# Index

ABORIGINAL LAND LAW	ABORIGINAL LAND LAW—Cont'd
Aboriginal lands, § 8:2	Aboriginal title—Cont'd
Aboriginal rights, § 8:2	protection for the future, § 8:3
Aboriginal title	provincial laws, status of, § 8:4
generally, <b>§ 8:3 to 8:7</b>	proving, before, § 8:4
alienated without compensation, § 8:4	reconciliation as objective, § 8:4
allowable uses, § 8:3	remedies available, § 8:4
characteristics of group, § 8:5	reserve lands, comparison with, § 8:3
characteristics of land, § 8:5	shared title, § 8:5
collective right, § 8:3	small sites, not limited to, § 8:3
consent to infringement, § 8:4	sufficiency, § 8:5
consultation, lack of, § 8:4	traditional territory, § 8:5
consultation re claims, § 8:4	unceded territory, § 8:4
continuity, § 8:5	unlawful destruction, § 8:3
court recognition, § 8:5	uses, allowable, § 8:3
Crown does not own, § 8:3	uses not allowed, § 8:3
Crown grant in unceded territory, § 8:4	Alberta, § 8:17 Atlantic provinces generally, § 8:20
Crown's fiduciary duty, justification consistent with, § 8:4	British Columbia, § 8:16
defences, § 8:4	Collective ownership, § 8:1
defined, § 8:2	Constitutional situation, § 8:1
economic benefit, right to, § 8:3	Environmental protection, § 8:29
equitable remedies, § 8:4	Glossary, § 8:2
European sovereignty, § 8:3, § 8:5	Indian lands, § 8:2
exclusivity, § 8:5	Interests, § 8:1
extinguishment by treaty or otherwise,	Legal rules, § 8:1
§ 8:7	Manitoba, § 8:17
future, protection for the, § 8:3	Metis lands, § 8:2
infringement, § 8:4	Modern era, § 8:1
interjurisdictional immunity, doctrine	New Brunswick, § 8:22
of, <b>§ 8:4</b>	Newfoundland and Labrador, § 8:24
joint title, § 8:5	Northwest Territories, § 8:25
justification components, § 8:4	Nova Scotia, § 8:21
justified infringement, § 8:4	Nunavut, § 8:26
laws, status of provincial, § 8:4	Ontario, § 8:18
legal systems, § 8:3	Origins, § 8:1
legislation, justification of, § 8:4	Overview, § 8:1
modern law, § 8:3	Prince Edward Island, § 8:23
pre-European settlements, § 8:3	Quebec, § 8:19
present occupation, § 8:5	Registration systems, § 8:1
private ownership, comparison with,	Reserves
§ 8:3	beneficial interest in, § 8:12
process for settlement of claims, § 8:6	creation of, § 8:10
proof of, § 8:5	defined, § 8:2, § 8:9

ABORIGINAL LAND LAW—Cont'd	ABORIGINAL PEOPLES—Cont'd
Reserves—Cont'd	Non-status natives and persons of mixed
expropriation, § 8:15	blood
special, § 8:13	general, § 1:133
statutes re, § 8:9, § 8:15	references to Indian blood, § 1:134
surveys of, § 8:14	Other statutory references
title to, § 8:11	generally, § 1:135
Saskatchewan, § 8:17	aborigines (Canada), § 1:137
Surrendered, the tract, § 8:2	first nation and first nation, member
Traditional territory, § 8:2	(Canada), § 1:136
Treaty settlement lands, § 8:2	native person (Ontario), § 1:139
Trees, § 8:28	persons with Inuit or Indian blood liv-
Yukon, § 8:27	ing the life of an Inuk or Indian (Canada), § 1:138
	Royal Proclamation of 1763, § 1:2
ABORIGINAL PEOPLES	Section 35, § 1:4
Approaches to defining, § 1:1	
Constitution Act, 1867, s. 91(24), <b>§ 1:12</b>	ABORIGINAL RIGHTS
Constitution Act, 1930—Natural	See also Charter of Rights and Freedoms
Resources Transfer Agreements,	and Citizenship and Civil Rights
§ 1:11	Generally, § 5:5
Corporate entities representing, § 1:141	Amendment of, § 2:28
Indians	Characterization and classification of sep
generally, § 1:5	arate rights, § 5:14
off-reserve, § 1:22	scope, § 5:14
status, § 1:17, § 1:59	Child welfers regulation \$ 4:16
statutory recognition of, § 1:16	Child welfare regulation, § 4:16 Common law doctrine of, § 2:1, § 5:1,
treaty, § 1:19	§ 14:11
Inuit	Constitution, under the, § 2:2, § 14:7
generally, § 1:6, § 1:122	Constitutional conferences, § 2:30
direct territorial legislation, § 1:124	Culture and religion, § 14:1
Indian Act not applying to Inuit,	Date of contact, § 5:19
§ 1:123, § 3:19	Distinctive test, § 5:16
laws of general application applying to	Evidence, § 5:18
Inuit in the Territories, § 1:125	Extinguishment of
Metis	generally, § 5:23
generally, § 1:8	fishing right
common law definition, § 1:9	generally, § 13:17
statutory references to Metis	Natural Resources Transfer Agree-
generally, <b>§ 1:126</b>	ments, § 13:19
Dominion Lands Act, § 1:128	commercial rights, § 13:20
Manitoba Act, 1870, § 1:127	private land, § 13:21
Metis Act (Saskatchewan), § 1:132	provincial authority, § 13:22
Metis Settlements Act (Alberta),	hunting right
§ 1:129	generally, § 13:17
Metis Settlements Appeal Tribunal,	Natural Resources Transfer Agree-
§ 1:130	ments, § 13:19
Metis Settlements Land Protection	commercial rights, § 13:20
Act (Alberta), § 1:131	private land, <b>§ 13:21</b>
Non-status Indians, § 1:10, § 1:15	provincial authority, § 13:22

ABORIGINAL RIGHTS—Cont'd	ABORIGINAL RIGHTS—Cont'd
Extinguishment of—Cont'd	Royal Proclamation of 1763, APP B,
provincial law cannot, § 5:23	§ 2:9, § 2:10
standard for Crown, § 5:23	Section 35, § <b>2:26,</b> § <b>5:2</b>
surrender, by, § 5:23	Spanish Law, comparison, § 2:11
French law, comparison, § 2:12	Sui generis, § 5:5
Historical obligations of Britain, § 2:18	Supreme Court, under the, § 2:1
Human rights	Traditional medicine, § 5:14
Canadian Human Rights Act, § 6:22	United States, comparison, § 2:13
claims, examples of, § 6:23	Van der Peet test
how the CHRA works, § 6:22	generally, § 5:14
provincial and territorial human rights	application, § 5:17
legislation, § 6:24	characterization of rights, § 5:14
Infringement	distinctive, § 5:16
generally, § 5:24	factors to consider, § 5:17
factors, § <b>5:24</b>	integral practice, § 5:15
justification	Voluntary cession, § 2:29
generally, § 5:25	ABORIGINAL SOVEREIGNTY
compelling and substantial objective	Generally, § 2:1
test, § <b>5:26</b>	Common law rights, § 2:1
compensation, § 5:30	Presumed to continue, § 2:3
consistent with fiduciary duty owing	Protection of pre-existing rights, § 2:1,
to aboriginal people, § 5:27	§ 2:8
minimal infringement, § 5:29	ABORIGINAL TITLE
priority of rights, § 5:28	See also Aboriginal Land Law
test, § 5:24	Custom, role of, § 2:5
Integral practice, § 5:15	Evidence of, § 2:5
International law	Protected under British colonial law, § 2:8
see also International Law	Provincial laws and general application,
generally, § 2:36	\$ 3:18, \$ 4:19
convention of rights of the child, § 2:40	
covenant of civil and political rights,	ADOPTION
§ 2:38	Accessing Indian status, § 15:21
covenant on elimination of racial	Child defined, § 2:4
discrimination, § 2:39	Consultation, § 15:19
human rights, § 2:37	Court, role of, § 2:4
ILO convention, § 2:42	Customary law, § 2:3, § 15:14
inter-American instruments, § 2:41	legal effects, § 15:15
Labour law, § 4:13	Disclosure, § 15:21
Metis recognized, § 5:8	Northwest Territories, § 2:4
Natural resources, § 4:19	Nunavut, § 2:4
Not to be taken away without express	Openness agreements, § 15:20
words, § 2:3	Provincial law, § 2:4
Proof	Statutory, § 15:16
generally, § 5:14	best interests of the child, § 15:18
burden and standard of, § 5:22	legal effects, § 15:17
by recognition through legislative or	BAND COUNCIL
administrative action, § 5:21	See also Self-government
Recognized and affirmed. § 5:7	Appointment of chief. § 2:4

BAND COUNCIL—Cont'd	BAND COUNCIL—Cont'd
Borrowing regulations, APP K § K:1 et	Defined
seq.	generally, § 2:4, § 7:13
Bylaws	council members in position of trust to
generally, § 7:47	band and members, § 7:17
conflicts with other federal legislation,	custom council or s. 74 council, § 7:13
§ 7:62	disqualification from office, § 7:19
conflicts with provincial laws, § 7:63	receivership, § 7:20
disallowance and revocation	size, <b>§ 7:14</b>
generally, § 7:59	source and scope of powers, § 7:15
civil remedy, injunction, § 7:79	term of office, § 7:18
court of jurisdiction, § 7:77	Financial transparency, § 7:21
penalties, fine or imprisonment, § 7:78	Freedom of information and protection of privacy legislation, § 7:22
police officers, § 7:82	Local government, § 7:1
proof of by-laws, § 7:80	Meetings, APP I § I:3 to APP I § I:5
proposed amendments re proof of	Meetings and decision making formalities
by-laws, <b>§ 7:81</b>	generally, § 7:40
general matters, s. 81 by-laws	application of Charter, § 7:45
generally, § 7:49	band council resolution, § 7:41
agriculture, § 7:71	band council's authority to enter into
ancillary powers, § 7:75	binding contracts, § 7:42
animal control, § 7:68	duty of fairness, § 7:44
business licensing, § <b>4:24</b> , § <b>7:73</b>	Indian Band Council Procedure
health, § 7:65	Regulations, § 7:43
land allotment, zoning and building	Orders, APP I § I:6 to APP I § I:31
standards, § 4:22, § 7:70	Proceedings, APP I § I:6 to APP I § I:31
law and order and by-laws enforce-	Regulations re procedures
ment, § 7:67	generally, APP I § I:1 et seq.
membership and members' rights,	definitions, APP I § I:2
§ 7:74	remuneration, § 7:16
public works, § 7:69	BAND FUNDS
traffic, <b>§ 7:66</b>	See also Finances
wildlife management, § 7:72	Appointment of third party manager,
intoxicants, § 4:18, § 7:51	§ 3:65
invalid by-laws, § 7:60	Spending investing and accounting for
statutory instruments and publicity,	generally, § 7:84
§ 7:58	band control over revenue moneys,
taxation and licensing, § 7:50	§ 7:92
territorial jurisdiction, § 7:61	borrowing, § 7:95
Councillors	capital moneys and revenue moneys,
generally, § 7:27	§ 7:89
civil and criminal liability, § 7:98	Indian moneys, § 7:85
custom band council, § 7:28	collection expenses, § 7:87
section 74 Councillors elected at large,	employees and labour relations, § 7:96
§ 7:29	applicability of Canada Labour Code
section 74 Councillors elected to repre-	to band employees, § 4:13
sent an electoral section, § 7:30	interest, § 7:88
Criminal and civil liability of bands,	loans to band members, § 7:93
§ 7:97	spending capital moneys, § 7:90

BAND FUNDS—Cont'd	BAND MEMBERSHIP—Cont'd
Spending investing and accounting for —Cont'd	Membership rules for Departmental band lists—Cont'd
spending only for benefit of Indians, § 7:86	status Indians or band members admitted by band council, § 1:96
spending revenue moneys, § 7:91	basic rule, § 1:96
statutory spending obligations, § 7:94	constitutional rationale for limitation, § 1:98
BAND MEMBERSHIP	legislation: s. 12, <b>§ 1:97</b>
All band members are Indians, § 1:80	Reinstatement payments: s. 15(5), § 1:106
Band lists to be kept by band or depart-	Rights of non-status band members
ment	generally, <b>§ 1:109</b>
generally, § 1:81	affirmed rights, § 1:111
bi-monthly updates, § 1:85	denied rights, § 1:112
consequences of departmental control,	partial Indian Act rights, § 1:109
§ 1:83	Starting point for band lists
early departmental control, § 1:82	generally, § 1:86
returning control to Department, § 1:84	interim powers of Registrar, § 1:87
Band membership codes	relevance of pre-1985 law, § 1:88
generally, § 1:101	section 9: April 17, 1985 band lists, § 1:86
bringing membership codes into effect, § 1:102	v
enforceability, § 1:104	BANDS
section 10, <b>§ 1:101</b>	Amalgamation or division
, -	generally, § 1:35
Entitlement on ceasing to be a member, § 1:107	effect of amalgamation on band assets, § 1:37
entitlement on ceasing to be a member for other reasons, § 1:108	effect of division on band assets and membership, § 1:38
entitlement on transfer from one band	Indian Act provisions, § 1:36
to another: s. 16(2), <b>§ 1:107</b>	Criminal and civil liability of band
Inquiries: s. 14.1, <b>§ 1:105</b>	members and groups, § 7:99
Membership rules for Departmental band lists	Criminal and civil liability of bands, § 7:97
generally, § 1:89	Custom and informal systems, § 10:12
band members as of 16th April 1985,	Enfranchisement, § 1:40
§ 1:90	Modern definition
band members' children born on or after 17th April 1985, § 1:93	generally, § 1:24 proclamations, § 1:27
general legislation governing band lists, § 1:100	reserve lands qualification, § 1:25 trust funds qualification, § 1:26
limitation to one Departmental list, § 1:99	Nature of as legal entity generally, § 1:28
loss of membership due to sex discrimination prior to April 17, 1985, <b>§ 1:92</b>	distinguishable from band community, § 1:33 not a corporation, § 1:30
members of new bands created by Cabinet Declaration, § 1:91	not a group of tenants in common, § 1:32
persons with one parent a status Indian and band member, § 1:95	not an unincorporated association, § 1:31
previously enfranchised persons. § 1:94	not a person. § 1:29

BANDS—Cont'd	CHILDREN—Cont'd
Nature of as legal entity—Cont'd	Property of—Cont'd
problems from unclear legal status,	payment into court, § 15:30
§ 1:34	Support
Origin of, § 1:23	enforcement, § 15:13
Powers of band acting as a whole, § 7:12	general, § 15:12
Recognition of new bands, § 1:35	jurisdiction, § 15:3
Relocation of, § 3:40	Welfare
CHARTER OF RIGHTS AND	community involvement, § 15:25
FREEDOMS	heritage as factor, § 15:26
Aboriginal rights and freedoms, s. 25,	jurisdiction, § 15:22
§ 6:21	plans of care, § 15:23
Application to aboriginal governments,	principles, § 15:23
§ 2:33, § 6:6	priorities, § 15:24
Bylaws, <b>§ 7:47</b>	CITIZENSHIP AND CIVIL RIGHTS
intoxicants, § 7:51	Canadian Bill of Rights, § 6:4
Cruel and unusual punishment, § 2:35,	Canadian Charter of Rights and Freedoms
§ 6:20	generally, § 6:5
Culture and religion, <b>§ 6:17</b> , <b>§ 14:7</b>	aboriginal rights and freedoms, s. 25,
Equality rights, § 2:34	§ 6:21
Life, liberty and security of person, § 6:18	application to aboriginal governments,
Section 35, relationship with, § 5:11,	§ 6:6
§ 14:9	conscience and religion, s. 2(a), § 6:17
Unreasonable search and seizure, § 6:19	cruel and unusual treatment or punish-
CHILDREN	ment, s. 12, <b>§ 6:20</b>
Aboriginal rights, § 15:32	equality and affirmative action, s.15
Access	generally, § 6:8
jurisdiction, § 15:3	caselaw, § 6:11
Adoption	discrimination, test for, § 6:9
accessing Indian status, § 15:21	infringements, justification of, s. 1 of the Charter, <b>§ 6:10</b>
consultation, § 15:19	
custom adoption, § 15:14	s. 15 in the aboriginal context, § 6:8 life, liberty and security of person, s. 7,
legal effects, § 15:15	§ 6:18
disclosure, § 15:21	unreasonable search and seizure, s. 8,
openness agreements, § 15:20	§ 6:19
statutory, <b>§ 15:16</b>	Canadian Human Rights Act, § 6:22
best interests of the child, § 15:18	claims, § <b>6:23</b>
legal effects, § 15:17	how the CHRA works, § 6:22
Custody	Provincial and territorial human rights
best interests of the child, § 15:10	legislation, § 6:24
in adoption, § 15:18	Subjects and citizens, § 6:1
determination, § 15:9	Canadian citizens, aboriginal people as,
enforcement, § 15:11	§ 6:3
jurisdiction, § 15:3	Crown subjects, aboriginal people as,
Divorce, § 15:2	§ 6:2
Property of	CLAIMS
distribution to infants, § 15:29	See also Land Claims
jurisdiction, § 15:27	Application of section 35, § 5:12
liability, § 15:31	Evidentiary difficulties, § 5:18

CLAIMS—Cont'd	CRIMINAL LAW—Cont'd
Proof, § 5:13	Gladue—Cont'd
Specific claims	Criminal Code provisions, § 17:15
basis for, § <b>3:37</b>	—Cont'd
Specific Claims Tribunal Act, § 3:37	applying s. 718.2(e) and Gladue
tribunal decisions, 8.3(e)	—Cont'd
limitation periods, § 3:37, § 3:70	appropriate sentencing procedures and sanctions, § 17:19
parties, <b>§ 3:37</b>	bail hearings, § 17:19
rules and process, § 3:37	civil matters, § 17:22
Van der Peet test	court martial, § 17:32
generally, § 5:14	extradition, § 17:25
application, § 5:17	faint hope hearings, § 17:27
characterization of rights, § 5:14	leading jurisprudence — Gladue
distinctive, § 5:16	and Ipeelee, § 17:16
factors to consider, § 5:17	parole, § 17:23
integral practice, § 5:15	prison conditions, § 17:30
CONSTITUTIONAL RECOGNITION	requests for discharge, § 17:26
	section 113 firearms authoriza-
Aboriginal rights, § 2:2	tions, § 17:24
Culture and religion, § 14:7	segregation of inmates, § 17:31
Custom, of, § 2:3	sentencing process, § 17:17
French law, comparison, § 2:12	unique systemic background fac-
Jurisdiction, § 2:20	tors, § 17:18
No bar to, § 3:72	Gladue information and Gladue
Provincial agreements, § 2:24	reports, § 17:21 section 718.2(e) mandates
Royal Proclamation of 1763, <b>§ 2:9 to 2:10</b>	consideration of the circum-
Rupert's Land order, § 2:21	stances of aboriginal offenders,
Section 35, § 2:3, § 2:26, § 14:9	§ 17:15
Self-government, of, § <b>2:6</b>	federal correctional system, § 17:41
Spanish Law, comparison, § 2:11	legal recognition of aboriginal rehabili-
United States, comparison, § 2:13	tation institutions, § 17:34
Officed States, comparison, § 2.13	parole, § 17:40
CRIMINAL LAW	recognition of cultural differences of
Application of the Criminal Code to	native communities, § 17:35
aboriginal persons, § 17:1	specialized courts, § 17:36
Criminal law curtailment of aboriginal	special orders generally, § 17:37
rights, § 17:2	banishment, § 17:38
Criminal liability of bands or band councils, § 17:44	DNA sample from offender, § 17:39
fines, § 17:45	firearms restrictions, § 17:37
Gladue	Youth Criminal Justice Act provisions,
generally, § 17:15	§ 17:33
Criminal Code provisions, § 17:15	Law enforcement by band police forces,
applying s. 718.2(e) and Gladue	§ 17:42
accused found not criminally	Procedure
responsible, § 17:28	generally, § 17:11
application of s. 718.2(e) in	aboriginal victims and jury instruction,
specific sentencing contexts,	§ 17:14
§ 17:20	jury selection, § 17:11

CRIMINAL LAW—Cont'd	CULTURE AND RELIGION—Cont'd
Procedure—Cont'd	International law
jury size, <b>§ 17:12</b>	see also International Law
pre-charge decisions, § 17:13	binding
Sentencing and parole	generally, <b>§ 14:33</b>
generally, § 17:15	Convention on Biological Diversity,
Criminal Code provisions	§ 14:33
generally, § 17:15	Convention on the Means of
applying s. 718.2(e) and Gladue	Prohibiting and Preventing the
accused found not criminally	Illicit Import, Export and
responsible, § 17:28	Transfer of Ownership of
application of s. 718.2(e) in	Cultural Property, § <b>14:35</b> ILO Convention 169, § <b>14:34</b>
specific sentencing contexts,	World Heritage Convention, § 14:36
§ 17:20	intellectual property, § 14:42
appropriate sentencing procedures	GATT—agreement on trade-related
and sanctions, § 17:19	aspects of intellectual property
bail hearings, § 17:22	rights, § 14:43
civil matters, § 17:29	non-binding
court martial, § 17:32	generally, § <b>14:37</b>
extradition, § 17:25	Agenda 21 from U.N. Conference or
faint hope hearings, § 17:27	Environment and Development
leading jurisprudence — Gladue	§ 14:41
and Ipeelee, § 17:16	Mataatua Declaration from the First
parole, § 17:23	International Conference on the
prison conditions, § 17:30	Cultural and Intellectual Prop-
requests for discharge, § 17:26	erty Rights of Indigenous
section 113 firearms authoriza-	Peoples (1993), § 14:38
tions, § 17:24	Rio Declaration on Environmental and Development, § 14:40
segregation of inmates, § 17:31	UN Draft Declaration on the Rights
sentencing process, § 17:17	of Indigenous Peoples, § 14:39
unique systemic background fac-	Language, § 14:6
tors, § 17:18	Protection of
Gladue information and Gladue	America, § 14:16
reports, § 17:21	Australia, § 14:15
section 718.2(e) mandates	Charter
consideration of the circum- stances of aboriginal offenders,	section 35, <b>§ 14:9</b>
§ 17:15	section 2(a), § 6:17, § <b>14:8</b>
federal correctional system, § 17:41	common Law, § 14:11
Youth Criminal Justice Act provisions,	damages, <b>§ 14:13</b>
§ 17:33	injunctions, § 14:14
Tribal courts, § 17:43	Replevin, § <b>14:12</b>
	division of powers, § 14:10
CULTURAL PROPERTY	legislation
International protection of, § 2:43,	material culture
§ 14:32	
Objects, § <b>2:44</b>	generally, <b>§ 14:18</b> federal, <b>§ 14:19</b>
Sites, § 2:44	Canada National Parks Act,
CULTURE AND RELIGION	S 14:23
Defences. § 14:4	Canada Shipping Act. § 14:26
DOIOHOUD, X ITOT	CAHAGA DIIIDDIIE /ACE V 17.40

CULTURE AND RELIGION—Cont'd	DEPARTMENT OF ABORIGINAL
Protection of—Cont'd	AFFAIRS AND NORTHERN
legislation—Cont'd	DEVELOPMENT ACT—Cont'd
material culture—Cont'd	Minister's powers, duties and function,
federal, § 14:19—Cont'd	APP C § C:4 to APP C § C:6
Cultural Property Export and	—Cont'd
Import Act, § 14:21	powers of the Department of Indian
Historic Sites and Monuments	Affairs and Development, § 7:5
Act, § 14:22	Title of department, § 3:25
Indian Act, § 14:20	DIVORCE
Museums Act, § 14:25	Children, see Children
Territorial Lands Act, § 14:24	Jurisdiction, § 15:2, § 15:3
provincial, § 14:27	Property division, § 15:5
territorial, § 14:28	First Nations Land Management Act,
treaties and agreements, § 14:29	§ 15:6
Nisga'a, § 14:29	membership in different bands, § 15:5
Westbank First Nation, § 14:30	on-reserve property, § 15:5, § 15:6
practices, traditions and customs, \$ 14:17	Spousal support, § 15:7
\$ 14:17 Schools, \$ 14:5	enforcement of, § 15:8
Schools, § 14:5	DUDY TO CONCILT AND
CUSTOM	DUTY TO CONSULT AND ACCOMMODATE
Aboriginal title, role in, § 2:5	
Affirmed as law by section 35, § 5:34	Basic features of duty
Canadian law does not displace custom,	generally, § 5:35 to 5:39
§ 2:2	origins of duty, § 5:35
Common law recognition, § 2:3	overview of content of duty, § 5:37
exceptions to, § 2:3	when duty applies, § 5:36
Constitutional recognition, § 2:3	who holds duty, § 5:38
Contemporary meaning of laws, § 2:7	who must be consulted, § 5:39
Decision-making process, § 7:46	Content of duty to consult in detail
Evolution of, § 2:7	generally, § 5:44 to 5:56
Nature of right, § 2:5	assessment of strength of a claim/
Origin of right, § 2:5	potential severity of infringement, § 5:52
Self-government, as basis for, § 2:6	
Statutory recognition, § 2:4	clear notification of proposed decision/ course of action, § 5:47
band council, § 2:4	duty of good faith, § 5:46
DEPARTMENT OF ABORIGINAL	duty to provide reasons, § 5:51
AFFAIRS AND NORTHERN	early consultation, § 5:45
DEVELOPMENT ACT	format for consultation process, § 5:50
Generally, APP C § C:1 et seq.	information sharing, § 5:48 to 5:50
Annual report, APP C § C:7	reasonable time for consultation, § 5:49
Establishment of department, APP C	unresolved issues, § 5:53 to 5:56
§ C:2 to APP Ĉ § C:3, § 3:25	Duty to accommodate in detail, § 5:56 to
Indian Act administration, § 3:27	5:57
Metis, responsibility for, § 3:26	Introduction, § 5:33 to 5:34
not referenced in Act, § 3:27	Limitation periods, § 5:43
Minister's powers, duties and function,	Relationship between Haida framework
APP C § C:4 to APP C § C:6	and Sparrow framework
Indian Act administration, § 3:29	generally, § 5:58 to 5:61

# DUTY TO CONSULT AND ACCOMMODATE—Cont'd

Relationship between Haida framework and Sparrow framework—Cont'd ability to litigate prior to decision being made or implemented, § 5:61

applicability of Haida framework to proven rights, § 5:59

standard for consultation and accommodation, infringement occurred before right proven, § 5:60

Role of courts, § 5:40 to 5:43 remedies for breach of duty, § 5:42 standard of review, § 5:41

Role of private parties in consultation, § 5:44

### ECONOMIC DEVELOPMENT

Aboriginal Business Canada, § 19:104 Community Economic Development Program, § 19:107

Community Economic Opportunities Program, § 19:108

Farms, § 19:109

Indian Act, § 19:110

treaties, § 19:111

First Nations Commercial and Industrial Development Act, § 19:106

Framework for aboriginal economic development, § 19:103

Introduction, § 19:102

Procurement strategy for aboriginal business, § 19:105

## **EDUCATION**

Generally, § 19:9

Bill C-33, § **19:35** 

Day schools, § 19:34

Educators as federal employees, § 19:10

First Nations Control of First Nations Education Act, § 19:34 to 19:35

Programs and services

generally, § 19:12

Cultural/Educational Centres Program, § 19:16

elementary and secondary school funding, § 19:13

First Nation education reform initiative, § 19:18

Education Partnerships Program, § 19:20

### EDUCATION—Cont'd

Programs and services—Cont'd

First Nation education reform initiative,

§ 19:18—Cont'd

First Nation Student Success Program, § 19:19

First Nations SchoolNet Program, § 19:17

post secondary education, § 19:21 Indian Studies Support Program, § 19:23

Post-Secondary Student Support Program, § 19:21

University College Entrance Preparation Program, § 19:22

residence requirements; discrimination argument, § 19:14

Special Education Program, § 19:15

Residential schools

generally, § 19:24

comprehensive settlement argument, § 19:27

commemoration initiative, § 19:31 common experience payment, § 19:28

health and healing, § 19:32 independent assessment process, § 19:29

Truth and Reconciliation Commission, § 19:30

federal government apology, § 19:33 history of residential schools, § 19:25 residential schools litigation, § 19:26 Treaties, § 19:11

# **ELECTIONS**

See also Referendum

Generally, APP D § D:91 to APP D § D:97; APP H § H:1 et seq.

Accelerated, APP H § H:21

Acclamations, APP H § H:12 to APP H § H:14

Addresses of electors, APP H § H:6 Appeals, APP H § H:22 to APP H § H:24, § 7:37

Ballot papers, disposition of, **APP H § H:20** 

Calling, § 7:32

Counting of votes, APP H § H:15 to APP H § H:19

Eligibility to vote, APP H § H:3

#### **ELECTIONS—Cont'd** ESTATES—Cont'd Nomination and eligibility for office, Heirs § 7:34 absent, APP F § F:13 Nomination meeting, APP H § H:7 to advertising for, APP F § F:8 APP H § H:10 missing, APPF § F:13 Procedure, § 7:35 Intestacy, APP D § D:58 to APP D Oualifications of electors, § 7:33 § D:61 Regulations re Inventory, APP F § F:4 generally, APP H § H:1 et seq. Notice of death, APP F § F:3 application of, APP H § H:4 Possession, transfer of, APP F § F:12 definitions, APP H § H:2 to APP H Regulations re § H:3 generally, APP F § F:1 et seq. interpretation, APP H § H:2 to APP H definitions, APP F § F:2 § H:3 interpretation, APP F § F:2 Residency, APP H § H:3 Sureties, APP F § F:10 Secrecy of voting, APP H § H:25 Wills Setting aside, § 7:36 generally, APP D § D:55 to APP D Voters list, APP H § H:5 § D:56; APP F § F:15 Withdrawal of candidates, APP H § H:11 probate on, APP F § F:5 EMPLOYMENT OPPORTUNITIES FEDERAL GOVERNMENT MANDATE Aboriginal human resources development Generally, § 19:1 strategy, § 19:94 Constitutional basis for Canada's role, Aboriginal Skills and Employment § 19:2 Partnership Program, § 19:95 DIAND, § 19:6 Aboriginal Skills Development DIAND and Canada's Metis and non-Program—Federal Student Work status Indians, § 19:7 Experience Program, § 19:96 DIAND and Crown's services, § 19:6 Aboriginal workforce participation initia-Federal assumption of responsibility, tive, § 19:97 § 19:1 Discrimination regarding federally funded Loans, § 19:4 employment opportunities, § 19:101 Need for federal services amongst First Nations and Inuit youth employment aboriginal people today, § 19:3 strategy, **§ 19:98** Scope, § 19:8 First Nations and Inuit skills link program, § 19:100 FEDERAL JURISDICTION First Nations and Inuit summer work Child welfare experience program, § 19:99 First Nations Child and Family Services Program, § 4:16 **ESTATES** Conflicting federal laws, § 3:51 Administration, application for, **APP F** § F:6 Constitutional source Administrators Constitution Act, 1867, § 3:1 to 3:7 duties of, APP F § F:11 principles, summary of, § 3:2 powers of, APPF § F:11 section 91(24) and exclusive authority, § 3:1 Advertising for creditors, heirs, claimants, **APP F § F:8** federalism, § 3:1 Affidavits, APP F § F:7 Enclaves, § 3:8 Express priority, § 3:51 Creditors, advertising for, APP F § F:8 specific over general, § 3:51 Death, notice of, APP F § F:3 Executors, APPF § F:9 Labour relations Forms, APP F § F:16 Canada Labour Code, § 4:13

FEDERAL JURISDICTION—Cont'd	FEDERAL JURISDICTION—Cont'd
Labour relations—Cont'd	Legislation pursuant to—Cont'd
test to determine jurisdiction, § 4:13	specific statutes—Cont'd
aboriginal service providers, § 4:13	self-government legislation—Cont'd
Landlord and tenant law, § 4:20	Westbank First Nation Self-
Legislation pursuant to	Government Act, § 3:45
general statutes	Natural resources, § 4:19
generally, § 3:30 to 3:37	Property taxes, § 4:23
First Nations Commercial and	FIDUCIARY OBLIGATIONS,
Industrial Development Act, § 3:33	CROWN'S
First Nations Fiscal and Statistical	Appointment of third party manager, § 3:65
Management Act, § 3:35	Content
fiscal institutions, § 3:35	band funds, management of, § 3:64
First Nations Jurisdiction over Education in British Columbia	extinguishment of duties, § 3:67
Act, § 3:36	modification of duties, § 3:67
First Nations Land Management Act,	protection of s. 35 rights, § 3:66
§ 3:34	reserves
Indian Act, § <b>3:31</b>	creation of, § 3:60
Indian Oil and Gas Act, § 3:32	expropriation of, § 3:62
Specific Claims Tribunal Act, § 3:37	reserves and natural resources,
specific statutes	management of, § 3:61
generally, <b>§ 3:38 to 3:49</b>	settlements that take/create reserves,
band relocation	§ 3:63
Songhees Indian Reserve Act,	scrutiny of Crown conduct, § 3:59
§ 3:40	balancing of interests, § 3:59
comprehensive treaty settlement	conflict of interest, § 3:59
legislation	error, § 3:59
Nisga'a Final Agreement Act,	standard of conduct, § 3:59
§ 3:47	Context it arises, § 3:58, § 3:59
Tsawwassen First Nation Final	Constitution Act, 1982, s. 35, § 3:58
Agreement, § 3:48	Indian Act, § 3:58
land claim settlement	History, § 3:55 to 3:57
James Bay Act, § 3:41	Honour of Crown
Nunavut Land Claims Agreement	context, § 3:73
Act, § 3:8	fiduciary duty, versus, § 3:73
Western Arctic (Inuvialuit) Claims	history, § 3:73
Settlement Act, § 3:42	section 35 rights, § 3:73
mineral rights dispute settlement	treaty negotiations, § 3:73
legislation	Inuit, § 3:57
Fort Nelson Indian Reserve	Metis, § 3:57
Minerals Revenue Sharing	No duty owed
Act, § <b>3:49</b>	arm's length transaction of commercial
overriding the Indian Act	nature, § 3:68
St. Regis Islands Act, § 3:39	estate land sale, § 3:68
self-government legislation	funding of programs, § 3:68
Cree-Naskapi (of Quebec) Act, § 3:43	lease of privately held reserve lands, § 3:68
Sechelt Indian Band Self-Government Act, § 3:44	litigation against aboriginal groups, § 3:68

FIDUCIARY OBLIGATIONS,	FIRST NATIONS LAND
CROWN'S—Cont'd	MANAGEMENT ACT—Cont'd
No duty owed—Cont'd	Land code
miscellaneous, § 3:68 to 3:69	contents, § 3:34
protection of information, § 3:68	development of, § 3:34
quasi-judicial government bodies,	Indian Act, interaction with, § 3:34
§ 3:68	Overview, § 3:34
release of funds, § 3:68	FISHING
unproven s. 35 rights, § 3:68	Aboriginal fishing strategy, § 13:60
Origin, § 3:57	Affirmed by section 35, <b>§ 5:34, § 13:1</b>
Remedies for breach, § 3:69	Aquaculture regulations, § 13:78
bars to remedies laches and acquiescence, § 3:71	British Columbia Terms of Union, § 2:22
limitation periods, § 3:70	By-laws, <b>§ 13:47</b>
compound interest, § 3:69	Commercial fishing and harvesting rights
equitable compensation, § 3:69	§ 13:5
equitable remedies, § 3:69	Common law right, § 13:1
•	Extinguishment of right
FINANCES	generally, <b>§ 13:17</b>
See also Band Funds	Natural Resources Transfer Agree-
Appointment of third party manger,	ments, § 13:19
§ 3:65	commercial rights, § 13:20
First Nations Finance Authority	private land, § 13:21
functions and powers, APP W § W:76	provincial authority, § 13:22
to APP W § W:88	Fisheries Act, § 13:49
organization, APP W § W:59 to APP W § W:74	Fish farming regulations, § 13:78
First Nations Financial Management	Game preserves, § 13:66
Board	Incidental harvesting rights, § 13:8
functions and powers, APP W § W:51	Infringement
to APP W § W:55	generally, § 13:23
organization, APP W § W:39 to APP	collective vs. individual right, § 13:24
W § W:49	justification
procedures, APP W § W:569	generally, § 13:38
First Nations Statistical Institute	compensation, § 13:46
offences, APP W § W:91	consultation, § 13:42
organization, APP W § W:91	forestry, § 13:43
powers, APP W § W:91	minimal infringement, § 13:41
First Nations Tax Commission	mining, § 13:44
functions and powers, APP W § W:31	priority of rights, § 13:40
to APP W § W:35	recognition of the right, § 13:46
organization, APP W § W:17 to APP	road building, § 13:45
W § W:29	valid legislative objective, § 13:39
procedures, APP W § W:36	prima facie infringement, § 13:25
Fiscal management and control, APP W	preferred method, § 13:29
§ W:92 to APP W § W:109  Powers of First Nations APP W § W:5 to	undue hardship on rights, § 13:26
Powers of First Nations, APP W § W:5 to APP W § W:16	Jurisdiction over, § 2:22
A11 11 8 11.10	Marine mammals, § 13:58
FIRST NATIONS LAND	National parks, § 13:65
MANAGEMENT ACT	Priority, § 5:28, § 13:40
Jurisidiction, § 4:22	Private lands, § 13:67

FISHING—Cont'd	HEALTH CARE—Cont'd
Provincial parks, § 13:65	Funding for health programs and services
Provincial wildlife laws, § 13:48	—Cont'd
Public roads, § 13:68	communicable disease control
Regulation of	generally, <b>§ 19:49</b>
aboriginal communal regulations,	HIV/AIDS, <b>§ 19:50</b>
§ 13:50	immunization, § 19:51
licences issued, § 13:50	tuberculosis, § 19:49
by-laws, <b>§ 13:47</b>	West Nile virus, § 19:52
federal	drinking water in First Nations com-
Fisheries Act, § 13:49	munities
regulations specific to provinces,	generally, § <b>19:77</b>
§ 13:51	development of legislative
marine mammals, § 13:58	framework, § 19:79
natural resource transfer agreements, § 13:63	plan of action for drinking water, § 19:77
rights of access, § 13:64 provincial laws, § 13:48, § 13:70	water and wastewater action plan, § 19:78
Safety concerns, § 13:71	environmental public health and
Sale and transportation of food fish,	research
§ 13:59	generally, § 19:63
Shelter, right to construct, § 13:69	Environmental Health Program,
Sparrow test, § 13:2	§ 19:63
integral to distinctive culture, § 13:4	Environmental Health Research
Transfer of rights	Program, § 19:64
to non-aboriginals, § 13:14	funded health programs and services,
Treaty rights, § 13:9	§ 19:42
Van der Peet test, § 13:5	health governance and infrastructure
FORFEITED GOODS/CHATTELS	report
Regulations re, APP J § J:1 et seq.	generally, § 19:65
HEALTH CARE	Aboriginal Health Human Resources Initiative, § 19:65
Generally, § 19:36	Aboriginal Health Services
general legal obligation, § 19:40	Accreditation, § 19:66
history, <b>§ 19:38</b>	Aboriginal Health Transition Fund,
responsibility for health service for	§ 19:67
aboriginal peoples, § 19:37	e-Health Solutions, § 19:68
treaty rights to health care, § 19:39	Health Careers Program, § 19:69
Funding for health programs and services	health consultation and liaison,
generally, § 19:41	§ 19:70
children and youth, § 19:43	Health Facilities and Capital
Aboriginal Head Start On-Reserve	Program, § 19:71
Program, <b>§ 19:44</b>	Health Integration Initiative, § 19:72
Fetal Alcohol Spectrum Disorder Program, § 19:46	Health Planning and Management program, § 19:73
Maternal and Child Health Program, § 19:47	health research and co-ordination projects, § 19:74
chronic disease and injury prevention,	Security Service Program, § 19:75
§ 19:48	mental health and addictions
Aboriginal Diabetes Initiative,	generally, § 19:53
§ 19:48	Brighter Futures program, § 19:53

HEALTH CARE—Cont'd	HUNTING—Cont'd
Funding for health programs and services	Dangerous game, § 13:73
—Cont'd	Existing rights, § 13:3
mental health and addictions—Cont'd	Extinguishment of right
Building Healthy Communities	generally, <b>§ 13:17</b>
program, § 19:54	Natural Resources Transfer Agree-
Indian Residential Schools Resolu-	ments, § 13:19
tion Health Support Program,	commercial rights, § 13:20
§ 19:55	private land, § 13:21
National Aboriginal Youth Suicide	provincial authority, § 13:22
Prevention Strategy, <b>§ 19:56</b> National Native Alcohol and Drug	Game preserves, § 13:66
Abuse Program, § 19:57	Infringement
Youth Solvent Abuse Program,	generally, § 13:23
§ 19:58	collective vs. individual right, § 13:24
Non-Insured Health Benefits Program,	justification, § 13:38
§ 19:62	compensation, § 13:46
primary care, § 19:59	consultation, § 13:42
First Nations and Inuit Home and	forestry, <b>§ 13:43</b>
Community Care Program,	minimal infringement, § 13:41
§ 19:60	mining, § 13:44
Oral Health Care Program, § 19:61	priority of rights, § 13:40
HOUSING	road building, § 13:45
Discrimination regarding federally funded	valid legislative objective, § 13:39
housing, § 19:92	prima facie infringement, § 13:25
2009 Economic Action Plan Housing	preferred method, § 13:29
Program, § 19:91	undue hardship on rights, § 13:26
First Nation On-Reserve Housing	Lights, hunting with, § 13:72
Program	Metis rights, § 13:13
generally, § <b>19:84</b>	National parks, § 13:65
Canada Mortgage and Housing	Preferred species, § 13:4, § 13:35
Corporation, § 19:87	Priority, § 13:35, § 13:40
on-reserve homeownership loan	Private land, <b>§ 13:67</b>
insurance pilot product without	Proof of right, § 13:2
Ministerialloan guarantee,	Provincial wildlife laws, § 13:48, § 13:70
§ 19:88	Regulation of
On-Reserve Non-Profit Rental Hous-	by-laws, <b>§ 13:47</b>
ing Program, § 19:89 Residential Rehabilitation Assistance	Firearms Act, § 13:62
Program, § 19:90	natural resource transfer agreements,
First Nations Market Housing Fund,	§ 13:63
§ 19:86	extinguishment of right, § 13:19
Ministerial loan guarantees, § 19:85	rights of access, § 13:64
•	provincial laws, § 13:48
HUNTING	Safety concerns, § 13:71
Affirmed by section 35, § 13:1	Sparrow test, § 13:2
By-laws, § 13:47	integral to distinctive culture, § 13:4
Common law right, § 13:1	Transfer of rights
Conservation laws, § 13:74	
failure to report a kill, § 13:76	jurisdiction to jurisdiction, § 13:15
licensing regulations, § 13:77	outside of traditional territory, § 13:16
waste, § 13:75	to non-aboriginals, § 13:14

HUNTING—Cont'd	INDIAN ACT—Cont'd
Treaty rights, § 13:9	Band lists—Cont'd
of non-status descendants, § 13:10	appeal, § 1:118
Wildlife laws, § 13:79	pre-1985 procedure, § 1:119
INDIAN ACT	section 14.3, <b>§ 1:118</b>
Generally, APP D § D:1 et seq.	evidence, § 1:120
•	further appeals, § 1:121
Administration, APP D § D:3	notice of, APP D § D:18
Department of Indian Affairs and Northern Development, § 3:27	protest, § 1:113
Alternatives to, § 3:31	commencing a protest, § 1:115
Amendments to, § 3:31	Registrar's duty on a protest, § 1:117
Amendments to, § 5.31 Appeals, APP D § D:57	section 14.2, <b>§ 1:114</b>
Application of Act, APP D § D:4 to APP	standing to protest, § 1:116
D § D:5	Bridges, APP D § D:41
Application of other laws, <b>APP D</b>	Bylaws
§ D:106 to APP D § D:108	generally, § 7:47, § 7:48
Band council, defined 2:4	conflicts with other federal legislation, § 7:62
generally, § 7:13	conflicts with provincial laws, § 7:63
council members in position of trust to	disallowance and revocation, § 7:59
band and members, § 7:17	enforcement
custom council or s. 74 council, § 7:13	generally, § 7:76
disqualification from office, § 7:19	civil remedy, injunction, § 7:79
receivership, § 7:20	court of jurisdiction, § 7:77
size, <b>§ 7:14</b>	penalties, fine or imprisonment,
source and scope of powers, § 7:15	§ 7:78
term of office, § 7:18	police officers, § 7:82
Band funds, spending investing and	proof of by-laws, § 7:80
accounting for	proposed amendments re proof of
generally, § 7:84	by-laws, § 7:81
band control over revenue moneys,	general matters, s. 81 by-laws
§ 7:92	generally, § 7:49
borrowing, § 7:95	agriculture, § 7:71
capital moneys and revenue moneys,	ancillary powers, § 7:75
§ 7:89	animal control, § 7:68
collection expenses, § 7:87 employees and labour relations, § 7:96	business licensing, § 7:73
1 .	health, § 7:65
applicability of Canada Labour Code to band employees, § 4:13	land allotment, zoning and building
.Indian moneys, § 7:85	standards, § 7:70
interest, § 7:88	law and order and by-laws enforce- ment, § 7:67
loans to band members, § 7:93	membership and members' rights,
spending capital moneys, § 7:90	§ 7:74
spending only for benefit of Indians,	public works, § 7:69
§ 7:86	traffic, § <b>7:66</b>
spending revenue moneys, § 7:91	intoxicants, § 4:18, § 7:51
statutory spending obligations, § 7:94	invalid by-laws, § 7:60
Band lists	statutory instruments and publicity,
generally, APP D § D:9 to APP D	§ 7:58
§ D:17	taxation and licensing, § 7:50

INDIAN ACT—Cont'd	INDIAN ACT—Cont'd
Bylaws—Cont'd	Entitlement to
territorial jurisdiction, § 7:61	generally, <b>§ 1:45, 1:46</b>
Ceasing to be band members, persons	loss of status under previous sections of
payments in respect of, APP D § D:22	Indian Act, § 1:47
to APP D § D:23	members of bands created in future,
Chiefs, selection, § 7:23	§ 1:60
criminal and civil liability, § 7:98	registration or entitlement to prior to
powers and privileges, § 7:24	April 17, 1985, <b>§ 1:46</b> reinstatement under s. 6(1)(c), <b>§ 1:48</b>
custom chiefs, § 7:26	children of women who married non-
regulations and other Acts, § 7:25 Constitution Act, 1867	Indians, § 1:52
section 91(24), <b>§ 3:9</b>	double mother rule, § 1:49
Council	protest of paternity of illegitimate
election of members, APP D § D:91 to	children, § 1:51
APP D § D:97	women who married non-Indians,
powers of, APP D § D:98 to APP D	§ 1:50
§ D:104	reinstatement under s. 6(1)(d), § 1:53
Councillors, § 7:27	families of Indian men enfranchised,
civil and criminal liability, § 7:98	§ 1:55
custom band council, § 7:28	Indians who applied to be
section 74 Councillors elected at large,	enfranchised, § 1:54
§ 7:29	reinstatement under s. 6(1)(e), § 1:56
section 74 Councillors elected to repre-	foreign residence, § 1:57
sent an electoral section, § 7:30	professionals, § 1:58
Definitions	section 6(1)(f) normal registration with successorship, <b>§ 1:61</b>
generally, APP D § D:2	both parents, § 1:62
Indians, APP D § D:6 to APP D § D:8	revival of successorship for persons
Descent of property, APP D § D:52 to	Registered under s. 6(2), § 1:63
APP D § D:54	section 6(2) registrations, § 1:64
Designations, APP D § D:45 to APP D § D:51	Exemptions from operation of Act for
Ÿ	bands and reserve lands, § 7:8
Effect of marriage, adoption and illegitimacy on status, § 1:73	First Nations Fiscal and Statistical
adoption, § 1:74	Management Act, § 3:35
legitimacy and illegitimacy, § 1:76	First Nations Jurisdiction over Educa-
marriage, § 1:76	tion in British Columbia Act,
Elections	§ 3:36
generally, APP D § D:91 to APP D	First Nations Land Management Act, § 3:34
§ D:97, § 7:31	pre-1985 exemptions relating to status
appeals, § 7:37	and membership, § 7:9
calling, § 7:32	refusal of requests for exemptions from
nomination and eligibility for office,	provincial laws affecting Indian-
§ 7:34	ness, § 7:11
procedure, § 7:35	voting rights for off-reserve band
qualifications of electors, § 7:33	members, § 7:10
setting aside, § 7:36	Family maintenance, § 4:15
Enforcement, APP D § D:113 to APP D	Farms, APP D § D:88
§ D:120	Fiduciary duty of Crown, § 3:58
Enfranchisement, § 1:77	Guardianship, APP D § D:63

INDIAN ACT—Cont'd	INDIAN ACT—Cont'd
History of, § 3:31	Powers of band acting as whole, § 7:12
Indian Register	Powers of federal government, § 7:2
generally, APP D § D:6 to APP D	commissioner for taking oaths, § 7:7
§ D:8, § 1:41	powers of federal cabinet, § 7:3
appeal, § 1:118	powers of the Department of Indian
pre-1985 procedure, § 1:119	Affairs and Development, § 7:5
section 14.3, <b>§ 1:118</b>	Pre-1985 rules, <b>§ 1:69</b>
evidence, § 1:120	descent in male line, § 1:71
further appeals, § 1:121	Indian Act provisions, § 1:70
protest, § 1:113	proof of band membership, § 1:72
commencing a protest, § 1:115	Produce, barter/sale of, APP D § D:40
Registrar's duty on a protest, § 1:117	Protests, APP D § D:20 to APP D § D:21
section 14.2, <b>§ 1:114</b>	Provincial laws of general application, s.
standing to protest, § 1:116	88
Infant children, money of, APP D § D:64	generally, § 4:5
to APP D § D:68	child welfare, § 4:16
Inquiries, APP D § D:19	family maintenance, § 4:15
Interpretation, APP D § D:2	general purpose, § 3:14
Intestacy, distribution of property on,	interjurisdictional immunity, § 4:5
APP D § D:58 to APP D § D:61	land, application to, § 3:18
Loans, APP D § D:87	landlord and tenant law, § 4:20
Management of lands, APP D § D:69 to	limits
APP D § D:86	subject to federal law, § 3:16
Meetings and decision making formalities, § 7:40	subject to Indian Act, First Nations
application of Charter, § 7:45	Fiscal and Statistical Manage-
band council resolution, § 7:41	ment Act, § 3:17
band council's authority to enter into	subject to treaty rights, § 3:15, § 4:5
binding contracts, § 7:42	liquor control, § 4:18
duty of fairness, § 7:44	matrimonial property, § 4:14
Indian Band Council Procedure	municipal zoning, § 4:22
Regulations, § 7:43	status Indians, application to other than,
Mentally incompetent Indians, APP D	§ 3:19
§ D:62, § 4:6	Public purposes, lands taken for, <b>APP D</b>
Money	§ D:42
infant children, of, APP D § D:64 to APP D § D:68	Punishment, APP D § D:113 to APP D § D:120
treaty, APP D § D:89	Purpose of registration, § 1:42
New bands, APP D § D:24	information from register, § 1:44
No entitlement to registration, § 1:65	preservation of pre-1985 registrations,
Inuit, § 1:68	§ 1:43
Metis, § 1:67	Referendum, § 7:39
non-Indian wives and widows, and	Registration, APP D § D:6 to APP D
their children, not reinstated,	§ D:8
§ 1:66	Regulations, APP D § D:90
section 7 exclusions, § 1:65	Removal of materials from reserves, <b>APP</b>
Offences, APP D § D:113 to APP D	D § D:111
§ D:120, § 17:3	Reserves
Post-1985 administrative procedures, § 1:78	generally, APP D § D:25 to APP D § D:27

#### INDIAN ACT—Cont'd INDIVIDUAL POSSESSION AND Reserves—Cont'd DEVELOPMENT OF RESERVES Constitution Act, 1867, s. 91(24), Management and development of § 3:11 First Nations Land Management Act, individually possessed reserve land § 3:34 -Cont'd lands in, possession of, APP D § D:28 mortgage or encumbrance of certificate to APP D § D:37 of possession, § 10:8 management of, APP D § D:69 to APP occupation of individually held reserve D § D:86 land by others, § 10:10 removal of materials from, APP D development, § 10:7 § D:111 transfers, § 10:7 replacement of, § 3:29, § 3:31 Right of residence on reserve, § 10:2 special, APP D § D:43 Rights of individual possession, § 10:3 trespass on, APP D § D:38 to APP D certificate of possession, § 10:5 § D:39 details and features of individual pos-Roads, APP D § D:41 session, § 10:4 Schools, APP D § D:122 to APP D minister's discretion, § 10:5 § D:127 no individual possession except by stat-Self-government, § 2:6 ute, § 10:3 Surrenders, APP D § D:45 to APP D terminating right of possession, § 10:6 § D:51 Special types of off-reserve individual overriding, § 3:39 possession, § 10:13 Taxation, APP D § D:105, § 12:23, § 12:42, § 12:106 **INFORMATION** Trading, APP D § D:109 to APP D Aboriginal claims researcher, access by, § D:110 § 3:76 Treaty money, APP D § D:89 section 8(2)(k) of Privacy Act, § 3:76 Wills, APP D § D:55 to APP D § D:56 Access to Information Act, § 3:74 section 88, § 3:17 Exceptions to duty to disclose INDIAN OIL AND GAS ACT aboriginal government defined, § 3:77 section 13 of Access to Information Generally, APP E § E:1 et seq. Act, § 3:77 Definitions, APP E § E:2 section 19 of Access to Information Federal jurisdiction, § 3:32 Act, § 3:77 Interpretation, APP E § E:2 section 20 of Access to Information INDIVIDUAL POSSESSION AND Act, § 3:77 DEVELOPMENT OF RESERVES band council resolutions, § 3:80 Band custom and informal systems, Indian band financial statements, § 10:12 § 3:78 Collective versus individual rights to membership codes, § 3:79 reserve lands, § 10:1 Privacy Act, § 3:74 to § 3:76 Individual possession under the FNLMA, Public data banks, § 3:75 § 10:11 Restricted data banks, § 3:75 Management and development of individually possessed reserve land INFRASTRUCTURE generally, § 10:7 First Nation Infrastructure Fund, § 19:93 improvements by individuals, § 10:9 INTERNATIONAL LAW compensation for improvements, Generally, § 2:36 § 10:9 deemed possession, § 10:9 Convention of rights of the child, § 2:40

# INTERNATIONAL LAW—Cont'd Convention on Biological Diversity, § 14:33 Convention on the Means of Prohibiting and Preventing the Illicit Import. Export and Transfer of Ownership of Cultural Property, § 14:35 Covenant of civil and political rights, § 2:38 Covenant on elimination of racial discrimination, § 2:39 Human rights, § 2:37 ILO convention, § 2:42, § 14:34 Intellectual property, § 14:42 GATT—agreement on trade-related as-pects of intellectual property rights, § 14:43 Inter-American instruments, § 2:41 Non-binding declarations, § 14:37 Agenda 21 from U.N. Conference on Environment and Development, § 14:41 Mataatua Declaration from the First International Conference on the Cultural and Intellectual Property Rights of In-digenous Peoples (1993), **§ 14:38** Rio Declaration on Environment and Development, § 14:40 U.N. Draft Declaration on the Rights of Indigenous Peoples, § 14:39 Protection of cultural property, § 2:43, § 14:32 World Heritage Convention, § 14:36 **INUIT** Constitution Act, 1867, s. 91(24) applying to Inuit, § 3:9 Direct territorial legislation, § 1:124 Indian Act not applying to Inuit, § 1:123, Laws of general application applying to Inuit in the Territories, § 1:125 JURISDICTION

# .JURISDICTION—Cont'd Federal—Cont'd under section 35. § 5:10 Fishing, § 13:44 Marriage, § 15:2, § 15:3 Natural resources, over, § 2:24 variation, § 2:25 Property of children, § 15:27 Rupert's Land order, § 2:21 Support for children, § 15:3 Taxation, § 12:1 LAND CLAIMS See also Claims Aboriginal title, proof of, § 5:19 Same as treaty rights, § 5:9 Settlement James Bay Act, § 3:41 application, § 3:41 companion agreement, § 3:41 contents, § 3:41 history, § 3:41 Nunavut Land Claims Agreement Act, § 3:46 rights and benefits, § 3:46 Western Arctic (Inuvialuit) Claims Settlement Act, § 3:42 administration, § 3:42 amendment to, § 3:42 lands conveyed, § 3:42 Taking up of land, § 5:63 Territorial rights, § 5:14 MANAGEMENT AND DEVELOPMENT OF ABORIGINAL LAND Lands under special legislation, § 9:23 to Sechelt Indian Band Self-Government Act, § 9:23 Westbank First Nation Self-Government Act, § 9:24 Registration of interests in Aboriginal lands, § 9:25 to 9:27 Indian Lands Registry, § 9:25 to 9:27 First Nations Land Registry System (FNLRS), § 9:27 Indian Lands Registry System, § 9:26 Registration of interests in lands of selfgoverning First Nations, § 9:29 Registration of interests in treaty lands,

§ 9:28

Federal

Access to children, § 15:3

Child custody, § 15:3

Child welfare, § 15:22

Divorce, § 15:2, § 15:3

British Columbia Terms of Union, § 2:22

constitutionally enacted, § 2:20, § 5:2

MANAGEMENT AND DEVELOPMENT	MINING—Cont'd
OF ABORIGINAL LAND—Cont'd	Leases
Subject lands	see also permits
generally, § 9	generally, APP L § L:16 to APP L
Aboriginal rights, § 9:1	§ L:46
Aboriginal title, § 9:1, § 9:30 to 9:34	appeals, APP L § L:46
title asserted, <b>§ 9:33 to 9:34</b>	assignment, APP L § L:39
different types of land, § 9:1	confidential information, APP L § L:4
First Nations Land Management Act,	entitlement, APP L § L:20
§ 9:1	inspection, APP L § L:42 to APP L
Indian Act reserves, § 9:1	§ L:43
protected uses, § 9:1	rental, APP L § L:24
rule against alienation, § 9:1	royalties, APP L § L:31 to APP L
special legislation, § 9:1	§ L:34
traditional territories, § 9:1	security deposit, APP L § L:25 to APF
MARRIAGE	L § L:29
Children, see Children	selection, APP L § L:16 to APP L
Customary law, § 2:3, § 15:2	§ L:19
Divorce, § 15:2	surface, use of, APP L § L:41
Jurisdiction, § 15:2, § 15:3	surrender, APP L § L:40
Not entitled to statutory benefits, § 2:3	surveys, APP L § L:21 to APP L § L:22
METIS	tax, payment of, APP L § L:45
Constitution Act, 1867, s. 91(24) applica-	terms of, APP L § L:23
tion, § 3:9	use of surface, APP L § L:41
Fiduciary duty, Crown's, § 3:57	Mineral rights, APP L § L:5 to APP L
Hunting rights, § 13:13	§ L:6
Indian Act, § 3:19	dispute resolution, § 3:49
provincial, § 4:19	Permits
exceptions	see also leases
aboriginal rights, § 4:19	generally, APP L § L:7 to APP L
aboriginal title lands, § 4:19	§ L:15
reserves, § 4:19	assessment of work, APP L § L:13 to
Statutory references to Metis	APP L § L:15
generally, § 1:126	rental, APP L § L:10
Department of Indian Affairs and	security deposit, APP L § L:11 to APP
Northern Development Act, § 3:26, § 3:27	L § L:12
Dominion Lands Act, § 1:128	term of, APP L § L:7 to APP L § L:9
Manitoba Act, 1870, <b>§ 1:127</b>	Regulations re
Metis Act (Saskatchewan), § 1:132	generally, APP L § L:1 et seq.
Metis Settlements Act (Alberta),	application of, APP L § L:3
§ 1:129	definitions, APP L § L:2
Metis Settlements Appeal Tribunal,	interpretation, APP L § L:2
§ 1:130	MOTOD VEHICLE AND HIGHWAY
Metis Settlements Land Protection Act	MOTOR VEHICLE AND HIGHWAY
(Alberta), § 1:131	TRAFFIC LAWS
	Indian Reserve Traffic Regulations, § 18:1
MINING  Disposition of mineral picks, ABB I	Registration and insurance, § 18:3
Disposition of mineral rights, APP L	Roads on reserves, § 18:2
§ L:5 to APP L § L:6	Rodus off fescives, § 18:2

MUNICIPAL JURISDICTION	ORDERS, BY-LAWS AND
Business licence fees, § 4:24	REGULATIONS AFFECTING
business on reserve, § 4:24	EACH BAND—Cont'd
Property taxes, § 4:23	Exemptions, § 22:4
non-Indian occupants of reserve lands,	bands exempt, § 22:5
§ 4:23	lands exempt, § 22:6
Reserves within municipalities, § 4:21	Land management, § 22:10
Section 35 rights, § 4:25	Management of revenue money, § 22:7
Zoning, § 4:22	Membership
NATURAL RESOURCES	generally, § 22:8
Jurisdiction over, § 2:24	band listings (chart)
, ,	generally, § 22:15 to 22:26
Provincial jurisdiction generally, § 4:9	Alberta, § 22:18
Alberta Metis settlement legislation,	British Columbia, § 22:17
§ 4:30	Manitoba, § <b>22:20</b>
funding, § 4:30	New Brunswick, § 22:23
General Council, § 4:30	Newfoundland & Labrador, § 22:26
land protection in perpetuity, § 4:30	Northwest Territories, § 22:16
Metis Settlements Appeal Tribunal,	Nova Scotia, § 22:24
§ 4:30	Ontario, <b>§ 22:21</b>
Metis Settlements General Council,	Prince Edward Island, § 22:25
§ 4:30	Quebec, § 22:22
settlement councils, § 4:30	Saskatchewan, § 22:19
Saskatchewan's Metis Act, § 4:31	Yukon, § 22:15
uncertain legislative jurisdiction, § 4:29	Names and populations of bands, § 22:2
variation, § 2:25	Self-government, § 22:3
variation, § 2.25	Taxation powers—commodities and
NISGA'A TREATY	income, § 22:12
Generally, § 2:6, § 3:23, § 3:47, § 4:28,	First Nations Goods and Services Tax, § 22:12
§ 14:29, § 21:32	income tax, § 22:14
NUNAVUT LAND CLAIMS TREATY	provincial-type taxes, § 22:13
	provincial-type taxes, § 22.13
Generally, § 2:6	PERSONAL PROPERTY (AND
OFFENCES UNDER INDIAN ACT AND	OFF-RESERVE REAL ESTATE)
REGULATIONS	Bankruptcy, § 11:19
Generally, § 17:3	Constitutional status of personal property
Certificates of analysis, § 17:4	§ 11:1
Enforcement by provincial officials,	Prohibited and regulated transactions,
§ 17:10	§ 11:13
Forfeiture, § 17:6	artifacts, § 11:15
Identification of Indians, § 17:8	produce from prairie province reserves § 11:18
Jurisdiction of provincial court judges and	section 90 property may not be sold,
appointment of justices, § 17:9	\$ 11:14
Penalties, § 17:5	trading with Indians, § 11:16
Recovery of fines, § 17:7	traffic in fish and wildlife, § 11:17
ODDEDC DV I AWC AND	Protection from seizure and execution
ORDERS, BY-LAWS AND	generally, § 11:2
REGULATIONS AFFECTING	
EACH BAND	avoiding s. 89, § 11:10
Elections, § 22:9	criminal seizure exception, § 11:4

PERSONAL PROPERTY (AND	PRACTICE MATTERS—Cont'd
OFF-RESERVE REAL ESTATE)	Limitation periods and other barriers to
—Cont'd	litigation, § 20:18
Protection from seizure and execution	abuse of process, § 20:24
—Cont'd	Cree-Naskapi (of Quebec) Act, § 20:22
examination of debtor, contempt	Federal Courts Act, § 20:21
proceedings, § 11:7	Indian Act, § 20:19
garnishment, § 11:8	provincial Limitations Acts, § 20:20
land application of s. 89 to, § 11:12	Notice, § 20:40
obtaining judgment, § 11:6	Parties, § 20:25
property deemed always to be situated	band, § 20:26
on a reserve, § 11:11	band council, § 20:27
section 89, § 11:2, § 11:9 to 11:10,	class actions, § 20:29
§ 11:12	defendants, § 20:32
secured transaction, § 11:9	intervenors, § 20:34
situated on a reserve, § 11:3	other first nations, § 20:33
statutory exemption from seizure,	plaintiffs, § 20:31
§ 11:2	Pleadings, § 20:35
Subject of federal jurisdiction, § 11:1	aboriginal title, § 20:37
PRACTICE MATTERS	constitutional questions, § 20:38
Access to courts, § 20:1	Crown, honour of, § 20:39
standing, § 20:2	form of proceeding, § 20:36
Costs, § 20:52	Relief, § 20:49
advance awards, § 20:53	declaratory, § 20:49
rules, § 20:52	injunctions, § 20:50
special costs, § 20:54	mandamus, § 20:50
Disclosure, § 20:46	restraining orders, § 20:51 supervision orders, § 20:51
privilege, § 20:47	Standard of review, § 20:41
Discovery, § 20:48	Standard of Teview, § 20.41
Evidence, § 20:42	PRE-EXISTING RIGHTS,
expert, § 20:45	PROTECTION OF
onus of proof, § 20:42	Generally, § 2:1
oral history, § 20:43	PROPERTY
public officials, § 20:44	See also Land Claims
Federal Courts Act, § 20:4	Aboriginal title
· -	custom, role of, § 2:5
actions against federal Crown, § 20:5	evidence of, § 2:5
actions against provincial Crown,  § 20:6	protected under British colonial law,
actions to protect or recover reserve	§ 2:8
land, § 20:8	Children
claims of aboriginal title, § 20:7	distribution to infants, § 15:29
Interrogatories, § 20:50	jurisdiction, § 15:27
Judicial bias, § 20:55	liability, § 15:31
Judicial review, § 20:11	payment into court, § 15:30
· -	Division on divorce, § 15:5
parallel proceedings, § 20:12	First Nations Land Management Act,
proceedings by and against band, § 20:11	§ 15:6
proceedings by and against band	membership in different bands, § 15:5
council, <b>§ 20:9</b>	on-reserve property, § 15:5, § 15:6

PROPERTY—Cont'd	PROVINCIAL JURISDICTION—Cont'd
Matrimonial property, § 4:14	Metis—Cont'd
Taxation, § 12:9, § 12:32 to 12:34,	uncertain legislative jurisdiction, § 4:29
§ 12:109, § 12:112, § 12:119	Modern treaties, § 4:28
First Nations Fiscal Management Act,	determining priority, § 4:28
APP W § W:1 et seq.	First Nations laws prevail, § 4:28
municipal, § 4:23	Natural resources, § 4:19
PROTEST AND APPEAL RE NAMES	Principles governing application
Appeal, § 1:118	aboriginal rights, infringement of, § 4:8
pre-1985 procedure, § <b>1:119</b>	federal paramountcy, § 4:4
section 14.3, <b>§ 1:118</b>	incidental effects, § 4:3
Evidence, <b>§ 1:120</b>	incorporation by reference, § 4:6
Further appeals, § 1:121	interjurisdictional immunity and s. 88,
Protest, § 1:113	§ 4:5
commencing a protest, § 1:115	Metis, § <b>4:9</b>
Registrar's duty on a protest, § 1:117	modern agreements, § 4:7
section 14.2, <b>§ 1:114</b>	pith and substance, § 4:2
standing to protest, § 1:116	treaties, § 4:7
	infringement, § 4:8
PROVINCIAL JURISDICTION	Sechelt Indian Band Self-GovernmentAct,
Application of laws generally, § 4:1	§ 4:27
Child welfare, § 4:16	adoption of provincial laws, § 4:27
Court orders, enforcement of, § 4:17	delegation of provincial powers, § 4:27
Delegation of authority	displacement of provincial laws, § 4:27
reserves within municipalities, § 4:21	REFERENDUM
Family maintenance, § 4:15	See also Elections
Jurisdiction under s. 92 of Constitution	Addresses of electors, APP M § M:6
Act, 1867, § 4:13 test to determine jurisdiction, § 4:13	Counting of votes, APP M § M:24 to
aboriginal service providers, § 4:13	APP M § M:28
treaty right, as, § 4:13	Holding of, <b>APP M § M:4</b>
Labour relations, § 4:13 to 4:14	Indian Act, <b>§ 7:39</b>
aboriginal right, as, § 4:13	Information meetings, APP M § M:8
commercial mainstream, § 4:13	Mail-in ballots, APP M § M:10
Landlord and tenant law, § 4:13	Notification of, APP M § M:7
Liquor, § 4:18	Polling stations, APP M § M:11 to APP
•	M § M:231
Matrimonial property, § 4:14 to 3:17	Preparation for, <b>APP M § M:9</b>
Medicine, practice of, § 4:12	Regulations re
Metis	generally, APP M § M:1 et seq.
Alberta Metis settlement legislation, § 4:30	application of, APP M § M:2
funding, <b>§ 4:30</b>	definitions, <b>APP M § M:3</b> interpretation, <b>APP M § M:3</b>
General Council, § 4:30	Review procedure, APP M § M:30 to
· -	APP M § M:31
land protection in perpetuity, § 4:30	Subsequent referenda, APP M § M:29
Metis Settlements Appeal Tribunal, § <b>4:30</b>	Voters lists, APP M § M:5
Metis Settlements General Council,	REGISTRATION
§ 4:30	Effect of marriage, adoption and
settlement councils, § 4:30	illegitimacy on status, § 1:73
Saskatchewan's Metis Act, § 4:31	adoption, § 1:74

REGISTRATION—Cont'd	REGISTRATION—Cont'd
Effect of marriage, adoption and	Pre-1985 rules, <b>§ 1:69</b> —Cont'd
illegitimacy on status, § 1:73	Indian Act provisions, § 1:70
—Cont'd	proof of band membership, § 1:72
legitimacy and illegitimacy, § 1:76	Purpose of registration, § 1:42
marriage, <b>§ 1:76</b>	information from register, § 1:44
Enfranchisement, § 1:77	preservation of pre-1985 registrations,
Entitlement to	§ 1:43
generally, § 1:45 to 1:46	RESERVES
loss of status under previous sections of Indian Act, § 1:47	Statutes affecting reserves, § 9:18 to 9:22
members of bands created in future, § 1:60	mining, § 9:19 miscellaneous, § 9:22
registration or entitlement to prior to April 17, 1985, <b>§ 1:46</b>	administrative services fees, § 9:22 dogs on reserve, § 9:22
reinstatement under s. 6(1)(c), § <b>1:48</b>	oil and gas, § 9:18
children of women who married non-	timber, § 9:20
Indians, § 1:52	waste management, § 9:21
double mother rule, § 1:49	Transition from the Indian Act to the First
new status under 2011 amendments,	Nations Land Management Act
§ 1:59	generally, § 9:17
protest of paternity of illegitimate	adhesion agreement, § 9:17
children, § 1:51	application, § 9:17
women who married non-Indians,	group applications, § 9:17
§ 1:50	assessment of applicants, § 9:17
reinstatement under s. 6(1)(d), § 1:53	confirmation of acceptance, § 9:17
families of Indian men enfranchised,	developmental phase, § 9:17
§ 1:55	eligibility, § 9:17
Indians who applied to be	individual agreement, § 9:17
enfranchised, § 1:54	Minister signing, § 9:17
reinstatement under s. 6(1)(e), § 1:56	land code, <b>§ 9:17</b>
foreign residence, § 1:57	obligations, § 9:17
professionals, § 1:58	operational First Nations, § 9:17
section $6(1)(f)$ normal registration with	ratification by community, § 9:17
successorship, § 1:61 both parents, § 1:62	Under the First Nations Land Manage- ment Act
revival of successorship for persons	administration by First Nation, § 9:16
Registered under s. 6(2), § 1:63 section 6(2) registrations, § 1:64	general land management powers, § 9:16
Indian Register, § 1:41	alienation, limitations of, § 9:16
No entitlement to registration, § 1:65	environmental protection regime,
Inuit, § 1:68	§ 9:16
Metis, § 1:67	exchange of First Nation land, § 9:16
non-Indian wives and widows, and	expropriation, § 9:16
their children, not reinstated,	land code to prevail, § 9:16
§ 1:66	law-making powers, § 9:16
section 7 exclusions, § 1:65	procedures under land code, § 9:16
Post-1985 administrative procedures, § 1:78	Crown, continuing powers and obligations of, § 9:15
Pre-1985 rules, <b>§ 1:69</b>	expropriation, § 9:15
descent in male line, § 1:71	land register, § 9:15

RESERVES—Cont'd	RESERVES—Cont'd
Under the First Nations Land Manage-	Under the Indian Act—Cont'd
ment Act—Cont'd	land transactions prior to surrender or
Crown, continuing powers and obliga-	designation, § 9:6
tions of, § 9:15—Cont'd	permits under s. 28(2), <b>§ 9:11</b>
powers transferred to First Nation,	disadvantage of, § 9:11
§ 9:15	no requirement to consult, § 9:11
transfer of Indian moneys, § 9:15	tenure for public utilities, § 9:11
overview, <b>§ 9:14</b>	unallocated band lands, § 9:11
broad powers, § 9:14	powers of band and band council,
opt out, § 9:14	§ 9:12
origins of, <b>§ 9:14</b>	authorize expropriations, § 9:12
Under the Indian Act	by-law powers, § 9:12
designated lands, § 9	declarations, § 9:12
absolute and conditional, § 9:3	expropriate land, § 9:12
background to 1988 amendments,	maintenance of public works, § 9:12
§ 9:3	powers of federal cabinet and Minister
before lease or sale, § 9:3	generally, § 9:13
definitions, § 9:3	administration, § 9:13
reserve does not include, § 9:3	burial, § 9:13
reserve includes, § 9:3	disposal of grass or timber, § 9:13
scope of, <b>§ 9:3</b>	exemption from the Indian Act,
surrendered for sale, § 9:3	§ 9:13
jurisdiction and administration, § 9:10	farms, <b>§ 9:13</b>
absolute surrender, § 9:10	health, § 9:13
absolute surrender and designation,	non-metallic minerals, § 9:13
§ 9:10	powers unused, § 9:13
absolute surrender and designation,	rent adjustment, § 9:13
distinction between, § 9:10	roads, <b>§ 9:13</b>
authority, ability to delegate, § 9:10	schools, <b>§ 9:13</b>
constitutional dispute, § 9:10	surveys and subdivisions, § 9:13
courts, management responsibilities	procedures for designation, § 9
and, § 9:10	non-residents, § 9:5
Crown's fiduciary obligations,	referendum required, § 9:5
§ 9:10	restrictions on land use, § 9:5
decisions, § 9:10	simple or double majority, § 9:5
departmental employees and appoin-	vote at a meeting, § 9:5
tees, § 9:10	procedures for surrender, § 9
federal jurisdiction, § 9:10	<u> </u>
forfeiture when rent not paid, § 9:10	failure to comply, § 9:4
jurisdiction over non-Indian interest,	Indian Act in 1945, § <b>9:4</b>
§ 9:10	non-resident band members, § 9:4
jurisdiction over use, § 9:10	secret ballot, § 9:4
leasehold interests, § 9:10	valid surrender, requirements for,
mechanic's lien, § 9:10	§ 9:4
Minister, <b>§ 9:10</b>	reversionary interest, § 9:9
non-leasehold interests, § 9:10	surrendered lands
proper valuation, § 9:10	generally, § 9
provincial jurisdiction, § 9:10	absolute and conditional, § 9:3
successor of original purchaser,	background to 1988 amendments,
§ 9:10	§ 9:3

RESERVES—Cont'd	SECTION 35 OF CONSTITUTION ACT,
Under the Indian Act—Cont'd	1982—Cont'd
surrendered lands—Cont'd	Aboriginal and treaty rights in Constitu-
before lease or sale, § 9:3	tion Act, 1982—Cont'd
definitions, § 9:3	section 35(2)—definition of aboriginal
equitable defences, § 9:8	peoples, § 5:8
independent legal advice, § 9:7	Alteration by amendment or consent,
lease without surrender, § 9:7	§ 2:27
purpose of the dealing, § 9:7	Amending process, § 2:28
recovery of, § 9:7	Application of s. 35
technical flaws, § 9:7	generally, § 5:12 to 5:32
trespass and alienation	extinguishment, § 5:23
generally, § 9	infringement, § 5:24
common law trespass, differences	justification, § 3:58, § 5:25 to 5:32
from, § 9:2	compelling and substantive objec-
inalienability of reserve lands,	tive, § <b>5:26</b>
example of, § 9:2	compensation, § 5:30 to 5:31
non-members of the band, § 9:2	minimal infringement, § 5:29
no trespass or alienation, § 9:2	priority, § 5:28
remedies for trespass, § 9:2	were Crown's actions consistent with
REVENUE MONEYS	fiduciary duty, § 5:27
First Nations Fiscal Management Act,	proof of aboriginal or treaty rights
APP W § W:1 et seq.	generally, § 5:13 to 5:22
Order re, <b>APP P § P:1 et seq.</b>	application of integral to a distinctive
Spending, § <b>7:91</b>	culture test, § 5:17
RIGHTS CLAIMS	burden and standard of proof, § 5:22
See Claims	characterization and classification of,
	§ 5:14
ROYAL PROCLAMATION, 1763	distinctive, § 5:16
Generally, APP B	evidentiary difficulties, § 5:18
Aboriginal rights and, § 2:9 to 2:10,	integral, § 5:15
§ 13:65	proof by recognition through legisla-
SECTION 35 OF CONSTITUTION ACT,	tive or administrative action,
1982	§ 5:21
See also Duty to Consult and Accom-	proof of aboriginal title, § 5:19
modate	proof of treaty rights, § 5:20
Aboriginal and treaty rights in Constitu-	provincial legislative authority, § 4:28
tion Act, 1982	Culture and religion, § 14:9
generally, <b>§ 5:2 to 5:11</b>	Custom, § 2:3
meaning of, § 5:3 to 5:7	Entrenchment of rights, § 2:26
aboriginal rights, § 5:5	
	Specific applications of s. 35, § 5:62 to
existing, § 5:4	5:63
recognized and affirmed, § 5:7	specific rights, § 5:62
treaty rights, § 5:6	taking up of land, § 5:63
relationship between s. 35 and Charter, § 5:11	voluntary cession of rights, § 2:29
relationship between s. 35 and ss. 91 and 92, <b>§ 5:9</b>	SECTION 91(24) OF CONSTITUTION ACT, 1867
section 35 & 5:2	See also Federal Jurisdiction

SECTION 91(24) OF CONSTITUTION	SELF-GOVERNMENT—Cont'd
ACT, 1867—Cont'd	Sources of powers to enact laws, § 7:47
Exceptions to exclusive jurisdiction	Budget Implementation Act, 2000,
aboriginal self-government rights,	§ 7:54
§ 3:24	First Nations Fiscal Management Act,
Indian Act, s	§ 7:52
88, see Indian Act	First Nations Goods and Services Tax Act, § 7:53
Manitoba Act, 1870, § 3:29	First Nations Land Management Act,
modern treaties, § 3:23	§ 7:55
Natural Resource Transfer Agreements, § 3:22	First Nations Oil and Gas Moneys
Extinguish aboriginal and treaty rights,	Management Act, § 7:56
power to, § 3:10	
Indian, who is, § 3:9	SOCIAL SERVICES
Indian Act, under, § 3:9	Assisted living program, § 19:82
Lands reserved for Indians, § 3:11	Income assistance program, § 19:81
aboriginal title lands, § 3:11	TAXATION
ownership vs. federal jurisdiction,	Band
§ 3:12	authority, § 12:5
reserves under Indian Act, § 3:11	consumer taxes, § 12:19
settlement lands, § 3:11	definition, § 12:31
Provincial jurisdiction and, § 4:2	income and other taxes, § 12:18
Scope of s. 91(24), <b>§ 3:10</b>	licence fees, § 12:17
SELF-GOVERNMENT	real property taxes, APP W § W:1 et
	seq., § 12:9
Affirmed by section 35, § 5:34	relationship with municipalities,
Constitutional conferences, § 2:31	§ 12:22
Constitutionally entrenched, § 2:6	Customs tariffs and duties, § 12:62
Custom as basis for right, § 2:6	Excise taxes and duties, § 12:61
Distinction between Indian Act and inherent powers, § 2:6	Exemptions
Indian Act, <b>§ 2:6</b>	gifts and donations to municipalities,
Legislation	§ 12:56
Cree-Naskapi (of Quebec) Act, § 3:43	Indian Act, s. 87, § 12:23, § 12:42
band council	municipal corporations, § 12:55
elections, § 3:43	Federal
powers, § 3:43	Canada Pension Plan contributions,
commission, § 3:43	§ 12:60
land registration system, § 3:43	customs tariffs and duties, § 12:62
Sechelt Indian Self-Government Act,	Employment Insurance premiums,
§ 3:44, § 4:27	§ 12:59
constitution, § 3:44	excise taxes and duties, § 12:61
district powers, § 3:44	First Nations Fiscal Management Act,
highlights, § 3:44	§ 3:35, § 4:23
land regime, § 3:44	Goods and Services Tax (GST)/
Westbank First Nation Self-Govern-	Harmonized Sales Tax (HST), § 12:63
ment Act, § 3:45	Income Tax Act, § 12:41
Local government, § 7:1	First Nations Tax Commission
Nisga'a treaty, § 2:6	functions and powers, APP W § W:31
Nunavut Land Claims treaty, § 2:6	to APP W § W:35, § 3:35

ΓAXATION—Cont'd	TAXATION—Cont'd
First Nations Tax Commission—Cont'd	Goods and Services Tax—Cont'd
organization, APP W § W:17 to APP	transactions attracting GST/HST
W § W:29	legislative/administrative tax
procedure, APP W § W:36	exemptions, § 12:83—Cont'd
Gasoline, § 12:20, § 12:114	services, § 12:88
Goods and Services Tax	tangible goods, § 12:84
generally, § 12:21, § 12:63, § 12:105	when Indians/bands/band-empowered entities collect and remit GST/
aboriginal persons/entities entitled to	HST, § 12:92
legislative/administrative tax exemptions, § 12:72	Income
band-empowered entities, § 12:75	business income, § 12:49
Indian bands, § 12:74	employment, § 12:43 to § 12:48
Indian-owned sole proprietorships	interest and investment income,
and partnerships, § 12:76	§ 12:50
Indians, § 12:73	other income, § 12:18, § 12:51
remission orders, § 12:77	Jurisdiction, § 12:1
aboriginal persons/entities not entitled	Municipalities, § <b>4:23</b> , § <b>12:53</b>
to legislative or administrative tax	non-profit organizations, § 12:58
exemptions, § 12:78	origins, purpose and future of, § 12:26
agents, § 12:82	§ 12:37
Indian-controlled corporations or	property taxes, § 4:23
trusts, § 12:81	public bodies performing the function
non-status Indians, § 12:79	of government, § 12:54
self-government agreement/treaty	registered charities/charitable organiza
terminating s. 87 exemption, § 12:80	tions, § 12:57
GST/HST tax regime, § 12:63	Property \$ 12.22
HST implementation in British Colum-	personal, § 12:33
bia and Ontario, § 12:94	real, <b>APP W</b> § <b>W:1 et seq.</b> , § <b>12:9</b> , § <b>12:32</b> , § <b>12:119</b>
general HST impacts in British	situs, § 12:34, § 12:109 to § 12:111
Columbia and Ontario, § 12:95	Provincial
HST impacts and First Nations,	applicability of s. 87, <b>§ 12:106</b>
§ 12:96	gasoline taxes, § 12:114
HST impacts and First Nations busi-	income tax, § 12:107
nesses, § <b>12:97</b>	licence fees, § 12:118
HST impacts: specific cases, <b>§ 12:100</b>	medicare premiums, § 12:117
implementation dates and transition	real property taxation, § 12:119
rules, § 12:94	sales tax, <b>§ 12:108</b>
Quebec, § 12:93	tobacco taxes, § 12:114
sources of tax exemptions available to	Tobacco, § 12:20, § 12:114
aboriginal persons and entities,	WEDDITODIAL HIDIODICTION
§ 12:64	TERRITORIAL JURISDICTION
administrative tax exemptions,	Delegation, § 3:52
§ 12:67	Northwest Territories, § 3:54
legislative tax exemptions, § 12:65	Nunavut, § 3:55 to 3:56
transactions attracting GST/HST	Yukon, § 3:53
legislative/administrative tax	Indian Act and, § 3:53
exemptions, § 12:83	Yukon Act, § 3:53
intangible personal property, § 12:87	legislature's powers, § 3:53

TIMBER	TRAPPING AND GATHERING—Cont'd
Cancellation, APP G § G:22	Infringement—Cont'd
Compliance, APP G § G:26	justification
Conservation, APP G § G:23	generally, § 13:38
Cut for sale, permits to, APP G § G:6 to	compensation, § 13:46
APP G § G:9	consultation, § 13:42
Fire protection, APP G § G:19	forestry, <b>§ 13:43</b>
Ground rent, APP G § G:13	minimal infringement, § 13:41
Licences, APP G § G:10 to APP G	mining, § 13:44
§ G:11	priority of rights, § 13:40
Penalties, APP G § G:31	road building, § 13:45
Permits	valid legislative objective, § 13:39
cut for sale, APP G § G:6 to APP G	prima facie infringement, § 13:25
§ G:9	preferred method, § 13:29
use, for, APP G § G:5	undue hardship on rights, § 13:26
Prima facie infringement, timber harvest-	Proof of right, § 13:2
ing rights, § 13:37	Provincial wildlife laws, § 13:48
Prohibition, APP G § G:4	Sparrow test, § 13:2
Records, APP G § G:21	integral to distinctive culture, § 13:4
Regulations re	Treaty rights, § 13:12
generally, APP F	test, § 13:12
application of, APP G § G:3	TREATIES
definitions, APP G § G:2	Beneficiaries, § 21:11
interpretation, APP G § G:2	Definitions and interpretation
Renewals, APP G § G:12	generally, <b>§ 21:2 to 21:9</b>
Rent, ground, APP G § G:13	extinguishment, § 21:8
Sale, permits to cut for, APP G § G:6 to	hostilities, § 21:7
APP G § G:9	neither international treaty nor ordinary
Scaling, APP G § G:16 to APP G § G:18	contract, § 21:4
Security deposit, APP G § G:15	oral and extrinsic evidence, § 21:6
Seizures	principles of interpretation, § 21:5
generally, APP G § G:27 to APP G § G:29	treaties and land claims agreements,
	§ 21:3
proceedings following, APP G § G:30	treaty negotiations, § 21:9
Use, permits for, <b>APP G § G:5</b>	Distribution, § 21:12
TITLE	Particular treaties
See Aboriginal Title	generally, § 21:15 to 21:41
	Agreement between the Inuit of the
TRAFFIC	Nunavut Settlement Area and Can-
Regulation re, APP N § N:1 et seq.	ada, § 21:33
TRAPPING AND GATHERING	Douglas treaties, § 21:21
Affirmed by section 35, § 13:1	Jay Treaty, 1794, § 21:19
By-laws, <b>§ 13:47</b>	Maa-nulth First Nations Final Agree-
	ment, § 21:40
Common law right, § 13:1	Manitoulin Treaty, § 21:23, § 1862
Crown duty to consult, § 13:11	New Brunswick and Nova Scotia Trea-
Existing rights, § 13:3	ties, § 21:16
Infringement	Nisga'a Treaty, § 21:32
generally, § 13:23	Robinson Treaty, § 21:22, § 1850
collective vs. individual right, § 13:24	Tla'amin Final Agreement, § 21:41

TREATIES—Cont'd	TREATY RIGHTS—Cont'd
Particular treaties—Cont'd	Proof of, § 5:13, § 5:20
Treaty 4, § 21:30	burden and standard of, § 5:22
Treaty 6, <b>§ 21:25</b>	provincial laws, application of, § 4:7
Treaty 7, § 21:31	Taking up of land, § 5:34
Treaty 8, <b>§ 21:26</b>	Tax exemption, § 5:34
Treaty 9, § 21:27	Timber harvest for homes, § 5:34
Treaty 10, § 21:34	Transfer of rights
Treaty 11, § 21:28	jurisdiction to jurisdiction, § 13:15
Treaty 3—North West Angle Treaty, § 21:24	outside of traditional territory, § 13:16 to non-aboriginals, § 13:14
Treaty of 1760, <b>§ 21:17</b>	Trapping and gathering rights, § 13:12
Treaty of 1790, <b>§ 21:18</b>	test, § 13:12
Treaty of 1836, <b>§ 21:29</b>	Tsawassen First Nation Final Agreement
Treaty 20 of 1818, <b>§ 21:20</b>	Act, § 3:48
Tr'ondek Hwech'in Self-government	
agreement, § 21:35	URBAN ABORIGINAL STRATEGY
Tsawwassen First Nations Final Agree-	Generally, § 19:112
ment, § 21:39	VAN DER PEET TEST
Yukon First Nation Umbrella Agree-	Application, § 5:17
ment and Final Agreements,	Characterization of rights, § 5:14
§ 21:37	Distinctive, § 5:16
Parties, § 21:10	Factors to consider, § 5:17
Relationship to provincial laws, § 21:14	Integral practice, § 5:15
Treaty Land entitlement, § 21:13	
Williams Treaties, § 21:38	VESTED RIGHTS
TREATY RIGHTS	Not to be taken away without express words, § 2:3
Generally under section 35, § 5:6	
Extinguishment of, § 5:23, § 13:17	WASTE
provincial law cannot, § 5:23	Burning, prohibitions re, APP O § O:10
-	Disposal, prohibitions re, APP O § O:3 to
standard for Crown, § 5:23	APP O § O:4
surrender, by, § 5:23	Orders
Fishing rights, § 13:9	generally, APP O § O:11 to APP O § O:12
Hunting rights, § 13:9	compliance, APP O § O:136
Infringement	Penalties, APP O § 0:14
generally, § 5:24	Permits
factors, <b>§ 5:24</b>	generally, APP O § O:5 to APP O
justification, § 5:25	8 <b>0:9</b>
compelling and substantial objective	cancellation of, APP O § O:116
test, § 5:26	Prohibitions, APP O § O:3 to APP O
compensation, § 5:30	§ 0:4
consistent with fiduciary duty owing	Regulation re
to aboriginal people, § 5:27	generally, APP O § O:1 et seq.
minimal infringement, § 5:29	definitions, APP O § O:2
priority of rights, § 5:28	interpretation, APP O § O:2
provincial law, § 4:8	
test, § 5:24	WILLS AND ESTATES
Labour law, § 4:13	Administration and probate, § 16:9
Nisga'a, § 2:6, § 3:47, § 14:29	Constitutional powers of Canada, § 16:1

# WILLS AND ESTATES—Cont'd

Estates of persons not competent to
handle their own affairs, § 16:10
Intestacy, § 16:8
Scheme of Indian Act and Regulations
generally, § 16:2
determination respecting rights of nonmembers to interests in reserve
land, § 16:5

# WILLS AND ESTATES—Cont'd

Scheme of Indian Act and Regulations
—Cont'd
exclusion for off-reserve Indians,
§ 16:3
jurisdiction of the minister, § 16:2
overriding discretion respecting reserve
land, § 16:4
Wills, § 16:7