Massive Victory for Métis and non-status Indians in *Daniels v. Canada*

WABIGOON, ON: April 14, 2016 – The Ontario Coalition of Aboriginal People (OCAP) is very pleased that today, the Supreme Court of Canada has ruled that Métis and non-status Indians are "Indians" under section 91(24) of the *Constitution Act, 1867*. "They are all Indians under section 91(24) by virtue of the fact they are all Aboriginal peoples," wrote Justice Rosalie Abella.

"We offer our congratulations to Joe Magnet and his legal team for their outstanding work over the past 17 years. Today's decision is a massive victory for Métis and non-status Indians in Canada. The Ontario Coalition of Aboriginal People is also pleased that the Court has overturned the decision of the Federal Court of Appeals that to be Métis, you must meet the *Powley* criteria," said President Maggrah.

The central issue in this case arose from the federal government's denial that it had jurisdiction over Métis and non-status Indians under section 91(24) of the *Constitution Act, 1867*. This denial had been used by the federal government as a justification to refuse to deal with Métis and non-status Indians and to exclude them from federal programs and benefits. Today's declaratory ruling does not compel the federal government to do anything, but relies upon the honour of the Crown, now that the legal issues have been determined by the Supreme Court to respond appropriately.

"In the absence of a defined Constitutional process to finish the work we started in 1983, the courts remain the only vehicle to obtain legal recognition of our rights," said Harry Daniels, in 1998. Today's massive victory marks another major achievement for this late Métis leader. In 1978, Harry Daniels, President of the Native Council of Canada (now the Congress of Aboriginal Peoples), spoke to the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada:

> "To leave the ambiguous provisions of the BNA act dealing with Indians so open-ended in the proposed amendments is to condemn native people in Canada to a future plagued by the whims and biases of legislative expediency. All of the Métis people and tens of thousands of Indians have been deprived of their constitutional rights since 1867. This has been accomplished by laws of expedience, by administrative fiat, and by what amounts to an arbitrary and certainly unilateral process of a shrinking definition of who is an Indian under the *Indian Act.*"

On June 16, 2014, the Congress of Aboriginal Peoples (CAP) filed a leave to appeal *Daniels* to the the top court on the grounds that the Federal Court of Appeal had erred in excluding non-status Indians from the declaration granted previously by the Federal Court and for failing to grant ancillary declarations, including the obligation to negotiate and consult with Métis and non-status Indians, as to our rights, interests and needs as Aboriginal Peoples. CAP had also argued that the Federal Court of Appeal had erred in

emphasizing the test for s.35 Métis identity in *Powley,* thereby adopting a more restrictive approach to the meaning of Métis, than Justice Phelan in the Federal Court. In today's decision, the Supreme Court of Canada overturned the decision of the Federal Court of Appeals that to be "Métis" they must meet the *Powley* criteria.

The Ontario Coalition of Aboriginal People is an incorporated, not-for-profit, membership based coalition formed to advocate for the rights and interests of status and non-status Indians living off reserve and Métis. It is committed to building capacity within community based organizations, collaboration and the development of partnerships that will provide long-term solutions for the needs of Aboriginal Peoples across Ontario.

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