

Ministry of Environment/Métis Nation–Saskatchewan Provincial Screening Process For Métis Nation – Saskatchewan Citizens Asserting Métis Food Harvesting Rights

Background

In 2003, in *R. v. Powley*, the Supreme Court of Canada set out a test for establishing the Aboriginal food harvesting rights of Métis communities. To date, Saskatchewan courts have recognized that these Métis rights exist in at least some parts of this province.

In response to these court decisions, the Ministry of Environment has developed and currently applies various policy approaches on Métis harvesting.

Context for the Screening Process

The Government of Saskatchewan and the Métis Nation – Saskatchewan (MNS) have recently engaged in discussions to build a stronger relationship between the Métis Nation and Saskatchewan on Métis food harvesting issues and to develop a mutually agreeable approach for the recognition of Métis food harvesting rights in the province.

As Saskatchewan and the Métis Nation move forward on addressing these issues together, the Ministry of Environment and the MNS have identified the need for the MNS to support and assist Métis food harvesters in their dealings with the Ministry.

Métis rights are collective rights. Therefore, the Métis community must be engaged when Métis food harvesting rights are being claimed and Saskatchewan recognizes that, the MNS, through its Regions and Locals, has a role to play. This Screening Process provides an opportunity for the Métis community to be engaged.

The MNS has created within its administration a Citizenship Registry which is intended to provide objectively verifiable registration of its citizens resident within the Province of Saskatchewan.

Further, under current Ministry policy approaches to Métis harvesting, the onus falls to the individual Métis food harvester to provide relevant and adequate information on the Métis right being claimed, which is then assessed by the Ministry. In many situations, the MNS is better placed to respond to these information requests and can assist Métis food harvesters in this regard. This Screening Process enables the MNS to provide this support to its Métis citizens.

Application of the Policy

This Screening Process will be applied province-wide, but will only apply to Métis food harvesters who request it be applied. In order to trigger the Screening Process, Métis food harvesters must complete the attached consent form and provide a copy to the Ministry. It is the responsibility of the Métis food harvester to complete this form.

It is also the responsibility of the Métis food harvester to get in touch with the MNS head office in Saskatoon and to provide a signed copy of the consent form to the MNS. The toll free number for the MNS is 1-888-343-6667.

Nothing in this Screening Process alters the Ministry's current legal interpretations of existing Métis food harvesting rights case law in the province or the Métis harvesting policy approaches as currently applied in Saskatchewan. For greater certainty, nothing in this Screening Process narrows, limits, abrogates, derogates, breaches, limits, recognizes or affirms Métis food harvesting rights. It is simply an interim, administrative procedure mutually agreed to by the Ministry and the MNS as a means to build a better working relationship on Métis harvesting issues in the province.

The Screening Process

Whenever a Conservation Officer encounters an individual in the field who he or she believes may have committed an offence under a federal or provincial fish or game law and the individual asserts that he or she is a citizen of the Métis Nation – Saskatchewan and that he or she believes that they have a Métis right to engage in the activity in question, the following procedures shall be employed:

Conservation Officers will conduct investigations in a thorough, respectful and professional manner and will not ordinarily lay charges until the following steps have been completed.

1. The individual will be asked to produce proof that he or she is of Metis ancestry to the Conservation Officer (which may be done by producing a valid MNS citizenship card issued by the MNS Citizenship Registry or by any other means available), to identify the Metis Local to which he or she belongs and to provide any other information that the individual believes may be relevant to the Metis harvesting right being claimed. The individual will also be advised that if he or she chooses to go through the Screening Process, the MNS will / may provide some or all of this information to the Ministry on his or her behalf.
 - a. If the individual produces a valid MNS citizenship card issued by the MNS Citizenship Registry, it shall be accepted as proof of Metis ancestry and citizenship in the MNS unless the Conservation Officer has reason to question the validity of the card and determines that further documentation is required.
 - b. However, proof of Metis ancestry and citizenship in the MNS alone is not accepted as proof that the individual has Metis food harvesting rights in any particular area of the Province.

2. The individual will then be asked if they are aware of this Screening Process and whether he or she would like it to be applied. The Conservation Officer will explain then to the individual in general terms how the Screening Process works.
 - a. If the individual wants this Screening Process to apply, the Conservation Officer will ask the individual to sign the attached Consent Form which allows the Ministry to release the individual's name and information regarding the incident to the MNS for its review and the Screening Process will proceed to Step #3.
 - b. If the individual does not want this Screening Process to apply, the Conservation Officer will proceed by applying standard enforcement procedures on Métis food harvesting rights assertions. Pursuant to this procedure, the Conservation Officer will provide the individual with a reasonable amount of time to provide relevant information on the Métis right being claimed, but not more than 30 days.
3. Conservation Officers will record all relevant information as part of the investigation, prepare a report on the incident, and forward it to the Ministry's Director of Enforcement.
4. In the application of this Screening Process, Conservation Officers will not ordinarily seize vehicles, equipment, firearms, fish or game from the individual as part of the investigation unless the Officer believes that a seizure is essential to public safety or to provide evidence in any future court proceedings. In determining whether a seizure is essential, the Officer shall take into account whether the individual is prepared to acknowledge the facts of the incident under investigation including his or her role in the incident by, for example, signing a statement..
5. Upon receipt of the Conservation Officer's report and if based upon a preliminary assessment the Ministry may be proceeding with a charge, the Director will provide a complete report on the incident to the MNS's Harvesting Co-ordinator for the MNS's review, assessment and recommendations
6. Within 30 days of receipt of the Ministry's report, the MNS may provide its comments to the Director, including confirmation that the individual is a citizen of the MNS, any additional relevant information and a recommendation with respect to how the incident should be addressed by the Ministry.
7. The time period for the response from the MNS may be extended in individual cases by mutual agreement of the Director and the MNS's Harvesting Co-ordinator.
8. The Director of Enforcement will review the Conservation Officer's report and the MNS's submission, in consultation with others within the Ministry of the Environment and the Ministry of Justice and Attorney General, and, will make a final determination about whether charges should be laid and both the individual and MNS will be informed by the Director of his decision by way of letter.

Exemptions from the Screening Process

This Screening Process does not apply to offences related to safety concerns, spotlighting trafficking in fish or game, protection of threatened or endangered species or offences occurring on privately owned or leased lands where the individual does not have permission from the landowner or lessee to be on the land.

General Provisions

Nothing in this Screening Process impacts on the discretion that Conservation Officers have to issue warnings to individuals who they believe may have committed offences.

Nothing in this Screening Process prevents a Conservation Officer from immediately laying charges where it is believed that the individual's identity is in question or where he believes that it may not be possible to locate the individual to serve him or her with a summary offence ticket or a summons at a later time.

Nothing in this Screening Process impacts on an officer's discretion to seize firearms where the Conservation Officer believes that his or her safety is at risk.

The Ministry will take all reasonable steps to advise Conservation Officers and other employees of the existence of this Screening Process and the MNS will likewise take all reasonable steps to advise its citizens of the existence of the Screening Process.

The Screening Process may be made available to individuals who are not citizens of the MNS such as Metis harvesters from other Provinces if the individual, the MNS and the Ministry all agree.

The details of this Screening Process may be changed by mutual agreement of the Ministry of Environment and the MNS at any time provided that any changes are set out in writing.

This Screening Process may be terminated by either the Ministry of Environment or the MNS by giving 30 days written notice of termination to the other

This Screening Process will otherwise remain in effect until September 1, 2012. The Ministry and the MNS will meet at least 60 days prior to September 1, 2012 to review the Screening Process in order to determine if it should be continued past that date and what, if any, amendments should be made.

This Screening Process has been approved by the Ministry of Environment and has been in effect since November, 2008.

Amendments to the Screening Process have been approved by the Ministry and the MNS are effective from and after June 20th, 2010.

