

The Daniels Case at the Supreme Court of Canada: A Case of Simple Clarifications with Significant Consequences

On April 14, the Supreme Court of Canada released its long-awaited judgment in *Daniels v. Canada*. The case was started by now-deceased Métis leader Harry Daniels in 1999. Despite the case's enormous documentary record and 17-year legal odyssey, the judgment is short and unanimous. It provides simple answers to key questions that have left the Métis Nation in what the court called a "jurisdictional wasteland" for generations.

The central question in the case was "who" are included in a provision of Canada's original Constitution. When Canada was created in 1867, various "jurisdictions" or "responsibilities" were divided between the federal and provincial governments. Parliament was assigned responsibility for "Indians" under s. 91(24) of the *Constitution Act, 1867*, since dealing with the lands and rights of *all* the Aboriginal peoples it encountered was necessary to advancing Canada's desired expansion westward.

The historic record showed that throughout its early development, Canada recognized and acted on its all-encompassing jurisdiction toward all Indigenous peoples. From legislating restrictions against all Indigenous peoples to attempting to deal with Métis land claims to applying its residential school policies to all, Canada did not distinguish between these groups historically.

In more recent times, however, Canada has conveniently only acknowledged its jurisdiction the Inuit and status "Indians" registered under the *Indian Act*. The Daniels case now confirms that the term "Indians" in Canada's 1867 Constitution means the same as the term "Aboriginal" today. Simply put, the term "Indians" includes all Indigenous peoples—First Nations, Inuit and the Métis Nation.

This inclusion means that the Metis Nation now has "certainty and accountability" in relation to Canada's jurisdiction to deal with Métis issues, including, knowing "where to turn for policy redress." This simple clarification also unblocks the federal government's self-created obstacle to negotiations with the Métis Nation.

It is important to note that federal jurisdiction does not mean Canada now has control or power over the Métis people. Section 91(24) is about the federal Crown's *relationship* with the Métis Nation and Parliament's overall goal of advancing reconciliation with *all* of Canada's Aboriginal peoples.

The Supreme Court also stressed that Métis inclusion as "Indians" within s. 91(24) does not compromise the Métis Nation's distinctiveness in any way. The Court went out of its way to reaffirm that "[t]here is no doubt that the Métis are a distinct people" and recognized that the "Métis Nation was ... crucial in ushering in western and northern Canada into Confederation..."

Helpfully, the Supreme Court did not stop there. It went on to reaffirm the Crown has a fiduciary relationship with the Métis people. It also confirmed that Canada has a positive duty to negotiate where Métis rights and claims engaged. These restatements of existing law will further assist in the Métis Nation's reconciliation with Canada.

For example, in Manitoba, the Manitoba Metis Federation has already established collectively held Métis rights protected by s. 35 of the Constitution Act, 1982 as well as an outstanding Métis land claim in relation to s. 31 of the *Manitoba Act, 1870*. Accordingly, negotiations are now a constitutional imperative, no longer left to the whims of the government of the day.

While the answers to the legal and constitutional questions in the Daniels case were relatively simple, the consequences of them are momentous going forward. Put simply, the process of reconciliation with the Métis Nation must now begin.

Jason Madden is a Métis lawyer and a partner in the law firm Pape Salter Teillet LLP. He was legal counsel for the intervener Métis National Council in the Daniels case. A detailed summary of the Daniels case and its implications is available at www.metisnation.ca or by contacting the Manitoba Métis Federation.