

R. v. Willison

B.C. Provincial Court Upholds Métis Hunting Rights

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The Short Story of the Willison Case

On November 26, 2000 near Falkland, B.C., Greg Willison was stopped by a conservation officer. Mr. Willison had a deer in the back of his half-ton truck and had no B.C. license. He produced his Métis Provincial Council of British Columbia (MPCBC) card. He claimed his right to hunt for food, as a Métis, without a license.

The conservation officer seized the deer and charged Willison under section 26(1)(c) of the B.C. *Wildlife Act* and s. 5(1) of the B.C. Regulations enacted under the *Wildlife Act*.

The case went to a trial that lasted seven days from June of 2004 to February of 2005. These kinds of trials are divided into three parts. This judgment deals only with Parts One and Two. Part Three has not yet been dealt with by the court.

Part One in a Métis hunting trial is about the actual facts of the hunting—Did Mr. Willison shoot the deer? Where did he shoot it? Did he have a license? When did he shoot it? Was the season open for that particular type of animal? etc. This part of the trial, in this case, was handled by way of agreed facts. In other words, Mr. Willison freely admitted hunting the deer, not having a B.C. license and that he was hunting for food on Crown land. What Mr. Willison claimed was that he had a right to shoot the deer for food and without a license by virtue of his Métis right.

Part Two of a Métis hunting trial is where the defendant, Mr. Willison in this case, has to prove that he has a Métis right to hunt in the area where he shot the deer. Mr. Willison has to prove, in this part of the trial, that there was a historical Métis community in the area, that it continues to exist in some form, that hunting was integral to the historic Métis community and continues to be significant to the contemporary community, and that he is a member of the contemporary Métis community. Mr. Willison was successful in proving all of this part of the trial.

Part Three is about Justification. No right are absolute and Métis hunting rights are no exception. The Crown can limit those rights if it can reasonably justify its actions. The court has set out a few reasons on which the Crown can limit aboriginal hunting rights—conservation and safety—being two of those reasons. This is the part of the trial that has not yet been dealt with and the reasons for judgment do not cover this issue.

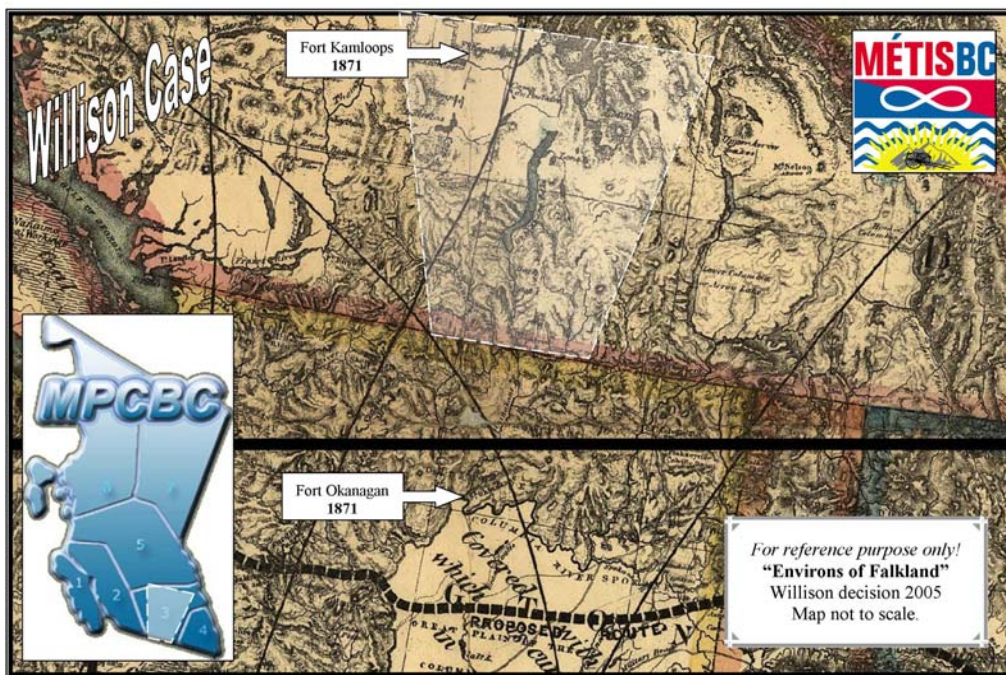
Having noted that there is more to come, the reasons for judgment are still very important because they uphold a Métis right to hunt in the Okanagan/Thompson area of B.C. Because the B.C. government has refused to recognize that any Métis communities exist in B.C., this judgment is an important victory for the Métis in the Province and for the Métis Nation generally.

The Big Issues in Willison

The biggest issue in the case was the meaning of “Métis community”. When, if ever, did a Métis community exist in “the environs of Falkland”? Did a Métis community exist at the time of effective European control? What is the geographic extent of the historic Métis community? Is there a contemporary Métis community in the area? Is there sufficient continuity between any historic Métis community and a contemporary Métis community? Finally, is Mr. Willison a member of the contemporary Métis community?

The Crown conceded that Mr. Willison is Métis and that he has self-identified as Métis for his whole life. The Crown also conceded that Mr. Willison has an ancestral connection to the Thompson/Okanagan area through Métis ancestors who live and worked in the area.

The Thompson/Okanagan Area



The trial judge found that there was an historic Métis community in the “environs of Falkland” which includes a geographic area that is part of the historic fur trade Brigade Trail. The trail went from Fort Kamloops to Fort Okanagan (to left).

Why this area?

The trial judge based his geographic description of the historic Métis community on evidence of the historic brigade route, which went from Fort Kamloops (where the North Thompson and Thompson River confluence, and which includes the Falkland area where Mr. Willison was hunting) to Fort Okanagan (now in the United States). This was the route of the fur traders in the first half of the 19th century.

The Métis were the people who transported the furs in the brigade system. They arrived in the area by 1810-1811 and established families in the area. The brigade system flourished for about 40-50 years.

The Historic Métis Community in the Thompson/Okanagan

The trial judge found that the Métis community can be understood in reference to their relationship to the Brigade Trail of the fur trade. He held that a defining characteristic of the Métis in B.C. prior to effective control (which he determined was 1858-1864) was their close association to the fur trade and the nomadic lifestyle it required.

Dr. Angel, the defendant's expert historian stated that some of the people who came to B.C. were Métis already because of their connections with Red River.

The trial judge called the historic community the "environs of Falkland" and limited the community to that portion of B.C., which is essentially the fur trade Brigade Trail from Fort Kamloops south through the Okanagan valley to what is now the United States border, and its environs.

The trial judge stated that for 40-50 years, in connection with the B.C. fur trade, the Metis were "indispensable" members of the B.C. aboriginal/non-aboriginal economic partnership. He was satisfied that a community of Métis persons existed during these years and that it was an historic rights-bearing community.

The Contemporary Métis Community

The judge referred to the Métis National Council's definition of Métis:

"Métis means a person who self-identifies as Métis, is of historic Métis Nation ancestry, is distinct from other aboriginal peoples and is accepted by the Métis Nation".

The judge said he had no hesitation in finding that there exists a Métis community in the Thompson/Okanagan area. He said it was apparent that the Métis seek each other out and that their purpose in "seeking each other out is to enhance their survival as a distinct community and to protect practices that were historically important features of Métis communities...I do not believe the existence of the community turns on the precise number of persons, but rather the conclusion that there exists a meaningful community for the relevant purpose." (par 111-112)

The judge stated that provided that persons meet the membership criteria set out in *Powley*, he did not believe it necessary to establish that every member of the local Métis community can demonstrate a personal ancestral connection to the particular Métis persons who formed the B.C. ancestral community. Mr. Willison has that connection.

Based on this, the trial judge was satisfied that Mr. Willison is a rights-bearing member of the local contemporary Métis community.

Continuity between the Historic & Contemporary Métis Community

The Métis came to the Thompson/Okanagan area in 1811 and by the 1860s they are largely invisible. However, they continued in and around Kamloops. As in *Powley*, the trial judge noted that there was evidence of the Métis culture going "underground" due in part to discrimination. He reiterated the Supreme Court of Canada's statement in *Powley* that the continuity requirement focuses on the continuing practice of the members of the community, rather than on the community itself.

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This document is not
legal advice. It has
been prepared as a
summary of the Willison
Provincial Court deci-
sion for the assistance
of the MPCBC and the
Métis Nation.



Does this mean all Métis in B.C. have the right to hunt?

Strictly speaking the judgment will apply to the Métis community in the “environs of Falkland”. That is, those in the Thompson/Okanagan area along the old fur trade Brigade Trail. However, it should be taken as a precedent for the existence of Métis communities in B.C. and that they have harvesting rights. It would be astonishing if Métis in only this area of B.C. could prove hunting rights. More likely there are many area of B.C. where Métis have harvesting rights, if not throughout the Province. The Métis will have to undertake research to prove their rights in other areas, as it is unlikely, in light of the judge’s limitation on the geographic area of the Métis community, that the B.C. government will accept this case as a province-wide hunting right for all Métis in B.C.

If Métis go hunting or fishing will they be charged?

Based on our experience in the rest of Canada, it is likely that the B.C. government will continue to charge Métis who try to exercise their harvesting rights, especially those who live outside of the “environs of Falkland”. The MPCBC will make every effort to negotiate with the B.C. government so that Métis throughout B.C. can exercise their harvesting rights without fears of charges.

What happens now?

Because the issue of justification has not been dealt with, the Crown may choose to return to court and present justification evidence to show that the B.C. government has reasonably denied Métis hunting rights. The usual attempt by provincial government’s is to try to justify their regulatory scheme based on conservation and safety.

Alternatively, the Crown may decide not to present justification evidence and may accept the court’s finding that Métis have harvesting rights in B.C., at least in the “environs of Falkland”. Or, the Crown may simply appeal this case to the B.C. Supreme Court.

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