



*Métis*  
*Nation of*  
*Alberta*

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Dear MNA Citizens,

This Thursday the Supreme Court of Canada will be releasing its decision in the long awaited Harry Daniels v. Canada litigation at 7:45 a.m. (Alberta time).

This significant litigation is about whether the federal government has constitutional responsibility for the Métis Nation in the same way its does for First Nation and Inuit peoples.

If the lower court decisions are upheld, this will be yet another victory for the Métis Nation. It will strengthen our hand even further in finally getting the federal government to the negotiating table to deal with our rights and outstanding claims here in Alberta.

I, along with a delegation from Alberta, will be attending at the Supreme Court in Ottawa. We will provide updates to our citizens back home as soon as they become available on Thursday.

For those of you interested in learning more about the Daniels case, a summary that was prepared for the MNA is attached. As well, the MNA's legal counsel (Jason Madden) wrote an opinion article for the Edmonton Journal last year that discusses what the Daniels case means for Alberta Métis. A copy of that article is available at:

<http://edmontonjournal.com/news/national/what-the-daniels-case-means-for-alberta-metis-opinion>

We are optimistic that Thursday will mark another victory for Métis rights!

Audrey Poitras  
MNA President

# What the Daniels case means for Alberta Métis: Opinion



JASON MADDEN

More from Jason Madden ([HTTP://EDMONTONJOURNAL.COM/AUTHOR/JASON-MADDEN](http://edmontonjournal.com/author/jason-madden))

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In this April 3, 2006 file photo, members of the Manitoba Métis community take part in a procession to the Manitoba Law Courts in Winnipeg to pursue court action against that province on land ownership issues. *WAYNE GLOWACKI / WINNIPEG FREE PRESS*

This week, the Supreme Court of Canada will hear arguments in *Daniels v. Canada*. The case was initiated by the late Saskatchewan Métis leader Harry Daniels more than a decade ago to make Canada revisit its arbitrary and exclusionary policies toward the Métis and “non-status” Indians (i.e., members of First Nations who cannot be registered under the Indian Act). In the words of the trial judge, these federal policies — or lack thereof — have produced “a large population of collaterally damaged” aboriginal people who are the “most disadvantaged of all Canadian citizens.”

Specifically, the Daniels case will answer the long-standing question of whether the Métis and non-status Indians are included within the meaning of the term “Indian” in s. 91 (24) of the Constitution Act, 1867. This head of power grants “exclusive Legislative Authority” for “Indians, and Lands reserved for the Indians” to Parliament. Canada has taken an extremely narrow interpretation in relation to this jurisdiction, which conveniently excludes the Métis and non-status Indians. This exclusion has resulted in these groups falling between the jurisdictional cracks of this country.

Both the Federal Court and Federal Court of Appeal have concluded that s. 91 (24) was necessarily broad enough to include all aboriginal peoples — First Nations, Métis and Inuit included — Canada encountered as it expanded from coast to coast to coast following Confederation. This jurisdiction was not limited to “Indians,” as defined by the Indian Act. Nor did it exclude the Métis Nation — which emerged as a distinct aboriginal people in the western territories — prior to Canada becoming the Canada we know today. Despite the overwhelming evidence and solid decisions of the lower courts, Canada continues to argue for an arbitrary, narrow interpretation.

For the Métis Nation, this case is just another chapter in its ongoing “hunt for justice” to begin the process of reconciliation with Canada. While Métis inclusion in s. 35 of the Constitution Act, 1982 was supposed to be the “starting gun” for negotiations, the Métis have been forced to repetitively turn to the courts to make any progress on s. 35’s promise. From *R. v. Powley* in 2003 to *Cunningham v. Alberta* in 2011 to *Manitoba Métis Federation v. Canada* in 2013, the Supreme Court of Canada has been consistent and unequivocal: s. 35 demands good faith and meaningful negotiations and reconciliation with the Métis people as well.

Unfortunately, Canada has not been listening. The Métis continue to be excluded from federal comprehensive and specific claims processes. They are denied access to programs available to other aboriginal groups. They are often excluded from Crown consultation in relation to their rights. Notably in Alberta, it was the provincial government that needed to step up and work with Métis leaders to address the complete failure of the federal scrip system to provide a land base and needed support to the Métis. Through these efforts, the Alberta Métis Settlements were born, while Canada was and continues to be “missing in action” on playing its necessary role on Métis issues.

Increasingly, independent experts have also recognized Canada’s failings when it comes to the Métis. Vancouver-based lawyer Doug Eyford recently reviewed the federal comprehensive claims policy and urged that Canada “must do more for the Métis” and “develop a reconciliation process to support the exercise of Métis s. 35 rights and to reconcile their interests.” In the same vein, the United Nations Special Rapporteur on Indigenous Rights has repeatedly criticized Canada for failing to deal with Métis’ rights and outstanding claims.

It’s clear what needs to happen — real negotiations on Métis rights, lands and self-government, as well as just and lasting settlements. Hopefully, the next federal government will proceed. If not, the Métis

are hopeful the Daniels case will provide additional judicial direction that federal inaction is no longer an option.

*Jason Madden is a partner in the law firm Pape Salter Teillet LLP, with offices in Toronto and Vancouver, and has been involved in much of the litigation on Métis rights over the last decade. In the Daniels case, he is legal counsel for the intervener, Métis National Council.*

## Comments

We encourage all readers to share their views on our articles and blog posts. We are committed to maintaining a lively but civil forum for discussion, so we ask you to avoid personal attacks, and please keep your comments relevant and respectful. If you encounter a comment that is abusive, click the "X" in the upper right corner of the comment box to report spam or abuse. We are using Facebook commenting. Visit our FAQ page (<http://www.edmontonjournal.com/news/story.html?id=7195492>) for more information.