



# PLAINspeak

Bill C-3 (McIvor) and Cunningham

**Métis Nation Registry or *Indian Act* Status:  
Choosing Your Legal Identity**





Métis around table during North-West 'Half-Breed' Commission, Devil's Lake, 1900

## Bill C-3 (McIvor) and Cunningham

# Métis Nation Registry or *Indian Act* Status: Choosing Your Legal Identity

**T**he Métis Nation has always asserted, and the Supreme Court of Canada has acknowledged, that the authority to determine citizenship in the Métis community rests with the Métis collective.

The Métis emerged as a distinct people or nation in the historic Northwest during the 18th and 19th centuries. This area is called the “historic Métis Nation Homeland”. This historic Métis Nation had recognized Aboriginal title which the Government of Canada attempted to extinguish through the issuance of “scrip” and land grants in the late 19th and early 20th centuries.

*The Constitution Act, 1982*, provides:

- 35(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.

For the purposes of establishing citizenship within the Métis Nation, the Métis National Council General Assembly ratified the Métis Nation definition at a session of the General Assembly in September 2002. It reads as follows:

*“Métis” means a person who self-identifies as Métis, is distinct from other Aboriginal peoples, is of Historic Métis Nation ancestry, and is accepted by the Métis Nation.*

The General Assembly also adopted in principle an acceptance process, which states generally that a person is not eligible to be enrolled as a Métis Nation citizen while that person is enrolled on another Aboriginal registry.

The Supreme Court of Canada (SCC) in *Powley* recognized that as the Métis collective defines itself, the three broad factors of self-identification, ancestral connection, and community acceptance, shall be respected. The identification of Métis shall promote the reconciliation of Métis interests in Canada.

To register as a citizen of the Métis Nation, or for a parent to register a child as a citizen of the Métis Nation, a person must self-identify as Métis, and provide proof of your identity with government-issued photo identification; and prove descent from the “historic Métis Nation”, by undertaking a genealogy which traces your ancestry to a person who received Métis scrip or a Manitoba land grant or who identified as a “Half-Breed” in the 1901 Canadian census, other census or trading record: long form birth certificates or marriage certificates or baptismal records will assist in showing your connection to this ancestor.

**“Métis” means a person who self-identifies as Métis, is distinct from other Aboriginal peoples, is of Historic Métis Nation ancestry, and is accepted by the Métis Nation.**

As a person is not be entitled to be registered on a Métis registry while registered under any other Aboriginal registry, the Métis registry process may require an applicant to declare that they are not registered on any other Aboriginal registry and/or consent to a search of the *Indian Act* registry to ensure that you are not an Indian for the purposes of the *Indian Act* or a Band Member.

All applicants have a right of appeal of any decision of a Métis Nation Registrar.



## ▪ Bill C-3

The British Columbia Court of Appeal, in *McIvor*, held that those sections of the *Indian Act* which granted status to individuals were discriminatory against women in denying them the right to pass on status to the same extent as their male siblings. Bill C-3, which came into force on January 31, 2011, is Parliament's solution to the discriminatory provisions.

The Federal Government in its public awareness campaign explained the Bill as follows:

*The Bill provides Indian registration to any grandchild of a woman who lost status as a result of marrying a non-Indian and who's children born of that marriage had the grandchild with a non-Indian after September 4, 1951.*

Registration under the *Indian Act*, therefore, requires applicants, aged 16 and older, who answer yes to the following questions may apply for status under the *Indian Act*:



Did your grandmother lose her Indian status as a result of marrying a non-Indian?

Is one of your parents registered, or entitled to be registered, under sub-section 6(2) of the *Indian Act*?

Were you, or one of your siblings, born on or after September 4, 1951?

The Bill also provides that if the applicant's grandparents were not married to each other before April 17, 1985, and the parent of the applicant was born after April 17, 1985, the entitlements may not apply.

Applicants may also apply on behalf of their children, aged 15 years and under, and on behalf of dependant adults.

Voluntarily registering under the *Indian Act* pursuant to Bill C-3 is an act that will affect your legal identity as an Aboriginal person. Persons with status as Indians, under the *Indian Act*, will be subject to the rights, privileges, limitations and responsibilities provided by the legislation.

**Once a person is registered, there is no mechanism for voluntary removal from registry under the *Indian Act*.**

## ▪ Alberta v. Cunningham

In *Alberta v. Cunningham*, the SCC found that the *Métis Settlements Act* (MSA) is lawful in providing the authority to the Métis community to govern Métis settlement membership, and in so doing, excluding people with Indian status from membership on the Métis settlement. The SCC held that the provincial legislation properly enabled the Métis community to remove status Indians from the settlement membership registry and to decline status Indians who apply to be registered as a settlement member.

Métis governance over membership was held to be consistent with the objective of preserving the land rights and self-governance authority of the Métis. This authority is necessary to ensure protection for the Métis to have a culture and identity distinct from other Aboriginal peoples. The Métis are recognized as a distinct Aboriginal people under s. 35 of the *Constitution Act, 1982* and the right to maintain a distinct identity has constitutional protection under s. 15 of the *Charter of Rights and Freedoms*.

“ ..... ”

**The Supreme Court of Canada found that the fact some people identify as both Métis and Indian does not undermine the fact that Indian and Métis people are distinct.... There is no prejudice in requiring an individual to choose.**

.....

The SCC acknowledged the historic and ongoing Métis struggle for recognition as a distinct Aboriginal people who hold the right of self-determination. There is no discrimination in addressing this historic wrong. The Métis emerged as a distinct people in the historic Northwest in the 1700s, having consistently and persistently distinguished themselves from the Indian people in their territory. The court went on to say that overlap and confusion with Indian cultures puts Métis identity and culture at risk. Line drawing by Métis serves the legitimate expectations of the Métis and reflects the Constitution. The fact that some people

identify as both Métis and Indian does not undermine the fact that Indian and Métis people are distinct.

The Chambers Judge found and the SCC agreed, that the decision of Aboriginal adults, who might otherwise meet the definition of both the Métis and the Indian, to choose which legislative scheme they wish to fall under – the *Indian Act* or the MSA – is proportionate to the importance of establishing a land base for the Métis as a means by which self-governance, identity and culture is maintained. There is no prejudice in requiring an individual to so choose when the unique plight of a particular disadvantaged people is at stake.

## ▪ Choosing Your Legal Status

There are individuals, who hold both Métis ancestry sufficient for registry under the Métis Nation Definition and First Nations ancestry sufficient for registry under the *Indian Act*.

Voluntary registration under one registry or the other is an act of asserting your legal identity as an Aboriginal person. Hence, individuals, in asserting their legal status, will be deemed to have made a choice as to which legal status they will thereafter hold. These individuals are entitled to the choice but may not retain registration under both regimes.

Once a person voluntarily becomes registered under the *Indian Act*, they lose their entitlement to register or remain registered as a Métis citizen in a Métis Nation registry.



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