

Kinship and Sheltering Rights

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A recent case of interest to aboriginal people in Ontario is the *Meshake* case.

This case involves a member of the Aroland First Nation. Aroland First Nation is situated within Treaty 9 area and its members have aboriginal and treaty rights within the Treaty 9 territory. This means that they have a constitutionally protected right to hunt and fish within the territory covered by Treaty 9.

However in the *Meshake* case, a member of the Aroland First Nation was charged with hunting outside his treaty area. Meshake was hunting moose near Sioux Lookout in the Treaty 3 territory. Meshake took the position that he had a right to hunt there because he was married to a member of the Lac Seul First Nation. Since moving to Sioux Lookout, Meshake hunted with his in-laws and sometimes hunted by himself.

At his first trial in the Provincial Offences Court, Meshake was acquitted of the charge. His defence was that he had a kinship treaty right to hunt for moose and it was protected by section 35(1) of the *Constitution Act, 1982*. The justice of the peace agreed with him.

The crown appealed to the Ontario Court of Justice. At that court the judge found him guilty and convicted him. The matter was further appealed to the Ontario Court of Appeal and the court set aside the conviction. At that Court the crown conceded that Meshake had a treaty right to hunt in his Treaty 9 territory and if he was hunting moose by way of an invitation from treaty 3 members, then he would be able to share in the treaty 3 harvest.

The court of appeal found that Meshake was accepted as part of his wife's family and that they had permitted him to share in their harvest in accordance with the custom of Treaty 3 rights-holders. Meshake was therefore entitled to "shelter" under Treaty 3.

Another case that concerns the right to "shelter" under another First Nation's treaty right is the case of Shipman. In the *Meshake* case the court looked at kinship and found that one could shelter under another's treaty right through marriage. In the *Shipman* case the Court of Appeal looked at whether or not one could be invited or be given permission to hunt in another treaty territory.

Shipman was a member of the Walpole Island First Nation and he was hunting in the Michipicoten First Nation's territory. Michipicoten First Nation is in the Robinson-Superior Treaty territory and Walpole Island is located outside of that territory. The Court found that it was the custom of the Michipicoten First Nation to share resources with others who were seeking food and were passing through their territory. Since treaty rights are communal, permission would have to be granted by one who speak on behalf of the community.

Here Shipman attempted to contact the Chief of the Michipicoten First Nation but was unsuccessful. He did receive permission after he harvested a moose but this did not allow the First Nation to decide whether he could hunt or not. The court said that because Shipman had not been given consent prior to hunting he could not “shelter” under the Michipicoten First Nation’s treaty right. As a result Shipman lost his appeal and the conviction of the lower courts was upheld.

These two cases are important because it allows for members of one treaty area to acquire treaty rights in another treaty area under the right circumstances.