Canadian Native Law Reporter (CNLR)

ISSN 0225-2279

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Canadian Native Law Reporter

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The Subject Index to Cases provides a brief summary of issues dealt with by the Court in the judgment. The case summaries are arranged under subject headings listed alphabetically. Cross-references are provided to guide readers in their search for specific topics.

• An outline of the subject headings together with cross references used in the Index is provided in the Subject Title Classification. This outline provides readers with a quick overview of the subject matter of the judgments.
• A Table of Cases is provided listing the names and citations of cases indexed in this volume. Where there is more than one level of proceeding for a case, the history of the case is given.
• A list of Statutes and Regulations Considered is provided to enable readers who are researching specific legislative provisions to access those cases where the legislation in question is considered or interpreted.

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Canadian Native Law Cases (CNLR)

Brian Slattery and Sheila Stelck

This multi-volume work is a comprehensive collection of reported Canadian court decisions, along with a selection of previously unreported cases, which deal with the affairs of Canada’s original peoples: Indians, Inuit and Métis. It covers the period 1763-1978. A Subject Index is included in each volume.

Volume 1 (1763-1869) $50.00
Volume 2 (1870-1890) $65.00
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Volumes 6 and 7 out of print
ISBN 0-88880-092-4
Pre-1868 Legislation Concerning Indians
A Selected and Indexed Collection
compiled by Thomas Isaac

Prior to the modern form of the federal Indian Act, a number of statutes relating to Indians were enacted by the pre-confederation colonial legislatures. This volume is a compilation of selected statutes directly affecting Indians that were enacted between 1777 and 1867. In addition to the Canadian statutes selected, two Imperial statutes are also included because they are particularly relevant in that they explicitly extend the colonial governments’ criminal jurisdiction regarding crimes and offences to the Indian territory. A detailed subject index enables quick reference to the relevant statutes or statutory provisions.


The Indian Act and Amendments
• 1970-1993 •
An Indexed Collection

This reference work sets out the 1970 and 1985 consolidations of the federal Indian Act and a complete collection of the amendments made subsequent to each consolidation. The cut-off date for the inclusion of amendments in this compilation is July 31, 1993. Amendments are inserted immediately following the subsection or paragraph to which the amendment refers. A comprehensive subject index is provided and provides a useful tool by tracing developments in the legislative history, since 1970, of the provisions in the Indian Act. Where a provision in the Act has been amended, the subject index provides the citation to the amending Act and defines the nature of the development. A companion volume to Indian Acts and Amendments 1868-1975: An Indexed Collection.


Aboriginal Title
First in a series of Contemporary Themes in Aboriginal Law

Thomas Isaac

The 1997 Supreme Court of Canada decision in Delgamuukw v. British Columbia provided the Court with its first substantive opportunity to discuss the meaning of Aboriginal title within the context of subsection 35(1) of the Constitution Act, 1982. In its November 2004 decision in Haida Nation v. British Columbia (Minister of Forests), the Supreme Court of Canada confirmed that where the Crown contemplates action that could adversely affect asserted Aboriginal rights, including Aboriginal title, it has a duty to consult and, where appropriate, accommodate the affected Aboriginal group. In July 2005, almost eight years after the Delgamuukw decision, the Court had an opportunity to apply the Delgamuukw principles to a specific set of facts with the release of its decision in R. v. Marshall; R. v. Bernard, concerning Mi’kmaq claims of Aboriginal title in Nova Scotia and New Brunswick.

Against this backdrop, Thomas Isaac poses the question: What does proven Aboriginal title mean for Aboriginal peoples, for the Crown, and for third parties, including private property owners?

In answering this question, Isaac offers insightful guidance, analysis, and commentary regarding
• the meaning and content of Aboriginal title
• the relationship between Aboriginal title and private property
• the remedies available to Aboriginal peoples facing infringements to proven Aboriginal title
• the balancing of interests that the Supreme Court of Canada has developed between Aboriginal rights and title on the one hand, and the rights of non-Aboriginal Canadians on the other hand
• an understanding of what Aboriginal title means in practical terms, on Crown land and on land owned in fee simple.

Thomas Isaac is a partner with the law firm of McCarthy Tétrault LLP in Vancouver. He has published numerous books and many articles in the area, and his published work has been cited with approval by numerous Canadian courts, including the Supreme Court of Canada.


Métis Rights
Second in a series of Contemporary Themes in Aboriginal Law

Thomas Isaac

The Métis are a distinct Aboriginal peoples whose rights are recognized and affirmed by section 35 of the Constitution Act, 1982. However, since the coming into force of section 35, most case law and judicial and academic commentary has been focused on the rights of First Nations peoples. The rights of the Inuit, with a few exceptions, have been largely dealt with by means of modern treaties and land claims settlements in northern Canada. This leaves the Métis. Fewer than a handful of decisions have been rendered by the Supreme Court of Canada expressly considering the rights of the Métis. For the Métis, the central legal question facing them is “Who are the Métis for the purposes of section 35?”

It is with this question – “Who are the Métis?” – as a purely legal question, that Thomas Isaac begins his discussion and analysis of the rights of Métis people under section 35 of the Constitution Act, 1982 and reviews related case law. This monograph addresses such important topics as
The treaties between the Crown and First Nations are unique and hold a distinct position in Canadian law. The historic treaties in Canada, namely, those treaties entered into by the Crown prior to the era of comprehensive land claims and modern treaties beginning in the late 1970s, represent an important part of the relationship between the Crown and Aboriginal peoples. In this monograph, authors Thomas Isaac and Kristyn Annis examine the legal interpretation of historical treaties in Canada and set out core legal principles from a wide array of case law, generated over decades. They present a straightforward discussion of the relevance of the historic treaties in modern circumstances, helping the reader to understand

- what is a treaty
- how courts interpret treaties and how the recognition of treaty rights in the Constitution Act, 1982 affects treaty rights and governmental authority
- in what circumstances treaty rights can be infringed and how governments must justify infringement of treaty rights
- what processes exist to deal with outstanding claims under the historic treaties of Canada
- leading judicial treaty-rights decisions, including decisions outlining the Crown's duty to consult Aboriginal peoples.

The authors provide a brief overview of significant treaties negotiated between First Nations and the Crown in both the pre- and post-Confederation eras.

Thomas Isaac is a partner with the law firm of McCarthy Tétrault LLP in Vancouver. He has published numerous books and many articles in the area, and his published work has been cited with approval by numerous Canadian courts, including the Supreme Court of Canada.

Kristyn Annis is an associate in the Business Law Group of McCarthy Tétrault LLP in Toronto. She practices in the areas of energy and Aboriginal law. Ms. Annis advises a wide range of clients across the energy sector and has particular experience with respect to First Nations and Métis issues.
*Part III* contains articles that examine

- nature and vulnerability of native title in Australia

Kent McNeil is a Professor at Osgoode Hall Law School. He is a former Research Director of the Native Law Centre.


**First Nations Criminal Jurisdiction in Canada: The Aboriginal right to peacemaking under public international and Canadian constitutional law**

*Matthias R.J. Leonardy*

Prior to European settlement and for a long time after that period, First Nations living within the boundaries of what today forms the country of Canada had distinctive ways of governance and of responding to crime and disorder to restore peace and harmony in their communities. Aboriginal communities and organizations and Canadian governments (federal and provincial) have entered into a dialogue on reforming the Canadian justice system to make it more cognizant of Aboriginal cultural values. Matthias R.J. Leonardy, in his doctoral thesis, contributes to this dialogue by presenting a thorough account of

- the legal principles determining Aboriginal jurisdiction over the administration of justice exercisable in the form of participation or independently; and
- the options provided by the law of Canada that allow for the creation of administrative structures of Aboriginal criminal justice.

**Topics discussed include:**

- Criminal Jurisdiction: An Aboriginal Right
- Origins of Aboriginal Rights Theory • Aboriginal Rights in Public International Law • Aboriginal Rights under Public International Law as Applied in Canada • Canadian Aboriginal Rights Doctrine
- First Nations Policing
- Crown Jurisdiction over Policing • Aboriginal Jurisdiction over Policing • Co-operative Models of First Nations Policing
- First Nations Courts
- Crown Jurisdiction over the Court System • First Nations Community Involvement with the Provincial Court System • Indian Act Courts (Federal) • The Future of First Nations Courts


**Indian Reserves and Aboriginal Lands in Canada: A Homeland**

*Richard H. Bartlett*

This comprehensive study provides a general theory and explanation of the ownership, power, and responsibility with respect to Indian reserves and other lands set apart for Aboriginal peoples. It clarifies the factors that determine the rights of Aboriginal peoples to lands set apart or reserved for them, and facilitates an appropriate legal understanding of those rights. Its 12 chapters are divided into 4 parts: Part 1 is a history of Indian reserves and Aboriginal lands; Part 2 examines the ownership of Indian reserves and Aboriginal lands; Part 3 looks at government, control, and management of Aboriginal lands and resources; and Part 4 addresses the accountability of the Crown and its fiduciary obligation.


**The Taking of Indian Lands in Canada: Consent or Coercion**

*Darlene Johnston*

The relentless expansion of European settlement witnessed over the centuries was accomplished by a corresponding diminution in the territorial rights of the original inhabitants. The dispossession has been dramatic. This work assesses the accuracy of the official story that the transfer of vast Indian territories to British control was achieved in a relatively principled fashion. The author analyzes: the Royal Proclamation of 1763; the historical treatment of Indian lands in the colonial jurisdictions of the Atlantic region, Quebec, and Upper Canada to determine the extent to which this principle was observed; the statutory regimes which emerged to govern Indian lands in the various colonies; the post-Confederation treatment of Indian lands; and the various incarnations of the Indian Act.


**Aboriginal Peoples and Section 25 of the Canadian Charter of Rights and Freedoms**

*Bruce H. Wildsmith*

The author presents a comprehensive examination of the meaning and implications of section 25 of the Canadian Charter of Rights and Freedoms concerning the protection of Aboriginal, treaty, and other rights and freedoms from abrogation or derogation by Charter rights and freedoms. The author outlines a brief legislative history and then focuses attention on the complex legal questions raised by section 25. Chief among them are: What happens when an irreconcilable conflict arises between a Charter right or freedom and a section 25 right or freedom? What are the rights and freedoms of Aboriginal people embodied in and protected by section 25? Does section 25 have the effect of blocking the application of the Charter to Aboriginal governments?


**Indians and Taxation in Canada**

*Third Edition*

*Richard H. Bartlett*

The author examines major changes in the law regarding the imposition of tax upon Indians in Canada. This edition includes an expanded discussion of why there is special provision for Indians and the form it takes; integrates case law and statutory amendments in the review of income, sales, real property and estate taxation, and custom and succession duties; and updates previous discussion on the need for economic development and tax planning possibilities. Included in the discussion is an examination of inherent Aboriginal sovereignty and immunity from taxation, and the Goods and Services Tax.

**The Indian Act of Canada**  
*Second Edition*  
*Richard H. Bartlett*

The Indian Act is the principal instrument through which federal jurisdiction over Indians and Native people has been exercised during the last one hundred years. It dictates the manner in which Indian reserves and treaties are administered by the Department of Indian Affairs and the limited control exercised by bands and band councils. The author gives a balanced and detailed study of the impact of this Act on Indian people. Topics discussed include: status and membership—entitlement to be registered as an Indian under the Act; the form and powers of self-government and the continuing conflict between traditional and municipal modes of self-government; the administration of the reserves and moneys arising therefrom as governed by the Act; the scope of the fiduciary obligation of the Crown with respect to Indian lands and resources; and the erosion of the treaties resulting from the narrow interpretation by the courts of treaty rights and the denial of treaty rights by the federal government.


**Indian Reserves in the Atlantic Provinces of Canada**  
*Richard H. Bartlett*

The author identifies and describes the legal and administrative nature of Indian reserves in Atlantic Canada. He discusses and analyzes: the dispossession of the Indians of their traditional lands prior to Confederation and the extension of federal protection under section 91(24) of the Constitution Act, 1867; the establishment of reserves before and after Confederation; the restrictive understanding of the Indian interest in reserve lands that has been adopted in judicial decisions; the 1958 Agreements respecting development of minerals, timber, and other resources of reserve lands for the exclusive benefit of the Indians of Nova Scotia and New Brunswick.


**Indian Reserves in Quebec**  
*Richard H. Bartlett*

The history and development of reserves in Quebec has been varied and complex. To determine the rights and interests of Indians and governments in the reserves the author examines: traditional occupation of lands in Quebec; the period of French sovereignty; the French and English religious missions to the Indians; the establishment of reserves by the Province of Canada; the historic impact of the 1920 Star Chrome Mining decision upon the Indian interest in reserve lands, and relations between Quebec and Canada thereafter; and the 1975 James Bay and Northern Quebec Agreement and the 1978 Northeastern Quebec Agreement.


**Ancestral Lands, Alien Laws: Judicial Perspectives on Aboriginal Title**  
*Brian Slattery*

This monograph examines critically the various ways in which Commonwealth and American judges have dealt with the issue of the land rights of Aboriginal peoples in the past. It devotes particular attention to the doctrine of Aboriginal title developed by Chief Justice Marshall of the United States Supreme Court. The nature and legal basis of that doctrine are reviewed in detail, and the relevance of the doctrine to Canadian and Commonwealth jurisdictions is explored.


**The Rights of Indigenous Peoples in International Law: Selected Essays on Self-Determination**  
*edited by Ruth Thompson*

Self-determination continues to be the most fundamental claim of Indigenous peoples throughout the world today. In this collection of essays, specialists in international law—both practitioners and academicians—examine Indigenous peoples’ right to self-determination from very different perspectives.


**Aboriginal Title and Mining Legislation in the Northwest Territories**  
*Ruth Thompson*

The steady increase in development of non-renewable resources in the Northwest Territories conflicts with the traditional Native economy and with the rights of Indigenous people to Aboriginal lands. Proceeding with the assumption that Aboriginal title did exist in the Territories prior to their transfer to Canada in 1870, this work discusses the source of Aboriginal title, curtailment or possible extinguishment of title after the transfer of the Territories to Canada in 1870, implications of characterizing Aboriginal rights as surface rights, and the effect of mining legislation and regulations on land use and Aboriginal claims in the Territories.


**The Aboriginal Rights Provisions in the Constitution Act, 1982**  
*LL.M. Thesis, University of Ottawa, 1987*  
*William F. Pentney*

Formidable interpretive challenges are posed by the provisions of the Constitution Act, 1982 that protect the Aboriginal and treaty rights of the Aboriginal peoples of Canada. This LL.M. thesis sets out a theoretical and legal framework for the interpretation of section 25 of the Canadian Charter of Rights and Freedoms and section 35 of the Constitution Act, 1982 and provides an appraisal of their scope and application.

The Land Rights of Indigenous Canadian Peoples
Brian Slattery

The problem examined in this doctoral thesis is whether the land rights originally held by Canada’s Indigenous peoples survived the process whereby the British Crown acquired sovereignty over their territories, and, if so, in what form. The question, although historical in nature, has important implications for current disputes involving Aboriginal land claims in Canada. The work includes: a review of the basic principles of British law governing the acquisition of colonial territories and its effect on private property rights; an examination of the original territorial claims advanced concerning Canada by Spain and Portugal, France, and England, and their implications for Indian land rights; an outline of the steps by which the British Crown acquired title to its Canadian territories up to 1763, dealing separately with old Nova Scotia, Rupert’s Land, French Canada, and the far west and north-west; and an examination of the provisions concerning Indian lands in the Royal Proclamation of 1763, discussing their historical evolution, scope, validity, legal effects, modifiability, and continuing application.

1979 488 pp. Hardcover $70.00

Justice as Healing Newsletter

A quarterly newsletter which deals with Aboriginal concepts of justice founded upon Aboriginal knowledge and language and rooted in Aboriginal experiences and feelings of wrongs and indignation. The term “Justice as Healing” refers to an old tradition in Aboriginal thought and society. After the Aboriginal experience with colonialism, racism, domination and oppression, there is a return to this tradition of “Justice as Healing” as a foundation for contemporary remedies. While there is no one single theory of Aboriginal justice, the common theme remains the necessity of Aboriginal knowledge healing Aboriginal people.

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