ABORIGINAL

LAW RESOURCES

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INTRODUCTION

By Carlie Kane

Canadian Aboriginal law is a body of law in Canada that focuses on the rights and issues of Indigenous peoples (First Nations, Métis and Inuit) in Canada. Aboriginal law is different from Indigenous law. Indigenous law refers to legal traditions, customs and practices of Indigenous peoples. To further clarify, Aboriginal law is generally considered to be the law of the state (Canada), and comes from legislation and the common law through the courts and the Constitution; whereas, Indigenous law refers to Indigenous peoples' own law, such as customs, songs, dances, stories, language, and ceremonies.

I would like to acknowledge and mention that when the terms *Indian* or *Aboriginal* are used, it is in reference to colonial legislation and government policies.

This document is a compilation of Indigenous legal resources from various scholars and resources. A full reference list is available at the end of the document.

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A TIMELINE SO FAR

PRE-CONTACT INDIGENOUS SYSTEMS OF LAW AND GOVERNANCE

From the University of Alberta ReconciliAction Blog:

> Indigenous Peoples have always self-governed, even before contact. It is important to understand that Indigenous governance is not a new or novel concept and has been in practice for hundreds of years. Pre-contact, Indigenous Peoples were organized as sovereign nations. Each group exclusively occupied territory, exercised governmental authority and established "their own cultures, economies, governments, and laws." Indigenous Peoples owned the land they occupied and had property rights and responsibilities regarding the land. It is for this reason that Indigenous rights to lands and natural resources are inherent. Indigenous Peoples occupied, used and cared for the land as sovereign nations prior to European contact. (Centre for First Nations Governance, n.d.)

From the Aboriginal Justice Implementation Commission:

> Indigenous Creation Stories "speak of the original peoples being on this land from the time of its creation. In essence, they have lived here from time immemorial. Archaeological evidence of hearths at the forks of the Red and Assiniboine rivers, of garden plots at Lockport near Selkirk on the Red River, of rock paintings in the Whiteshell and of bison jumps in the Assiniboine River valley near Brandon are merely the best known of the physical evidence of this long occupation. As this evidence accumulates, scholars have sketched a picture of hunting-based and agriculture-based societies, of trade and of material culture that demonstrates how effectively they adapted to their environment. The social structures of these communities, however, their politics, diplomacy and family relations, are less evident. It is much more difficult to create a picture of the society in which these people lived their lives. Our brief description of the customary law that prevailed in these Aboriginal communities, drawn from oral histories of the people and written accounts of early contacts, will suffice to underline our conclusion that a separate and distinct legal system existed in pre-contact Aboriginal history." (The Aboriginal Justice Implementation Commission, n.d.)

INDIGENOUS ALLIANCES

From the **Royal Collection Trust**:

> "When Jacques Cartier planted a cross and claimed Canada for France during his first voyage in 1534, the Iroquois (Haudenosaunee) chief Donnacona approached him and gestured that the land was not Cartier's to claim. Donnacona later travelled to France with Cartier and was warmly welcomed at the French court, where he died before he could return home. These events marked one of the earliest documented instances of contact between First Nations and Europeans. European settlement in Canada began in earnest in 1608, with the establishment of the city of Quebec. The next two centuries saw greater contact between settlers and Indigenous Canadians. Some of this contact was beneficial: settlers traded with Indigenous communities and some married into them, alliances were signed and treaties such as the Great Peace of Montreal in 1701 treated First Nations and Europeans equally. Other aspects of contact severely affected the lives of Indigenous people in Canada. New diseases ravaged Indigenous societies, resources became increasingly scarce and Europeans came to be involved in longstanding conflicts between Indigenous communities."

1701, COMMERCIALIZATION OF FIRST NATIONS HARVEST

Commercialization of First Nations harvest created a highly competitive fur trade that led to wars between the First Nations. In 1701, France and the 40 First Nations around the Great Lakes basin entered into the Great Peace treaty to end the violence.

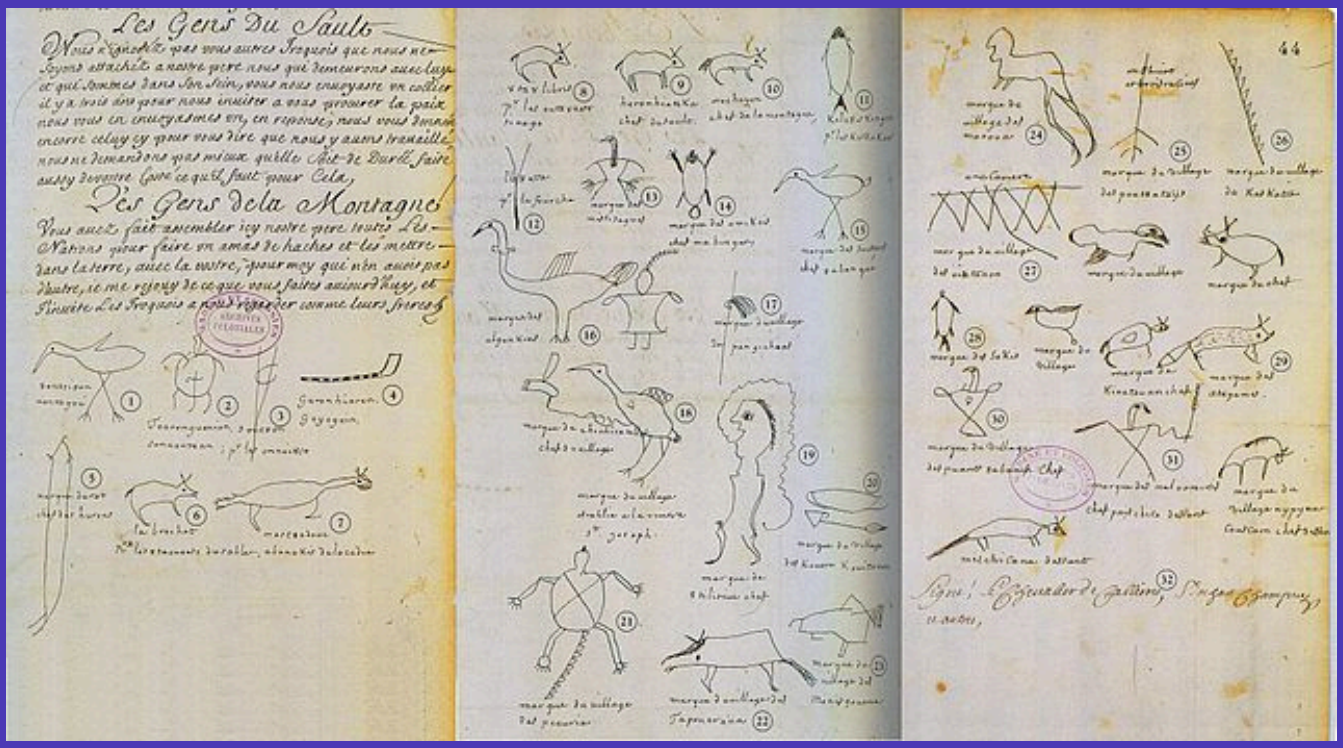


Image: Peace Treaty of 1701, In the peace treaty of 1701, pictograms represent the signatories of the various nations.

SPECIAL RELATION TO THE CROWN

From the **Royal Collection Trust**:

> "In the nineteenth century, Indigenous rights were increasingly ignored by unequal treaties and the assimilation policies of successive colonial and federal governments. First Nations' see their relationship with the Crown as separate to that with the government and have used this special relationship to voice their grievances. Among the first people to establish this relationship were the Mohawk (Kanien'keha:ka) who made several Treaties with the Crown, known as the Covenant Chain, in the seventeenth century. In 1710, Queen Anne held an audience with four leaders from the Mohawk and Mahican, who sought British support in their conflict with France and its Indigenous allies."

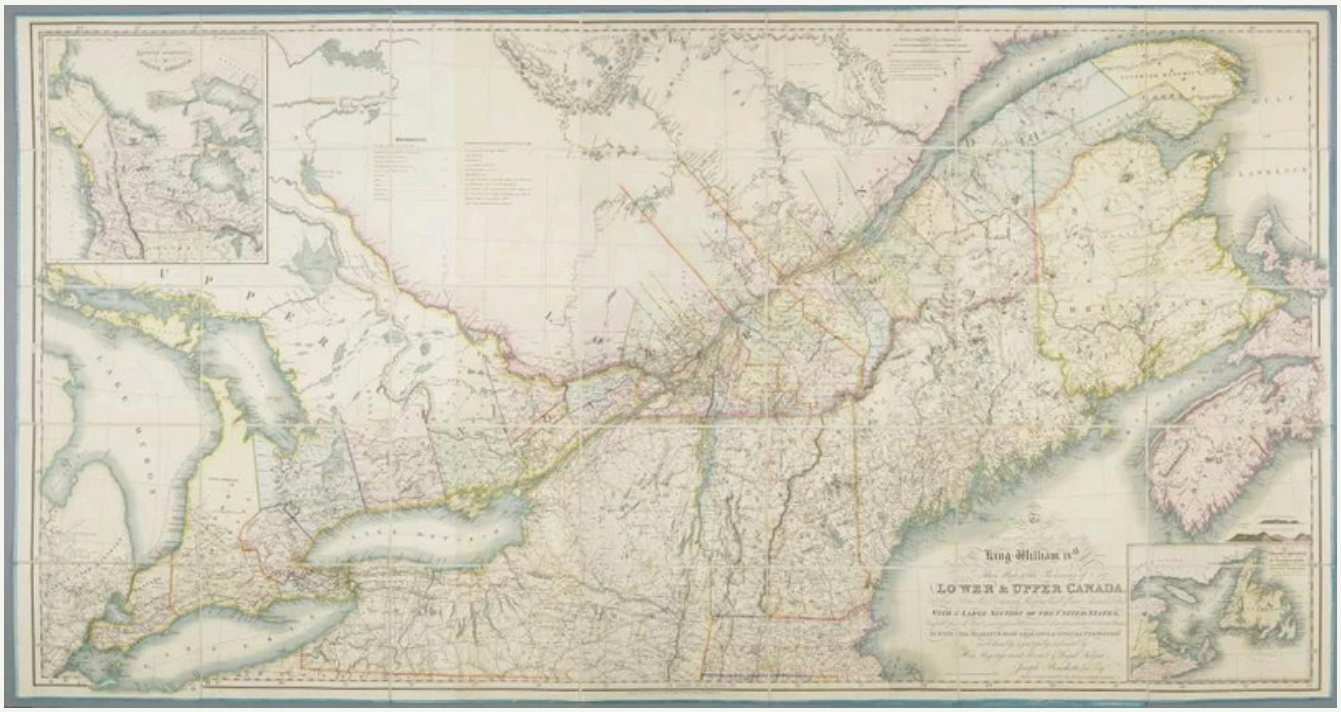


Image: General Map of the Provinces of Canada, 1831. Royal Collection Trust / © His Majesty King Charles III 2024

1763, SEVEN YEARS WAR

From the Canadian Encyclopedia

> "The Seven Years' War (1756–63) was the first global war. In North America, Britain and France fought each other with the help of Indigenous allies. At the end of the war, France gave Canada (Quebec) and Ile Royale (Cape Breton) to Britain, among other territories. This is the reason that Canada has a British monarch but three founding peoples — French, British and Indigenous. "

1763, ALLIES TO WARDS OF THE STATE (THE ROYAL PROCLAMATION)

From Nelligan Law, 2022

> "After 1763 the relationship between the Indigenous peoples and the Crown changed from allies to wards. The changing relationship was driven by the influx of newcomers following the American war of Independence. There was a greater demand for land and the First Nations were no longer seen as allies but rather as obstacles to growth. The Royal Proclamation of 1763 made an appearance when France ceded territories to Britain in the Treaty of Paris, and King George III of England issued the Royal Proclamation. The 1763 Royal Proclamation "set out a framework for the British Crown to acquire Indigenous interests in land through treaties. The Proclamation reserved to Indigenous peoples lands that had not been ceded to or purchased by the Crown, recognized that Indigenous interests in lands could only be purchased through agreements with the Crown following a public meeting involving the Indigenous community, and provided that no private person could directly acquire Indigenous interests in land."

1764, TREATY OF NIAGARA

From the Canadian Encyclopedia

> In July and August 1764, Sir William Johnson and approximately 2,000 people, representing approximately 24 First Nations, met at Niagara to discuss an "alliance with the English." The discussion led to the acceptance of the Royal Proclamation of 1763. It also included one of the first land cessions under the Royal Proclamation's protocols, a return of prisoners, and an accepted British presence in the Great Lakes area. The resulting treaty was recorded in wampum. In the contemporary era, the 1764 Treaty of Niagara is not recognized by the Canadian government but is seen as a foundational document by First Nations for all subsequent relations and treaties.

1818, TREATY ANNUITIES

From Active History:

> “Annuities were first included in three treaties made in October and November 1818. For example, on November 5, 1818, the Ojibwa and British made a treaty pertaining to the Rice Lake area, with financial terms described as $10 worth of goods at Montreal prices to be distributed annually to each man, woman and child. This was explained by Crown representative William Claus, who introduced the new system of payment that would continue “as long as any of you remain on Earth.
>
> While Claus didn’t say so, the Crown was likely financially motivated to avoid larger, one-time treaty payments. During this period, there was tremendous Imperial pressure to reduce the Indian Department’s annual expenses, as funded from Britain’s military budget. After the War of 1812 and the Treaty of Ghent (1815) the British foresaw lasting peace in North America, and wished to reduce military expenditures for Indigenous people. By 1818, there were frequent instructions from London to find means to reduce this cost.
>
> More deeply, the system of annual presents drew on traditions of “material diplomacy” that the French and British had learned from Indigenous peoples. Early historical records abound with examples of material diplomacy—gift giving, exchange, feasting, and other tactile expressions of good will—, which colonial officials witnessed, reciprocated, and strategically assumed. Treaty annuities may be viewed within this context, as Indigenous people may have experienced annuity payments as material gestures according to their own diplomatic traditions, and the ways that the British already engaged with them.” (Baldwin, 2018).

1850, THE ROBINSON TREATIES

From the Canadian Encyclopedia:

> “The Robinson Huron Treaty signed in 1850 outlines an agreement for sharing land and resources. The First Nations in the Treaty territory did not surrender their land, but agreed to share it in exchange for an annual payment for any resource revenue in the territory. The Robinson Treaties used American precedents which established a pattern for future treaty negotiation and pageantry in Canada (see Treaties with Indigenous Peoples in Canada). The presence of British troops at the signing as well as the visit by the governor general was adapted and expanded for the Numbered Treaties (1871–1921). The idea of an annuity (annual payment) and the continuance of hunting and fishing rights on Crown lands were also drawn from American precedents and applied to post-Confederation treaties.Robinson’s promise that Métis claims would be dealt with were never fulfilled. After many court challenges, the Supreme Court of Canada recognized Métis hunting rights in the 2003 Powley Case.”

1850, DETERMINING WHO WAS A LEGAL "INDIAN"

From the Canadian Encyclopedia:

> The *1850 Act for Better Protection of the Lands and Property of the Indians in Lower Canada* was one of the first pieces of legislation that included a set of requirements for a person to be considered a legal "Indian", a precursor to the concept of "status".

1860, ROYAL TOURS AND BRITISH SOVEREIGNS

From the Royal Collection Trust:

> "When royal tours of Canada began in earnest in 1860, Indigenous communities used meetings to reaffirm their loyalty to the Crown and express urgent grievances about colonial abuses. Addressing British sovereigns as 'father' or 'mother', First Nations groups appealed directly to the Crown as the protector of their rights. his relationship was cemented through the presentation of gifts and loyal addresses, drawing on ancient ceremonies used to make Treaty."

1871, TREATIES, BROKEN PROMISES AND DECEPTION

From Crown-Indigenous Relations and Northern Affairs Canada:

> "Canada has been given administrative control of "Indian Affairs" and entered into numbered treaties with different First Nations. Between 1871 and 1921, the Crown signed 11 treaties, known as the Numbered Treaties, divided into two groups: those for settlement in the South; and those for access to natural resources in the North. These agreements promised reserve lands, annuities and fishing and hunting rights in exchange for Indigenous land. From the perspective of the Canadian government, the treaties enabled westward settlement on traditional lands, forestalling Indigenous resistance to European expansion. They also paved the way for colonial policies of assimilation such as reserves and residential schools, and the banning of Indigenous ceremonies. The terms of the treaties, and their enforcement, remain contested today.

It is important to understand that from an Indigenous perspective, treaties were seen as continual, sacred obligations between nations. A metaphor used in the describing the sacred treaty relationships can be seen by the Silver Covenant Chain. The Silver Chain had been "polished" (Hill & Coleman, 2019, p. 343) meaning that this would occur as a symbol of renewal of treaty and the resolution of any issues that might have strained the two nations relationship. The understanding of the Covenant Chain, like many agreements, was to cement the continuity of rebuilding relationships between settlers and Indigenous nations. The interesting juxtaposition of the Covenant Chain collecting dust and/or being polished, illustrates how the Indigenous nations viewed the agreements with European settlers, they were continually renewed and never weakened."

1875, "HALFBREED" ADHESION TO TREATY 3

Louis Barkwell asserts:

> "In 1875, the first and only numbered treaty between Canada and the Métis was signed as an adhesion to Treaty Three: In Ontario, mixed-ancestry people were dealt with in several ways. The Métis community at Fort Frances, which is now part of the Coochiching First Nation, signed an adhesion to Treaty 3 in 1875 as "Half-Breeds".
>
> "In 1871, Nicholas Chatelain (a Métis HBC trader, manager and interpreter) was hired by the federal government as an interpreter and was present at the treaty negotiations with the Ojibway and Métis at Lake of the Woods (Treaty No. 3). It was Chatelain who requested that the Métis be included in Treaty No. 3, Morris refused this request but indicated that those Métis that so wished could sign an adhesion to the treaty. On September 12, 1875 Chatelain, acting on behalf of the Métis of Rainy Lake and Rainy River signed a memorandum agreement with Thomas Dennis. This agreement, known as the "Half-Breed Adhesion to Treaty No.3," set aside two reserves for the Métis and entitled them to annuity payments, cattle and farm implements. Unfortunately the Department of Indian Affairs did not ratify this agreement and over the following ten years the Métis sought to receive the promised benefits."

1876, THE INDIAN ACT

From Nelligan Law:

> The federal department assumed greater authority over Indigenous peoples and lands reserved, managing their lands, monies and resources. What's more, this Act introduced prohibitions on intoxicants and aimed to enhance the assimilation of Indians by obligating parents to send their children to schools. The wholescale push for assimilation included bans on Indigenous spiritual ceremonies and introducing enfranchisement in order to enjoy the rights of citizenship like voting."

From the Canadian Encyclopedia:

> "The *Indian Act which* came to force in 1876 is the primary law the federal government uses to administer Indian status, local First Nations governments and the management of reserve land. It also outlines governmental obligations to First Nations peoples. The *Indian Act* pertains to people with Indian Status; it does not directly reference non-status First Nations people, the Métis or Inuit. First introduced in 1876, the *Act* subsumed a number of colonial laws that aimed to eliminate First Nations culture in favour of assimilation into Euro-Canadian society. The Act has been amended several times, most significantly in 1951 and 1985, with changes mainly focusing on the removal of discriminatory sections. It is an evolving, paradoxical document that has enabled trauma, human rights violations and social and cultural disruption for generations of Indigenous peoples." (Parrott, 2006).

GENDER INEQUITY AND DISCRIMINATION

From Native Women's Association of Canada:

"The 1850's definition was broad in scope where anyone who married a person of 'Indian' blood, would be considered Indian in terms of related entitlements. There were no consultations with First Nations people when drafting this definition, leading almost immediately to protest from First Nations leaders. Because resources for First Nations people were already being rationed, fears were expressed about white men inheriting entitlements reserved for Indigenous peoples and communities. Rather than address the deficiency of resources, a new piece of legislation was written in 1851 that narrowed the scope of who qualified as 'Indian' consequently penalizing First Nations women who married non-Indian men. Heavily influenced by the sentiments of pre-confederate legislation, the first Indian Act was officially ratified in 1876. It adopted many of the same concepts of its precursors, including the ideas of assimilation, enfranchisement, and the changing definition of Indian. The 1876 Indian Act also explicitly stipulated that any First Nations woman who married anyone other than an "Indian" or "non-treaty Indian" would themselves cease to be "Indian" under the meaning of the Act.

The 1951 Indian Act also introduced several sexist rules governing entitlement to status. These included:

- The "double mother rule" which revoked the status of individuals at the age of 21 in instances of two consecutive generations of mothers who were not born with entitlement to status;
- The "illegitimate female child rule" which permitted the male children of status men born out of wedlock to register, but which did not entitle their female children to status;
- The "marry-out rule" which caused First Nations women to lose their status upon marrying a non-status person, but which permitted First Nations men to extend status to their non-status wives; and Involuntary enfranchisement, which revoked the status of First Nations women and their children when their husbands became enfranchised."

1984, LOVELACE

From the Legal Information Institute, Cornell Law School

Sandra Lovelace was born and registered as a Maliseet Indian but lost her rights and status as such in accordance with section 12(1)(b) of Canada's Indian Act after she married a non-Indian in 1970. Lovelace noted that the law did not equally adversely impact Canadian Indian men who marry non-Indian women, and therefore alleged that the law is gender discriminatory in violation of articles 2, 3, 23, 26, and 27 of the Covenant on Civil and Political Rights.

From Native Women's Association of Canada:

A ruling in favour of the Lovelace case by the United Nations Human Rights Committee (1984) against the backdrop of the signing of the Charter in 1982, provided the political will and legal impetus to remove sex-based discrimination from the registration provisions.

The Indian Act was amended in 1985 by Bills C-31 to remove all sex-based distinctions affecting entitlement to register for status, but legal mechanisms to curtail the number of individuals entitled to status remained, particularly through the second-generation cut-off rule. Under this rule, an individual who has status under subsection 6(1) of the Indian Act may pass on status to their children. If the other parent of their child also has status, the child would be entitled to status under subsection 6(1); however, if the other parent does not have status, the child will be entitled to status under subsection 6(2). An individual who has status under subsection 6(2) may pass on status to their children only if the other parent of their child also has status. If the other parent of the child does not have status under the Indian Act, that child will not be entitled to status.

While proponents of these limits on entitlement to status argue that these provisions are necessary for the preservation of Indigenous rights and identity, others argue that federal legislation governing status is inconsistent with the right of Indigenous peoples to self-determination and self-government and, importantly, perpetuates colonial efforts remove Indigenous peoples from their communities and integrate them into non-Indigenous communities.

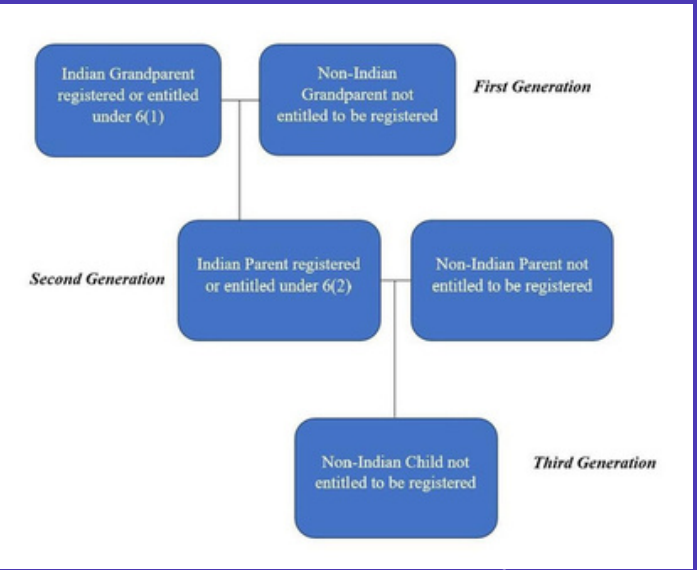


Chart: Native Women's Association of Canada

BILL C-31

From Assembly of First Nations:

> In 1985, Bill C-31 was used to amend the *Indian Act* to conform with the equality rights guaranteed by s.15 of the *Canadian Charter of Rights and Freedoms* (*Charter*). When introduced, the amendments were thought to be neutral with respect to a person's gender or marital status. The amendments allowed women who previously lost their Indian Status to regain their status, as well as their children's status. In addition, after Bill C-31 was adopted, a person's marriage could no longer affect his or her receiving or losing Indian status.
>
> While Bill C-31 was meant to eliminate sex based discrimination, the amendments created new forms of discrimination. For example, the second-generation "cut-off" was introduced. It meant that after two generations of parenting (one generation after the other) with a person who had a right to Indian registration and another person who did not have that right (that person was non-Indian), then the third generation would not be entitled to register for Indian status.
>
> The amendments to Bill C-31 tried to create equality between men and women when it came to transferring status to children. They did it by creating a standard that was not dependent on the gender of the people who were involved in it. In addition, these amendments considered financial concerns voiced by First Nations. Moreover, it considered protecting their nationhood and integrity of traditions. An attempt to balance individual and collective rights was the reason why second-generation cut-off was introduced.

1987, MCIVOR CASE

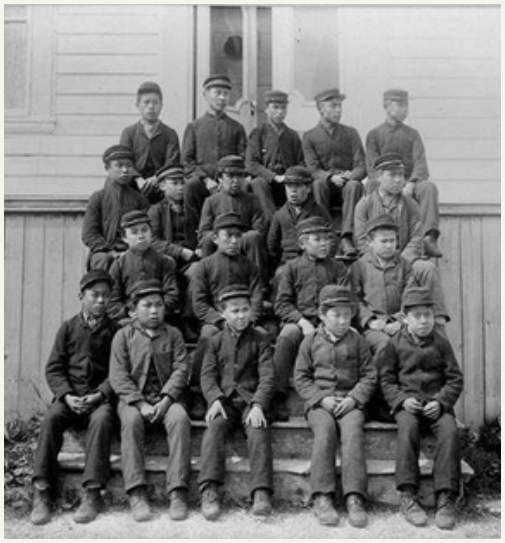
From Assembly of First Nations:

> Soon after Bill C-31 was passed, Women started to challenge the registration provisions of the Indian Act under the Canadian Charter of Rights and Freedoms. They argued that sex-based discrimination continued to exist. They also thought that the certain registration rules in the Indian Act were still unfair. The first challenge was initiated by Sharron McIvor in 1987. Sharon McIvor lost her Indian Status when she married a non-Indian man. After the 1985 amendments to the Indian Act were introduced, her right to Indian registration was returned to her using section 6(1) (c). Her son, Jacob Grismer, had only one Indian parent, and he had the right to have Indian registration under section 6(2). Yet, he couldn't transfer his Indian status to his children because he parented with a non-Indian woman. On the other hand, Jacob's cousins in the male line, who were born to a man who married a non-Indian woman before 1985, could pass their Indian status on to their children. The status of the other parent did not matter there. The McIvor case was decided by the British Columbia Court of Appeal (BCCA) in 2009. In its decision, the BCCA widened the definition of who an "Indian" was. It was done through the Gender Equity in Indian Registration Act (Bill C-3)

RESIDENTIAL SCHOOL SYSTEM, SIXTIES SCOOP, & MILLENNIAL SCOOP

From Indigenous Peoples Atlas of Canada:

> While the federal Indian Residential School system began around 1883, the origins of the Indian Residential School system can be traced back as early as the 1830's long before Confederation in 1867, when the Anglican Church established a residential school in Brantford, ON. First Nations children attended residential schools between 1883 and 1996. The last school closed in Saskatchewan in 1996.



Students of the Metlakatla Indian Residential School, B.C. Photo Courtesy of Library and Archives Canada

From CBC News:

> Since Canada was created in 1867, the federal government has been in charge of aboriginal affairs. The Indian Act, which was enacted in 1876 and has since been amended, allows the government to control most aspects of aboriginal life: Indian status, land, resources, wills, education, band administration and so on. Inuit and Métis are not governed by this law. In its previous versions, the Indian Act clearly aimed to assimilate First Nations. People who earned a university degree would automatically lose their Indian status, as would status women who married non-status men. Some traditional practices were prohibited. Between 1879 and 1996, tens of thousands of First Nations children attended residential schools designed to make them forget their language and culture, where many suffered abuse. On behalf of Canadians, Prime Minister Stephen Harper made a formal apology in 2008 to Canada's Aboriginal Peoples for this policy that sought to "kill the Indian in the child."

Indigenous children were sent to residential boarding schools, like this one in Fort Resolution, N.W.T., in late 19th and early 20th centuries. Early versions of the Indian Act were clearly designed to assimilate First Nations people. (Library and Archives Canada/PA-042133)

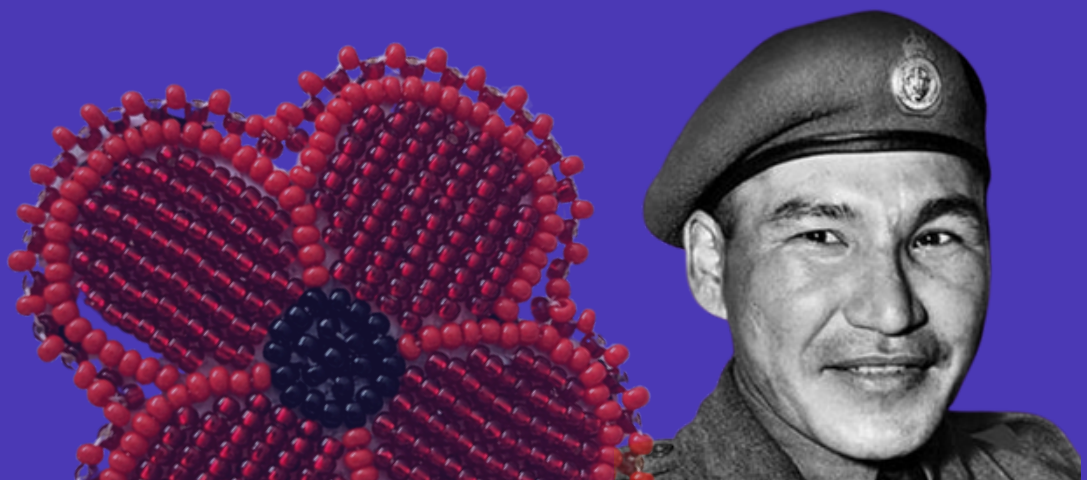
1914-1918 & 1939, WORLD WAR 1 AND 2 AND ITS IMPACTS ON INDIGENOUS PEOPLES

From Indigenous Corporate Training, Inc.:

Indigenous Peoples in Canada have fought on the front line of every major battle Canada has been involved in, and have done so with valour and distinction. It is estimated that 7,000 First Nations People served in the First and Second World Wars, and the Korean War; an unknown number of Métis, Inuit and non-Status Indians also served. However, it was not until 1995, fifty years after the Second World War that Indigenous Peoples were allowed to lay Remembrance Day wreaths at the National War Memorial to remember and honour their dead comrades.

At the time of the First World War, First Nations (status Indians) were exempt from conscription because they were not considered “citizens” of Canada and did not have the right to vote. To serve in the Canadian Air Force or Canadian Navy, you had to be “of pure European descent”; this restriction was rescinded in 1940 for the Air Force and 1943 for the Navy. After the First World War, returning veterans did not receive the same assistance as other returned soldiers under the War Veterans Allowance Act; this policy endured from 1932 until 1936. Many First Nation veterans from the Second World War found that when they returned home after fighting overseas for Canada, they were no longer considered Indians because the Indian Act specified that Indians absent from the reserve for four years were no longer Indians.

Many status Indian soldiers had to become enfranchised before they could sign up to fight in the Second World War, which meant that when they returned to their home communities, they no longer had Indian status. They also did not have the right to obtain other benefits available to non-Indigenous veterans due to Indian Act restrictions. Between 1932 and 1936, Indigenous veterans on reserves in need of help, were to be treated like everyone else on reserves rather than as veterans. Many Second World War veterans, including Tommy George Prince, the most decorated Indigenous war veteran whose medals included the American Silver Star and six service medals, re-enlisted for the Korean War simply because they were unable to re-enter their previous lives. The lives of numerous Indigenous veterans ended in despair and poverty.



Sgt.Tommy Prince. PPCLI Museum and Archives in Calgary

1939, "ESKIMO DECISION" INUIT RIGHTS

From the Canadian Museum of History:

> On April 5, 1939, the Supreme Court of Canada decided on the constitutional status and racial definition of Inuit in Canada. Before the decision, there was legal uncertainty as to whether the Inuit were Canadian citizens or, like the First Nations, wards of the state. The court found that Inuit should be considered as "Indians" within Section 91(24) of the 1867 *Constitution Act* or *British North America Act*, thereby making the Inuit the legal responsibility of the Canadian federal government.

1950-60, FEDERAL SUFFRAGE FOR INDIGENOUS PEOPLES

In 1950, the Inuit were officially qualified to vote in the federal elections. However until ballot boxes were placed in more Inuit communities in 1962, most Inuit had no means to exercise the franchise because they lived in isolated communities. In 1960, First Nations were given the right to vote.

From Nelligan Law:

> Slowly Indian Agents were removed from reserves and First Nations were given greater control over their affairs as the federal government began funding First Nation political organizations thereby enabling them to renegotiate treaties and enforce their rights. In 1960, portions of Section 14(2) of the *Canada Elections Act* were repealed in order to grant the federal vote to status Indians. It was now that First Nations peoples could vote and not worry about losing their status.

From the Canadian Encyclopedia:

> Feelings were mixed about obtaining the right to vote, many Indigenous peoples feared that the act of voting in federal elections would mean loss of historic rights and status, inmany years Indigenous turnout at the voting polls were low.

Skwxwú7mesh Chief Isaac Jacobs casts his ballot in 1962

1970, JAMES BAY AND NORTHERN QUEBEC AGREEMENT

From Nelligan Law:

> In the early 1970's three court decisions had an immeasurable impact on the future of Indigenous rights. In Quebec, the Cree of Eeyou Istchee and the Inuit of Northern Quebec obtained an injunction against the Hydro Quebec project. This lead to the James Bay and Northern Quebec Agreement, the first modern day treaty."

From the Canadian Encyclopedia:

> In the 1970s, the Quebec government under Robert Bourassa undertook a vast development of the James Bay region. The prime minister announced the construction of several hydroelectric dams with the goal of expanding the province's energy potential and reviving its economy. Quebec did not consult the Indigenous peoples inhabiting the land (mostly Cree and Inuit), despite the potential impact on their way of life.
>
> The Cree and Inuit then decided to retaliate and defend their unceded rights over the land affected by the hydroelectric development project. With the help of the Indians of Quebec Association (IQA), a pan-Indian political organization created in 1965, the Cree attempted to communicate with the Quebec government to voice their grievances.
>
> When the government refused to address the issue and insisted on building the dams, the Cree and the IQA joined forces with the Northern Quebec Inuit Association (NQIA). In November 1972, they took legal action to slow the project down and force the province into negotiations. Their main argument rested on the fact that the land transfer agreements for the James Bay and Northern Quebec, struck in 1898 and 1912 respectively, stated the obligation to negotiate the surrender of land rights. The Quebec government, scarcely interested in its northern territories before 1960, did not deem it necessary to meet this obligation.
>
> The Agreement's scope and comprehensiveness regarding the redefinition of Indigenous rights on a specific territory had major repercussions on Quebec and the rest of the country. While the Canadian government saw a foundation on which to build future resolutions for Indigenous lands, other parties held a more negative view of the accord. George Manuel, Indigenous activist from British Columbia and president of the North American Indian Brotherhood, considered the JBNQA as the onset of a wave of treaties through which the rights of Indigenous peoples would dissolve in exchange for simple financial compensation.

Grand Chief Billy Diamond signs the James Bay and Northern Quebec Agreement, 1975.

1970, THE CALDER DECISION

In *Calder v. British Columbia,* [1973] SCR 313, the Supreme Court of Canada acknowledged that Indigenous title was a legal right derived from Indigenous peoples' historic occupation of territory.

From Indigenous Foundations:

> In 1967, Frank Calder and other Nisga'a elders sued the provincial government of British Columbia, declaring that Nisga'a title to their lands had never been lawfully extinguished through treaty or by any other means. While both the BC Supreme Court and the Court of Appeal rejected the claim, the Nisga'a appealed to the Supreme Court of Canada for recognition of their Aboriginal title to their traditional, ancestral and unceded lands. Their appeal was a landmark move that posed considerable risk not only to the Nisga'a, but to all Aboriginal peoples hoping to have their rights and title affirmed and recognized. What the Supreme Court concluded was groundbreaking. While the lower levels of court had denied the existence of Aboriginal title, the Supreme Court ruled in 1973 that Aboriginal title had indeed existed at the time of the Royal Proclamation of 1763. The Supreme Court's 1973 decision was the first time that the Canadian legal system acknowledged the existence of Aboriginal title to land and that such title existed outside of, and was not simply derived from, colonial law." (Salomons, 2009)

British Columbia cabinet minister Frank Calder talks to media in Ottawa Feb.8, 1973 after meeting with Prime Minister Pierre Trudeau and Indian Affairs Minister Jean Chretien. (CP PHOTO/Chuck Mitchell)

1971, R V BEDARD

From the Canadian Encyclopedia:

R v. Bedard (1971) challenged section 12(1)(b) of the Indian Act, which concerns the rights of Status Indian women in Canada. The appellant in the case, Yvonne Bedard, took the federal government to court after losing her rights as a Status Indian because of her marriage to a Non-Status man. In 1973, before the Supreme Court of Canada, the Bedard case merged with AG v. Lavell, another case concerning gender discrimination (see Status of Women) in the Indian Act. Although Bedard ultimately lost her reinstatement claims, her case inspired future legal battles regarding women's rights and the Indian Act, including Lovelace v. Canada (1981) (see Sandra Lovelace Nicholas) and the Descheneaux case (2015).

1980-1990 CIRCLE SENTENCING

From California Courts

> A sentencing circle is a community-directed process, conducted in partnership with the criminal justice system, to develop consensus on an appropriate sentencing plan that addresses the concerns of all interested parties.

From University of Alberta:

> During the 1980's and 1990's, Indigenous justice workers and communities began pressing for a different approach – that of Indigenous restorative justice. This began with circle sentencing. The first reported decision on circle sentencing was the 1992 Yukon Territorial Court decision in *R. v Moses.* This circle sentencing approach was adopted in many communities. A Saskatchewan Provincial court judge set out the criteria used as:
>
> - The accused must agree to be referred to the sentencing circle.
> - The accused must have deep roots in the community in which the circle is held and from which the participants are drawn.
> - That there are Elders or respected non-political community leaders willing to participate.
> - The victim is willing to participate and has been subjected to no coercion or pressure in so agreeing.
> - The court should try to determine beforehand, as best it can, if the victim is subject to battered spouse syndrome. If they are, then they should have counseling made available to them and be accompanied by a support team in the circle.
> - Disputed facts have been resolved in advance.
> - The case is one in which a court would be willing to take a calculated risk and depart from the usual range of sentencing

The Criminal Law Notebook by Peter Dostal

1981, THE FIGHT TO RESTORE THE LEGAL RIGHTS OF STATUS INDIAN WOMEN AND CHILDREN

From: the Canadian Encyclopedia

> Seeking a permanent and more far-reaching solution, Lovelace Nicholas took her case (Lovelace v. Canada) to the United Nations Human Rights Committee in 1981. She argued that discriminatory measures in the Indian Act violated international law. Around the same time, other Indigenous women who had lost their status, such as Jeannette Corbiere Lavell and Yvonne Bédard (supported by women's groups including Indian Rights for Indian Women and the Native Women's Association of Canada) made separate legal challenges in Canada that aimed to end discrimination against women in the Indian Act. In Lovelace Nicholas's international case, the UN ruled in her favour, stating that Canada was in breach of the International Covenant on Civil and Political Rights. While the UN lacks the power to change Canadian law, many Indigenous women in Canada saw this as a victory.

1982, SECTION 35 OF THE CONSTITUTION ACT, 1982

From: Nelligan Law

> "In 1982, section 35(1) of the Constitution Act, 1982 recognized and affirmed existing Indigenous and treaty rights. Therefore, such rights can no longer be extinguished through legislation, but only by voluntary surrender to the Crown, unless there is a constitutional amendment. Also in 1982, section 25 of the Canadian Charter of Rights and Freedoms provided that the guarantee of certain rights in the Charter must not be interpreted to abrogate or derogate from any Indigenous or treaty rights or other rights or freedoms that pertain to Indigenous peoples.

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons. (The Constitution Act, 1982)

1984, THE GUERIN DECISION

From Musqueam: A Living Culture

> The Guerin case was pivotal because it fundamentally changed Aboriginal law in relation to the: legal enforceability of the Crown's obligations to Aboriginal people; fiduciary duty owed to Aboriginal people; nature of Aboriginal title; and duty to consult. This case is also acknowledged as changing the law relating to other fiduciary obligations owed to a range of vulnerable people.

From the Canadian Encyclopedia:

> In the early 1980s, Guerin joined with other members of the Musqueam nation to challenge the government on Indigenous rights in a Supreme Court case, R v. Guerin [1984] 2 S.C.R. 335 (also referred to as Guerin v. The Queen). This case stemmed from actions taken by the federal government of Canada in 1958, who represented the Musqueam and leased approximately 162 acres of prime Vancouver land to the Shaughnessy Heights Golf Club. In 1975, the Musqueam filed suit against the federal government for misrepresenting them and their interests. When the case was first heard, the band was awarded $10 million for the government's failure to provide all details of the agreement to the Musqueam.

> The Supreme Court decision in the Guerin case is one of the most important legal judgments in the history of Indigenous law in Canada. It recognized two key principles:

1. The Crown has a a fiduciary duty toward First Nations and their lands, which can be enforced through the courts.
2. It reaffirmed the existence of Aboriginal title to First Nations lands.

The concept of "fiduciary duty" has become an important element in other Indigenous rights cases. It also became integral in the interpretation of Section 35 of the Constitution Act, 1982, which provides for the protection of Indigenous rights.

Musqueam Chief Gertrude Guerin (6 January 1961). Courtesy Vancouver Public Library/Accession Number 44666.

THE CROWN HAS A FIDUCIARY OBLIGATION TO PROTECT FIRST NATIONS' INTERESTS WITH THIRD PARTIES

1985, BILL C-31

From the Canadian Encyclopedia:

> In 1985, responding to growing national and international concern over the lack of equality in the *Indian Act*, the government passed Bill C-31. The bill fully removed all remaining enfranchisement clauses. Additionally, those who had lost status through marriage were reinstated as Status Indians and as band members. Their children gained status, but would not gain band membership for two years. This interval was meant to give bands time to create their own membership codes, which could exclude the children, but not their mothers. If such a code was not passed prior to June 1987, the children gained band membership as well. With more control over membership lists, bands could have non-status members.
>
> However, since funding through the federal government is based on status members, there However, while the amendment addressed discrimination against women, it also created some problems. Bill C- 31 created two categories of Indian registration. The first, known as section 6(1), applies when both parents are or were entitled to registration. (This section is further broken down into sub-sections that differ based on how status is passed down.) The second, known as section 6(2), applies when one parent is entitled to registration under 6(1). Status *cannot* be transferred if that one parent is registered under section 6(2). In short, after two generations of intermarriage with non-status partners, children would no longer be eligible for status. This is known as the "Second-Generation Cut- Off" rule. In this way, Bill C-31 has had consequences on the number of people entitled to status rights.is little incentive for bands to have many non-status members.

1990, THE KANESATAKE RESISTANCE (OKA CRISIS)

From the Canadian Encyclopedia:

> The Kanesatake Resistance, also known as the Oka Crisis or the Mohawk Resistance at Kanesatake, was a 78-day standoff (11 July–26 September 1990) between Kanyen'kehà:ka (Mohawk) protesters, Quebec police, the RCMP and the Canadian Army. It took place in the community of Kanesatake, near the Town of Oka, on the north shore of Montreal. Related protests and violence occurred in the Kahnawake reserve, to the south of Montreal. The crisis was sparked by the proposed expansion of a golf course and the development of townhouses on disputed land in Kanesatake that included a Kanyen'kehà:ka burial ground. Tensions were high, particularly after the death of Corporal Marcel Lemay, a Sûreté du Québec police officer. Eventually, the army was called in and the protest ended. The golf course expansion was cancelled, and the land was purchased by the federal government. However, it did not establish the land as a reserve, and there has since been no organized transfer of the land to the Mohawks of Kanesatake.

Oka Confrontation, Summer 1990 (courtesy of Canapress).

1990, SPARROW

From Indigenous Foundations:

R v. Sparrow was a precedent-setting decision made by the Supreme Court of Canada that set out criteria to determine whether governmental infringement on Aboriginal rights was justifiable, providing that these rights were in existence at the time of the Constitution Act, 1982. This criteria is known as "the Sparrow Test." In 1984, Musqueam band member Ronald Sparrow was arrested for fishing with a net longer than was permitted by his food fishing license. His arrest and subsequent court case led to one of the most defining decisions by the Supreme Court of Canada regarding Aboriginal rights. Musqueam community members recognized Sparrow's arrest as a threat to their collective rights, and to the rights of Aboriginal people across Canada. As such, the Musqueam band decided to defend to the charge against Sparrow.

They outlined five main arguments:

- That the Musqueam retained the right to fish on the territories they had inhabited and fished on for centuries;
- That Musqueam's rights to the land and its resources had never been extinguished by treaty;
- That Section 35 of the 1982 Constitution Act reinforced Musqueam's right to fish;
- That any infringement on Aboriginal fishing rights was invalid, as evidenced by Section 35, unless justified as being a necessary measure of conservation, and
- That a restriction on net length infringed on Musqueam's fishing rights and was not justified by reason of conservation.

The case was first heard in the British Columbia (BC) Provincial Court, which found Sparrow guilty of violating the terms of his fishing license. This conviction was appealed to the BC County Court, which ruled in the same manner as the Provincial Court. Musqueam then appealed to the BC Court of Appeals and won their appeal. In 1988, the case was heard in the Supreme Court of Canada and in 1990, 6 years after Ronald Sparrow's arrest, the court ruled in favour of the Musqueam. The Supreme Court's decision ruled that, despite nearly a century of governmental regulations and restrictions on Musqueam's right to fish, their Aboriginal right to fish had not been extinguished. This decision was arrived upon by the Court's interpretation of the phrase "existing Aboriginal and treaty rights are hereby recognized and affirmed" in Section 35.

Court ruling brings peace, fisheries official claims

By WILLIAM BOEI

The landmark Sparrow decision on native fisheries is bringing a measure of peace and cooperation to native food fishing in British Columbia, says a senior federal fisheries official.

But spokesmen for native fishermen are skeptical, saying the significance of the court ruling has not fully penetrated government bureaucracies. Proof of good intentions, they say, will have to be demonstrated on the province's salmon rivers in the coming weeks.

The Supreme Court of Canada ruled unanimously in May that Indians must take priority over all other user groups in access to B.C.'s salmon resources, and only conservation can be used to prevent Indians from fishing.

Musqueam fisherman Ron Sparrow had been charged with using an oversized net to catch spring salmon in the Fraser River. The case was the first test of the eight-year-old aboriginal rights provisions of Canada's Constitution.

In light of the Sparrow decision, a review of cases is being conducted that could result in outstanding charges against native fishermen being stayed, said Rod Bell-Irving, a policy advisor for the department of fisheries and oceans.

The ministry's new watchword is "consult, consult, consult," Bell-Irving said.

"There are fewer charges being laid in our area right now," said Ken Malloway, spokesman for the Sto:lo tribal fisheries in the Fraser Valley.

Malloway, who is also co-chairman of the B.C. Aboriginal People's Fisheries Commission, said only one charge of illegally selling food fish has been laid so far this year in his tribal region. Two years ago, there were 75 to 80 charges in the region.

Citing conversations with other native leaders, he said: "It's probably not that much different in other areas."

However, the major native food fisheries have not yet begun.

And Musqueam band fisheries coordinator Joe Becker cautioned: "The reason they are probably laying fewer charges is that there is no set management plan for 1990 as yet."

He predicted that if the ministry settles on a management plan for this year's salmon runs and the Musqueam fish contrary to the plan, "they would be charging us."

Becker noted that about a month ago, a net owned by Ron Sparrow Jr. was seized by fisheries officers. No charges have been laid yet, but Becker said there is often a delay of several weeks before charges are filed.

Bell-Irving said the federal fisheries ministry has new guidelines that reflect "a new attitude, a new approach for dealing with native fisheries questions."

He said consultation with native groups and joint planning are keys to the guidelines. As a result, "one would expect there is little or no need for enforcement," Bell-Irving said.

BELL-IRVING

He said the justice department is reviewing all outstanding charges involving native fisheries. "Consequently, if the facts warrant, the staying of charges may ensue."

Malloway agreed there have been changes. "We are being consulted more than we were before," he said. "I think Fisheries and Oceans realize that they have to begin to move on certain issues because of the Sparrow decision.

"I think that things are moving in the right direction, (although) not as quickly as we would like."

He added that senior bureaucrats might be quicker to catch the new reality than the fisheries officers who enforce regulations.

"The higher you go in the fisheries bureaucracy, the easier it is to talk to people," he said. "But the enforcement people will take a little more time. Some of them are worried about their jobs, because of the talk about co-management."

Becker agreed, saying Bell-Irving's attitude might be reasonable, but the bureaucrats who actually negotiate with natives and the fisheries officers who enforce the rules on the rivers tend to have narrower views.

Both native spokesmen predicted there will be more litigation before there is long-term peace on the salmon rivers.

Prospects for the upcoming salmon season are unpredictable, Becker added.

"The next week or two is going to tell us what's in store," he said. "I was hoping there would be a degree of sanity by the department of fisheries.

Image of a newspaper clipping from Vancouver Sun, 1990.

"Section 35 had been added to the Constitution in 1982 to protect Aboriginal rights. However, those rights had yet to be explicitly defined. The Supreme Court of Canada ruled that Musqueam's Aboriginal right to fish had not been extinguished prior to the 1982 Constitution and that, as such, Mr. Sparrow had an "existing" right to fish at the time of his arrest. The Court also ruled that the words "recognized and affirmed," as they appear in Section 35, mean that the government cannot override or infringe upon these rights without justification. This point essentially upheld the then-recent R. v. Guerin decision that the government has a fiduciary duty to First Nations." (Solomons and Hanson)

1990, PEACEMAKING

From Legal Aid Saskatchewan:

The Tsuu T'ina are a Dene people occupying a reserve southwest of Calgary. An Aboriginal court complemented by a peacemaking program was proposed in 1996 and began sitting in 2000. The provincial court sits in a circular arrangement and the judge, prosecutor, court clerks, courtworker, probation officer and even some of the defense counsel are Aboriginal. Court protocols reflect Tsuu T'ina traditions including smudging and traditional symbols (beaded medallions and eagle feathers) on the robes of the judge and court clerks. Tsuu T'ina peacemakers sit across from the Crown prosecutors signifying equal status.

1991, ROYAL COMMISSION OF ABORIGINAL PEOPLES

From Bora Laskin Law Library:

The Royal Commission on Aboriginal Peoples was created in order to help "restore justice to the relationship between Indigenous and non-Indigenous people in Canada and to propose practical solutions to stubborn problems." Established in 1991, the commission examined the relationships between the government and Indigenous Canadians and between Indigenous and non-Indigenous Canadians and advised the government on their findings.

The Commission and its report also addressed reconciliation and the future relationship between the government of Canada and Indigenous. This led the government to release Gathering Strength — Canada's Aboriginal Action Plan, which included a Statement of Reconciliation.

1996, R V VAN DER PEET

From Indigenous Foundations:

The Van der Peet case was pivotal in further defining Aboriginal rights as outlined in Section 35 of the Constitution Act, 1982. Dorothy Van der Peet, a member of the Stó:lō First Nation in British Columbia, was charged with selling salmon that had been caught under a food-fishing license. Such a license permitted Aboriginal people to fish solely for the purposes of sustenance and ceremonial use, and prohibited the sale of fish to non-Aboriginal people. Van der Peet challenged the charges, arguing that as an Aboriginal person, her right to sell fish was protected under Section 35 of the Constitution Act.

The provincial court ruled that Van der Peet's right to sell fish was not protected by Section 35, as selling fish did not constitute an "existing" Aboriginal right. This ruling was subsequently overturned by a summary judge, but was later reinstated by the Court of Appeal. In 1996, the Supreme Court upheld the Court of Appeal's finding, ruling that while fishing constitutes an Aboriginal right, the sale of such fish does not. Despite Stót:lō peoples' traditional practice of engaging in complex trade and barter relationships with other First Nations, the Court ruled that trade in salmon did not amount to an Aboriginal right. The Court's decision thus went beyond the earlier Sparrow ruling (1990), to define particular Aboriginal rights regarding fishing. The ruling also resulted in what is known today as the Van der Peet Test, or the "Integral to a Distinctive Culture Test," which determines how an Aboriginal right is to be defined. Specifically, the right must be proven to be integral to the culture of the claimant. The test outlines ten criteria that must be met in order for a practice to be affirmed and protected as an Aboriginal right pursuant to Section 35.

1997, DELGAMUUKW V BRITISH COLUMBIA

From Canadian Encyclopedia

The Delgamuukw case (1997) (also known Columbia) concerned the definition, the content and the extent of Aboriginal title (i.e., ownership of traditional lands). The Supreme Court of title constituted an ancestral right protected by section 35(1) of the Constitution Act, 1982. Influenced by the Calder case (1973), the the Delgamuukw case had an impact on other court cases about Aboriginal rights and title, including in the Tsilhqot'in case (2014).

THE VANCOUVER SUN

In historic judgment, top court strengthens Indian land claims

1999, GLADUE FACTORS

From the Canadian Encyclopedia:

Also known as *R v Gladue*, is a landmark Supreme Court of Canada decision which advises that lower courts should consider an Indigenous offender's background and make sentencing decisions accordingly, based on section 718.2(e) of the Criminal Code of Canada.

In 1995, Jamie Tanis Gladue, a 19-year-old Cree woman, stabbed and killed her common-law husband, Reuben Beaver, in Nanaimo, British Columbia. Gladue was intoxicated — her blood-alcohol level was approximately double the legal limit for operating a motor vehicle in the province — and had suspected her husband of infidelity at a party earlier in the evening. Beaver confirmed his infidelity and insulted Gladue during an argument upon returning to their townhouse. Gladue fatally stabbed Beaver in the chest after chasing him from the home with a knife. Gladue was charged with second-degree murder but pleaded guilty to manslaughter. The trial judge heard that she had demonstrated remorse, and that while on bail she had attended counselling for substance abuse and completed Grade 10. Since she was not living on a reserve at the time of the murder, the judge ruled that section 718.2 (e) of the Criminal Code did not apply in her case. This section states that a court must consider all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders. The judge sentenced Gladue to three years in prison.

The Gladue case led to the development of "Gladue reports," which are personal histories prepared by or on behalf of offenders that outline mitigating factors for judges to consider in sentencing; and "Gladue rights," which entitle an offender to such considerations. All persons who self-identify as Indigenous, including First Nations, Métis and Inuit, have Gladue rights and may prepare a Gladue report for consideration during sentencing. Such a report might outline how a particular offender has been marginalized or otherwise affected as a result of their upbringing. The Gladue case also helped to establish "Gladue courts," which are legal systems that are tailored to Indigenous peoples. Gladue court judges, for example, specialize in matters concerning Indigenous peoples.

Learn more from Dr. Deborah Parkes: www.youtube.com/watch?v=uELgDt5c2Dc&list=UU6rcyl53k1CN_y9qou2DPxA&index=45.

2003, POWLEY DECISION

Resource from Indigenous Foundations:

R. v. Powley was the first major Aboriginal rights case concerning Métis peoples. The Powley decision resulted in "the Powley Test," which laid out a set of criteria to not only define what might constitute a Métis right, but also who is entitled to those rights. Although the Powley decision defined Métis rights as they relate to hunting, many legal experts and Métis leaders view the Powley case as potentially instrumental in the future of recognizing Métis rights.

The Powley case outlined a set of criteria known today as the "Powley test." This test is used to define Métis rights in the same way that the Van der Peet test is employed in defining Aboriginal (Indian) rights. Once a right is identified, The Powley test is a process that can be used to assess whether is the claimants are entitled to exercise Métis rights. The Powley test includes ten components which determine

1. The characterization of the right claimed (eg: was it hunting for food?),
2. Whether the claimant is a member of a contemporary Métis community,
3. Identification of the historic Métis community,
4. Identification of the contemporary Métis community,
5. The historical time-frame of the practice,
6. Whether the practice is integral to the culture of the claimant,
7. Whether the proposed practice is continued by the Métis community,
8. Whether the right was extinguished,
9. Whether the right was infringed upon, and, finally,
10. If the right was infringed, can that infringement can be justified

Steve Powley with then-MNO President Tony Belcourt, and lawyer Jean Teillet after the first trial.
Photo Credit: Marc St. Germaine/MNO

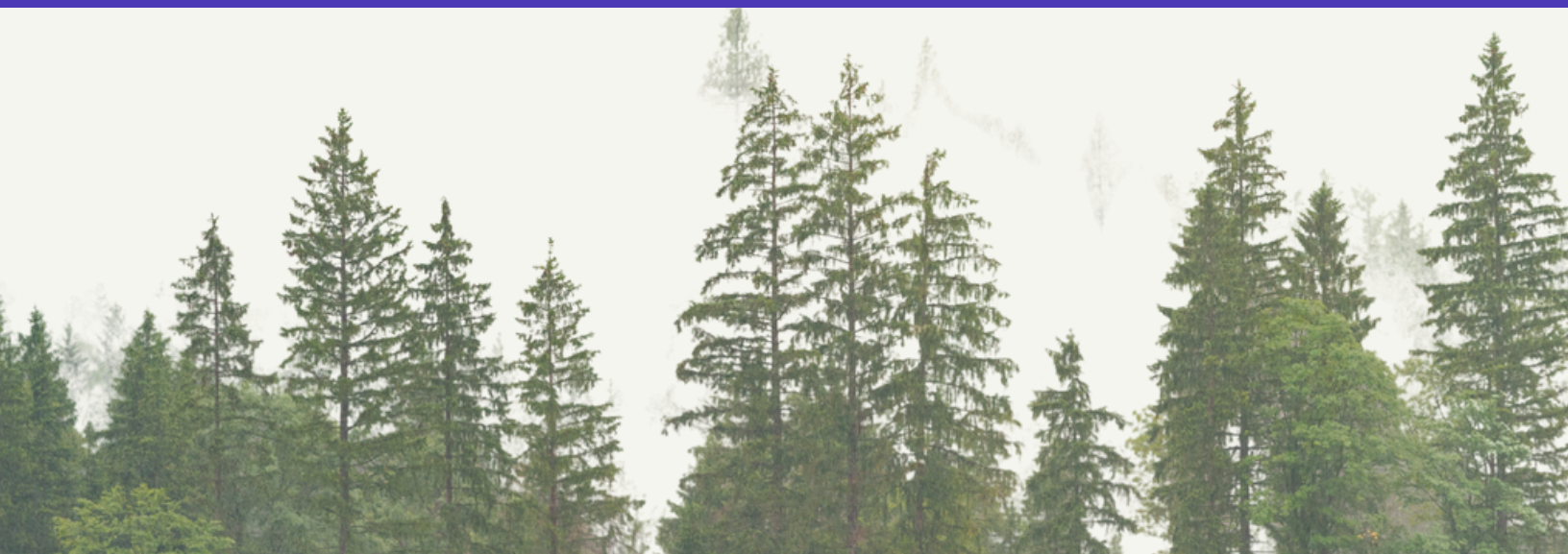
2004, DUTY TO CONSULT

From Nelligan Law:

In *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511, the Supreme Court of Canada held that the Crown is obliged under section 35(1) of the Constitution to consult with Indigenous people and, if necessary, accommodate their concerns before a final judicial determination has been made as to the existence and scope of an Indigenous right. (Nelligan Law, 2022) In other words, the *Haida* case is significant because a unanimous Supreme Court of Canada set out the basic principles applicable to the duty to consult.

The Council of the Haida Nation brought an action against the Provincial Crown and Weyerhaeuser Company Limited for not properly consulting with the Haida Nation when renewing a tree farm licence on Haida Gwaii (Queen Charlotte Islands). Tree Farm Licence 39, issued to Weyerhaeuser, contained several areas of old-growth red cedar – a culturally significant tree used for totem poles, canoes, and log houses. The Haida Nation wanted large areas of old-growth forest protected from clearcutting and its potentially detrimental effects on land, watersheds, fish, and wildlife.

By a unanimous (7-0) decision delivered by Chief Justice McLachlin, the Supreme Court of Canada went a long way toward providing the clarity and direction arising from Delgamuukw decision and the Court of Appeal decisions in Haida Nation and Taku River Tlingit. The strongly worded judgment makes two issues very clear. First, both orders of government have an inescapable Constitutional duty to consult and accommodate Aboriginal communities, in a manner that is meaningful, timely and reflective of the "honour of the Crown", regarding potential infringement on an Aboriginal right or title. Second, that duty rests with the Crown; it cannot be delegated to and does not otherwise extend to third parties (i.e. to industry).



2011 & 2017, AMENDMENTS TO THE INDIAN ACT & BILL C-3

From Canadian Encyclopedia:

> Despite various amendments, the Indian Act still discriminated against women and their descendants, with regards to status rights. In 2011, Parliament passed the Gender Equity in Indian Registration Act, also known as Bill C-3. This was federal government's response to the McIvor case, which was about gender discrimination in section 6 of the 1985 Indian Act. Bill C-3 grants 6(2) status to grandchildren of women who regained status in 1985. However, the descendants of women, specifically in terms of great-grandchildren, did not have the same entitlements as descendants of men in similar circumstances. Therefore, Bill C-3 still denied status rights to some individuals because of gender discrimination.
>
> Bill S-3 was created in response to another court case about discrimination in the Indian Act, the 2015 *Descheneaux* case. The issue in this case was about the way status is passed to cousins and siblings. One part of Bill S-3 came into effect on 22 December 2017. Among other provisions, the amendment enables more people to pass down their status to their descendants and reinstate status to those who lost it before 1985. For example, it provides ways to register people with unknown paternity and who were unmarried minors between 1951–85 and affected by registration rules in place at the time. The other part of the bill — related to restoring status to women and their offspring who lost status before 1951 (known as the "1951 Cut-off") — was brought into force on 15 August 2019. According to the government, "All known sex-based inequities in the Indian Act have now been addressed.

2013, MANITOBA MÉTIS FEDERATION INC V CANADA

From Canadian Encyclopedia:

> In Manitoba Metis Federation Inc. v. Canada, the appellants (plaintiffs) — including the Manitoba Metis Federation Inc. (MMF) — charged that Canada failed to implement sections 31 and 32 of the Manitoba Act, 1870. These sections had promised land to the children of the Red River Métis in Manitoba, and recognized existing Métis land ownership. Although the MMF lost the case in 2007 and in a 2010 appeal, the Supreme Court of Canada ruled in its favour in 2013. The Supreme Court stated that in failing to follow the land grant provision, the Crown had not taken diligent action to fulfill its constitutional obligation. In response to this case, the Canadian government and the MMF signed a memorandum of understanding in 2016 to explore talks on reconciliation and develop a framework for negotiating a solution.

From Rabble:

> “Louis Riel must be smiling.” That was the front-page headline of the Winnipeg Free Press on March 9, 2013. It’s taken from the response of the head of the Manitoba Métis Federation to the ruling by the Supreme Court of Canada released the day before that the Canadian and Manitoba governments abrogated their responsibilities to respect land rights won by the Métis people when the province was established in 1870.

Métis Leader Louis Riel (centre) surrounded by councillors of the Metis Legislative Assembly of Assiniboia.

2014, TSILHQOT'IN NATION

From Nelligan Law:

> In *Tsilhqot'in Nation v. British Columbia*, [2014] 2 SCR 257, the Supreme Court of Canada granted a declaration of Indigenous title to the Tsilhqot'in Nation on the basis that it had used the land regularly and exclusively. The Court held that Indigenous title is inherently collective and exists not only for the benefit of the present generation, but also for that of all future generations. This restricts the transferability of land and the uses to which land can be put. The Truth and Reconciliation Commission of Canada was a truth and reconciliation commission active in Canada from 2008 to 2015, organized by the parties of the Indian Residential Schools Settlement Agreement.
>
> Between Keewatin and Tsilhqot'in conference (2014) on the implications of recent Supreme Court decisions for First Nations and Aboriginal people in Canada.

2015, TRUTH AND RECONCILIATION COMMISSION

From Nelligan Law:

> The Commission was officially established on June 1, 2008 and was active until 2015. Its purpose was the documenting the history and lasting impacts of the Canadian residential school system on Indigenous students and their families.

From National Centre for Truth and Reconciliation:

> The Truth and Reconciliation Commission of Canada (TRC) was created through a legal settlement between Residential Schools Survivors, the Assembly of First Nations, Inuit representatives and the parties responsible for creation and operation of the schools: the federal government and the church bodies. The TRC's mandate was to inform all Canadians about what happened in residential schools. The TRC documented the truth of Survivors, their families, communities and anyone personally affected by the residential school experience. This included First Nations, Inuit and Métis former residential school students, their families, communities, the churches, former school employees, government officials and other Canadians.

2016, DANIELS CASE

From Nelligan Law:

Daniels v Canada (Indian Affairs and Northern Development) 2016 SCC 12 is a case of the Supreme Court of Canada, ruling that Métis and non-status Indians are "Indians" for the purpose of s 91 of the Constitution Act, 1867.

From Canadian Encyclopedia:

On 14 April 2016, the Supreme Court of Canada ruled in Daniels v. Canada that the federal government, rather than provincial governments, holds the legal responsibility to legislate on issues related to Métis and Non-Status Indians. In a unanimous decision, the court found that Métis and Non-Status peoples are considered Indians under section 91(24) of the Constitution Act, 1867 — a section that concerns the federal government's exclusive legislative powers. Recognition as Indians under this section of law is not the same as Indian Status, which is defined by the Indian Act. Therefore, the Daniels decision does not grant Indian Status to Métis or Non-Status peoples. However, the ruling could result in new discussions, negotiations and possible litigation with the federal government over land claims and access to education, health programs and other government services.

"Harry Daniels played an instrumental role in getting the Métis recognized as Aboriginal peoples in section 35 of the *Constitution Act, 1867*. While serving as president of the Native Council of Canada (now the Congress of Aboriginal Peoples) in the late-1970s and early-1980s, Daniels attended constitutional negotiations in Ottawa — talks that eventually led to the patriation of the Constitution."

- Heather Conn

2019, NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN, GIRLS AND TWO - SPIRITED RELATIVES

From Nelligan Law:

> Published in 2019, the National Inquiry's Final Report revealed that persistent and deliberate human and Indigenous rights violations and abuses are the root cause behind Canada's staggering rates of violence against Indigenous women, girls and 2SLGBTQQIA people. The two volume report calls for transformative legal and social changes to resolve the crisis that has devastated Indigenous communities across the country."

From the National Inquiry into MMIWG2S+:

> The National Inquiry's Final Report reveals that persistent and deliberate human and Indigenous rights violations and abuses are the root cause behind Canada's staggering rates of violence against Indigenous women, girls and 2SLGBTQQIA people. The two volume report calls for transformative legal and social changes to resolve the crisis that has devastated Indigenous communities across the country.

Image of MMIWG2S+ Red Dress at the Forks, Winnipeg. By Carlie Kane

2021, SOUTHWIND V CANADA

From First Peoples Law:

In 1929, over 11,000 acres of Lac Seul First Nation's reserve lands in Treaty #3 were flooded following the construction of a hydroelectric dam. Timber was lost, graves were damaged, gardens and fields were destroyed, and portions of the community were severed from one another. The lands remain flooded today.

Canada did not seek Lac Seul's consent to surrender the lands prior to the flooding, nor did it take steps to expropriate the lands under the Indian Act. Lac Seul filed a civil action against Canada in Federal Court. In 2017, the Federal Court found Canada breached its fiduciary duties to Lac Seul and that it had breached the Indian Act by failing to obtain a surrender from Lac Seul or take the necessary steps to expropriate the lands. The Court awarded Lac Seul equitable compensation in the amount of $30 million based on the fair market value of the lands at the time they were flooded.

Lac Seul appealed the Federal Court's assessment of compensation. In 2019, the Federal Court of Appeal dismissed the appeal and upheld the decision of the lower court. Lac Seul appealed to the Supreme Court asking it to clarify which principles apply when determining compensation for breaches of the Crown's obligations to First Nations in respect of reserve lands.

Image by Laurie Sanderson, member of Lac Seul First Nation

2021, R V DESAUTEL

From DGW Law:

When Canada's border with the United States was extended to the Pacific Ocean in 1846, the colonial governments did so with no consideration of the territories and boundaries of the Indigenous people living in the area. As the border solidified, Indigenous nations whose territory stretched across the 49th parallel were separated from portions of their territory. This case confirms that Indigenous nations who are now located within the United States may claim the protection of s. 35 (1) of the Constitution Act 1982 to exercise Aboriginal rights in their traditional territory in Canada.

Mr. Desautel is a member of the Lakes Tribe, which is now located in Washington State. He is an American citizen and resident. Mr. Desautel shot and killed an elk in British Columbia and was charged under the B.C. Wildlife Act for hunting without a license and hunting without being a resident.

The decision confirms that Indigenous communities located outside Canada may have Aboriginal rights that are protected under the Canadian constitution. This precedent will support other Indigenous groups who are currently located within America to safeguard and strengthen their connection to their Canadian territory. The decision also affirms that the duty to consult will compel the Crown to consult with American Indigenous groups where those can show the potential existence of an Aboriginal right in Canada. However, the court cautioned that the onus is on the Indigenous group to put the Crown on notice that it has a claim that may be adversely affected by Crown action.

2021, TREATY INTERPRETATION FROM YAHEY V BRITISH COLUMBIA

From Mandell Pinder, LLP:

On June 29, 2021, the British Columbia Supreme Court released its decision in Yahey v. British Columbia. This case is significant because it represents the first time that a court in Canada has found treaty infringement based on the cumulative effects of development within a First Nation's territory.

Blueberry River First Nations ("Blueberry") is a Dane-zaa and Cree community located in the Upper Peace River region in what is now northeastern British Columbia. Blueberry is a party to Treaty 8, having adhered to the Treaty in 1900. Since adhering to the Treaty, Blueberry's territory has been highly impacted by industrial development of all kinds.

Blueberry filed its claim in 2015 alleging that the cumulative effects of industrial development had damaged the forests, lands, waters, fish and wildlife within their traditional territory and had therefore had a profound and negative effect on their members' ability to exercise their Treaty 8 rights.

In its defence, the Province relied on the taking up clause of the Treaty which gives the government the power to take up lands within the Treaty territory for specific purposes. The Province argued that the Treaty would only be infringed if so much land were taken up that no ability to exercise the Treaty right remained.

This case is important because it is the first case in Canada to consider treaty infringements arising from the cumulative effects of development rather than infringement based on a specific project, authorization or legislative restriction. For the first time a court has found that (1) a Province breached treaty promises by permitting the cumulative impacts of industrial development on treaty rights; and (2) infringed a treaty by taking up lands to such an extent that there are insufficient lands for the meaningful exercise of treaty rights.

This case calls upon the British Columbia government to do more to protect Treaty rights and uphold the promises of Treaty 8. It will likely also have implications for other Treaty 8 Nations as well as First Nations across Canada who are signatories to treaties with similar language. The case will may affect other BC First Nations as the Province reviews its regulatory regime and makes changes to account for the cumulative effects of development on the exercise of Aboriginal and treaty rights.

2021, IMPLEMENTATION OF UNDRIP

From Nelligan Law:

> The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) received Royal Assent and came into force. This Act provides a roadmap for the Government of Canada and Indigenous peoples to work together to implement the Declaration based on lasting reconciliation, healing, and cooperative relations.

From Brenda Gunn:

> The UN Declaration is monumental because it is the only human rights instrument created with the participation of the rights holders themselves. Further, it specifically recognizes that Indigenous peoples' rights are both collective and individual. The UN Declaration sets the floor for Indigenous peoples' rights – the minimum necessary to meet international human rights standards, not a ceiling. States are free to apply higher standards or stronger rights than those set out in the UN Declaration.

2021, RESTOULE CASE

From DGW Law:

The primary issue raised on appeal was the interpretation of the augmentation clause in the Treaties' annuity provisions.

Negotiated and signed in 1850, the Treaties provided for the surrender of a large portion of northern Ontario. In addition to promises of continued hunting and fishing rights, the Crown paid a lump sum up front and promised to make an annual payment to the Anishinaabe. In 1850, the beneficiaries received approximately $1.60-$1.70 per person, depending on whether they were a beneficiary of the Robinson-Huron or the Robinson-Superior Treaty. While this was only a fraction of the standard $10 per person annuity provided in earlier treaties, the Treaties were unique in that they included an augmentation clause linked to revenues from the territory. In 1875, the annuities under both Treaties were increased to $4 per person. This was the first and only time the annuities under either Treaty were increased. To this day, members of the Robinson-Huron and Robinson-Superior Treaties receive $4 per year.

In Stage 1, the trial judge concluded that the Treaties were a collective promise to share revenue from the territory. She held that the Crown has a mandatory and reviewable obligation to increase the annuities. In carrying out its obligations, she held that the Crown must engage in a consultative process to determine whether the annuities can be increased without incurring loss. Further, the trial judge held that the reference to $4 in the augmentation clause applied only to the amount that could be distributed to individuals and did not limit the total collective annuity. She concluded that both the honour of the Crown and an ad hoc fiduciary duty (opposed to the sui generis fiduciary duty often applied in Aboriginal law) required the Crown to diligently implement the purpose of the Treaties' promise. In Stage 2, the trial judge concluded that the Plaintiffs' claims were not barred by either (i) Crown immunity or (ii) provincial legislation that sets limitation periods within which certain types of claims must be brought.

On appeal, Ontario argued that the trial judge erred in her interpretation of the Treaties and in rejecting Ontario's defences of Crown immunity and limitations.

Importance

The Crown has often ignored historic treaty promises or interpreted them in a way that minimizes the Crown's obligations to the detriment of Indigenous peoples. Not only does this decision reaffirm that treaty promises must be interpreted in a way that best reflects the common intention of both parties, it also confirms that the Plaintiffs are not statute-barred from bringing their breach of Treaty claims. For historic grievances of Indigenous peoples, this is a significant decision.

The financial implications of Restoule are also likely enormous. The Court of Appeal's decision is an important step forward for the beneficiaries of the Treaties in the negotiation of an increased annuity and in the calculation of damages for the Crown's breach of the augmentation provisions.

2022, ANDERSON V ALBERTA

From DGW Law:

Beaver Lake Cree Nation (referred to as “Beaver Lake”) is a First Nation band and Treaty No. 6 signatory. In the underlying claim, which was first filed in 2008, it alleges that the Crown infringed Treaty No. 6 by allowing the cumulative effect of industrial development in Treaty 8 territory to interfere with Beaver Lake’s member’s ability to maintain their traditional way of life.

In 2019, the Alberta Court of Queen’s Bench ordered that Canada and Alberta each contribute $300,000 per year to Beaver Lake’s legal fees to assist Beaver Lake to bring the claim.This type of order is known as an “advance costs” award. The Alberta Court of Appeal overturned the advance costs award on appeal. Beaver Lake appealed that decision to the Supreme Court of Canada.

n this decision, the Supreme Court rejected the Alberta Court of Appeal's strict application of the impecuniosity requirement to Indigenous governments and confirmed that Indigenous governments can qualify for advance costs while still providing services to their communities.

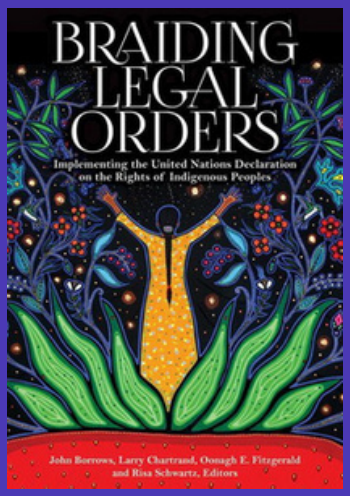
Free image by Los Fotos Project courtesy of Canva

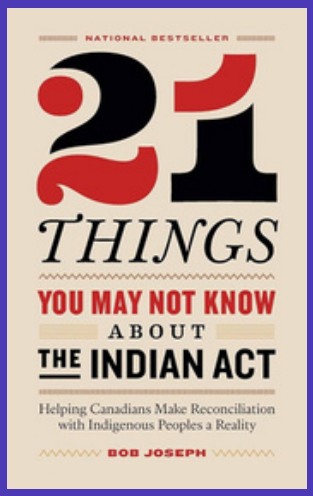
2023, DEREK WHITE & HUNTER MONTOUR

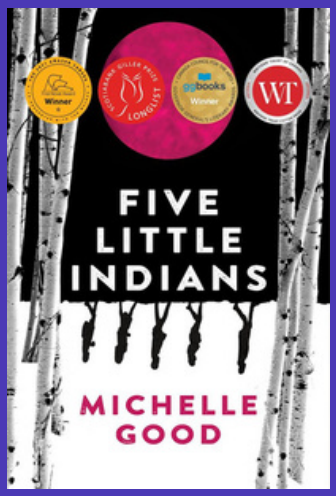
From Mandell Pinder, LLP:

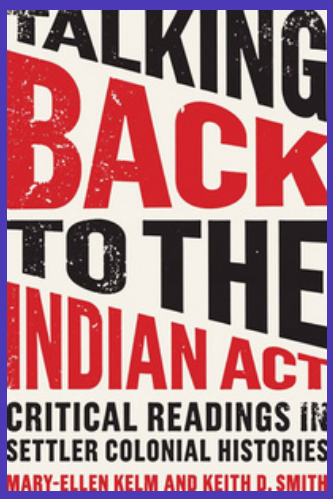
> R c Montour, 2023 QCCS 4154 concerned a criminal prosecution for illegal import of tobacco and whether duty levied on tobacco under the Excise Act, 2001 infringes Aboriginal and treaty rights.
>
> The court held that the levy of duty imposed on the Applicants, without sufficient opportunity to discuss or resolve the application of the Excise Act to the Applicants, unjustifiably infringed their treaty rights. While the court held that the government's goal of controlling tobacco is a worthy policy objective, it held that the adverse effects of the limitations imposed under the Excise Act, including criminalization of Indigenous people, were not proportional.
>
> The court developed and applied a new legal test to determine whether the Applicants had an Aboriginal right to trade tobacco based on contemporary rather than historical practices. The court found the old Aboriginal rights test, established in Van der Peet, needed to be updated to reflect a modern understanding of Indigenous Peoples, Aboriginal rights, and reconciliation. In the court's words, "[t]he notion of reconciliation, as referring to a work-in-progress to arrive at a mutually-respectful long-term relationship between sovereign peoples, did not have the same importance at the time Van der Peet was delivered as it has nowadays." (At para. 1233.) The court also justified the development of a new test based on the view that the UN Declaration, though not a binding instrument of international law, should be given the weight of a binding instrument of international law in the interpretation of section 35 of the Constitution Act, 1982, and reflect ongoing and significant changes in the understanding of Indigenous Peoples in Canada.

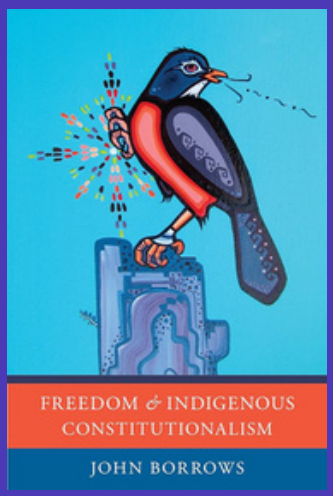
INDIGENOUS LEGAL RESOURCES (NON-EXHAUSTIVE)

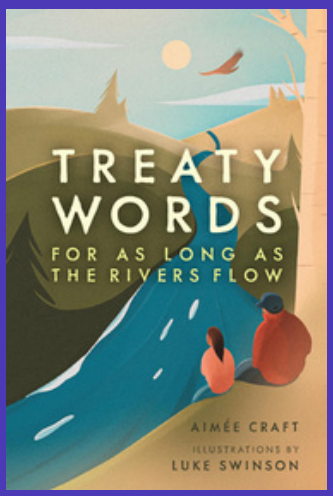


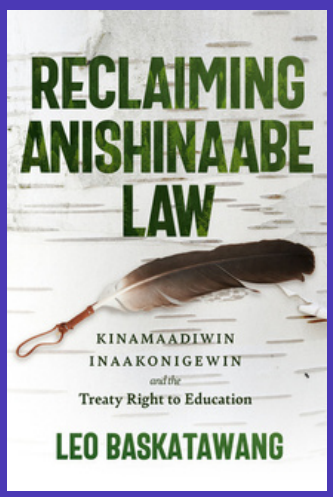


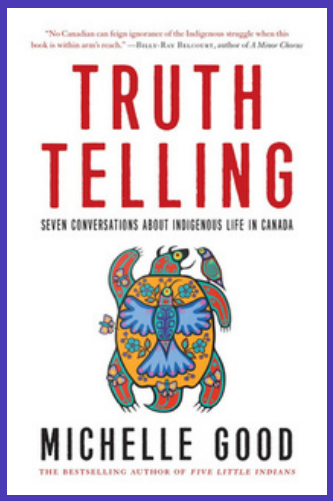


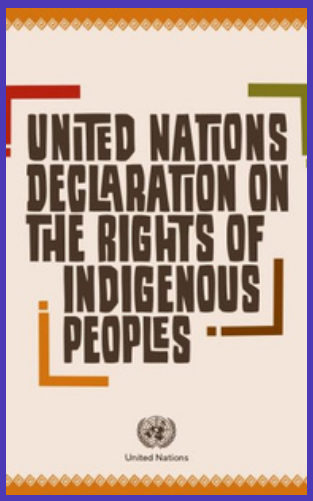












Resource compiled by Carlie Kane

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