LAW SCHOOL

Mark of Honour: a Case Brief

Descent by either sex: the Crown's mark against the Indian Act.

The issue

Does Dorchester's Order of 1789, conferring the mark on adherents and "all their children and their descendants by either sex", define the class's membership today; and how does its rule of descent compare with the Indian Act's, which courts and the UN Human Rights Committee have found to discriminate by sex?

The instruments

Instrument	Date	What it does
Dorchester's Order in Council	9 Nov 1789	The mark UE on adherents and all descendants by either sex; a registry
Simcoe's Proclamation	6 Apr 1796	Adherence ascertained on oath; the registry made
Indian Act	1876	Status through the father
Bill C-31	1985	Status restored to many women and their children; s 6(1) and 6(2)
Later amendments	2010, 2017	Bills C-3 and S-3, after McIvor and Descheneaux

The statutes

Indian Act, RSC 1985, c I-5, s 6.

Canadian Charter of Rights and Freedoms, ss 15, 28, Part I of the *Constitution Act, 1982*.

Constitution Act, 1867 (UK), 30 & 31 Vict, c 3, s 109.

The cases

Lovelace v Canada, UN Human Rights Committee, Communication No 24/1977 (1981)
Loss of status on marrying out denied a woman her right to enjoy her culture with her community, contrary to art 27 of the Covenant.

McIvor v Canada (Registrar of Indian and Northern Affairs), 2009 BCCA 153
The registration rules still discriminated by sex in the descent of status; Parliament amended the Act.

Descheneaux c Canada (Procureur général), 2015 QCCS 3555
Remaining sex-based inequities in registration found unconstitutional; Bill S-3 followed.

R v Marshall, [1999] 3 SCR 456
Historical instruments are read in their context.

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The arguments

	For the Crown	For the class
The Order	A colonial honour; no legal effect today	A Crown instrument never revoked; it names the class by descent
Descent	Membership by statute (the Indian Act) or community	By either sex, as the Order's note expressly says
Equality	The Act has been amended to cure discrimination	The Order needed no cure: it never discriminated by sex
Who keeps it	No public duty to keep a UE registry	Simcoe's Proclamation and the honour of the Crown; the Register keeps it now

Weak points to test

For the class: whether a colonial honour can define legal membership; the Old U.E. List as the Crown's only roll. For the Crown: why an instrument that never discriminated should yield to a statute that did; s 28 of the Charter; whether the mark was ever revoked.

Briefing note

A school board asks whether it may list a student's name with UE in its records, at the family's request, and whether doing so says anything about the student's Indian Act status. In 150 to 200 words, advise the board: what the mark is, what it does and does not imply, and what to record. Write it as a briefing note: purpose, background, considerations, recommendation.

Moot problem

An applicant descends from a Loyalist Mohawk of Canajoharie through three women in a row; under the Indian Act she has no status. She seeks a declaration that she is of the class under Dorchester's Order, entitled to the mark and to be recorded. The Crown says the Order has no legal effect today.

For the applicant: the Order's words, never revoked; Marshall on context; ss 15 and 28 as a measure of fairness. **For the Crown:** the Order's colonial character, and the Indian Act as the measure of belonging. **For both:** what a declaration would and would not do.

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A worked outline: IRAC

Step	For the applicant
Issue	Is the applicant of the class under Dorchester’s Order, entitled to the mark and to be recorded?
Rule	The Order and its note; Simcoe’s Proclamation; Marshall on context; the Charter’s equality guarantees as a measure.
Application	Her line runs through women, and the Order counts descent by either sex; the Indian Act’s rule is a different system and does not displace it.
Conclusion	A declaration that she is of the class and entitled to the mark.

The Crown’s outline runs the same four steps the other way. Students draft it themselves.

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Written assignment: memorandum of argument

The task

Write the memorandum of argument for one side of the moot on this sheet: the applicant or the Crown, as your instructor assigns. Then argue it.

Requirements

- 2,500 words, not counting the list of authorities.
- Every authority cited in McGill Guide form, with pinpoints.
- At least six authorities, including at least two not on this sheet.
- Meet the other side’s best argument in Part III, not just your own case.
- Only facts set out in the moot problem; no new facts.

Structure

- Part I, the facts: a neutral statement, no more than two pages.
- Part II, the issues: each as a single question.
- Part III, the law and argument: issue by issue, the rule, its application, and the other side’s answer met.
- Part IV, the order sought: precisely worded.
- Part V, the list of authorities: statutes, then cases, then secondary sources.

Timeline

- Week 1: research; a one-page outline of your issues and authorities.
- Week 2: the full memorandum, exchanged with the other side.
- Week 3: oral argument.

Oral argument

Fifteen minutes a side, two minutes’ reply for the applicant. Expect questions from the bench from the first minute; the marking guide on the instructor’s page applies.

Integrity

Your memorandum must be your own. If you use an AI tool for research or drafting, verify every authority against the reports and say so in a note; an invented citation fails the assignment.

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For the instructor: standards met

Universal competencies	Identify key facts and claims; Understand perspective and point of view; Analyse and evaluate evidence; Apply: what does this mean for us?. The same everywhere, whatever the curriculum.
TRC Call to Action 28	Indian law (the Indian Act's registration rules), human rights (Lovelace, McIvor, Descheneaux), and the history of Aboriginal–Crown relations.
National Requirement	Problem-solving, legal research, and oral and written communication, within constitutional and human rights law.
Citation	The McGill Guide; pinpoints left for students to supply.
Method	IRAC; a briefing note to a school board; a moot on a declaration.
Balance	The arguments both ways and their weak points; the brief names its own position.
Time	One class of 90 minutes; the moot as a separate session.

Marking guide: the moot

	Outstanding	Strong	Competent	Weak
Law	Every authority on point, accurately stated and pinpointed	Main authorities correct	Some missed or loose	Wrong or absent
Analysis	Applies the law to the facts and meets the other side's best point	Applies the law clearly	Applies it in part	States law without applying it
Structure	A clear road map, followed throughout	Clear and mostly followed	Some drift	Hard to follow
Advocacy	Answers the bench directly and returns to the theory	Answers well	Answers with difficulty	Avoids the questions

This brief sets out the Mohawk Nation of Grand River's position beside others, for study and argument. The case summaries are for teaching: read the reports. It is not legal advice.

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