

The CAP/Daniels Decision – Frequently asked questions

[Expand all](#) | [Collapse all](#)

▼ [Q. \(Question\)1](#). What does the declaration that Métis and non-Status Indians are "Indians" under s. 91(24) actually mean? Are they now eligible for the same programs and services as Status Indians?

The Supreme Court has declared that Métis and non-Status Indians are "Indians" for the purpose of federal Parliament's law-making jurisdiction under subsection 91(24) of the *Constitution Act, 1867*. We will be working in genuine partnership with Métis and non-Status Indians - based on recognition of rights, respect, and partnership - in order to meaningfully advance the work of reconciliation.

The ruling does not impact on Métis and non-Status Indian eligibility for programs and services currently targeted to Status Indians.

▼ [Q. \(Question\)2](#). In practical terms, what now is the difference between a Status Indian and a person who is Métis? What is a non-Status Indian?

A Status Indian is a person who is registered under section 6 of the *Indian Act*. While there is no legal or legislative definition of "Métis," they are recognized as one of three Aboriginal Peoples under section 35 of the *Constitution Act, 1982*.

The Supreme Court of Canada concluded in *Daniels* that the term "Indian" for purposes of Canada's law-making powers under section 91(24) includes all Aboriginal peoples including Métis and non-Status Indians and there is no need to delineate which mixed ancestry communities are Métis and which are non-Status Indians. It held that determining whether particular individuals or communities are non-Status Indians or Métis and therefore "Indians" under s. 91(24), is a fact-driven question to be decided on a case-by-case basis in the future.

▼ [Q. \(Question\)3](#). What will this decision cost the federal government?

We are studying the decision to determine next steps. We will be working in genuine partnership with Métis and non-Status Indians - based on recognition of rights, respect, and partnership - in order to meaningfully advance the work of reconciliation.

▼ [Q. \(Question\)4](#). Do Métis need to form into bands like First Nations?

The Supreme Court of Canada decision has no impact on band creation or band membership, which falls within the purview of the *Indian Act*. There is no requirement for Métis to "form into bands."

▼ [Q. \(Question\)5](#). Are all individuals who self-identify as Métis entitled to rights under section 35 of the *Constitution Act*? Are they now entitled to federal programs and services?

Not all Canadians who self-identify as Métis are section 35 rights-holders. There is a distinction between Métis self-identification and Métis Aboriginal rights. The 2003 Supreme Court of Canada decision in *R. v. (versus). Powley* outlines the test to prove Métis Aboriginal rights, and Métis self-identification is only *one component* of a broader objectively verifiable process that is required in order to meet the *Powley* test.

▼ [Q. \(Question\)6](#). Does the Supreme Court of Canada's April 14, 2016, decision mean that Métis and/or non-Status Indians are now eligible to register as Status Indians?

The Government of Canada respects and welcomes the Supreme Court of Canada decision and the clarity it brings. We will be reviewing it closely and working with Indigenous partners and others to ensure we are following court direction as we move forward. However, the decision does not provide Métis or non-Status individuals with new entitlements to registration as [Status Indians](#). The current registration provisions within the *Indian Act* do not provide the Department with the authority to grant Métis or non-Status recognition; therefore, individuals should not apply under the *Indian Act*.

As has always been the case, individuals applying for registration as a Status Indian under the *Indian Act* will be assessed based on the existing eligibility criteria for Indian registration. Please verify the [application criteria](#) before submitting an application for Status.

Date modified:

2016-04-14