

 **Ontario (Ministry of Natural Resources) v. Fortin, [2006] O.J. No. 1166**

Ontario Judgments

Ontario Court of Justice

Gore Bay, Ontario

R. Beck J.P.

Oral judgment: February 9, 2006.

Information No. 02 100199

[2006] O.J. No. 1166

Between Ministry of Natural Resources, and Rene Fortin

(47 paras.)

Case Summary

Aboriginal law — Hunting rights — Offences — Accused convicted for hunting without a licence — Accused failed to establish a MÚtis constitutional right to hunt without a licence on Manitoulin Island.

Natural resource law — Hunting — Right to hunt — Accused convicted for hunting without a licence — Accused failed to establish a MÚtis constitutional right to hunt without a licence on Manitoulin Island.

Statutes, Regulations and Rules Cited:

Fish and Wildlife Conservation Act, s. 6(1)(a)

Charges: S. 6(1)(a) Fish and Wildlife Conservation Act - Hunt white-tailed deer without a licence

Counsel

Brian Wilkie Prosecutor for the MNR

Fran Heath Counsel for Rene Fortin

R. BECK J.P. (orally)

1 In the matter as indicated at the time of the hearing in the matter of Rene Fortin, this was addressed as a constitutional hearing. In the matter before the court of who was charged on November 21st, 2002 at Allan Township, Manitoulin Island, Northeast Region, commit the offence of unlawfully did hunt white tail deer without a licence, contrary to the , Section 6(1)(a).

2 There was agreed facts by both counsels when on November 21st, 2002 at Allan Township, Manitoulin island, conservation officers were doing routine checks during the deer hunt. They came to Mr. Fortin's hunt camp where they found a deer hanging. The deer was sealed with Mr. Fortin's deer seal in accordance with the *Fish and Wildlife Conservation Act* and it's regulations. That while inspecting the deer, Mr. Fortin emerged from the woods where he had continued to hunt deer after having shot the deer that was hanging at his camp. Mr. Fortin did not have a licence or seal that would allow him to continue hunting the deer after the first deer was shot. Further indicating that once Mr. Fortin affixed the seal to the first deer, in terms of the Ontario Licence Regime, he no longer had the ability to keep hunting. That Mr. Fortin did not have a licence to continue to hunt.

3 With respect to the issue, did Mr. Fortin unlawfully hunt white tail deer without a licence, given with respect to Métis status issue? Examination in-chief by Ms. Heath to address that at this time that Mr. Fortin was coming out of the bush with his gun and the conservation officer's were at the camp. They checked the deer that he had on the buck pole. it was his deer with his seal but the deer was shot on another property that he owns.

4 Conservation asked him if he shot the deer, which he indicated, yes. Asked which gun he used, he indicated he shot the deer with a shotgun using a slug. The conservation officer's did not believe him because of the size of the hole in the deer but he indicates that he shot the deer with a rifle, a 300 Savage. The conservation officer's wanted to charge him for hunting without a licence so he produced his Métis status card. He was charged about a year later.

5 Mr. Fortin indicates he resides in Sturgeon Falls, Ontario. That he was hunting on Manitoulin Island, Allan Township, Lot 17, Concession 4. This is between Ice Lake and Kagawong Lake. Mr. Fortin indicates he owned this property since the year 2002. He further indicates he did not shoot the deer on this property that he shot the deer on East Bluff at another property that he owns with six other people, that he owned this property since 1985. He shot the deer on Thursday the twenty-first. He indicates that the East Bluff is located on Lot 27, Concession 12. That he has been hunting on the Island for twenty years. He was asked, "What do you hunt?" and he indicates, "Just deer."

6 In 2002 if I understood correctly, Mr. Fortin was allowed two tags to hunt Is that what was indicated?

7 MS. HEATH: Yes, Your Worship.

8 THE COURT: Thank you. Then in 2004 he was allowed four tags to hunt?

9 MS. HEATH: Yes.

10 THE COURT: To indicate deer.

11 He indicates he always purchases licence or seals. In 2002 he does not recall what he purchased, he indicates deer and small game. He indicates the deer hunt is generally from October 1st until the third week of November, that this event took place in November. He indicates he showed his Métis card to the conservation officer. He indicates that the conservation officer wanted to charge him because he was still hunting. That this deer was being divided by six hunters and that he was hunting with his Métis card for an extra deer for his family for the winter. He

was party hunting with six other people. Further indicates one person is allowed to shoot six deer as long as there is a seal on every deer. He indicates that they had three deer for six people.

12 Mr. Fortin believes he is a Métis person because of his ancestry. He indicates that his father hunted all of his life, his grandfather hunted all of his life and he was raised hunting and fishing in different parts of Ontario. He indicated that he hunted and fished in North of Sturgeon Falls in the River Valley. He has hunted in Mattawa area, Iron bridge area, Manitoulin and Ottawa.

13 He was asked, "At what point did your family decide that it was Métis? He indicates he thinks it was around the year 2000 that him and his family have been participating at all the Métis meetings. That the Métis meetings are held in Sturgeon Falls, which is called the Woodland Métis Community. That he and his two sons attend these meetings.

14 His aboriginal ancestors came from Sturgeon Falls, Verner, Massachusetts and Sault Ste. Marie, Ontario. That his ancestry would go back to four to five generations. That he hunts for sustenance and sport, that his family members participate in hunting and fishing. His genealogy comes from his grandmother's side. Further he indicates that he has always obtained a licence. The reason he was hunting for an additional deer is for sustenance for his family, indicating there is not much meat on one deer and there are three deer to split amongst six hunters. He indicates he does not use his Métis card when he is hunting with a group.

15 Mr. Fortin indicates he is on a disability pension. He brings in about eighteen hundred dollars a month. He has one son who resides with him and this son does, I believe it was indicated, he does seasonal work. He indicates that his wife works. He finds money tight. That he had a need for the deer.

16 Further with cross-examination by Mr. Wilkie, Mr. Fortin resides in Sturgeon Falls which is the North Shore of Lake Nipissing. That he was born in Sturgeon Falls. His father was born in Espanola, then moved to Sturgeon Falls. That he has ancestry from his mother, who is from Sturgeon Falls.

17 The genealogical report was done with respect to his family. In this report, his aboriginal ancestry traces back to Acadia, which would be the East Coast of Canada. Indicating that his mother is from Sault Ste. Marie, Ontario, that his ancestry is the MicMac Indian. As indicated by the prosecutor it is suggested that his ancestry goes back thirteen years to get a full-blooded aboriginal person. Mr. Fortin indicates he has not seen that report. Further by the prosecutor that this report, Mr. Fortin's ancestry, were really one of the first settlers in Canada in the terms of coming from Europe 1644 and 1643 is a very early time frame. Again, Mr. Fortin indicates he has not seen that report.

18 Mr. Fortin has indicated that he has two sons who attend the OMAA meeting, known as the Woodland Métis group. OMAA means the Ontario Métis Aboriginal Association. Further Mr. Fortin was asked if his brother is a member and his response was, "I don't think so." That the Woodland Métis is a name for the community, Mr. Fortin was asked if he has been a member of the Ontario Métis Aboriginal Association since the year 2000. Mr. Fortin's response, "I think so. I'm not sure, not sure exactly what year."

19 Further, Mr. Fortin receives - again to confirm, he receives a disability pension. That he has bought property in the year 2002 costing forty-five thousand dollars. He owns another property bought on the Island. At the time of the purchase there were ten members and it cost thirteen thousand dollars each and that was to assist the group in hunting deer. His membership fee for the Ontario Métis Aboriginal Association is ten dollars a year. He has applied for membership, that the Ontario Métis Aboriginal Association has his application.

20 Currently he buys a licence to hunt moose, which also allows him to hunt calves. That in order to hunt an adult moose, Mr. Fortin has to win a lottery and that he has never had a licence to hunt an adult moose. It was further explored that if Mr. Fortin is allowed to hunt deer without a licence that this would allow him to hunt moose without a licence which Mr. Fortin indicates, "yes."

21 He was asked if he was an avid fisherman. In response he indicated yes and that he does guiding. Asked if he used the property on Manitoulin Island to do any guiding, his response, people come to hunt and pay him to help pay for the taxes. The people pay so much a day or so much a week. He has a camp on Allan Road. He indicates that he really doesn't guide them but the people pay him to hunt there. This helps to pay for all the expenses like taxes, insurance and everything as indicated by Mr. Fortin. For fishing he guides in the summertime. That he has been doing this since 1996.

22 Prosecutor asked when the officer's were inspecting his deer and he emerged from the woods had he been hunting for deer and the response was yes and that initially his response to the officers, with respect to Mr. Wilkie addressing Mr. Fortin, Mr. Fortin indicated, "I haven't been hunting." That he left his rifle in the bush. Mr. Fortin indicates it was around five-twenty. It was about illegal shooting time. He heard voices at the camp so he got a little nervous. He left his loaded gun there and walked to the camp. Further, if he had unloaded the gun they would have heard him.

23 Mr. Fortin was asked if he was concerned about getting caught for hunting at night. Mr. Fortin indicates no it was close to it, it wasn't really hunting at night but it was by the time he finished talking to Ian, it was another ten to fifteen indicates that he filled out a questionnaire by the Ministry of Natural Resources regarding his aboriginal ancestry and provided it to the Ministry.

24 On examination by Ms. Heath it was determined that Mr. Fortin obtains a fishing licence. That he continues to purchase a moose licence and it's been about twenty years that he did not have a moose tag. He gets frustrated unable to get a tag but not frustrated enough to take an adult moose. That he has consistently purchased all of his licence and seals. That he only hunts during season and if he uses his Métis status that he hunts and fish during the seasons, not off seasons.

25 When asked if he participated in activities with the Ontario Métis Aboriginal Association in Sturgeon Falls he indicated yes. What activities took place, he indicates, "I'm not really sure" and further he indicated that he participated at meetings.

26 With respect to an expert witness qualification, Luke Lacroix, he addressed with respect to the family tree. Mr. Lacroix has been doing genealogy research for the past twenty-five years. He is an aboriginal person himself. He started at a very young age when he was in College doing various types of research. He is a member of the Genealogical Society of ... unable to pronounce this word, O-U-T-A-O-U-A-I-S. He has been a member for over ten years. He has published many papers. Has worked with the aboriginal organization. Has been a member of the organization in Quebec for the last twenty-five years. Worked on many complex genealogical cases specified more where the aboriginal ancestry of an individual lies.

27 Types of papers he has published shows individuals how to go about finding their genealogy. He has published papers on the aboriginal peoples of Acadia. He has published with Genealogical Society and in the Pembroke area. He has given many conferences on the subject of aboriginal genealogy in Hull Quebec as well as Pembroke area. He did genealogy for Mr. Rene Fortin.

28 Mr. Wilkie's response with respect to Luc Lacroix, hearing the evidence, the expert evidence of Luc Lacroix, the report goes far beyond the expertise that Mr. Lacroix has just provided, but is content that the genealogy go in, that there are other areas of the report, all of which require a speciality.

29 Ms. Heath indicates that the report can be separated. The only issue that she intends to address is the genealogy of Mr. Fortin's family background, the family tree report prepared by Mr. Lacroix. The prosecutor is content with that. Tendered for the purpose of the hearing, Exhibit No. One, the family tree of Mr. Rene Fortin.

30 Mr. Lacroix indicates he was contacted by the Ontario Métis Aboriginal Association with respect to the

genealogical work in the matter of Rene Fortin. The first thing he did was to check with the accuracy of the information given to him by his client and corroborate with that information against the Genealogical Register in Quebec.

31 He has an encyclopaedia called the Drouin Encyclopaedia. Including this is the genealogical repertoire since 1608. This can be found in the Hull Quebec, the National Archives of Quebec and also can be found at the National Library of Canada on Wellington Street in Ottawa.

32 Further, goes on to say that Mr. Fortin's genealogy starts immediately with his parent's wedding, that his ancestry came from the Beaudette side of the family. The Beaudette line is through his mother, Bernadette Edith. His father was Eddy Baudet. Next is - is it Alexis or Alex, A-L-E-X-I-S Baudet. His mother was Rosalie Baron.

33 Looking further down the family tree it shows three aboriginal Métis ancestries which came from Acadia and originally migrated to Quebec and in the early 1900's moved to Sturgeon Falls. Further indicating Verner, Ontario.

34 Question raised by Ms. Heath, "How do you know if you have the right person?" Mr. Lacroix indicates, "Through documentation that the Priest have the church records and the genealogical society's have created the repertoire marriage registers which reflect this information."

35 In doing this particular genealogy through the marriage certificates he found that Mr. Fortin's ancestry came from the Beaudette line which was corroborated. Mr. Fortin is of MicMac ancestry, which originated from Acadia. Starting at the bottom of the family tree shows Pierre Doucet, a Métis Edmée, E-D-M-E-E and the last name is L-E-J-E-U-N-E, a Métis and Marie-Marguerite Dugas, daughter of Marguerite Doucet, indicating a Métis. Further indicating these families immigrated or were exiled from Acadia in 1755 when there was various wars between Britain and France. These individuals spread throughout the continent. Indicates most came back to Quebec after 1755.

36 Métis is a mixed heritage a marriage between a non-aboriginal person and an Indian. As indicated, Mr. Fortin's family tree goes back to the 1640's. It started out in 1640's in Port-Royal. Actually started from the Acadia then Port-Royal, Grand-Pré, Beaubassin, B-E-A-U-B-A-S-S-I-N area, indicating all of the Maritimes now Nova Scotia and part of New Brunswick. They moved to Quebec further indicating another town, L-O-T-B-I-N-I-E-R, I'm sorry. My French is not that good. Sorry. I'm unable to pronounce some of these words. It is indicated that from about 1774 to about 1881, Alexis Baudet is the first gentleman to leave looking for work in this area meaning Verner and Sturgeon Falls, or Sturgeon Falls. With respect to the word work meaning fur trade and logging. Mr. Lacroix indicates to the best of his knowledge and believes, based on his research, that this is a correct representation of Mr. Fortin's genealogy.

37 With respect to Mr. Rene Fortin, Mr. Wilkie indicates - he addresses the court based on law that Mr. Fortin does not have a right, here on Manitoulin Island. He gives his reasons being the location, the lack of historic community, lack of evidence of a modern community. He addresses the *Powley* and *Mitchell* case that aboriginal rights, including Métis rights, are site-specific and they flow from the traditional hunting practices of a community and a specific area.

38 Mr. Wilkie indicates no evidence today of any hunting by any member of Mr. Fortin's family or his community prior to his own purchase of land on Manitoulin Island in 1985. Based on the ancestry of the genealogy, Exhibit No. One, if Mr. Fortin can trace himself to any community as an Acadia where the hunting and fishing rights would be exercised, no evidence from the defendant to suggest that he would have a hunting right locally here on Manitoulin Island.

39 To indicate, a book of authorities was given for the court's consideration. This addresses the *Powley* case, [\[2003\] 2 S.C.R. 207](#), the *Manners* case as well as [\[2005\] O.J. No. 2214](#). The *Mitchell v. MNR* [\[2001\] 1 S.C.R. 911](#), and *Regina v. Hopper* [\[2004\] N.B.J. No. 107](#). This addresses the characterization of the right in the *Powley* case. The first step is to characterize the right being claimed. Aboriginal hunting rights, including Métis rights, are

contextual and site-specific. It further states, "The right being claimed can therefore be characterized as the right to hunt for food in the environs of Sault Ste. Marie." Further to indicate, "Identification of the Historic Rights-Bearing Community." It goes on to say:

"In addition to demographic evidence, proof of shared customs, traditions and a collective identity is required to demonstrate the existence of a Métis community that can support a claim to site-specific aboriginal rights."

40 Further, "Identification of the Contemporary Rights-Bearing Community," it sets out:

"Aboriginal rights are communal rights: They must be grounded in the existence of a historic and present community and they may only be exercised by virtue of an individual's ancestrally based membership in the present community."

41 Further, "Verification of the Claimant's Membership in the Relevant Contemporary Community." It goes on to say:

"First the claimant must self-identify as a member of a Métis community. This self-identification should not be of recent vintage ..." [Further] "The claimant must present evidence of an ancestral connection to a historic Métis community..." [Further] "The claimant must demonstrate that he or she is accepted by the modern community, whose continuity with the historic community provides the legal foundation for the right being claimed ..." [Further this indicates] "Membership in a Métis Political organization may be relevant to the question of community acceptance, but is not sufficient in the absence of a contextual understanding of the membership requirements of the organization and the role of the Métis community. The core of any community acceptance is past and ongoing participation and a shared culture, in customs and traditions that constitute a Métis community's identity and distinguish it from other groups. This is what the community membership criterion is all about. Other indicia of community acceptance might include evidence of participation in community activities and testimony from other members about the claimant's connection to the community and its culture."

42 Further the "Identification of the Relevant Time Frame." This addresses the *Van der Peet* test, which the *Powley* case further goes on to say:

"The focus should not be on the period after a particular Métis community arose and before it came under the effective control of European laws and customs. This pre-control test enables us to identify those practices, customs and traditions that predate the imposition of European laws and customs on the Métis"

43 Another case law was address with respect to the *Mitchell* case and further the *Matters* case was also addressed, again indicating:

"The court first has to be satisfied that the community exists and has to establish how long that the community has existed. [That the court] would need evidence with respect to when contact was made in this area; at what time a government exerted control over the area; was the Métis community established prior to that control being established in the area; has there been a continuous community in the area; does it continue to exist; are you actually a part of that community or are you merely an individual who can trace your genealogy back to a person who had native status."

44 In the case of *Hopper*, in this case it indicates that:

"... most people of Acadian descent had aboriginal blood ... This, by itself, does not qualify all of them as beneficiaries of aboriginal rights ..."

45 Hearing evidence and the circumstances and the balance of probabilities that Mr. Fortin, hearing the evidence with respect to the family tree, has established that he is Métis given the history of his mother's side. Further, has not established a right on a Métis constitutional right to hunt without a licence on Manitoulin Island. The defendant failed to meet the burden of proof required of him with respect to the *Powley* case that he can hunt on Manitoulin Island as a Métis using his Métis status card.

46 Mr. Fortin has not given any evidence that he can trace ancestry to a historic Métis community and no evidence to any hunting practices on Manitoulin Island and no evidence to support a modern Métis community on Manitoulin Island.

47 Hearing the evidence, it was indicated that some aboriginal again, ancestral, was given the background of Mr. Fortin and the court was satisfied that the Métis was established. Therefore hearing the evidence and the circumstances the court is satisfied beyond reasonable doubt as to the guilt of the defendant. The Crown has proven its case and therefore a conviction is registered.