



# Landmark Case

## "THE MÉTIS HUNTING RIGHTS CASE": *R. v. POWLEY*

Prepared for the Ontario Justice Education Network by Counsel for the Department of Justice Canada.

### Facts

On October 22, 1993, Steve Powley and his son, Roddy, went hunting in an area just north of Sault Ste. Marie, where they live. At approximately 9 a.m., they shot and killed a bull moose near Old Goulais Bay Road. Steve Powley, the father, affixed a tag to the ear of the moose and wrote the date, time and location of the kill. He also wrote a brief statement explaining that he was harvesting the meat for the winter and added his signature and Ontario Métis number. Later that same day, two **conservation officers** arrived at the Powley residence to question them on their catch. The Powleys admitted that they shot the moose earlier that day even though neither of them possessed a valid Ontario Outdoor card or licence to do so.

In Ontario, the Ministry of Natural Resources is responsible for the regulation of moose hunting. It imposes strict regulations in order to protect the moose population. The Ministry issues Outdoor Cards and has a lottery for validation tags that authorize hunting of adult moose in specified areas. This requirement is not enforced against status Indians and no record is kept of their annual harvest.

### The Game and Fish Act

The Powleys did not possess any of the necessary provincial documents. As a result, a week after the incident occurred, both father and son were charged with unlawfully hunting moose and possession of moose meat contrary to the Ontario *Game and Fish Act*.

#### The Game and Fish Act, 1990

s.46. No person shall knowingly possess any game hunted in contravention of this Act or regulations.

s.47. (1) Except under the authority of a licence and during such times and on such terms and conditions and in such parts of Ontario as are prescribed in the regulations, no person shall hunt black bear, polar bear, caribou, deer, elk or moose.

### Métis Hunting Rights

The position of the Ontario government, at that time, was that the **Métis** people did not have any aboriginal rights that exempted them from provincial hunting regulations. The Powleys disagreed and pled not guilty to all charges. The Métis Nation of Ontario believed that this case would allow

them to establish, once and for all, the existence of Métis hunting rights and assisted the Powleys by providing them with financial support. The Powleys argued that under section 35 of the *Constitution Act, 1982*, they did have an **Aboriginal** right to hunt for food in that area and, as a result, they should not be subject to the government's regulations in this regard.

**The Constitution Act, 1982**

**s.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.

The trial took place in the Ontario Court of Justice (Provincial Division) and spanned a six-month period between April and September 1998. The actual trial only lasted 14 days. On December 21, 1998, Justice Vaillancourt ruled in favour of the **respondents**. The judge defined Métis as a "person of Aboriginal ancestry; who self identifies as a Métis; and who is accepted by the Métis community as a Métis". Since the Powleys were Métis, they were legally exercising their Aboriginal right to hunt as protected by section 35 of the *Constitution Act, 1982*. The Powleys were **acquitted** and the charges were dismissed.

### Appeal to the Ontario Superior Court of Justice

The government of Ontario was not satisfied with this judgement and **appealed** to the Ontario Superior Court of Justice. Justice O'Neill heard the case on October 12-13, 1999, and on January 19, 2000 he ruled to uphold the decision of the lower court. However, the definition of Métis adopted in this court was different from the trial court. On appeal, Justice O'Neill held that a Métis person is one "who (a) has some **ancestral** family connection, (b) identifies himself or herself as Métis and (c) is accepted by the Métis community or a locally-organized branch, chapter or council of a Métis association or organization with which that person wishes to be associated". The government's appeal was dismissed.

### Appeal to the Ontario Court of Appeal

Once again, the government of Ontario appealed the decision to the Ontario Court of Appeal, the highest court in Ontario. This would mark the first time that Métis rights, as set out in section 35, would be addressed at this level. Cases decided in this court set precedents that are binding in all of Ontario's courts. The appeal was heard on January 10-12, 2001. In this appeal, the Ontario government took the position that the Métis community in Sault Ste. Marie was not a significantly distinct Aboriginal group and that hunting was not important to them. As such, they did not qualify for exemption from provincial hunting regulations as protected under section 35 of the *Constitution Act, 1982*. On February 23, 2001, the Court of Appeal **unanimously** upheld the decisions of the two lower courts. The court ruled that there was a Métis community in Sault Ste. Marie and that hunting was a crucial part of its culture, as it had been historically. As the Powleys belonged to this community, they did have an Aboriginal right to hunt for food. The court dismissed the government's arguments but granted a one-year **stay** on the judgement so that the Ontario government could either come up with a new **regulatory** hunting system for the Métis or stop regulating Métis hunting altogether.

## Appeal to the Supreme Court of Canada

The government of Ontario was not satisfied with this decision and applied for **leave** to have their appeal heard by the Supreme Court of Canada, the highest court of appeal in the country. This court usually hears cases that are of national significance, on appeal from a provincial appeal court, many of which deal with either **constitutional** or criminal matters. Leave to be heard was granted by the Supreme Court on October 4, 2001. On March 17, 2003, the appeal was heard. On September 19, 2003, the Supreme Court upheld the decisions of the lower courts and the government's appeal was dismissed. The court also established a ten-part test to be used in determining the Aboriginal rights of the Métis. This test is called the Powley test. The court also stated that establishing membership in a Métis community was not a simple task and must be determined on a case-by-case basis.



## Classroom Discussion Questions

1. Using the “Timeline of Events” provided, write a brief description of the importance of each date on the timeline to this case.
2. Examine your timeline. What observation can you make about the litigation process?
3. Who are the respondents in this case?
4. Who are the appellants in this case?
5. Why did the Powleys feel that they had a right to kill the moose without possessing the legal documentation required to do so?
6. What legislation did they use to support this claim?
7. Why do you think that Aboriginal peoples are given special status under the law?
8. Do you agree with their right to special status? Explain.
9. Using the textbook, the Internet or any resources available to you, research and briefly state the ten parts of the Powley test.



## *R v. Powley*: Timeline of Events

October 1993 -

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April-September 1998 -

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December 1998 -

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October 1999 -

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January 2000 -

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January 2001 -

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February 2001 -

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October 2001 -

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March 2003 -

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September 2003 -

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## R v. Powley. Worksheet 1

### RELEVANT TERMINOLOGY

Using your textbook, a dictionary, the *Criminal Code* or any other resources available, define the following terms. They are in bold typeface in the case summary.

**Conservation officer** \_\_\_\_\_  
\_\_\_\_\_

**Metis** \_\_\_\_\_  
\_\_\_\_\_

**Aboriginal** \_\_\_\_\_  
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**Respondents** \_\_\_\_\_  
\_\_\_\_\_

**Acquitted** \_\_\_\_\_  
\_\_\_\_\_

**Appealed** \_\_\_\_\_  
\_\_\_\_\_

**Ancestral** \_\_\_\_\_  
\_\_\_\_\_

**Unanimously** \_\_\_\_\_  
\_\_\_\_\_

**Stay** \_\_\_\_\_  
\_\_\_\_\_

**Regulatory** \_\_\_\_\_  
\_\_\_\_\_

**Leave** \_\_\_\_\_  
\_\_\_\_\_

**Constitutional** \_\_\_\_\_  
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