LAW SCHOOL

What the Register Does: a Case Brief

A Nation's register, identity, and privacy.

The issue

What legal standing does the Nation's Register have as a record of identity and descent; how should others treat its certificates; and what privacy obligations attach to it?

The instruments

Instrument	Date	What it does
Dorchester's Order	1789	A registry of the posterity ordered
Simcoe's Proclamation	1796	Ascertainment on oath before the magistrates
UNDRIP, art 33	2007	Identity and membership
UN Declaration Act	SC 2021, c 14	Canada's implementing statute

The statutes

United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14.

Personal Information Protection and Electronic Documents Act, SC 2000, c 5.

Evidence Act, RSO 1990, c E.23.

The cases

R v Powley, 2003 SCC 43

Membership in a rights-bearing community: self-identification, ancestral connection, community acceptance.

Mitchell v MNR, 2001 SCC 33

Evidence of Indigenous history is admissible if useful and reasonably reliable.

The arguments

	For a sceptical institution	For the Register
Standing	A private list without statutory status	The Nation's own register, to the Crown's 1796 standard
Proof	Certificates need independent proof	Each line proved by records and sworn
Privacy	Must comply with privacy law	Adopts privacy law's principles, and more
UNDRIP	Interpretive	Art 33 recognizes a people's own membership

Weak points to test

For the Register: no statute recognizes it; Powley's community-acceptance test. For the institution: the Register's records and oath may exceed what many institutions accept as proof.

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Briefing note

A bank asks whether it may accept the Register’s certificate as proof of identity for opening an account. In 150 to 200 words, advise the bank: what the certificate proves, how to check it, and what else to ask for. Write it as a briefing note: purpose, background, considerations, recommendation.

Moot problem

A member applies for a declaration that a provincial agency acted unreasonably in refusing the Register’s certificate as evidence of descent, without considering it. The agency says only government records count.

For the member: the certificate’s basis, Mitchell on evidence, UNDRIP. **For the agency:** its statute and its discretion. **For both:** what a reasonable decision-maker must do with evidence it does not usually see.

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A worked outline: IRAC

Step	For the member
Issue	Was the refusal to consider the certificate reasonable?
Rule	Reasonableness review; evidence of Indigenous history (Mitchell); UNDRIP.
Application	The agency refused without looking; the certificate rests on records and an oath.
Conclusion	The decision set aside and remitted for reconsideration.

The agency’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 member or the agency, 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	Identity and membership (UNDRIP art 33, Powley), evidence (Mitchell), and privacy.
National Requirement	Problem-solving, legal research, and oral and written communication.
Citation	The McGill Guide; pinpoints left for students to supply.
Method	IRAC; a briefing note to a bank; a moot on judicial review.
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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