

THE DANIELS **DECISION** **WHAT'S POSSIBLE?**





This booklet is dedicated to Harry Daniels (1940-2004), for making it his life's work to stand up against injustice and support the Métis and Non-Status Indians of Canada.
May we never let that work be in vain.

GLOSSARY

Métis: An individual with mixed European and Indigenous heritage.

Indian Act: Canadian law that outlines Federal Government control over Indigenous life. It also dictates who can and cannot be legally registered as Indian.

Non-Status Indians: Individuals who have Indigenous heritage but are not recognized as 'Indian' under the Indian Act.

Status Indians: A person who is legally registered as an 'Indian' under the Indian Act. Being registered as 'Indian' makes an individual eligible for specific programs and benefits.

Fiduciary Duty: A duty of one party to take care of and look after the interests of another party. For example, the Federal Government has a fiduciary duty to First Nations, Métis, and Inuit..

Good Faith: A negotiation principle that states all parties involved in negotiation share a commitment to acting with honesty and integrity.

Litigation: The process of settling a dispute or disagreement through legal action.

Jurisdiction: The power to make legal decisions over a certain policy area. For example, the Federal Government has power over criminal law issues.

Section 35 of The Constitution: A section in the Canadian Constitution Act that recognizes the rights of Aboriginal Peoples as valid and inherent.

Section 91 of The Constitution: A section in the Canadian Constitution Act that outlines areas that the Federal Government has jurisdiction over.

Self-Governance: The ability for a Peoples to have control over their own laws and society.

THE POSSIBILITY FOR **A BETTER TOMORROW** ARRIVED TODAY.



The greatest opportunity for change in the history of Métis and Non-Status Indians is right in front of us.

20 years ago, Harry Daniels was living in a Canada where Métis and Non-Status Indians were arguably the most disadvantaged people in the country, and decided something had to be done.

The Daniels Decision, the culmination of a 17-year long legal battle between the Congress of Aboriginal Peoples (CAP) and the Government of Canada, has made it clear which level of Government is legally accountable for Métis and Non-Status Indian interests –the Federal Government.

This means that for the first time in Métis and Non-Status Indian history, there is someone accountable for handling programs and services, land

claims, self-governance discussions, and the recognition of Métis and Non-Status Indian rights.

It means that real and long-lasting change is more possible today than ever before, because for the first time we are confident in who we should engage in discussion.

But it is up to us to come together and turn this possibility into a reality that is better for all of us. The Daniels Decision put a wheel in motion, now it's our turn to keep them moving.

The Congress of Aboriginal Peoples needs your help to bring this decision to life. We have provided this booklet as a resource to help leaders like you utilize the Daniels Decision to advance the issues of rights, land, governance, and programs in their communities.

THE CHALLENGE.

For decades, Métis and Non-Status Indians were caught in the middle of a dispute between the Federal and Provincial Governments, over who held legal accountability for their interests. This jurisdictional argument led to neither level of Government taking accountability, leading to the needs and interests of Métis and Non-Status Indians being ignored.

This meant that for decades it was impossible to make any headway on rights, land claims, programs and services, and governance, since there was no one to hold a dialogue with.



DANIELS V. CANADA

In 1999, the Congress of Aboriginal Peoples and its then president Harry Daniels sought to put an end to the Métis and Non-Status Indian jurisdictional dispute, and went to court seeking affirmation for the following three declarations:

1. That Métis and Non-Status Indians are 'Indians' under section 91(24) of the Constitution.
2. That the Federal Government owes a fiduciary duty to Métis and Non-Status Indians.
3. That Métis and Non-Status Indians have a right to be consulted and negotiated with in good faith by the Federal Government on a collective basis through representatives of their choice in regard to the interest of Aboriginal Peoples.

The Supreme Court of Canada held the first declaration. This decided that Métis and Non-Status Indians are 'Indians' under section 91(24) of the Constitution, and are therefore under the jurisdiction of the Federal Government.

THE SECOND AND THIRD DECLARATIONS.

The Supreme Court declined to make the second and third declarations on the basis that both were already matters of settled law.

The existence of a fiduciary relationship (a duty of care) to all Aboriginal Peoples was established in *Delgamuukw v. BC* and *Manitoba Métis Federation Inc. v. Canada*.

The duty to consult and negotiate is not triggered for Métis and Non-Status Indians by being included in 91(24), but does apply where Métis and Non-Status Indians have credible or established s. 35 rights or claims.

Although the Daniels Decision deemed both concepts matter of settled law, it nonetheless laid the groundwork for future litigation in each issue.

UNDERSTANDING THE POSSIBILITIES.

The Daniels Decision is often misunderstood. In order to maximize its potential, it is critical for us all to understand Daniels: what it does, what it doesn't do, and most importantly, what it makes possible.

The Daniels Decision **DOES** recognize Métis and Non-Status Indians as 'Indians' in the Constitution. This recognition is fundamentally different than registered Indian Status.

The Daniels Decision **DOES** prevent the Federal Government from turning down proposals on the basis that they are outside of federal jurisdiction.

The Daniels Decision **DOES NOT** compel the Federal Government to pass any specific laws or programs for Métis and Non-Status Indians. It **DOES** serve as a starting point for those seeking programs and services claims as there is now someone accountable for handling these matters.

The Daniels Decision **DOES NOT** make Métis and Non-Status Indians eligible for Indian Status. Programs specifically available to Status Indians are not now available to Métis and Non-Status Indians. It **DOES** provide policy-based justification for making existing Federal programs and services more available to Métis and Non-Status Indians in the future.

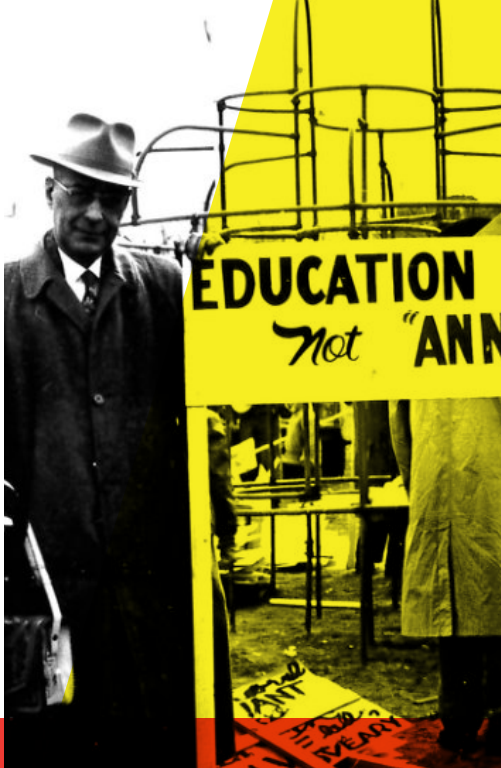
Most importantly, the Daniels Decision puts an end to the persistent game of jurisdictional "hide and seek" perpetuated by the Federal and Provincial governments. For the first time in history, a dialogue can be held.

WHAT DOES IT MEAN?

The Daniels Decision clarifies that the Federal Government is legally accountable to the rights, interests, and needs of Métis and Non-Status Indians.

This means that for the first time in history, Métis and Non-Status Indian leaders know who is responsible for the other end of the dialogue on matters of programs and services, rights, land claims, and self-governance.

Change is finally possible.





WHAT'S POSSIBLE?

Better programs. Land claims. Self-governance. Further recognition of our rights.

All of it is possible. It is up to us.

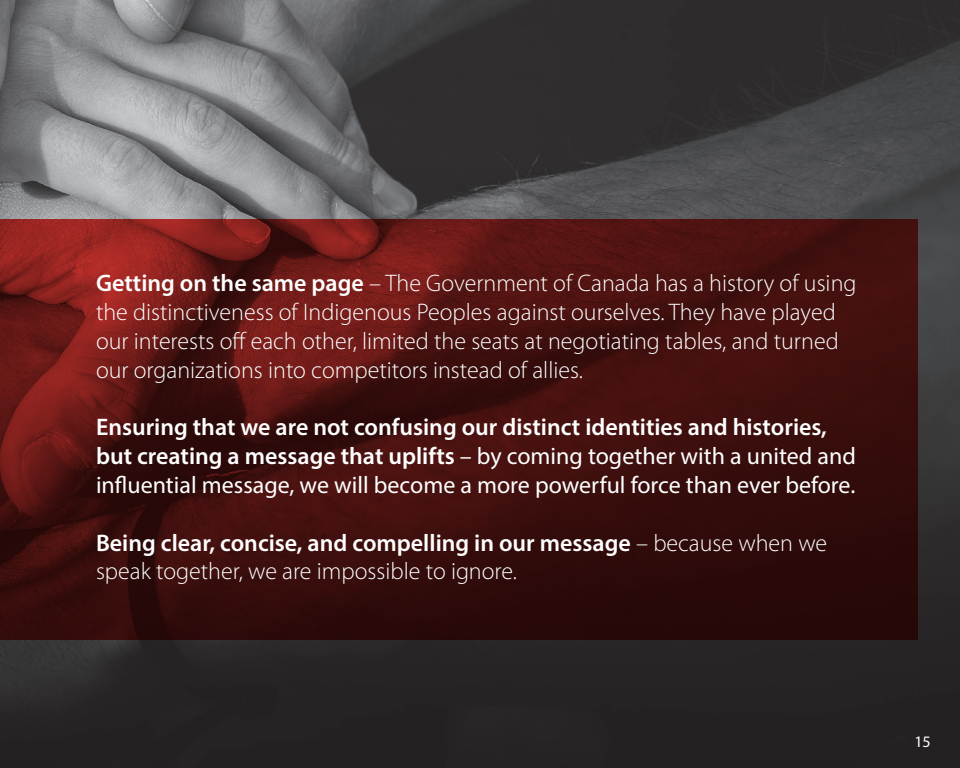
Harry Daniels and his associates created a massive opportunity for change, but to capitalize on that opportunity, we need you.

In fact, we need all Métis and Non-Status Indians to come together, youth and adult leaders alike, to unite our purpose into one clear, compelling, and influential message to the Government of Canada.



THE TASK AT HAND.

When we work together, better programs, rights, land claims, self-governance and more all become possible for Métis and Non-Status Indians. However, we have yet to organize our efforts into cohesive messages, and the Government has used this to create divides within our communities. In order to turn possibility into real change, we need to come together with a united sense of purpose.



Getting on the same page – The Government of Canada has a history of using the distinctiveness of Indigenous Peoples against ourselves. They have played our interests off each other, limited the seats at negotiating tables, and turned our organizations into competitors instead of allies.

Ensuring that we are not confusing our distinct identities and histories, but creating a message that uplifts – by coming together with a united and influential message, we will become a more powerful force than ever before.

Being clear, concise, and compelling in our message – because when we speak together, we are impossible to ignore.

WHAT YOU CAN DO

Informed by some of the brightest legal minds in Canada, the following pages are designed to help you better understand the role you can play to help make the possibilities of the Daniels Decision become a reality.

They outline four key areas where you can help inspire political will and action:

- **Rights**
- **Land**
- **Programs and Services**
- **Governance**

We have also included a case study in each section to help provide clear examples of how others have come together and leveraged change in these very same issues.

This is intended to help each and every one of us – from community leaders to the leaders of tomorrow – to call for change.

Remember, we all have a role to play, a skill to offer, and a perspective to lend.

RIGHTS

The rights of Aboriginal Peoples come from their heritage and histories, and they are inherent and undeniable. Inherent rights like self-identification and ownership of land are not bestowed by the government, they are only recognized by them. Unfortunately, the Government of Canada has historically failed to properly recognize the rights of Aboriginal People.

What's Possible

The Daniels Decision does not create new rights for Métis and Non-Status Indians, but it can be used as a first step towards the equal recognition of rights, and it prevents the Government from avoiding these discussions on the basis of jurisdiction.

RIGHTS

WHAT CAN YOU DO?



1. **Have** conversations with local members of parliament about the rights of Métis and Non-Status Indians.
 - a. **Leverage** section 15 of the *Charter of Rights and Freedoms*, which states that all Canadians have the right to equal treatment under the law, in order to make the argument that Métis and Non-Status Indians are entitled to treatment that is substantively equal to other s. 35 rights-holders.
 - b. **Use** pre-existing treaties as well as section 35 of the Constitution, in which the Federal Government recognizes that Indigenous treaty rights are valid, as sources for your discussions.

2. Assert your rights in your day-to-day personal life.

- a. **Use** your rights. For example, if you have a treaty right to fish, fish according to your rights.
- b. **Refuse** to renegotiate rights you already have.
- c. **Learn** about cases such as *R. v. Powley* and *R. v. Sparrow* for a legal history of Indigenous people asserting their own rights.
- d. **Be** prepared to handle potential confrontations peacefully, respectfully, and reasonably.

3. Advocate in support of new rights as well as the assertion of old ones.

- a. **Encourage** others to explore their history and discover what their rights are.
- b. **Rally** people to assert their own rights in their personal lives.
- c. **Consult** legal aid before engaging in any forms of protest that could potentially have a response from Canadian authorities.

RIGHTS – CASE STUDY

Case Study: Misquadis

What Was The Problem?

Urban Indigenous organizations were not recognized by the Government as legitimate political organizations. This caused urban Indigenous organizations to be excluded from Government funding considerations.

What Was Done?

Roger Misquadis and his colleagues issued a legal challenge that argued the exclusion of urban Indigenous organizations from funding programs was discriminatory, and therefore unconstitutional.

What Was Accomplished?

The legal challenge forced the Government to recognize urban Indigenous organizations as political organizations that are representative of urban Indigenous communities. This distinction enabled urban Indigenous organizations to seek better funding, increase their access to Employment and Social Development programming, and develop more effective poverty-reduction strategies.



LAND

Aboriginal Peoples have an inherent right to the land, which has not been properly recognized by the Canadian Government. Many Métis and Non-Status Indians have been disconnected from their ancestral land. This has limited access to and recognition of their rights.

What's Possible?

The Daniels Decision does not provide Métis or Non-Status Indians new ownership or access to land, but it can provide an opportunity to have discussions with the Federal Government on the matter of land claims, and potentially push the issue further than ever before.

LAND

WHAT CAN YOU DO?

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- 1. Educate** yourself on who you are and what you are entitled to.
 - a. **Be** an example and encourage those around you to learn more about their identities and ancestral land.
 - 2. Assert** your rights to the land.
 - a. **Discuss** with local politicians and bureaucrats about your rights to land.
 - b. **Occupy** land that you have an ancestral right to.
 - c. **Consult** legal aid before physically occupying land.
 - 3. Argue** for land sharing, where Indigenous leadership gains a control of land and governs it with your peers.
 - 4. Leverage** your social media channels to raise awareness on land rights.

LAND – CASE STUDY

Case Study: Burleigh Falls

What Was The Problem?

The Métis people of Burleigh Falls were faced with the possibility of being forcefully evicted from their homes when Parks Canada developed a plan to build a park on their land.

What Was Done?

An ongoing legal challenge was issued to the Attorney General of Canada arguing that the development plans were both unconstitutional and discriminatory.

What Was Accomplished?

A message has been sent that Métis communities will not comply with legislation and development plans that further marginalizes their rights to the land. Litigation on the matter will continue in the future and the Government could be forced to withdraw the development plans.

PROGRAMS AND SERVICES

Government of all levels have programs and services available for Aboriginal Peoples. Unfortunately, these programs have historically been awarded in a discriminatory way and has often marginalized Métis and Non-Status Indians. This has created a sense of competition amongst Aboriginal Peoples and the organizations that represent them.

What's Possible?

The Daniels Decision does not compel the Federal Government to create any specific programs and services for Métis and Non-Status Indians, but it does create an opportunity to call on the Federal Government to increase access and equality in their approach to program and services funding allocations.

PROGRAMS AND SERVICES

WHAT CAN YOU DO?

- 1. Identify** programs and services that are currently unavailable to Métis and Non-Status Indians.
- 2. Inform** the Federal Government on their discriminatory approach to funding allocation.
- 3. Share** clear solutions with government officials to update their funding criteria and allocation models to be more transparent, fair, and equitable.
- 4. Advocate** for the inclusion of Métis and Non-Status Indians in programs only available to those on-reserve or with status cards.
 - a. Leverage** section 15 of the *Charter of Rights and Freedoms*, which states the right to equality, in order to support arguments that Métis and Non-Status Indians deserve equal access to programs and services.
 - b. Utilize** the evidence of identity-based discrimination that excludes Métis and Non-Status Indians such as the recent removal of Métis and Non-Status Indian access to previously granted programs.
- 5. Call** for the development of new programs and services that are equitable and accessible to Métis and Non-Status Indians.

PROGRAMS AND SERVICES – CASE STUDY

Case Study: Bear Clan Patrol

What Was The Problem?

A lack of security and proper law enforcement was leading to a reduced sense of safety among inner-city Indigenous communities in Winnipeg.

What Was Done?

Community members came together and revived the *Bear Clan Patrol* – a volunteer organization that organizes safety patrols of local neighbourhoods and runs an array of other community service programs.

What Was Accomplished?

A system of Indigenous-led crime prevention was established, awareness of the violence that was occurring in Indigenous neighbourhoods was raised, and a greater sense of safety among local indigenous communities was cultivated.

...NITE
AND
END THE
VIOLENCE



GOVERNANCE OVERVIEW

The First Peoples of this land had political systems and processes – what is referred to as self-government. Since the establishment of the British North America Act in 1867, Aboriginal Peoples have been fighting to return to their inherent right of self-governance. Unfortunately, this right remains improperly recognized by the Federal Government, and Aboriginal Peoples are still fighting to return to self-governance.

What's Possible?

The Daniels Decision creates an opportunity for new discussions and litigation on the matter of self-governance, and prevents the Federal Government from avoiding these conversations on the basis of jurisdiction.



GOVERNANCE

WHAT CAN YOU DO?

- 1. Lead** conversations with politicians and key bureaucrats on the topic of self-governance.
- 2. Make** the Daniels Decision a part of your everyday conversations to help educate others.
- 3. Rally** your community to call for a return to self-governance.
- 4. Leverage** your social media channels to raise awareness on the issue of self-governance.
- 5. Further** your understanding of Canada's political systems and parties.
- 6. Inform** your political views by learning about various Indigenous governments.

GOVERNANCE – CASE STUDY

Case Study: Montreal Indigenous Community Network

What Was The Problem?

Rapid growth in the urban Indigenous community led to an increasingly complicated ecosystem of individuals, groups, organizations, and governmental institutions working towards improving the lives of Indigenous people in Montreal, wherein gaps, silos, and redundancies, of both services and information, emerged.

What Was Done?

The Montreal Indigenous Community NETWORK (formerly Montreal Urban Aboriginal Community Strategy NETWORK) was created to coordinate and connect individuals, groups, organizations, and institutions within the urban Indigenous community.

What Was Accomplished?

An increase in the collaboration, coordination, and communication between members of the urban Indigenous community. As well as an increase in resource and information sharing, and a deeper understanding of the complex issues that face urban Indigenous populations.



SEIZING POSSIBILITY, TOGETHER.

The greatest opportunity for change in the history of Métis and Non-Status Indians is right in front of us, and we're going to seize it together.

The Daniels Decision has clarified that the Federal Government is responsible for Métis and Non-Status Indian needs, and in doing so, has held someone accountable for Métis and Non-Status Indians for the first time in history.

Our efforts today, will shape the rights, land, programs and governance of tomorrow.

We as Métis and Non-Status Indians must come together like never before, and unite our priorities into a clear, compelling, and influential message.

Together, we will turn the possibility of today, into the reality of tomorrow.

ACKNOWLEDGEMENTS

ABOUT CAP

Founded in 1971 The Congress of Aboriginal Peoples (CAP) is a National Indigenous Organization. CAP works collectively with its provincial and territorial affiliate organizations across Canada to promote and advance the common interests, collective and individual rights, and needs of its constituents.

The Congress of Aboriginal Peoples believes in inclusion of all Indigenous Peoples, and carries this belief in our vision statement: "That all Indigenous Peoples in Canada will experience the highest quality of life, founded on the rebuilding of our Nations. All Indigenous citizens will rightfully be treated with respect, dignity, integrity and equality."

OUR APPRECIATION

A special thanks to the Technical Working Group made up of Indigenous and non-Indigenous legal experts from across the country who participated in the development of the booklet by providing extensive input and ideas.

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