

## Case Brief – *Enge v. Mandeville et al*, 2013 NWTSC 33

In a significant decision issued on the eve of National Aboriginal Day 2013, the NWT Supreme Court recognized that the members of the North Slave Métis Alliance (“NSMA”) constitute a Métis community that holds Aboriginal rights over its traditional territory to the north of Great Slave Lake in the Northwest Territories (“NWT”). As to the date of the judgment, NSMA is the only Aboriginal group in the NWT to have received judicial recognition as a right-bearing indigenous community since *Re Paulette* in 1973.

The facts of the case involve the plight of the declining Bathurst caribou herd. In response to the herd’s dramatic decline, the Department of Environment and Natural Resources of the Government of the Northwest Territories (“GNWT”) and the Tlicho Government in 2010 agreed to limit the annual Aboriginal harvest from the herd to 300 caribou per annum. The harvesting allocation was shared equally between the Tlicho Government and the Yellowknives Dene First Nation. However, NSMA was entirely excluded from this allocation notwithstanding that the Bathurst herd’s range also coincided with the traditional territory of the Métis.

Justice Smallwood of the NWT Supreme Court applied the *Powley* test to the extensive evidence submitted by NSMA and concluded that NSMA members have a *prima facie* claim to Aboriginal rights as Métis people of the Great Slave Lake area. Drawing upon the BC Court of Appeal’s decision in *West Moberly*, the court held that the GNWT failed to consult or accommodate NSMA regarding the limited Aboriginal caribou harvest. The GNWT was ordered to consult with NSMA regarding the management of the Bathurst caribou and NSMA’s participation in the harvest.

This is the first judicial decision to apply the *Haida* doctrine of consultation to a Métis community, not only in the NWT but also in Canada. It affirms that the constitutional protection of the Aboriginal rights of Métis people is as robust as it is for the other indigenous people of Canada. It is also the first application of the *Powley* test respecting the Aboriginal rights of Métis people in the NWT.

The case also has significance for the present devolution process occurring in the NWT. By April 2014, Canada will devolve significant power to the GNWT respecting authority over lands and resources in the territory. This decision is an important reminder that the GNWT, as a Crown actor, will be held accountable for upholding the honour of the Crown with the indigenous peoples of the NWT.

Devlin Gailus is very proud to have represented NSMA and congratulates all NSMA members on this significant achievement and on finally gaining recognition of their Aboriginal rights.