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2020 Catalogue



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*... furthering learning, knowledge, and research in Indigenous peoples' and Aboriginal law*



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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.

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## Legislation

### First Nations Gazette

The First Nations Gazette provides public notice of First Nation laws, by-laws, land codes and other First Nation legislation. The First Nations Gazette – a register of First Nation laws – is published by the First Nations Tax Commission in conjunction with the Native Law Centre. In 2014, the First Nations Gazette transitioned to an exclusively electronic publication, consolidated monthly. While the Gazette is no longer being printed or distributed in hard copy format, it is available online with free access at [www.fng.ca](http://www.fng.ca). The First Nations Gazette serves as the authoritative reference for First Nation laws in Canada.

ISSN 2368-612X

### 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.

ISBN 0-88880-297-8 1993 112 pp. Softcover \$20.00

### 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 section, 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.

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## Monograph Series Contemporary Themes in Aboriginal Law

### 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*,

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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.

ISBN 0-88880-512-8 2006 66 pp. Softcover \$17.00

### 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

- Métis self-definition
- the meaning of Métis for purposes of constitutionally recognized Aboriginal rights and the *Powley* test
- the term "Indians" and whether the Métis are "Indians" for the purposes of section 91(24) of the *Constitution Act, 1867*
- the test for determining entitlements of the Métis to constitutionally recognized and affirmed Aboriginal rights, and the nature and extent of such rights
- the challenges the Métis face in making successful claims of Aboriginal title
- the application of the Crown's duty to consult the Métis people
- federal and provincial perspectives on Métis issues.

**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.

ISBN 978-0-88880-534-8 2008 76 pp. Softcover \$18.00

## Monograph Series

### Contemporary Themes in Aboriginal Law

#### Treaty Rights in the Historic Treaties of Canada

Third in a series of Contemporary Themes in Aboriginal Law  
Thomas Isaac & Kristyn Annis

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.

ISBN 978-0-88880-558-4 2010 80 pp. Softcover \$18.00

## Books

#### Renewing Relationships: Indigenous Peoples and Canada

Karen Drake & Brenda L. Gunn, eds.

This edited collection features essays by Indigenous legal academics from across Canada about renewing relationships between Indigenous peoples and Canada. Some Indigenous nations might embrace principles of reconciliation as reflecting a renewed relationship, while others reject the concept of reconciliation and instead advocate for resistance or decolonization. This collection includes chapters that critically engage with these theoretical debates, as well as chapters that analyze how these concepts can be instantiated in tangible and specific ways. It builds on existing literature on Indigenous-Crown relationships that addresses issues such as the inclusion of Indigenous laws, self-determination, and the role of the constitution. The chapters explore questions such as: What does a renewed relationship look like in modern Canadian society? What is the role of Indigenous law in renewing the relationship between Indigenous peoples and Canada? What does the United Nations Declaration on the Rights of Indigenous Peoples contribute to an understanding of a renewed relationship? How do treaties define Indigenous-Crown relationships? What shifts must occur within Canadian institutions to move away from the current colonial relationship?

**Karen Drake** is a citizen of the Métis Nation of Ontario and an associate professor at Osgoode Hall Law School at York University.

**Brenda L. Gunn** is a Métis woman and an associate professor at Robson Hall Faculty of Law, University of Manitoba.

ISBN 978-0-88880-625-3 2019 359 pp. Softcover \$65.00

## Books

#### Reconciling Sovereignties Aboriginal Nations and Canada

Felix Hoehn

Reconciling pre-existing Aboriginal sovereignty with *de facto* Crown sovereignty will not threaten the territory of Canada, nor will it result in a legal vacuum. Rather, it will facilitate the self-determination of Aboriginal peoples within Canada and strengthen Canada's claim to territorial integrity in the eyes of international law.

In *Reconciling Sovereignties*, Felix Hoehn presents a persuasive case that the once unquestioned and uncritical acceptance of the Crown's assertion of sovereignty over Aboriginal peoples and their territories is now being replaced by an emerging paradigm that recognizes the equality of Aboriginal and settler peoples and requires these peoples to negotiate how they will share sovereignty in Canada.

Hoehn concludes that the Supreme Court of Canada has taken us to the threshold of a new paradigm for Aboriginal law that (a) rejects the doctrines of discovery and *terra nullius*, (b) accepts that Aboriginal sovereignty continues, and (c) holds that only treaties can elevate the Crown from *de facto* sovereignty to a *de jure* sovereignty that is shared with Aboriginal peoples. The sovereignty paradigm will provide needed answers to the pressing moral and practical crises that plague the old paradigm, and it holds the greatest promise for reconciliation.

**Felix Hoehn, B.A. (Hons.), LL.B., LL.M.**, is an Assistant Professor at the College of Law, University of Saskatchewan.

ISBN 978-0-88880-577-5 October 2012 182 pp. Softcover \$30.00

#### Emerging Justice? Essays on Indigenous Rights in Canada and Australia

Kent McNeil

This work, written by a leading Aboriginal law scholar, brings together, in one ideal convenient source, fifteen essays that examine the development of the law of Indigenous rights in both Canada and Australia, primarily since 1990. Focussing on the two broad topics of land rights and self-government, Kent McNeil shows how the law in these two countries has converged in certain respects, and diverged in others. The essays provide a penetrating analysis of judicial decisions involving Indigenous rights by pointing out strengths and weaknesses in the decisions, as well as suggesting ways in which some remaining gaps in the law can be filled. In these academically provocative essays, McNeil takes the debate on Indigenous rights beyond the bounds of current judicial discourse. In particular, McNeil attempts to show that there is constitutional space for Indigenous governments within the legal systems of Canada and Australia.

Designed for ease of research, this work is conveniently organized into three parts, the essays are cross-referenced, and a comprehensive index is provided.

##### Part I groups together articles dealing with

- colonization of Canada
- treaties
- definition and proof of Aboriginal rights, including Aboriginal title to land

##### Part II is devoted to articles that focus on

- Aboriginal self-government
- constitutional jurisdiction over Aboriginal peoples
- constitutional protection of Aboriginal rights in Canada

##### 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.

ISBN 0-88880-441-5 2001 532 pp. Softcover \$45.00

# Books

## Contemporary Metis Justice: The Settlement Way

*Catherine Bell • Metis Settlement Appeal Tribunal*

To what extent can a delegated system of government and dispute resolution incorporate cultural values and enhance the autonomy of Aboriginal peoples?

Answers to this question can be found in the recent success of Alberta Metis settlements in negotiating a Metis land base and delegated powers of self-government. The Metis settlements in Alberta have achieved:

- powers of local and regional government
- constitutional protection of collective fee simple title to their land and the structure of regional Metis government
- a significant share in, and control over, the development of natural resources on their lands
- the creation of a unique quasi-judicial body, the Metis Settlements Appeal Tribunal (MSAT), with jurisdiction to resolve disputes relating to membership, land dealings, surface rights, descent of property and any other matter the parties involved agree to submit to MSAT jurisdiction

Professor Bell's detailed study of MSAT as a unique model of contemporary Aboriginal dispute resolution in Part One of this book, together with the reporting of MSAT decisions in Part Two, is a valuable reference for those interested in exploring the development of Aboriginal justice mechanisms through delegated powers and the adaptation of existing principles of administrative law. This book will also be of interest to those working in the areas of alternative dispute resolution, administrative law, resource management, Metis history, Aboriginal law, and those engaged in the study and implementation of Aboriginal government.

ISBN 0-88880-392-3 1999 602 pp. Softcover \$55.00

## 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

ISBN 0-88880-367-2 1998 440 pp. Softcover \$47.50

## 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.

ISBN 0-88880-282-X 1992 120 pp. Softcover \$20.00

## 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.

ISBN 0-88880-235-8 1990 240 pp. Softcover \$60.00

## 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.

ISBN 0-88880-226-9 1989 100 pp. Softcover \$12.00

## 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?

SBN 0-88880-193-9 1988 55 pp. Softcover \$15.00

## **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.

ISBN 0-88880-204-8 1988 48 pp. Softcover \$20.00

## **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.

ISBN 0-88880-192-0 1987 267 pp. Hardcover \$50.00

## **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 academics—examine Indigenous peoples' right to self-determination from very different perspectives.

ISBN 0-88880-185-8 1987 68 pp. Softcover \$20.00

## **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.

ISBN 0-88880-167-X 1986 92 pp. CD-ROM \$25.00

## **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.

ISBN 0-88880-140-8 1984 44 pp. Softcover \$20.00

## **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.

ISBN 0-88880-100-9 1983 49 pp. Softcover \$20.00

## **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.

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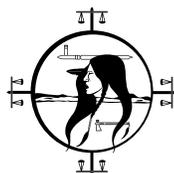
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