

Lessons from Canada and the USA.

To be a Gypsy and not be a “gypsy” that is the question.

Gypsy people are an ethnic minority group protected under the Equality Act 2010, however the contentious issues of ‘gypsy’ status for the purposes of planning law undermines their protection as a minority, as ‘gypsy’¹ status in relation to land use is not defined by an ethnicity, but is determined by work patterns at the time of the application for planning permission.

Homelessness legislation has assisted Gypsy and Traveller people, but the issues now appear very unclear blurring those that may be statutory homeless with a want to adopt the gypsy way of life as a ‘lifestyle’ and those that have a perceived traditional and ethnic right to live in caravans, knowing no other way of life and who are statutory homeless because there is nowhere legal to place their caravans.

The definition used for the Caravan Sites Act 1968 was transferred from the Divisional Court case of *Mills v Cooper*². The Court had to consider the meaning of Gypsy with regard to s127 of the Highways Act 1959. The Court came to the conclusion that Parliament did not intend to discriminate by meaning the Gypsy people as a race, the wording of the Act being “a hawker or other itinerant trader or a “gipsy” Lord Parker stated that although in the context of the Act he felt that the word gipsy means no more than a person living in no fixed abode or fixed employment, he also stated that;

¹ Also spelt gipsy in statutes and law reports and spelt with a lower case g to denote difference from ethnic group

² *Mills v Cooper* [1967] 2 All ER 100

*"I am hoping that those words will not be considered as the words of statute"*³

How prophetic, and of course, historically we know there had been discrimination, with regard to the law the Egyptian Acts from 1530s and beyond and anti Gypsy wording has been placed in a number of Acts through the years. There was no reason to worry about this interpretation until the early nineties, when others tried to claim rights under 'gypsy status'. Unfortunately the resulting case *R(South Hams DC ex parte Gibb* damaged the traditional Traveller community by introducing the concept, that a Gypsy is someone who travels to seek work, and the case of *Wrexham CBC Berry* followed where effectively, it was found that Mr Berry was too old and too ill to be a Gypsy.

We are now at a point in time where there is a system that allows anyone who may choose to take to the road to become a 'gypsy' for the purposes of planning law, but there has to be proof of a nomadic habit of life and at the same time the, system denies the status to the original Gypsy people as they do not comfortably fit into the 'case law interpretation'.

The Race Relations Act 1976 has not have the teeth when it is needed, the Equalities Act 2010 means that there can now be a further legal argument to put forward, this time for the women, traditionally not workers in the sense of 'moving for an economic purpose' [as in the case of *McCann*,] but do we want more years of endless argument, more years of a pincer movement of Equalities/Homeless/Planning /Human Rights [articles 8 and 14] and case law that has defined who and what is a Gypsy and often defined it wrongly? We need to get to grips with this issue.

³*Mills v Cooper* [1967] 2 All ER 100 at (467) B

The Métis history and definition is the closest to the Gypsy cultural group as it stands today. The Métis culture grew up mainly around the Red River area of Manitoba, they have a distinct culture that developed over a period of time, approx 600 years, they are a nomadic group the word Métis means 'a mix' of Scots French Iroquois, they travelled along the Red River Valley.

This argument for review is **not a racial one**. The problem that Native people have had in USA through for example the Dawes Rolls and quantum of blood illustrates that this is not a road to travel down; basically a quantity of Indian blood was required for various treaty rights and is still required for tribal membership, the implications of that today are extremely complicated and it is worth remembering that the Nazi physician Robert Ritter used the original Indian Quantum Blood⁴ chart for his model, when studying the Roma and Sinti. The consideration of how much Indian blood made to a Métis has is immaterial⁵

The Romany Gypsies kept their heads down when they could, remembering the Egyptians Acts albeit distant memory and the Métis kept their heads down after the Louis Riel rebellion, both groups not daring to identify themselves to the majority populace. Both groups have kept their languages secret Romany and Michif. Both have been referred to as the invisible people. Both had Acts

4 Issued by the Bureau of Indian Affairs

5 Louis Riel the great Métis leader actually only had 1/8 native blood

specifically to improve conditions. The Métis Betterment Act in 1938⁶ and the Caravan Sites Act 1968, the latter unfortunately substantially repealed.

The Métis have struggled for their cultural identity usually involving hunting and fishing rights as in the case *Powley*.⁷ There are ten tests laid out in *Powley*⁸ most connected to harvesting and fishing rights but the ones that could be attributed to Gypsies are:

- a) Self - identification. The individual must self- identify as a member of the Métis community. It is not enough to self identify as Métis. The individual must also have an ongoing connection to a historic Métis community.⁹
- b) Ancestral connection, there is no minimum blood quantum requirement, but Métis rights holders must have some proof of ancestral connection to the historic Métis community whose collective rights they are exercising. Ancestral connection was also defined by the Court as by birth or adoption.
- c) Community acceptance. There must be proof of acceptance by the modern community - a membership of a Métis community must be put into evidence. The court stated that the evidence presented must be objectively verifiable.

6 An Act Respecting the Métis of the Province 1938

7 *R v Powley (Canadian Supreme Court)* [2003] 2.S.C.R This case modified rights in relation to aboriginal property rights as set out in *R. Van der Peet* [1996] 2 SCR. 507

8 *ibid* para 10

9 Definition of community in his sense is one of a geographical nature and problems can arise from this definition for the Métis. However with regard to Gypsy and Traveller people, there has always been, throughout history, settlements, that community members will refer to or family resting places.

The term Métis that was affirmed in the Canadian Constitution Act amendment of 1982 does not encompass all individuals with mixed Indian and European heritage; rather it refers to distinctive peoples who in addition to their mixed ancestry developed their own customs, way of life and are recognisable, hence capital M for the Métis as a cultural people and métis with a lower case m for any one who has mixed heritage but are not descended from the Metis as a group.

Many Gypsy people are worried that the definition should not be made wider after all we are an island and many people may have some Gypsy blood. This argument was addressed in Canada for the Métis in the case of *Hopper*¹⁰

Evidence was rejected that Mr Hopper had direct lineage to a signatory of a treaty in Massachusetts dated from 1693. The judge stated that if that was "*enough to gain status then most Acadians would qualify as Métis.*"

Acadia is an area in USA with a high proportion of citizens have native blood somewhere in their ancestry.

We have had approximately 20 years of this nonsensical interpretation post *Gibb*
There should be a debate with a review on recent history and status addressed

¹⁰ *R V Hopper*[2008] 3 CNLR 377 N.B.C.A

with regard to those who are traditionally Gypsies or Travellers. In my view Gypsy status should not be 'lost or acquired'.

My answer would be no to any further legal interpretation rather I would like to see the indigenous Gypsy and Traveller people of England and Wales with a protective statute, similar to that of the Métis cultural people from Canada.

The law has struggled with the definition of Gypsy and has not had the opportunity to look outside of its own jurisdiction for what may be an answer it is time that this issue was addressed sensibly and calmly.

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