

R. v. Burns, [2005] O.J. No. 2215

Ontario Judgments

Ontario Court of Justice

Brockville, Ontario

W. Stewart J.P.

Oral judgment: May 2, 2005.

Court File Nos. 093326, 093327 and 093328

[2005] O.J. No. 2215

Between Her Majesty the Queen, and Roger S. Burns, Dale Burns and Arthur G. Burns

(18 paras.)

Case Summary

Aboriginal law — Aboriginal rights — Constitution Act, 1982, s. 35, recognition of existing aboriginal and treaty rights — Metis — Fishing rights — Offences.

Trial of three accused charged with fishing offences. The accused were members of the Ontario MÚtis Aboriginal Association and members of the local Delta Woodland MÚtis. One of the accused testified to being taught to harvest fish and game from the St. Lawrence River to North Bay.

HELD: The accused were found guilty.

The exercise or entitlement to MÚtis Aboriginal rights by virtue of the accuseds' ancestral connection to and current membership in a MÚtis community fell short of a solid bond of past and present mutual identification and recognition of common belonging between the accused and other members of the rights bearing community. The accused were fined \$50 each.

Statutes, Regulations and Rules Cited:

Constitutional Act, 1982, s. 35

Ontario Fisheries Regulations, s. 4(1)(a)

Charge: S. 4(1)(a) Ontario Fisheries Regulations, Ministry of Natural Resources

Counsel

Brian Wilkie, Esq. Provincial Prosecutor for the Crown

Fran Heath, Ms. Counsel for the defendants

REASONS FOR DECISION

W. STEWART J.P. (orally)

1 Initially, I will reflect that the term "Métis" in Section 35 of the Constitutional Act, 1982 refers to distinctive peoples who in addition to their mixed ancestry develop their own customs and recognizable group identity, separate from their Indian, or Inuit or European fore bearers.

2 A Métis community is a group of Métis with a distinctive collective identity living together in the same geographical area and sharing a common way of life.

3 The purpose of Section 35 is to protect practices that were historically important features of these distinctive communities and that persist in the present day as integral elements of the Métis culture. To support a site specific aboriginal rights claim and identifiable Métis community with some degree of continuity and stability must be established through evidence of shared customs, traditions and collective identity as well, demographic evidence.

4 Roger, Arthur and specifically Dale Joseph Burns feel in their heart to be a part of the Métis community and a card-carrying member of the Ontario Métis Aboriginal Association of six years. They are also a member of the local Delta Woodland Métis, numbering some 400 members although many reside apart from the area.

5 Mr. Dale Joseph Burns reflected his family history with reference as being taught to harvest fish and game from the St. Lawrence River to North Bay and beyond. He related that they never shared in a specific community but his ancestors had more of a nomadic existence. It reflects the three broad factors as indicia of Métis identity for the purpose of claiming rights under Section 35 as "self identification, ancestral connection and community acceptance."

6 It is the opinion of this court, after considering the totality of the evidence presented, that the criteria emphasized by Section 35 of the Constitutional Act, 1982, that the exercise, or entitlement to Métis Aboriginal Rights by virtue of their ancestral connection to and current membership in a Métis community falls short of a solid bond of past and present mutual identification and recognition of common belonging, between Mr. Arthur, Roger and Dale Burns and other members of the rights bearing community. Consequently, this claim by the defendants; Mr. Arthur Burns, Mr. Roger Burns and Mr. Dale Burns will not proceed and convictions on all counts to the charges will be registered.

7 I will now entertain submissions, Crown with regard to penalty?

8 MR. WILKIE: Your Worship, the Crown is just seeking the ticket amount on the face of those tickets, which I believe is \$50.00 each.

9 THE COURT: Yes. All right and Mr. Dale Burns do you need some time, sir to pay this fine?

10 MR. DALE BURNS: Many years, sir.

11 THE COURT: Ninety days, sir.

12 MS. HEATH: I think he requires more than 90 days.

13 THE COURT: The fine is \$50 and 90 days with which to pay the fine. That is on all counts.

14 MS. HEATH: Your Worship, if Mr. Burns requires more than 90 days, can he apply to the court for that additional time?

15 THE COURT: Most certainly. Usually, if you set up a monthly payment programme, no matter how much it is, and you continue on monthly that is fine, sir.

16 All right, thank you, Mr. Burns.

17 MR. DALE BURNS: Thank you, Your Honour.

18 THE COURT: Miss Heath and Mr. Wilkie, I thank you for your very professional presentations on different viewpoints of this matter and also Mr. Burns, as well. Thank you.