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Media Release
Attention News Editors

Appeal Court Overturns Conviction of Métis Harvester

Court Confirms Métis Harvesters Can Rely on Interim Métis Harvesting Agreement

Edmonton, AB (January 24, 2007) – The Alberta Court of Queen's Bench has overturned a lower court decision that convicted a Métis harvester for trapping without a license based on the Interim Métis Harvesting Agreement (IMHA). A backgrounder on the case is attached to this release.

The Court ruled that Métis harvesters who are harvesting within the terms of the IMHA can rely on the IMHA as a defence against charges.

"We are pleased that the court has recognized that the Alberta Government and the MNA did the right thing by negotiating and entering into the IMHA following the Powley decision," MNA President Audrey Poitras said about the ruling. "At the time, it was a bold step, but the court has now validated that it was the right step."

In December 2004, Kipp Kelley, a member of the Métis Nation of Alberta (MNA), was teaching his children how to trap in the tradition of their Métis culture while just outside of Hinton. He was charged for hunting without a license under section 24(1) of the Wildlife Act

In the first trial, Provincial Court Judge Ken Norheim found that Kelley was harvesting within the terms of the IMHA but could not use the agreement as a legal defence. Yesterday's ruling overturned this decision, confirming that IMHA does allow Métis people in Alberta to hunt, fish and trap on identified Métis Harvesting Lands, subject to conservation and safety rules and regulations

In coming to his conclusion, Justice Gerald Verville held that following the Supreme Court's decision in Powley, "Alberta was under a constitutional imperative" to accommodate Métis harvesting rights and "that the IMHA was entered into by the Government in its attempt to fulfill the constitutional imperative on it in light of the decision in Powley." The Court added "that it is not only the Métis, but also the Government who benefit from avoiding the high costs of litigation" through the IMHA."

Jason Madden, Legal Counsel for Mr. Kelley said, "This case is precedent setting in its confirmation that governments have a constitutional imperative to consult on and accommodate credible Métis harvesting rights claims prior to Métis having to go to courts, at great expense, to prove a constitutionally protected harvesting right. The court is clearly saying that governments cannot 'sit on there hands' and wait for court cases that confirm Métis rights. There is an imperative to consult on and accommodate Métis harvesting practices within provincial regulatory regimes."

President Poitras concluded, "This decision is important to Alberta Métis as well as the entire Métis Nation. It affirms that the Crown has a constitutional obligation to negotiate with Métis in order to accommodate their rights – whether asserted or proven. It affirms that we do not need to litigate Métis

harvesting rights cases across the country, but accommodations can be negotiated. It affirms that the courts are willing to uphold these negotiated agreements based on the honour of Crown. We believe these are all positive developments for Métis rights."

Background on Kelley Case

The IMHA was negotiated by the Alberta Government and the MNA following the Supreme Court of Canada's landmark decision in R. v. Powley. In 2003, the Powley case confirmed that the Métis people have harvesting rights that are protected by s. 35 of the Constitution Act, 1982. In order to accommodate Métis harvesting practices in Alberta, the IMHA was negotiated and signed by the MNA's leadership and three Alberta Ministers in September 2004. The IMHA provides that eligible Métis can hunt, fish and trap on identified Métis Harvesting Lands, subject to conservation and safety rules and regulations. A copy of the IMHA is available at www.albertametis .com.

In December 2004, Kipp Kelley, a member of the MNA, was teaching his children how to trap in the tradition of their Métis culture just outside of Hinton. KeIley was charged for hunting without a license under s. 24(1) of the Wildlife Act. At trial, Judge Norheim found that Kelley is Métis, had a long family history for living off the land in the Hinton area and that Kelley was harvesting within the terms of the IMHA. In addition, the evidence showed the Alberta Government did not follow the screening process set out in the IMHA prior to laying charges. However, Judge Norheim went on to convict Kelley for trapping without a license because he concluded Kelley could not use the IMHA as a legal defense. Kelley, supported by the MNA, appealed Judge Norheim's decision.

On January 23, 2007, the Alberta Court of Queen's Bench overturned Judge Norheim's decision. In his ruling, Justice Verville, of the Alberta Court of Queen's Bench, stressed that Métis harvesters must be able to rely on the IMHA for the constitutional imperative to be fulfilled. He wrote, "[t]he Supreme Court in Haida emphasized that the constitutional imperative must be understood generously. In my view, this means that where a course of action results in an accommodation (even a temporary one), the Aboriginals in question must be able to rely on the accommodation. If not, the constitutional imperative has not been adequately addressed." Verville J. concluded that, "it would be extremely egregious for a conviction to ensue where a court has found that the activity was contemplated and authorized by the IMHA." Based on the Crown's commitments within the IMHA to Alberta Métis and the facts that Mr. Kelley was eligible under the IMHA and he relied on it, Verville J. set aside the conviction of Mr. Kelley and granted a stay.

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