

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Hatfield*, 2015 NSSC 77

**Date:** 20150309

**Docket:** Yar No. 428004

**Registry:** Yarmouth

**Between:**

Jack Leonard Hatfield

*Appellant*

v.

Her Majesty the Queen

*Respondent*

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**Judge:** The Honourable Justice John D. Murphy

**Heard:** February 2, 2015, in Yarmouth, Nova Scotia

**Written Decision:** March 11, 2015  
*{Oral decision rendered March 9, 2015.}*

**Subject:** *Wildlife Act, RSNS 1989* summary offences; *Constitution Act 1982, s.35*: Métis aboriginal rights

**Summary:** Mr. Hatfield appealed provincial court convictions for hunting without a license and possessing a deer carcass contrary to the *Wildlife Act*. He admitted the *actus reus* of the offences and defended the charges on the basis that as a Métis person he was exercising aboriginal hunting rights protected by s.35 of the *Constitution Act*. The trial judge did not accept the appellant's claim that he was a member of a contemporary Métis community on Cape Sable Island with historic ancestral

connection to a Métis community on Cape Cod, Massachusetts. He concluded the appellant did not prove on the balance of probabilities the existence of an identifiable rights-bearing Métis community with a degree of continuity and stability existing prior to effective European control sufficient to support a site-specific aboriginal rights claim. The trial judge considered the evidence in the context of the ten-part "integral to a distinctive culture" test enumerated in *R. v. Powley*, 2003 SCC 43 for analyzing Métis aboriginal rights claims. Based on expert evidence which he accepted, the trial judge concluded that effective European control was exercised in Massachusetts in 1640 and in Nova Scotia in 1670, before the appellant's ancestors came to the area.

**Issues:** Did the trial judge err in finding the appellant failed to establish that he was acting pursuant to an existing Métis aboriginal right because the evidence did not establish that there was a culturally distinctive, geographically-identified community of mixed ancestry before effective European control was exercised on Cape Sable Island?

**Result:** Appeal dismissed. The trial judge properly interpreted and applied the Powley test, particularly the fifth part "Identification of the Relevant Time Frame." His findings were reasonable and supported by the evidence, and he made no error of law.

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