



Métis Harvesting in Alberta

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In the case *R. v. Powley* (September 19, 2003), the Supreme Court of Canada found that members of the Métis community in and around Sault Ste. Marie, Ontario have, under s. 35(1) of the *Constitution Act, 1982*, an aboriginal right to harvest for food that was infringed without justification by the Ontario hunting legislation. In reaching its decision, the Supreme Court set out a number of criteria for Métis people in establishing their right.

Some Métis in Alberta are the beneficiaries of constitutionally protected harvesting rights as described in *Powley*. Three elements are essential to government of Alberta's recognition of those rights:

- Determining who are Métis harvesters;
- What comprises Métis harvesting rights; and
- Where those rights can be exercised.

Who is a Métis Harvester?

A person who asserts a constitutionally protected Métis harvesting right has the onus to prove that assertion.

A person who wishes to fish using a net must have a Métis Domestic Fishing Licence; an individual's eligibility for that licence must be established before the licence is issued. A person who wishes to fish by any other legal means must have a sportfishing licence. A person who wishes to hunt must be able to demonstrate that he/she is a Métis harvester as described below. If checked while hunting, the person will be given 60 days to produce evidence of their status as a harvester, and, if unable to do so, may be charged with an offence.

If an individual is uncertain whether they will be able to prove that they possess an aboriginal right they should seek legal advice, as you may be required to prove the existence of such a right in court if you are charged with an offence. Alternatively, individuals may wish to purchase the necessary licences in order to avoid uncertainty.

A person is a Métis harvester only if he or she meets the test set out in the *Powley* case.

To demonstrate that you are a Métis harvester, you must provide evidence that you meet the *Powley* test. You should be prepared to produce evidence that you satisfy the following criteria:

- That you self-identify as Métis, and for how long you have self-identified as Métis
 - membership in the Métis Nation of Alberta or a Métis Settlement or a statutory declaration confirming self identification would assist in demonstrating self identification,
 - membership in either of these organizations, or a Statutory Declaration, is not sufficient to meet the *Powley* test;
- That you have an ancestral connection to an historic Métis community¹ in Alberta;
 - genealogical history, including where ancestors lived and when they lived there,
 - please go back in time as far back as possible, and in any event, back to the late 1800's;
- That you belong to a contemporary Métis community in Alberta.
 - name that community and demonstrate acceptance by and involvement in that community;
- That you are a resident of Alberta.

Thorough information will help make the decision-making process efficient.

At this time, Alberta is prepared to consider for the purposes of Métis harvesting the eight Métis Settlements and the following 17 communities as both historic and contemporary Métis communities: Fort Chipewyan, Fort McKay, Fort Vermilion, Peace River, Cadotte Lake, Grouard, Wabasca, Trout Lake, Conklin, Lac La Biche, Smoky Lake, St. Paul, Bonnyville, Wolf Lake, Cold Lake, Lac Ste. Anne and Slave Lake.

When Hunting Can Take Place

Métis harvesters may hunt for food at all times of the year.

¹ In light of the unique history of Alberta's eight Métis Settlements, an ancestral connection to a Métis Settlement can be established by demonstrating a pre-1900 ancestral connection to the general geographic area of the settlement, or a pre-1900 ancestral connection to a recognized Métis community within Alberta from which an individual or their family migrated when the settlement was established. Again, when submitting documentation, please go back in time as far as possible, and in any event, back to the late 1800s.

Where Hunting Can Take Place

A Métis harvester **may hunt** for food only within the community harvesting area² of his or her community. Within that harvesting area, a Métis harvester may hunt on:

- unoccupied Crown land; and
- other land to which they have a right of access for hunting (e.g., privately-owned lands if they have first obtained the landholder's permission to enter for the purpose of hunting).

The *Recreational Access Regulation* applies to Métis harvesters.

Where Hunting Can Not Take Place

A Métis harvester **may not hunt** on land that is being put to any other use that is visibly incompatible with hunting. This determination must be made on a case-by-case basis. The safety of other persons, livestock and domestically raised animals is of primary importance. The presence of fences, signs, fields, buildings, domesticated animals or indications of farming or industrial activities all suggest uses that are visibly incompatible with hunting. For example, *unless permission has first been obtained for hunting on such lands*, Métis harvesters may not hunt on lands:

- being actively used for mining, lumbering or other industrial purposes;
- that are fenced, posted, or cultivated;
- that contain buildings that may be used or occupied;
- on which livestock or other domestically raised animals may be present.

A Métis harvester **may not hunt** in:

- provincial parks, recreation areas, ecological reserves or other similar lands where no hunting is allowed;
- wildlife sanctuaries, including road corridor wildlife sanctuaries.

Laws that Apply to Métis Harvesters

Safety – laws dealing with hunting safety apply to Métis harvesters. For example, a Métis harvester is not permitted to hunt in a dangerous manner, illegally discharge a weapon or firearm (such as from a primary highway, or within 200 yards of an occupied building, or at night), discharge a weapon from a vehicle or have a loaded firearm in a vehicle. Local municipal bylaws that prohibit the discharge of weapons in some areas may also apply.

² In the absence of a more definitive description of a community's historical harvesting area, Alberta presently considers a harvesting area to comprise the area within 160 kilometres of a community.

Wastage of Meat – laws that require that the edible meat of any game animal or bird not be wasted, destroyed, spoiled or abandoned apply to Métis harvesters.

Sale of Wildlife (Trafficking) – selling, buying, bartering, soliciting or trading in wildlife or wildlife parts, and offering to do so, are activities governed by the *Wildlife Act* and Regulations. Many of these activities are strictly prohibited, while others are regulated. Hunting for the purpose of unlawful trafficking in wildlife, including parts such as meat, trophy heads, antlers, horns, or skins, is prohibited. However, the incidental sale of skins from deer, elk, moose or pronghorn antelope that were lawfully hunted (including by a Métis harvester) is permitted under the *Wildlife Act*.

Registration – for the purposes of conservation and management of the following species, all persons, including Métis harvesters, must register the kill of each of these animals in person and submit certain parts:

- bighorn sheep over the age of one year must be registered within 30 days of the kill (hunter must submit the complete and unaltered skull with horns and eyes intact);
- mountain goat must be registered within 30 days of the kill (hunter must submit the incisor bar);
- grizzly bear must be registered within 4 business days of the kill (hunter must submit the skull and skin, and evidence of sex must be attached to the skin and visible);
- cougar must be registered within 2 business days of the date of the kill (hunter must submit the skull and skin, and evidence of sex must be attached to the skin and visible).

Trapping – the right of Métis harvesters to hunt for food does not include the right to trap animals for the purpose of selling their fur.

Export of Wildlife from Alberta – the export of wildlife from Alberta is governed by both federal and provincial laws. Certain types of wildlife and certain wildlife parts cannot be exported from Alberta by any person, including a Métis harvester; this includes bear paws and bear gall bladders.

Migratory Birds – certain federal laws including the *Migratory Birds Convention Act* and the *Migratory Birds Regulations* apply to all hunters, including Métis harvesters. A Métis harvester may hunt migratory game birds at all times of the year, however bag limits, permit requirements and other laws concerning migratory game bird hunting do apply. Sustainable Resource Development defers to the Canadian Wildlife Service to provide details of the application of these laws to Métis harvesters.

Fishing

Métis harvesters must abide by all regulations pertaining to fishing, including holding applicable fishing licences.

Sportfishing licences – these licences authorize fishing by means of angling and other methods permitted by the regulations.

- This licence is available to any resident of Alberta.
- A person who is under 16 years of age or over 65 years old does not require a licence to fish in this manner.

Métis domestic fishing licences – these licenses authorize fishing for food in a specified water body with one gill net that is not over 100 yards in length and of a minimum mesh size. The licenses are issued to Métis harvesters based on the following criteria:

- the person must be eligible as a Métis harvester in accordance with the criteria set out by the Supreme Court in the *Powley* case (Note: in addition, pursuant to the *Métis Settlements Act*, a member of a Métis Settlement is eligible for a licence to fish in a lake that is within or bordering the Métis Settlement in which he or she lives);
- licences are issued only for those waters identified by fisheries managers as supporting domestic fishing; an eligible applicant may be considered for a Métis domestic fishing licence authorizing fishing only in waters that are within their community harvesting area.