

Index

Aboriginal and treaty rights, duty to negotiate

- framework of modern aboriginal law and treaty rights —
 - constitutional obligations, 40-42
 - Honour of the Crown, 38-40
- generally, 37-38, 64-65
- Honour of the Crown, duty to negotiate and treaty interpretation —
 - court, role of, 47
 - duty to negotiate, triggering, 46
 - process, 42-44
 - purpose and contents, 44-45
 - reconciliation, and, 38-40
- negotiation of Aboriginal title and rights —
 - judicial declarations on negotiation assumptions, 55-58
 - nature and content of title, 49-51
 - policy and political assumptions underlying negotiation, 51-55
 - reconciling disconnect in future negotiations, 58-64

Alton Natural Gas Storage Inc. v. Poulette, 109-112, 120-122

Anishinabek Nation Governance Agreement

- generally, 95, 107-108
- positive results —
 - First Nations to have all powers of natural person, 99
 - First Nations to have powers over penalties and enforcement, 99-100
 - further negotiations to expand self-government, 100
 - new financial support for agreement and First Nations governments, 99
 - no effect on constitutionally protected Aboriginal or treaty rights, 100
 - paramountcy of agreement and First Nations governments, 98-99
 - recognition of First Nations jurisdiction, 97-98
- positive/negative results —
 - creation of level of Anishinabek government above others, 106
 - division of federal transfer payment, 107
 - First Nations authority not based on inherent right of self-government, 106
 - limited bundle of self-government powers, 105

Anishinabek Nation Governance Agreement — *continued*positive/negative results — *continued*

no role for treaty organizations, 107

potential negative results —

agreement and First Nations governments required to defray governance costs, 103-104

broad applicability of Charter, 103

enforcement costs and administrative inefficiencies, 105

First Nations governments blocked from enacting additional laws, 105

laws and decision-making subject to rights or appeal or review, 100-102

limits on paramountcy of agreement and First Nations governments laws, 102

new rights to participate in governance, 102

no funding for expanded citizenship and non-citizens residing on reserves, 104-105

what it does, 95-97

Attorney General, role in reconciliation, 29-31**Bill C-69**, 9, 13-17, 21-23**Bill C-262**, 131***British Columbia (Minister of Forests) v. Okanagan Indian Band***, 33**Calls for Justice, National Inquiry into Missing and Murdered Indigenous Women and Girls**, 1, 2, 4, 7-9, 15, 17, 23***Canada v. Stoney Band***, 34***Canadian Charter of Rights and Freedoms***

generally, 64, 97, 103, 108

s. 15, 30, 103

s. 25, 103

Canadian Energy Regulator Act, 13-14, 16-17***Canadian Environmental Assessment Act, 2012***, 9-11, 12, 13, 14***Cannabis Act***

generally, 82, 83, 84, 87, 93, 94

legislative purpose, 91-92

Cannabis regulation. *See* Retail cannabis regulation and right to self-determination

Coastal GasLink Pipeline, BC, 71

Coastal GasLink Pipeline Ltd. v. Huson, 109, 116-120, 120-122

Constitution Act, 1867, 83, 106

Constitution Act, 1982

s. 35, 25-26, 27-29, 31, 33-35

Court, role of

duty to negotiate, 47-48

reconciliation, 31-35

Declaration on the Rights of Indigenous Peoples Act and reconciliation

effects of, 132-134

generally, 28, 123-124, 132, 150

implementation challenges —

duty to consult and principle of free, prior and informed consent, 137-148

s. 3, 134-137

role in process of reconciliation —

evaluation, 149-150

process, 148-149

United Nations Declaration on the Rights of Indigenous Peoples —

evolution of Canada's position on, 128-131

generally, 123-124, 124-128

Duty to negotiate and overlapping traditional territories

framework of modern aboriginal law and treaty rights —

constitutional obligations, 40-42

Honour of the Crown, 38-40

generally, 37-38, 64-65

Honour of the Crown, duty to negotiate and treaty interpretation —

court, role of, 47

duty to negotiate, triggering, 46

process, 42-44

purpose and contents, 44-45

reconciliation, and, 38-40

negotiation of Aboriginal title and rights —

judicial declarations on negotiation assumptions, 55-58

nature and content of title, 49-51

Duty to negotiate and overlapping traditional territories — *continued*negotiation of Aboriginal title and rights — *continued*

policy and political assumptions underlying negotiation, 51-55

reconciling disconnect in future negotiations, 58-64

Eagle Spirit Energy Resource Corridor, Alberta and BC, 70**East Tank Farm, Alberta, 69****Energy projects under Impact Assessment Act. See *Impact Assessment Act, Indigenous-led projects under*****Fort McMurray West 500-kV Transmission Project, Alberta, 69****Government obligation to seek reconciliation, 26-29****Honour of the Crown**

duty to consult, and, 137

duty to negotiate, treaty interpretation, and, 42-48

generally, 26-29, 35, 37-38, 40-42, 57, 60, 143-144

obligation to prove asserted Aboriginal rights, and, 63

reconciliation and, 38-40, 64, 148, 150

Royal Proclamation of 1763, 38***Impact Assessment Act*, 14-16. See also *Impact Assessment Act, Indigenous-led projects under******Impact Assessment Act, Indigenous-led projects under***

generally, 67, 80

impact assessment process, Indigenous participation —

collaborative process, 72

exercise of powers, constraints on, 76

generally, 71

Indigenous governing bodies, 75-76

phases of process —

decision-making phase, 74

impact assessment phase, 74

impact statement phase, 73-74

planning phase, 73

post-decision phase, 75

“spectrum of engagement” , 72-73

streamlined process, 77-80

- Impact Assessment Act, Indigenous-led projects under*** — *continued*
- Indigenous-owned energy projects —
- Coastal GasLink Pipeline, 71
 - Eagle Spirit Energy Resource Corridor, 70
 - East Tank Farm, 69
 - Fort McMurray West 500-kV Transmission Project, 69
 - Muskowekwan Potash Mine Project, 67-68
 - Trans Mountain Expansion Project, 70
- Injunctions and blockades, self-help remedies**
- Alton Natural Gas Storage Inc. v. Poulette* —
- application of test, 111-112
 - generally, 109-110, 120-122
 - test for interlocutory injunction, 110-111
- Coastal GasLink Pipeline Ltd. v. Huson* —
- application of test, 119-120
 - generally, 116-117, 120-122
 - role of Indigenous law, 117-119
- generally, 109, 121-122
- Taseko Mines Limited v. Tsilhqot'in National Government* —
- generally, 112-113, 120-122
 - history of Taseko project, 113-114
 - interlocutory injunction test, 114-116
- treatment of blockades in injunction cases, 120-121
- Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)***, 34-35
- Kwakiutl Nation v. Canada (Attorney General)***, 34
- Lax Kw'alaams Indian Band v. Canada (Attorney General)***, 33, 35
- Missing and Murdered Indigenous Women and Girls, National Inquiry.** *See* **National Inquiry into Missing and Murdered Indigenous Women and Girls and resource extraction sector**
- Mitchell v. Minister of National Revenue***, 26
- Muskowekwan Potash Mine Project, Saskatchewan**, 67-68
- National Energy Board Act***, 9, 12-13, 16

National Inquiry into Missing and Murdered Indigenous Women and Girls and resource extraction sector

background of National Inquiry, 3-4

Bill C-69 —

Canadian Energy Regulator Act, 16-17

generally, 13-14

Impact Assessment Act, 14-16

calls for justice, 1, 2, 4, 7-9, 15, 17, 23

connection, 2

findings of Inquiry —

economic insecurity, 6

industry culture, 7

narrow and short-sighted decision-making, 7

rotational shift work, 5

substance abuse and addictions, 6

transient workers, 4-5

workplace environment, 5

generally, 1-2, 23

previous regulatory regime —

Canadian Environmental Assessment Act, 2012, 9-11

National Energy Board Act, 12-13

project assessment process, evolution, 9

resource extraction sector —

gender-based analysis plus, 17-21

increased engagement with Indigenous Peoples, 21-23

Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam), 25, 35

R. v. Gladstone, 27

R. v. Van der Peet

two-stage analysis, 86-89

Reconciliation, public interest in, See also Declaration on the Rights of Indigenous Peoples Act and reconciliation

Attorney General, role of, 29-31

courts, role of, 31-35

generally, 25-26, 35-36

government obligation to seek, 26-29

Resource extraction sector, MMIWG and

gender-based analysis plus, 17-21

Resource extraction sector, MMIWG and — *continued*
increased engagement with Indigenous Peoples, 21-23

Retail cannabis regulation and right to self-determination

Aboriginal regulation, 83-84

Cannabis Act —

 federal regulation, 82, 83, 84

 legislative purpose, 91-92

federal regulation, *Cannabis Act*, 82, 83, 84

generally, 92-94

legalization of recreational cannabis, 82

provincial regulation —

 application to First Nation reserves, 83

 generally, 82-83

self-determination —

 Canadian Aboriginal law, and, 85-86

 contestable concept, 84-85

 justification, test, 89-92

Van der Peet two stage test, 86-89

Tobique raid, 81-82, 84-85

Tribal ReLeaf dispensary, 81-82, 84-85

Right to self-determination, retail cannabis regulation and. *See* retail cannabis regulation and right to self-determination

Royal Proclamation of 1763, 38, 56

Self-determination, 125-127. *See also* Retail cannabis regulation and right to self-determination

Taseko Mines Limited v. Tsilhqot'in National Government, 109, 112-116, 120-122

Tobique First nation medical cannabis dispensary raid, 81-82, 84-85

Trans Mountain Expansion Project, Alberta and BC, 70

Treaty rights. *See* Aboriginal and treaty rights, duty to negotiate

Tribal ReLeaf. *See* retail cannabis regulation and right to self-determination

Tsilhqot'in Nation v. British Columbia, 34

United Nations Declaration on the Rights of Indigenous Peoples Declaration,
See also Declaration on the Rights of Indigenous Peoples Act and
reconciliation

evolution of Canada's position on, 128-131

generally, 29, 123-124, 124-128

Wewaykum Indian Band v. Canada, 27-28