or the Euro-Canadians that followed. Nothing allowed individuals of mixed ancestry to be distinguished from their biological authors, ... not a behavior, thought, or interest in anyway different and unique to a group that was neither native nor white.”



The East Coast

- There is now over 14 cases that conclude no historical Métis communities emerged in the East Coast. Cases like, *R. v. Vautour*, 2010 NBPC 39, continue to affirm that there was no emergence of distinct Métis groups in this region prior to effective control.
- The “Labrador Métis” have officially changed their name to NunatuKavut. They assert they are a southern Inuit community. They are now advancing their rights claims on that basis (*e.g.*, *Nunatukavut Community Council Inc. v. Newfoundland and Nalcor Energy*, 2011 NLTD 44, para 2), which is not consistent with who are “Métis” for the purposes of *Powley* and s. 35 rights.

R. v. Vautour, 2010 NBPC 39

[56] Dr. von Gernet offers examples where in other parts of Canada, anthropologists have identified mixed-blood families that had evolved over time into new and distinctive aboriginal communities through a process known as ethnogenesis. Perhaps the best-known are the Métis communities of the ‘old Northwest’ that emerged in the late 18th and early 19th century. ... [A]ll those historic communities could be connected to some of the modern Métis communities that exist today in parts of what are now Northern Ontario, Manitoba, Saskatchewan and Alberta.

[57] According to Dr. von Gernet our historical experience with mixed marriages is quite different. In the Maritime region there are two communities of which much has been said in this case whose long-term historical existence as separate communities with a distinct identity seems indisputable: The Mi’ kmaq and the Acadian. The question which Dr. von Gernet turned to is whether intermarriages between these two ethnic groups ever led to the creation of a third ‘Métis community’ with its own particular culture and identity. The short answer is no.

Recognition of Métis Rights - September 2015



Gwich'in Land Claim Agreement (Métis Included)

Sahtu Dene and Métis Land Claim Agreement

-  Treaty 3 "Half-Breed" Adhesion
-  Negotiations on Métis Rights
-  Métis Harvesting Rights Established (Litigation)
-  Métis Harvesting Rights Accommodated
-  Métis Harvesting Rights Recognized (Negotiated Agreement)
-  Métis Harvesting Rights in Litigation

Dehcho Negotiations (Métis Included)

Canada-GNWT-NWT Métis Nation Interim Measures Agreement

Saskatchewan Government's Métis Harvesting Policy

R. v. Morin & Daigneault & R. v. Laviolette

Alberta Government's Métis Harvesting Policy

Saskatchewan Government's Métis Harvesting Policy

North Sask. River

Battle River

MMF-Manitoba Harvesting Agreement

MNO-Ontario Harvesting Agreement

South Sask. River

R. v. Poitras et al.

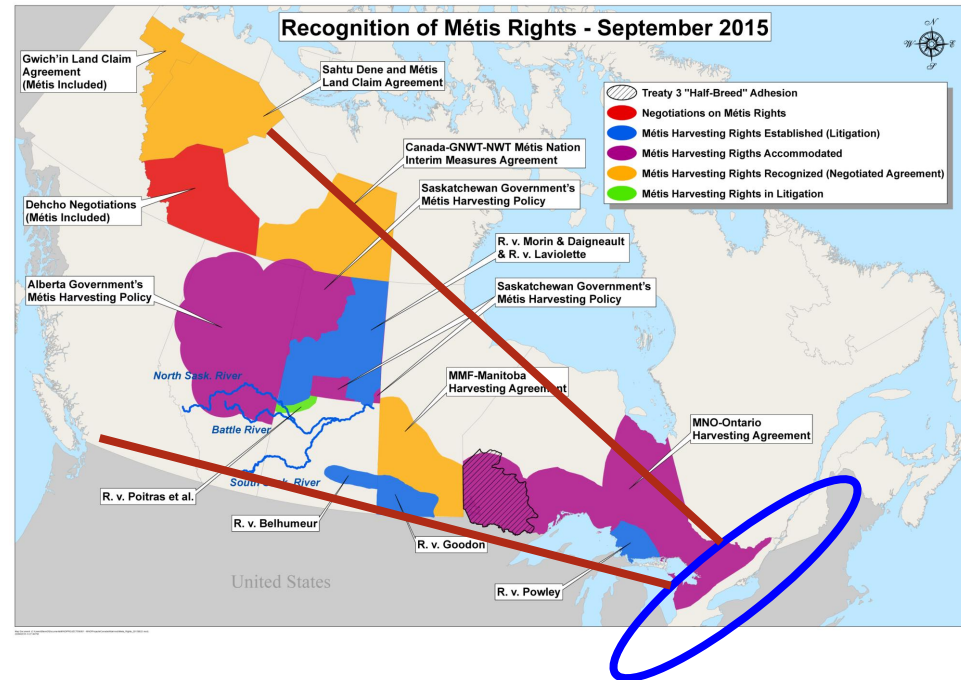
R. v. Belhumeur

R. v. Goodon

R. v. Powley

United States

The Historic Northwest and the Recognition of Métis Rights



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- D5 - South Saanich 1862
- D6 - Chosoon 1862
- D7 - Oklawich 1869
- D8 - Swengthing 1880
- D9 - Kowampan 1890
- D10 - Kalyakaa 1900
- D11 - Chewanquam 1900
- D12 - Soke 1900
- D13 - Tachemias 1900
- D14 - Whyweth 1900

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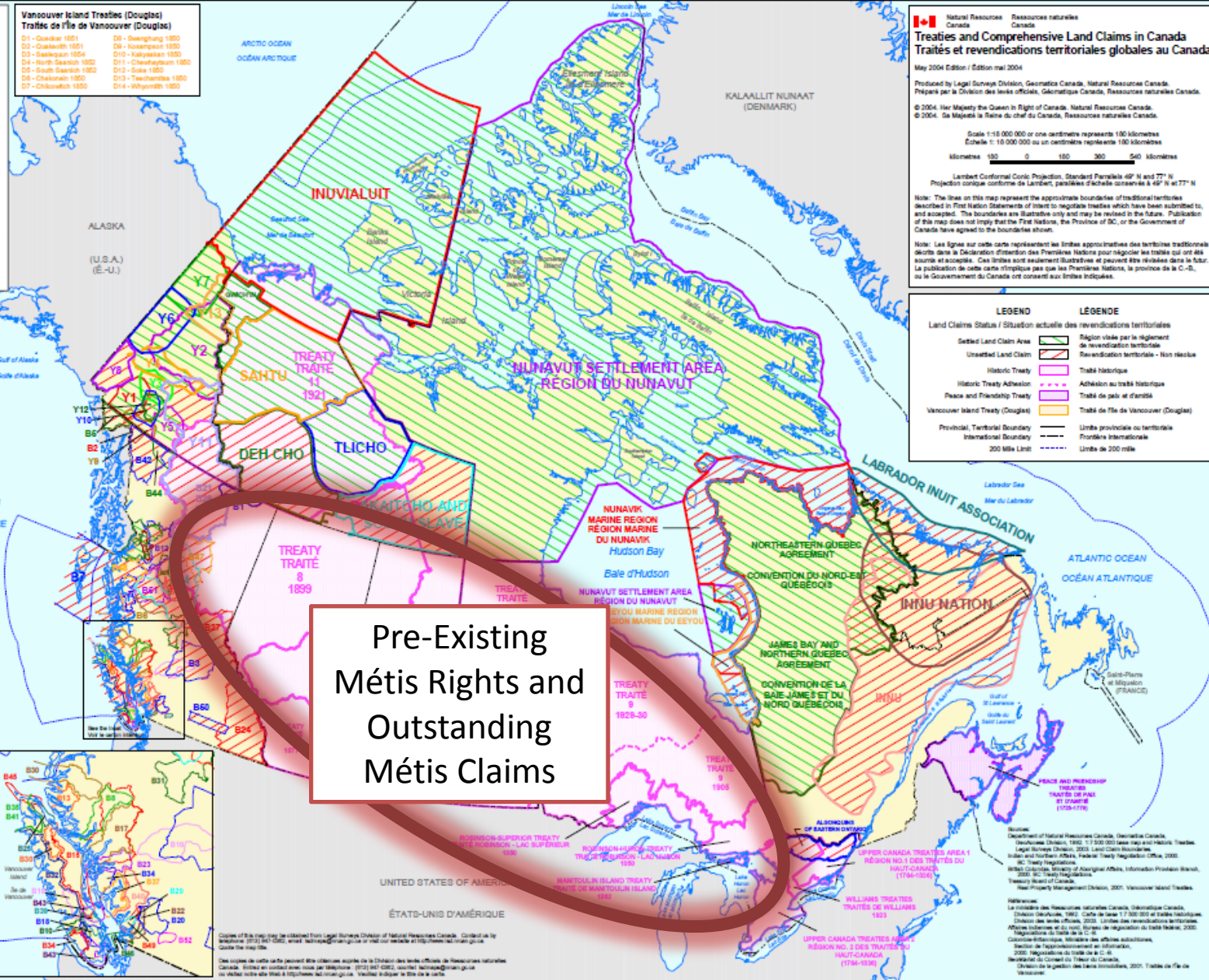
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Vancouver Island Treaties (Douglas)
Traité de l'île de Vancouver (Douglas)

D12 D13 D14 D4 D6 D3 D11 D10 D9 D7



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LEGEND **LÉGENDE**

Land Claims Status / Situation actuelle des revendications territoriales

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**Pre-Existing
 Métis Rights and
 Outstanding
 Métis Claims**

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The “Unfinished Business” of Reconciliation with the Métis

[140] What is at issue is a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in s. 35 of the *Charter* and underlying s. 31 of the *Manitoba Act*, remains unachieved. **The ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Métis people with Canadian sovereignty is a matter of national and constitutional import.**

The Process of Reconciliation

[32] The jurisprudence of this Court supports the view that the duty to consult and accommodate is part of a process of fair dealing and reconciliation that begins with the assertion of sovereignty and continues beyond formal claims resolution.

Reconciliation ... is a process flowing from rights guaranteed by s. 35(1) of the *Constitution Act, 1982.* (Haida Nation v. BC, [2004] 3 S.C.R. 511)

Outstanding
Métis Claims
(MMF Case)

Pre-Existing
Métis Rights
(Powley)

Jurisdiction
for the Métis
(Daniels)

Reconciliation with the
Métis through
negotiations that lead to
“just and lasting
settlements” consistent
with s. 35’s purpose
(i.e., treaties, land claims
or other agreements)

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Dealing with Métis Identity Issues

United Nations Declaration on the Rights of Indigenous Peoples, Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship in the States in which they live.
2. Indigenous peoples have the right to determine structures and to select the membership of their institutions in accordance with their own procedures.

R. v. Powley, [2003] 2 S.C.R. 207

[29] While determining membership in the Métis community might not be as simple as verifying membership in, for example, an Indian band, this does not detract from the status of Métis people as full-fledged rights-bearers. As Métis communities continue to organize themselves more formally and to assert their constitutional rights, it is imperative that membership requirements become more standardized so that legitimate rights-holders can be identified. In the meantime, courts faced with Métis claims will have to ascertain Métis identity on a case-by-case basis. The inquiry must take into account both the value of community self-definition, and the need for the process of identification to be objectively verifiable.

R. v. Powley, [2003] 2 S.C.R. 207

[30] We emphasize that we have not been asked, and we do not purport, to set down a comprehensive definition of who is Métis for the purpose of asserting a claim under s. 35. **We therefore limit ourselves to indicating the important components of a future definition**, while affirming that the creation of appropriate membership tests before disputes arise is an urgent priority. As a general matter, we would endorse the guidelines proposed by Vaillancourt Prov. J. and O'Neill J. in the courts below. In particular, we would look to three broad factors as indicia of Métis identity for the purpose of claiming Métis rights under s. 35: **self-identification, ancestral connection, and community acceptance.**

[34] It is important to remember that, no matter how a contemporary community defines membership, only those members with a demonstrable ancestral connection to the historic community can claim a s. 35 right.

Métis Settlements Act

“Metis” means a person of aboriginal ancestry who identifies with Metis history and culture;

75 (1) An Indian registered under the Indian Act (Canada) or a person who is registered as an Inuk for the purposes of a land claims settlement is not eligible to apply for membership or to be recorded as a settlement member unless subsection (2) or (3.1) applies.

MMF-Manitoba Harvesting Agreement

Self-identification as Métis: The applicant must self-identify that they are “Métis” and are of “Historic Métis Nation Ancestry”, consistent with the definition of Métis in the MMF’s Constitution. This criterion is met through the completion of a MMF Metis Harvester Identification Card Application Form which includes a section where an applicant signs a declaration to this effect.

Demonstrate an ancestral connection to the Historic Métis Nation: The applicant must provide documentation that is objectively verifiable that shows he or she is of “Historic Métis Nation Ancestry,” consistent with the definition of Métis in the MMF’s Constitution. This criterion is met by an applicant providing a copy of his or her own long-form birth certificate and/or baptismal certificate as well as a genealogy, with objectively verifiable supporting documents dating back to at least the late 1800s, demonstrating that he or she is of Historic Metis Nation Ancestry.

Be accepted by the contemporary Metis Community: The applicant must demonstrate that he or she is accepted by the contemporary Métis community as represented by the MMF. This criterion is met by the applicant completing a MMF Métis Harvester Identification Card Application Form and obtaining the requisite signatures from the relevant MMF Local and/or MMF Region.

Canada-NWT Métis Nation Agreement-In-Principle

“Métis” means an Aboriginal person of Cree, Slavey or Chipewyan ancestry who resided in, used and occupied any part of the Agreement Area on or before December 31, 1921, or a descendant of such person.

3.1.1 An individual will be eligible to be enrolled under the Final Agreement if he or she is a Canadian citizen who:

(a) is Métis; or

(b) was adopted as a Child, under Laws or under NWTMN custom, by a Métis or is a descendent of such person.

Cunningham v. Alberta, [2011] 2 S.C.R. 670

[79] The exclusion of status Indians from membership in the new land-based Métis settlements was the product of a long period of consultation between the government and the Métis. ...

[82] The self-organization and standardization of the Métis community in Alberta is precisely what the Alberta legislature and the Alberta Métis have together sought to achieve in developing, agreeing upon and enacting the membership requirements found in the *MSA* and challenged here. The significant role that the Métis must play in defining settlement membership requirements does not mean that this exercise is exempt from *Charter* scrutiny. **Nevertheless, it does suggest that the courts must approach the task of reviewing membership requirements with prudence and due regard to the Métis's own conception of the distinct features of their community.**

Daniels v. Canada, 2014 FCA 101

[117] In the modern era, the difficulty of definition in part has been addressed. As indicated earlier, the government in 1980 defined the core group of MNSI as a group of native people who maintained a strong affinity for their Indian heritage without possessing Indian status. Their "Indianness" was based on self identification and group recognition. That group was estimated at between 300,000 and 450,000.

[130] However, it is those persons described in paragraph 117 who are the Métis for purposes of the declaration which the Plaintiffs seek.

Daniels v. Canada, 2014 FCA 101

[3] The intervener the Manitoba Métis Federation asks that the appeal be dismissed, but that the Judge's declaration be restated to separate reference to non-status Indians from the declaration. It would restate the declaration as follows: "The Court declares that the Métis are included as 'Indians' within the meaning of s. 91(24) of the *Constitution Act, 1867*." ... For the reasons that follow, I would allow the appeal in part by deleting reference in the declaration to non-status Indians and would restate the declaration as proposed by the Manitoba Métis Federation.

[159] For the above reasons, I would allow the appeal in part by deleting reference in the declaration to non-status Indians. I would restate the declaration as follows: **The Court declares that the Métis are included as "Indians" within the meaning of section 91(24) of the *Constitution Act, 1867*.**

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A Final Point

Cunningham v. Alberta, [2011] 2 S.C.R. 670

[86] That people, including many Métis, include mixed ethnic and cultural strands in their particular individual identity is clear. ... Mixed identity is a recurrent theme in Canada's ongoing exercise of achieving reconciliation between its Aboriginal peoples and the broader population. It figures, for example, in land claims negotiations between particular Indian groups and the government. Residents of one Indian group frequently also identify themselves with other Indian groups for historical and cultural reasons. **Yet lines must be drawn if agreements are to be achieved.** The situation of Métis settlements is similar. In order to preserve the unique Métis culture and identity and to assure effective self-governance through a dedicated Métis land base, some line drawing will be required. It follows of necessity that not every person who is a Métis in the broad sense of having Indian-European ancestry and self-identifying with the Métis community, as discussed in *Powley*, may be entitled to the benefit of membership under the *MSA*.