



Backgrounder for CAP Powley Implementation Project

This backgrounder is designed to provide the basic information necessary to understanding the function of the CAP Powley Implementation Project. A very brief outline of the Powley case is provided, followed by the highlights of the final Supreme Court of Canada's (SCC) decision in September 2003. The goals of the CAP Powley Implementation Project are then explained.

A Powley Snapshot

A Sault St. Marie father and son, Steve and Roddy Powley, were charged in 1993 with possession of a moose they had shot out of season and without a license. The pair pleaded not guilty on the grounds that, as Métis, they had an Aboriginal right to hunt that was unjustly infringed by Ontario game laws. The Ontario Trial Court agreed with them and dismissed the charges. The Government of Ontario appealed that decision to the Ontario Superior Court of Justice which denied the appeal. The Ontario government then appealed that decision to the Court of Appeal which also upheld the acquittals and denied the appeal. Finally, the decision was appealed to the SCC.

A Summary of the Decision

In its Powley decision of 2003, the SCC not only upheld the hunting rights of Métis in Ontario, but set out a specific (and sometimes limiting) framework in which those rights could be exercised. In a nutshell, the Supreme Court agreed that Ontario game laws did, illegally infringe on a Métis right to hunt for food. BUT ... it then went on to place limits on who could legally exercise that right and where it could be legally exercised.

Those limitations required any Métis exercising that right must be able to prove:

1. That a Métis community existed historically in the area where the hunting was taking place and that the right was exercised by that community.
2. That a current or modern Métis community continues to exist in the same area today.
3. That the individual exercising the right is a descendant of the historic community and is a recognized member of the current Métis community.



Post Powley Initiative

Following the SCC decision in 2003, the federal government developed a “Powley Implementation” initiative to prevent the kind of misunderstanding and violence generated in reaction to the Marshall decision in the Maritimes. They committed 23 million dollars to the initiative for the fiscal year 2004-2005, half of which was earmarked to fund Powley related research, policy development and liaison activity between Métis organizations and their respective provincial governments on how the decision should be, or could be implemented.

The purpose of the CAP Powley Implementation Project is threefold:

1. to identify CAP Métis constituent communities who can qualify as historic Métis communities within the test of Powley decision of the SCC.
2. to quantify the number of individual rights-bearing Métis harvesters there may be within the membership of CAP affiliates.
3. to help establish a framework with respective provincial governments for the consultation/negotiation of a practical harvesting regime for rights-bearing Métis harvesters within affiliate constituents.

A key component in the CAP project. Is to help identify those rights-bearing Métis within CAP affiliates who match the Powley decision test. If it can be established that an individual is descended from a Métis community that harvested in a particular area for many generations, then it becomes possible to prove that person is eligible, under the Powley rules, to exercise the Métis right to harvest (hunt, fish, trap, gather) for food in that area.

The fact that an individual cannot provide the technical proof of eligibility under the Powley “rules,” does NOT mean that individual is not Métis or does not have Métis rights. It simply demonstrates that eligibility to exercise those rights cannot be proven under the particular test provided by the SCC Powley decision. Other court decisions or political agreements may change these rules in the future, particularly if CAP can successfully demonstrate they not appropriate and/or too restrictive.

Within the context of those goals the national project has developed a strategy informed by the concerns and discussion of those three issues by the lead Métis PTOs. The heart of the strategy is to take the envelope formed by the SCC Powley criteria and push the edges of that envelope to the point where the criteria can accommodate all of those CAP/Affiliate Métis constituents who perceive themselves to be rights-bearing.

Although we are clearly committed to addressing the criteria in the text of the decision itself, we are by no means constrained to accept the limited interpretations being placed on those criteria by some provincial governments, some analysts, and some third party interests. CAP’s job, in fact, is to compile data and articulate positions that will expand the interpretation of the Powley criteria to the point where all of our Métis constituents can be justly accommodated.



In practical terms, that means CAP must present hard data that clearly demonstrates historic Métis communities existed everywhere in Canada, and that must be identified as the Métis of that particular historic period would identify them if they could speak today. Most historic Métis families did not spend most of their lives in communities of little houses surrounded by timber fences. They often ranged across virtually hundreds of square miles to harvest the resources necessary to support their families and all of that territory –that “settlement area” -- must be recognized as an integral part of their “community.”

From a national perspective, it is clearly understood that each PTO has a unique history and a distinct and valid perspective on how each of these elements should be addressed and presented so as to best serve their respective Métis constituencies. It is the task of the national component of the project to welcome the identification of these differences and to develop and articulate mutually acceptable national policies to further their eventual accommodation by the governments involved.

Although there has been no formal commitment on the part of the federal government to continue Implementation funding beyond March 31, 2005, it is becoming increasingly clear that the project will require considerable more time and resources to accomplish the goals the federal government has for it.