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Introduction

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Editor's Introduction

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Welcome to volume 3, issue 3 of *aboriginal policy studies*. This is the journal's first special issue since our inaugural issue in 2010 on the state of the policy field in Canada as it relates to Métis, Non-Status Indian, and urban Aboriginal issues. Issue 3(3) is focused specifically on the broad issue of Non-Status Indians. In doing this, we explore a wide range of what, as we discovered, is a massively complex set of issues. Part of the impetus for this special issue is certainly traceable to the relative lack of research exploring the implications of what is now a century-old policy effect—the removal of women and their families from the legal auspices of the *Indian Act* upon their marriage to Non-Status Indian men (whether still "ethnically" Aboriginal—such as Métis or Inuit—or non-Aboriginal altogether).

More recently, however, the issue arrives in the wake of a number of recent court cases: the 2009 *McIvor* decision and the subsequent Federal Court of Canada and Federal Court of Appeal *Daniels* decisions (in 2013 and 2014, respectively). The *McIvor* decision relates to a Non-Status Indian woman living in British Columbia challenging the sexist provisions of the *Indian Act* that led to her and her children's removal from the *Indian Act*'s legal guidelines. This decision was followed by the federal government's formal response in 2010, Bill C-3, a piece of legislation intended to correct earlier sex discrimination in the *Indian Act*. As several of our authors explain below, Bill C-3 addresses the problem only partially, and certainly not in a manner that respects Indigenous governing systems.

Similarly, the recent *Daniels* decisions have cast a judicial light on whether Métis and Non-Status Indians could be considered "Indians" for the purposes of section 91(24) of the British North America Act of 1867, with the court finding, in the original trial court decision, that both groups should be considered Indians under section 91(24). The Federal Court of Appeal narrowed this finding to Métis specifically, a finding that the federal government recently decided not to appeal any further, though at the time of writing no decision has been made on whether they will cross-appeal the Congress of Aboriginal Peoples' appeal of what they see as the "narrow" definition of Métis in the appeal court decision.[1]

In the context of the *Indian Act*'s longstanding policy effects and its more recent activity in the courts and legislative branch, we offer three peer-reviewed articles, four commentaries, a book review and a set of foundational documents. In this issue's first article, David Newhouse, Pam Ouart, and Yale Belanger discuss the problems and possibilities encountered by Non-Status Indians in their attempts to organize politically, undertaking what is essentially a "near history" genealogy of these collective efforts. The authors begin by discussing the original representative groups in the 1960s, tracing their fissioning into

1 "Non-status Indian organization seeks to appeal the Daniels Decision," *NationTalk*, June 20, 2014, http://nationtalk.ca/story/non-status-indian-organization-seeks-to-appeal-the-daniels-decision/.

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separate representative groups in the 1970s as emblematic of the existing legal categories of the time and then again in the 1980s following the constitutionalization of Aboriginal administrative categories in the 1982 *Constitution Act*. The authors compellingly demonstrate the manner in which Non-Status Indian issues are far overshadowed by those of Métis and status Indian organizations. However, though they trace the emergence of Non-Status Indian organizations and their increasing articulation of distinctive needs and concerns, Newhouse, Ouart, and Belanger explain that there are still far more questions than answers about the policy place of Non-Status Indians in Canada's larger Aboriginal policy field.

In the second article, Dr. Pam Palmater uses the *Indian Act* as a window into discussing the meaning and effects of genocidal policies. Of course, genocide is itself a hotly contested concept, and Anglo settler nation-states (Canada, Australia, the U.S., New Zealand, etc.) have balked at any use of the term to describe their relationships with Indigenous peoples. Playing off her widely regarded book *Beyond Blood*, Palmater nonetheless argues compellingly that the *Indian Act* has produced and cemented a longstanding "legislative extinction" through which Indigenous individuals and communities who have lost status have seen the intergenerational erosion of their identity, culture and communities.

Finally, Dr. Ravi De Costa takes a broader view of the *Indian Act* (and the legal creation of Non-Status Indians) as a form of state-sanctioned population definition. He undertakes a comparative analysis of nation-state attempts to define Indigenous peoples more globally. In addition to making the case that these definitions regarding Indigenous populations were global, De Costa explores the comparative similarities and differences in their definitional boundaries (i.e. self-definition, descent, specific cultural standards, etc.). Perhaps more importantly, he highlights the implications of increased political activity by Indigenous peoples themselves in these varied national contexts.

In addition to the peer-reviewed articles, this journal issue contains four commentaries. In the first, Andrew Siggner and Dr. Evelyn Peters explore the demographic and socioeconomic characteristics of the Non-Status Indian population. They note that while little differentiates the Non-Status Indian population socioeconomically from other Aboriginal groups, differences nonetheless exist between Non-Status Indians and non-Aboriginals: Non-Status Indians tend to have slightly lower employment rates in general and lower rates of "knowledge economy" employment more specifically, and tend to live in older houses in more need of repair. In the second commentary, PhD student Jessica Kolopenuk writes a letter to her imaginary future daughter about the effects of current *Indian Act* regulations on her ability to pass on status to her daughter. Written eloquently and with force, Kolopenuk's commentary demonstrates that these issues are not the "dry policy" with which we often associate them. Instead, they can painfully affect real families, and over multiple generations.

Third, noted Métis legal scholar Paul Chartrand provides a sober assessment of the recent court case *R. v. Daniels*, a case in which the plaintiffs sought what is called a "declaration" that Métis and Non-Status Indians were Indians within the meaning of section 91(24) of the

Constitution Act, 1867. This case has drawn much speculation from the media about what the case was (supposedly) about. In his commentary, Professor Chartrand explores the manner in which the presiding judge relied heavily on antiquated notions of race to arrive at his decision, despite his (i.e. the judge's) obvious discomfort with its use. Chartrand ends with a spirited critique of the general legal strategies employed by the federal government in the years following the case's launch.

Finally, and relatedly, law Professor Catherine Bell offers a second commentary on the Daniels decision, exploring sets of issues similar to those touched on by Professor Chartrand. In particular, Professor Bell examines why Justice Phelan declared that Non-Status Indians and Métis fall under federal jurisdiction. Following this, she sets out the issues appealed to the Federal Court of Appeals (FCA) and explains why the FCA held that a declaration on constitutional jurisdiction has practical utility for the Métis, but not for Non-Status Indians.

In addition to the articles and commentary, this special issue on Non-Status Indians includes Vivian O'Donnell's review of Dr. Bonita Lawrence's recently published book *Fractured Homeland: Federal Recognition and Algonquin Identity in Ontario* on the complexities of identity among Aboriginal communities in Ontario. Finally, this issue's foundational documents section includes a reproduction of *Bill C-3*, the federal government of Canada's formal response to the *McIvor* decision, noted earlier in the introduction. We hope that you enjoy this issue, and we encourage anyone interested in writing a journal article, commentary, or book review – or who has suggestions for foundational documents – to contact us at apsjournal@ualberta.ca.