

**SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)**

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA
(The Minister of Aboriginal Affairs and Northern Development)**

and

REGISTRAR, MÉTIS SETTLEMENTS LAND REGISTRY

**APPELLANTS
(Respondents)**

-and-

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CUNNINGHAM, ROGER CUNNINGHAM AND RAY STUART**

**RESPONDENTS
(Appellants)**

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THE INTERVENER'S PERSPECTIVE

1) The appeal deals with membership¹ issues on the only collectively held Métis land base in Canada – the Alberta Métis Settlements. The Settlements are recognized as a part of the Métis Nation. The Métis Settlements were and remain the **only** concrete step that has been taken in Canada to date to address Métis title and land claims. They need to be able to be protected for what they were initially created to be: a land based home where Métis could live and Métis identity, culture, language and self-government could flourish. They are **not** Indian reserves and were **not** created for status Indians, non-status Indians or other Aboriginal peoples. They are a Métis-specific accommodation, which furthers the reconciliation process between the Crown and the Métis in Alberta. This accommodation is set out in the *Métis Settlements Act*, R.S.A. 2000, c. M-14 (“MSA”). As an accommodation, this exclusion of other Aboriginal peoples is not a violation of s. 15(1) of the *Charter*. As such, the Appellants’ appeal should be allowed.

PART I – STATEMENT OF THE FACTS

- 2) The Métis National Council (“MNC”) accepts the facts set out by the trial judge and adds.
- 3) The MNC represents the Métis Nation at the national and international levels. In its final report, the Royal Commission on Aboriginal Peoples (“RCAP”) recognized that “the homeland of the Métis Nation embraces the three prairie provinces as well as parts of Ontario, the Northwest Territories, British Columbia, and the north central United States.”²
- 4) The MNC is formed by the Métis Nation of Ontario, Manitoba Métis Federation, Métis Nation – Saskatchewan, Métis Nation of Alberta (“MNA”) and Métis Nation British Columbia (collectively referred to as the “MNC Governing Members”) coming together to create a national body. For over 25 years, the MNC has represented and advanced the rights and interests of the Métis Nation in constitutional discussions, negotiations with governments, and in the courts.³
- 5) The evidence shows that the Respondents, with the exception of the Ray Stuart, have Indian ancestry through their mother’s family, as well as Métis ancestry through their father’s family.⁴ Mr.

¹ Throughout this factum, the MNC uses the terms “membership” and “citizenship” interchangeably.

² RCAP, Vol. 4, Métis Perspectives, p. 203.

³ RCAP, Vol. 4, Métis Perspectives, p. 230.

⁴ For evidence on Respondents acknowledging their family consists of distinct Indian (mother’s line) and Métis (father’s line) ancestry see: Letter from Lawrent Cunningham to Alberta Premier dated September 24, 2001, A.R. Vol. II, p. 38 which states “[m]y father [Peter Cunningham] was a ‘true’ Métis and my mother [Nora Cunningham] was a treaty Indian from one of the neighbouring reserves...”. See also Respondents Factum at par. 33.

Stuart's evidence shows both of his parents were "treaty Indians," but he married into the Cunningham family.⁵

6) The Respondents are designated as members of various Indians Bands (*e.g.*, Sucker Creek Indian Band, Duncan Indian Band, Bigstone Cree First Nation).⁶

PART II – ISSUES ON APPEAL

7) The MNC proposes to address the following questions that it believes are before this Court:

- a. Is the *MSA* an accommodation in furtherance of reconciliation?
- b. Can accommodations negotiated between the Crown and the Métis exclude other Aboriginal peoples?
- c. Do ss. 75 and/or 90 of the *MSA* unjustifiably infringe s. 15 of the *Charter*?
- d. If there is an unjustifiable *Charter* infringement, what is the appropriate remedy?

PART III – ARGUMENT

8) The MNC positions on this appeal are as follows:

- a. It agrees with the submissions of the MNA on the preliminary issue that the appeal should be allowed because the Respondents did not first exhaust their remedies within the *MSA*. This would enable the Métis Settlement themselves, along with the Alberta Government, if required, to attempt to address these important membership issues, through their own internal processes.
- b. In the alternative, if this Court does not agree with the MNC and the MNA on this preliminary issue, it is the MNC's position that the appeal should be granted because ss. 75 and 90 of the *MSA* do not violate of s. 15(1) of the *Charter*. The MNC argues that the *MSA* is an accommodation between the Crown and the Métis in Alberta, which allows for other Aboriginal peoples to be excluded in furtherance of reconciliation.

⁵ Affidavit of Ray Stuart, A.R. Vol. II, p. 67-68, paras. 3 & 4.

⁶ Affidavit of Ralph Cunningham, A.R. Vol. II, p. 3, par. 12; Affidavit of Barbra Cunningham, A.R. II, p. 13, par. 12; Affidavit of John Cunningham, A.R. Vol. II, p. 22, par. 12; Affidavit of Lawrent Cunningham, A.R. Vol. II, p. 32, par. 13; Affidavit of Gordon Cunningham, A.R. Vol. II, p. 45, par. 11; Affidavit of Lynn Noskey, A.R. Vol. II, p. 54, par. 14; Affidavit of Roger Cunningham, A.R. Vol. II, par. 11; Affidavit of Ray Stuart, A.R. Vol. II, p. 69, par. 10.

- c. If this Court finds the Respondents' *Charter* rights were violated, the MNC agrees with the MNA's submissions on the appropriate remedy in this appeal.

9) The MNC also raises two preliminary issues with the Court in relation to this appeal.

10) First, this Court **does not** have a full evidentiary record before it in order to make some of the determinations that it is being asked to by the Respondents. For example, the record does not provide a proper evidentiary foundation for this Court to thoroughly consider the interplay of statutory rights in the *MSA* and Métis identity. The record also does not allow for a full consideration of the Respondents' claims that *Indian Act* registration is simply a means to access federal health benefits, rather than a means to identify Indian peoples.⁷ Important evidence is not before this Court and the MNC asks for restraint in making any determinations that could impact future Métis identity and rights claims, as these are the early days of Métis jurisprudence. Moreover, the MNC notes that many of the issues raised in this appeal may not need to be addressed, if the matter can be dealt with on the preliminary issues proposed by the MNC and MNA.⁸

11) Secondly, this appeal **does not** address or engage whether Métis are "Indians" for legal or constitutional purposes, i.e., whether Métis are "Indians" for the purposes of s. 91(24) of the *Constitution Act, 1867* or in other statutory or constitutional instruments. The MNC submits that these extremely important legal and constitutional questions should be left for another day until this Court has the benefit of a full evidentiary record before it. The MNC asks this Court to explicitly acknowledge that this appeal will not determine or pre-judge these legal and constitutional issues that are of fundamental importance to the Métis Nation and its communities.

A. The Métis Nation and its Communities have the Right to Determine their own Members

12) As noted above, the MNC believes the appeal should be allowed because the Respondents did not exhaust their internal remedies within the *MSA*, which would have allowed the Métis Settlements to deal with these issues. These processes should have been utilized first because the right of an Aboriginal peoples to determine their own citizenship has been recognized in international law.⁹ This right must be exercised by the Métis Nation and its communities based on the customs, practices and

⁷ For B.C. Court of Appeal commenting on limited case law on interplay between *Indian Act* and constitutional rights and reluctance to decide these issues without evidence see: *McIvor v. Canada*, 2009 BCCA 153 at par. 66.

⁸ *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97 at p. 111.

⁹ *United Nations Declaration on the Rights of Indigenous Peoples*, adopted by the General Assembly, September 13, 2007, A/RES/61/295.

traditions of the people themselves.¹⁰ While courts play an ongoing role in the identification of Métis rights-holders pending negotiated agreements between Métis and governments, the right to identify membership ultimately rests with the Métis.¹¹

13) Consistent with the recognition of this right, the *MSA* legislative scheme allows the Métis Settlements – individually and collectively – to fulfill this role. The *MSA* provides a comprehensive registration process. It allows for the Métis Settlements General Council (“MSGC”) as well as individual Métis Settlements to make determinations and accommodations with respect to their membership (i.e., accepting registered Indians as members).¹² It also includes an appeals process (the Métis Settlements Appeals Tribunal) and a complaints process (the Métis Settlements Ombudsman).¹³

14) Of relevance to this appeal, the *MSA* excludes Indians from membership on the Métis Settlements. Notably, in order to accommodate individuals who had registered as Indians prior to 1990, a “grandfather” clause is included. This clause represented a reasonable compromise for the Métis.¹⁴ It maintained longstanding members of the Métis Settlements, who were registered as Indians prior to 1990, as members for their lifetime. It also re-enforced a prospective desire to ensure the Métis Settlements remained Métis lands, under Métis control, in the future, through the 70+ year continuation of the exclusion of Indians from membership on the Settlements. Equally important, the *MSA*’s exclusion of Indians also removes the membership criteria of the Settlements from being forever affected by an external statute such as the *Indian Act*.

15) The evidence also showed that maintaining control of the Settlements, by Métis, for Métis, has remained a central concern for the leadership and membership of the Settlements.¹⁵ The evidence **does not** show that the Métis Settlements, through their democratically elected leadership, have advocated for the removal of ss. 75 and 90 of the *MSA*. In fact, the evidence shows the MSGC and the Métis Settlements have considered membership policies that would allow for the registration of status

¹⁰ *R. v. Alphonse*, [1993] 4 C.N.L.R. 19 (B.C.C.A.) at p. 61.

¹¹ *R. v. Powley*, [2003] 2 S.C.R. 207 at par. 50.

¹² *MSA*, ss. 222 (y) and (z).

¹³ *MSA*, ss. 180-213 and s. 175.1.

¹⁴ *For evidence on this compromise see: Alberta Government Memorandum dated February 23, 1999, A.R. Vol. III, p. 1.*

¹⁵ *See Letter from Alberta dated October 21, 1999 re: petition to remove registered Indians from Métis Settlements: A.R. Vol. III, p. 11. See also Affidavit of Archie Collins, January 9, 2010, A.R. Vol. II, p. 75, par. 9; p. 91, lines 2-17, 24-27; p. 92, lines 1-5; p. 105, lines 10-21.*

Indians, but they have chosen **not** to take action either individually or collectively.¹⁶ This lack of collective action, by the Métis Settlements, should be respected.

16) Essentially, the Respondents argue that their personal choices to register as Indians trump the ability of the Settlements to adhere to and implement the eligibility criteria set out in the *MSA*. As illustrated in the Métis Settlements' 70+ year history, the exclusion of registered Indians is an important element of community acceptance. This is reflected in the current legislation. It is also reflected in the fact that the Métis Settlements have not attempted to change or override ss. 75 and 90 of the *MSA*, even though they have the ability to do so. While the selective political singling out of the Respondents was clearly objectionable, it is submitted that the exclusion of status Indians is not.

17) As explained above, the *MSA* allows for the Métis Settlements to determine their own membership, with appropriate safeguards, appeal processes and flexibility to accommodate individuals. It is submitted that this process, which is grounded in the right of the Métis to determine their own members, should **not** be frustrated or circumvented.

B. The Alberta Métis Settlements are a Crown-Métis Accommodation and Can Exclude Other Aboriginal Peoples

18) The MNC submits that this Court's analysis of the Respondents' *Charter* claims must be undertaken in the context of the history that led to the creation of the Métis Settlements, as an accommodation that advanced and continues to advance the reconciliation process between the Crown and the Métis in Alberta.

19) As set out in the Ewing Commission's report, the federal government's scrip system failed to secure a recognized land base for the Métis Nation and its communities in the Prairie Provinces, as a means to address Métis title and land based rights and interests.¹⁷ The scrip system was riddled with speculation and fraud and resulted in the Métis being left largely as a landless people in the territory they called home. This Court has already recognized this injustice against the Métis "as a sorry chapter in our nation's history".¹⁸

20) In the early 1900s, the impacts from scrip system, combined with the collapse of the buffalo hunt and increased non-Aboriginal settlement throughout the Prairies, pushed the Métis to the fringes of the new settler society. This new Metis reality was described by RCAP as follows,

¹⁶ See evidence re: *MSGC consideration of termination policy*: A.R., Vol. V, pp. 82-91 and 110-114.

¹⁷ Ewing Commission Report, A.R. Vol. II, pp. 118-119.

¹⁸ *R. v. Blais*, [2003] 2 S.C.R. 236 at par. 34.

While they were never well off, Indian people at least had their reserves and benefited from various social services provided by the government of Canada. Not so the Métis. In the early twentieth century, the circumstances of the Alberta Métis were "especially grim in the central and north-central regions....Game was scarce, prohibitively expensive fishing licences were required, and white settlement was spreading remorselessly. The majority of the Metis were reduced to squatting on the fringes of Indian reserves and white settlements and on road allowances". The 'independent ones,' who had been the diplomats and brokers of the entire northwest were now being referred to as the 'road allowance people'.¹⁹

21) This reality in Alberta led to the Ewing Commission and its recommendations. At their core, the Commission's recommendations to establish the original Métis colonies was an attempt to create a place for the Métis, consistent with the principles of "humanity and justice" that would not allow government to simply ignore the Métis and watch them "gradually disappear."²⁰ Moreover, it is submitted that the Commission's recommendations were an attempt to address the title and land-based interests and rights of the Métis – *who were organized and living on the land* – in the historic Northwest prior to Canada's expansion westward.

22) This Court has consistently recognized that the honour of the Crown is always at stake in its dealings with Aboriginal peoples.²¹ It is submitted this honour, which gives rise to different duties in different circumstances, applies equally to the Métis.²² It guides the ongoing reconciliation process between the Crown and Aboriginal peoples, leading to negotiations, accommodations, and, ultimately just settlements.

23) The original Métis colonies and today's Métis Settlements must be understood in light of this reconciliation process. They represent an attempt to reconcile the title and land based "rights, interests and ambitions"²³ of Alberta Métis. They were not simply a welfare initiative or a program for "disadvantaged" or "poor" people. They represent an "accommodation" in every sense of the word. Over the last 70+ years, the Métis in Alberta and the Alberta Government have continued to work on this accommodation, resulting in the MSA as a part of the reconciliation process.

24) The Crown, acting honourably, must be able to negotiate and arrive at accommodations with different Aboriginal peoples. Implicit within these accommodations are the inclusion of the Aboriginal peoples the accommodation is negotiated for, while excluding other Aboriginal peoples

¹⁹ RCAP, Vol. IV, Métis Perspectives, p. 227.

²⁰ Ewing Commission Report, A.R. Vol. II, p. 119.

²¹ *Haida Nation v. British Columbia*, [2004] 3 S.C.R. 511 at paras. 16-18.

²² See *Powley*, *supra* at par. 50 where this Court recognize the Métis right to hunt as "a right that we recognize as part of the special aboriginal relationship to the land." See also *Manitoba Métis Federation Inc. et al. v. Canada et al.*, [2010] 3 C.N.L.R. 233 (M.B.C.A.) re: Crown-Métis fiduciary relationship.

²³ *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388 at par. 1.

with their own rights, interests and ambitions. Métis-specific accommodations must be able to exclude Indians without offending the *Charter*. Similarly, accommodations negotiated with Indians must be able to exclude Métis, as well as other Aboriginal peoples, without equating to discrimination.

25) In this appeal, the facts show that the original Métis colonies were **not** created for Indians, who had treaties and the *Indian Act* regime as attempts to address their title, claims and interests. **As this Court stated in *R. v. Blais*, “Indian reserves were set aside for the use and benefit of Status Indians, not for the Métis.”²⁴ Similarly, the Métis colonies were created for the Métis, not Status Indians.** The very reason the Alberta Government stepped into the void left by the federal government’s failed scrip policy was because the Métis were **not** status Indians.

26) It would be truly perverse that 70+ years later, the Métis could no longer exclude Status Indians from the Settlements, if they so chose. The honour of the Crown must allow for and protect Métis-specific accommodations being reached and protected. By recognizing the Métis Settlements as an accommodation, this preserves the Settlements as a Métis land base and furthers the ongoing reconciliation process between the Crown and the Métis. It is submitted that this allows for the exclusion of others and withstands the Respondent’s *Charter* claims.

C. Concerns on the Use of Section 15(2) to Resolve this Appeal

27) In light of the relationship that exists between the Crown and Aboriginal peoples generally and the facts that give rise to the accommodation at issue in this appeal specifically, the MNC cautions against the use of s. 15(2) to resolve this appeal.

28) The MNC is deeply concerned that s. 15(2), as proposed by some of the government Interveners, could increasingly be used as a way to inoculate government initiatives that attempt to advance the reconciliation process with some Aboriginal communities, but excludes other similarly situated Aboriginal communities with comparable rights and interests. Specifically, this relates to government initiatives that are created to address Aboriginal rights, claims and land.

29) The MNC proposes that government initiatives or programs that are designed to advance negotiations, accommodations and settlement of Aboriginal rights and interests must be guided by the honour of the Crown in their design and development. They should not be determined at the sole discretion of governments, but should be reviewable based on the honour of the Crown.

²⁴ *Blais, supra*, par. 30.

30) This approach would **not** apply to programs and initiatives that are solely designed for social or economic ameliorative purposes. It would only become engaged when the purpose of the government initiative deals with rights, claims and land interests in furtherance of reconciliation. Moreover, it would not require that the ultimate accommodations reached between the Crown and different Aboriginal groups be the same. It would only require that the honour of the Crown inform how the reconciliation initiative is designed by government and who can participate.

31) It is the MNC's perspective that s. 15(2) is an awkward fit when used to address government initiatives that are designed for the reconciliation of Aboriginal rights, interest and claims. These initiatives are not solely undertaken because Aboriginal peoples are a "disadvantaged" group. They are undertaken in furtherance of reconciliation. As such, it is submitted that they should be considered in light of the honour of the Crown – not simply through the lens of s. 15(2).

D. Registration under the *Indian Act* has Significant Implications for Individuals and Métis Communities

32) The Court of Appeal characterized the registration of some of the Respondents under the *Indian Act* as merely a way for them "to access medical benefits not available to Métis"²⁵ and that individuals registering as Indians had absolutely no effect on the Métis Settlements.²⁶ It is submitted that those conclusions are flawed and unsupportable based on the evidence in this appeal.

33) With respect to individual registration, individuals do not get to 'pick and choose' what parts of the *Indian Act* they want to apply to them. For example, upon registration under the *Indian Act* an individual acquires constitutionally protected harvesting rights under the *Natural Resources Transfer Agreements, 1930*.²⁷ They are designated as members of specific Indian Bands, as the evidence shows the Respondents have been.²⁸ Further, they have no ability to change their minds and no longer be registered as an Indian.²⁹ Recent court decisions have also recognized that *Indian Act* registration has "an important aspect of cultural identity" for Indians, as well as significant legal implications.³⁰

²⁵ Reasons for Judgment of Court of Appeal, A.R. Vol. I, p. 50, par. 7.

²⁶ Reasons for Judgment of Court of Appeal, A.R. Vol. I, p. 50, par. 7.

²⁷ *Natural Resources Transfer Agreements*, confirmed in *Constitution Act, 1930* (U.K.), 20 & 21 Geo. 5, c. 26 [reprinted in R.S.C., 1985, App. II, No. 26], s. 1.

²⁸ See Intervenor's Factum at para. 6, footnote 7.

²⁹ *Indian Act*, R.C.S. 1985, c. I-5, s. 6

³⁰ *For the importance of Indian Act registration to Indian cultural identity see: McIvor v. Canada (Registrar, Indian and Northern Affairs)*, 2007 BCSC 827 at para. 134, aff'd 2009 BCCA 153 at paras. 70-71, 73.

34) *Indian Act* registration also impacts Métis communities because issues that were once important to Métis, without Indian status, are no longer pressing issues for Métis, with Indian status. The pursuit of Métis harvesting rights, securing federal health benefits as Métis and an objectively verifiable Métis registry are just some of the issues that would not be relevant to registered Indians, but would be very relevant to Métis not registered as Indians.

35) An influx of individuals registered as Indians could shift a Métis community's priorities – politically and financially. A community's pursuit of a Métis-specific agenda could become one that is largely influenced by the *Indian Act* and changes to it. The evidence shows this has been and continues to be a concern for the leadership of the Métis Settlements as well as Métis Settlement members.³¹

E. Métis Have Métis Ancestry – Not Just “Aboriginal Roots”

36) The Court of Appeal concluded that the exclusion of Indians from the *MSA* was discriminatory because “the aboriginal roots that make an individual eligible to acquire Indian status are the same aboriginal roots that qualify him or her as Métis.”³²

37) The MNC submits that this finding by the Court of Appeal is wrong in fact and in law.

38) Firstly, the evidence in this appeal shows that the majority of the Respondents **do not** claim that their Métis identity comes from common “aboriginal roots.” They recognize that they have dual Aboriginal ancestries that come from different Aboriginal groups – Indian ancestry from their mother Nora Cunningham, Métis ancestry from their father Peter Cunningham. As such, the Court of Appeal's finding is **not** supported by the evidence before it.

39) Secondly, the idea that Métis derive from a common Aboriginal identity shared with First Nations was rejected by this Court in *Powley*. In *Powley*, this Court recognized that Métis emerged as distinct communities and peoples in areas not yet open to colonization, and who “in addition to their mixed ancestry, developed their own customs, way of life, and recognizable group identity separate from their Indian and Inuit forebearers.”³³ The identity, history and rights of the Métis Nation and its communities **do not** flow from or through a common Aboriginal ancestry with Indians, they are a part

³¹ See *Letter from Alberta dated October 21, 1999 re: petition to remove registered Indians from Métis Settlements*: A.R. Vol. III, p. 11. See also Affidavit of Archie Collins, January 9, 2010, A.R. Vol. II, p. 75, par. 9; p. 91, lines 2-17, 24-27; p. 92, lines 1-5; p. 105, lines 10-21.

³² Reasons for Judgment of Court of Appeal, A.R. Vol. I, p. 57, par. 27.

³³ *Powley*, *supra*, par. 10.

of a new Aboriginal people with distinct communities that emerged from Ontario westward. As such, a fundamental part of Métis identity is having Métis ancestry – not just mixed Aboriginal ancestry or Indian ancestry.

40) It is submitted that the Court of Appeal’s conclusions on this issue did not appreciate that while individuals can have Métis ancestry as well as Indian ancestry this does not equate to these mutually exclusive ancestries being equated to the same “aboriginal roots”. The MNC asks this Court to explicitly address this finding because if it is not clarified, it has the potential to confuse the ongoing development of Métis jurisprudence, which is still in its relative infancy.

F. Potential Implications on Crown-Métis Negotiations and Agreements

41) The implications of this appeal being could have significant and wide-spread negative consequences for existing agreements and future negotiations for Métis.

42) Firstly, existing Métis-specific agreements and accommodations could now be open to challenges by registered Indians who are excluded from them. These negotiated agreements exist across a wide range of areas, including, social housing, labour market programming, education, impacts and benefits agreements, harvesting agreements, etc.

43) Secondly, it could deter governments from entering into Métis-specific negotiations and agreements in the future. One of the successful rationales the Métis Nation has been able to use in order to achieve some of these Métis-specific arrangements has been the argument that Métis are excluded from similar programs that are available to registered Indians. If this appeal is dismissed, it could deter governments from even entering into negotiations with Métis because of concerns on the duplication of programs, delivery structures and resources already provided to status Indians.

44) Thirdly, the MNC and its Governing Members could be excluded from negotiations with government because of their membership requirements which exclude registered Indians. It would be illogical that Métis-specific bodies would now be at a disadvantage because they only represent Métis.

45) It is submitted that refusing this appeal would have irrational and detrimental results on past, present and future Crown-Métis negotiations and accommodations.

PART IV – COSTS

46) The MNC does not seek costs in this appeal.

PART V – NATURE OF ORDER SOUGHT

47) The MNC asks that the appeal be allowed and that the order of the Court of Appeal be set aside.

48) The MNC asks that this Court grant it time to make oral representations at the hearing of this appeal.

All of which is respectfully submitted, this 8th day of November, 2010.

Clément Chartier, Q.C.

Jason Madden

Kathy Hodgson-Smith

PART VI – LIST OF AUTHORITIES

A. CASES

1. *Haida Nation v. British Columbia*, [2004] 3 S.C.R. 511 22
2. *Manitoba Métis Federation Inc. et al. v. Canada et al.*, [2010] 3 C.N.L.R. 233 (M.B.C.A.) 22
3. *McIvor v. Canada (Registrar, Indian and Northern Affairs)*, 2007 BCSC 827 33
4. *McIvor v. Canada*, 2009 BCCA 153 10
5. *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388 4
6. *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97 10
7. *R. v. Alphonse*, [1993] 4 C.N.L.R. 19 (B.C.C.A.) 12
8. *R. v. Powley*, [2003] 2 S.C.R. 207 12, 22, 39
9. *R. v. Blais*, [2003] 2 S.C.R. 236 19, 25

B. LEGISLATION

10. *Indian Act*, R.C.S. 1985, c. I-5 33, 34, 35
11. *Métis Settlements Act*, R.S.A. 2000, c. M-14 1, 12, 13, 14, 15
12. *Natural Resources Transfer Agreements*, confirmed in *Constitution Act, 1930* (U.K.), 20 & 21 Geo. 5, c. 26 [reprinted in R.S.C., 1985, App. II, No. 26], s. 1 33

C. TEXT AND ARTICLES

13. Royal Commission on Aboriginal Peoples, Perspectives and Realities, Vol. 4, Métis Perspectives 3, 4, 20

D. INTERNATIONAL

14. *United Nations Declaration on the Rights of Indigenous Peoples*, adopted by the General Assembly, September 13, 2007, A/RES/61/295 12