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ABORIGINAL LAW IN CANADA Woodward Release No. 2, April 2022
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Publisher's Special Release Note 2021

The pages in this work were reissued in July 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the July 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This release includes important updates to the law, including:

Is UNDRIP “vacuous political bromide” – first judicial comment on B.C.’s legislation. Justice Kent of B.C. Supreme Court observed that “It remains to be seen whether the passage of UNDRIP legislation is simply vacuous political bromide or whether it heralds a substantive change in the common law respecting Aboriginal rights including Aboriginal title. Even if it is simply a statement of future intent, I agree it is one that supports a robust interpretation of Aboriginal rights.” *Thomas and Saik’uz First Nation v. Rio Tinto Alcan Inc.*, 2022 BCSC 15, 2022 CarswellBC 36 (B.C. S.C.) at para. 212. See **Chapter 4, § 4:10, para. 4.135, note 20.**

Actions in tort against non-Crown parties for interference with s. 35 rights. The B.C. Supreme Court has found that interference with Aboriginal rights or Aboriginal title can serve as a basis for a common law action against non-government entities. *Thomas and Saik’uz First Nation v. Rio Tinto Alcan Inc.*, 2022 BCSC 15, 2022 CarswellBC 36 (B.C. S.C.) at paras. 56, 354-355, 359, 367, 517-521. See **Chapter 5, § 5:64, para. 5.2610 and following, and Chapter 8, § 8:3, para. 8.315.**

Submerged lands: Conflict between the public right of navigation and the exclusive nature of Aboriginal title. Justice Kent of the B.C. Supreme Court stated in obiter that “... the conflict between the exclusivity of Aboriginal title and the primacy of the public right of navigation might still provide a potentially insurmountable barrier to a finding of Aboriginal title in ... any Aboriginal title claim to the bed of a navigable waterway” and “Without some development in the law, there may be no path to Aboriginal title to submerged lands beneath navigable waterways” though he ultimately declined to decide the issue. *Thomas and Saik’uz First Nation v. Rio Tinto Alcan Inc.*, 2022 BCSC 15, 2022 CarswellBC 36 (B.C. S.C.) at para. 333. See **Chapter 8, § 8:5, para. 8.589.**

ProView Developments

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