

Index

[All references are to page numbers of the text.]

ABORIGINAL LAND TITLE

consultation and accommodation
duties, 160
content of, 158
Delgamuukw case, 157, 159
fiduciary relationship between
Crown and Aboriginals, 158
honour of the Crown, 160
infringement of, 159
nature of, 157
proof of, 158
self-government, 159, 161-163

ABORIGINAL RIGHTS

basis of, 144
Charter provisions re, 144
Constitution Act, 1867 provisions
re, 144
Constitution Act, 1982, s. 35, 144,
150-157
application of legal principles,
155-157
constitutional conferences on
aboriginal issues, 150
existing treaty rights, meaning
of, 153
interpretation of, 151
recognized and affirmed,
meaning of, 154
Sparrow case, legal test in, 152,
154
treaty rights, meaning of, 152
Crown and Aboriginal peoples,
relationship, 146, 158
defined, 143
generally, 143
honour of the Crown, 160
nature of, 145-147

self-government, 159, 161-163
treaty rights, 145, 147-157
Constitution Act, 1982, s. 35,
152-157
extinguishment/alteration, 150
origin and development of,
147-148
principles of interpretation, 149

ABORIGINAL PEOPLES,

ISSUES RE. *See*
CONSTITUTION

AMENDMENT OF

CONSTITUTION. *See*
CONSTITUTIONAL
AMENDMENT PROCEDURES

BILL OF RIGHTS

American Bill of Rights, 170
Canadian Bill of Rights, 168, 169

BRITISH NORTH AMERICA

ACTS, 27

CABINET

choice of, 98
provincial, 113-114, 116

CANADIAN BILL OF RIGHTS,

168, 169

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

aboriginal rights and, 144
American Bill of Rights, influence
of, 170
analysis under, steps re
application issues. *See*
application of (s. 32)

- justified violation under s. 1, 175
- violation, existence of, 175
- application of (s. 32)
 - alleged conduct, whether restricted, 172
 - complainant's entitlement to protection, 174
 - generally, 220
 - territorial application issue, 174
- breaches of, burden of proof, 46
- Canadian Bill of Rights*, 168, 169
- Charter adjudication, process of, 170
- Constitution Act, 1982* supremacy clause, 45
- contextualism principle, 171
- court of competent jurisdiction, 45
- courts' power of review, 169
- democratic rights (ss. 3, 4 and 5), 185
- education rights, minority language (s. 23), 216-218
- enforcement of Charter rights (s. 24), 218-220
- entrenchment of, significance, 168
- equality rights (s. 15), 209-214
 - application/operation of law, result of, 210
 - comparator group, use of, 211
 - conflicts in equality, 213
 - enumerated/analogous ground, 211
 - generally, 209
 - government discrimination, prevention of, 210
 - legal test re infringement, 210
 - proactive combat of discrimination, 213
 - purpose of provisions, 210
- fundamental freedoms (s. 2), 178-185
 - access to government information, right to, 184
 - freedom of association, 185
 - freedom of expression, 180-184
 - freedom of peaceable assembly, 184
 - freedom of religion, 178-179
 - freedom from religion, 180
 - hate speech, 182
 - public place, expression in, 183
- generally, 167-168
- guarantee and limitation of rights and freedoms (s. 1), 175-178
 - limit "demonstrably justified in a free and democratic society", 178
 - limitation "prescribed by law", 175
 - violation as "reasonable limit", 176
- human rights codes and, 169
- language rights (ss. 16 to 22), 214-216
 - courts, language of, 215
 - federal institutions, languages of, 216
 - official languages, 215
 - parliamentary proceedings, 215
 - parliamentary statutes and records, 215
- legal rights (ss. 7-14), 188-208
 - arbitrary detention/imprisonment, right against, 194
 - arrest/detention, rights on, 194-198
 - counsel, 196-198
 - habeas corpus*, right to, 198
 - reason for, 195
 - charged with offence, rights on, 199-206
 - double jeopardy, 205
 - lesser punishment, right to, 206
 - non-compellability, right of, 203
 - presumption of innocence, 203

- reasonable bail, right to, 204
- retroactive offences, 205
- specificity of offence, 199
- trial by jury, right to, 204
- trial within reasonable time, 200-202
- cruel and unusual punishment, right to be free from, 206
- interpreter, right to, 208
- life, liberty and security of the person, 188-191
- self-incrimination, right against, 207
- unreasonable search and seizure, right against, 192
- mobility rights (s. 6), 186-188
 - citizens, of, 186
 - limitations on, 188
 - move and gain livelihood, 187
- notwithstanding/override clause (s. 33), 221
- purposive approach to, 171
- remedial powers, 48, 218-220
- supremacy of Constitution clause (s. 52), 48, 222-223
- unconstitutional purpose/effect, 172
- CHARLOTTETOWN ACCORD**, 20
- CHARTER REMEDIES**, 48, 218-220
- CLARITY ACT**, 21
- CONSTITUTION**
 - aboriginal peoples
 - specific and comprehensive claims policies, 22-24
 - Constitution Act, 1982*, s. 35, 22
 - Royal Commission on Aboriginal Peoples, 24
 - self-government negotiations/claims, 23-25
 - Statement of Reconciliation, 24
 - constituent elements, 4-7
 - conventions, 6
 - evolutionary qualities, 5
 - legal rules, 4-6
 - political rules, 6
 - written and non-written aspects, 4
 - constitutionalism, 19
 - defined, 4
 - formation and origins of, 8-14
 - functions of, 15-16
 - generally, 25
 - historical background, 8-14, 18-19
 - historical chronology, 16-18
 - house and home description, 3-4
 - living tree analogy, 15
 - political boundaries, maps, 11-14
 - Quebec nationalist/secessionist movement, 20-22
 - Charlottetown Agreement, 20
 - Meech Lake Accord, 20
 - PQ governments, 21-22
 - referendums, 20-21
 - relationship management, as, 18-19
 - study of, 7-8
- CONSTITUTION ACT, 1867**
 - aboriginal rights provisions, 144
 - constitutional amendment provisions, 227
 - constitutional documents related to, 31-32
 - courts, provisions re, 37
 - federal executive powers under. *See* FEDERAL EXECUTIVE POWERS
 - federal legislative powers under. *See* FEDERAL LEGISLATIVE POWERS
 - powers under. *See* DIVISION OF POWERS
 - provincial executive powers under. *See* PROVINCIAL EXECUTIVE POWERS
 - provincial legislative powers under. *See* PROVINCIAL

LEGISLATIVE POWERS AND RESPONSIBILITIES

shared federal/provincial powers under, 119
structure and content of, 28-29

CONSTITUTION ACT, 1982

aboriginal rights. *See* ABORIGINAL RIGHTS
constitution defined under, 28
constitutional amendment provisions, 2270-234
constitutional documents related to, 33
federal executive powers under. *See* FEDERAL EXECUTIVE POWERS
provincial executive powers under. *See* PROVINCIAL EXECUTIVE POWERS
structure and content of, 30

CONSTITUTIONAL AMENDMENT PROCEDURES

Constitution Act, 1867 provisions, 227
Constitution Act, 1982 provisions, 227-234
 constitutional conference re review, 234
 General Formula, 229-231
 One-or-More-but-not-all-Formula, 232
 Unanimity Formula, 232
 Unilateral Federal Formula, 233
 Unilateral Provincial Formula, 233
generally, 227
Reference re Secession of Quebec, 235-238
secession, 234-238

CONSTITUTIONAL CONVENTIONS

convention, described, 6, 33-34
federal executive powers, 102

generally, 33
miscellaneous conventions, 35
responsible government conventions, 34-35

CONSTITUTIONAL DOCUMENTS

British North America Act, 1867, 27
Constitution Act, 1867
 constitutional documents related to, 31-32
 structure and content of, 28-29
Constitution Act, 1982, 28
 constitution defined under, 28
 constitutional documents related to, 33
 structure and content of, 30
“Constitution of Canada”, defined, 28
generally, 27
terminology, 27

CONSTITUTIONAL INTERPRETATION DOCTRINES

Charter s. 24 remedial powers, 48
common law, 47
Constitution Act, 1982 supremacy clause, 48
division of powers doctrines
 “ancillary” doctrine, 49
 “colourability” doctrine, 49
 concurrent jurisdiction context, 50
 “effects” test, 49
interjurisdictional immunity doctrine, 52
 “objective and purpose” of legislation, 48
paramountcy doctrine, 51
 “pith and substance” of legislation, 48
 “severability” doctrine, 52
statutory interpretation principles, 52
generally, 47, 53

inherent supremacy of Constitution,
47
precedents, use of, 53
stare decisis, 53

**CONSTITUTIONAL
QUESTIONS/ISSUES**

factual disputes, 43
generally, 42-43
legal disputes, 43
references, 43-45
standing, 45

CONTEXTUALISM, 171

CONVENTIONS. *See*
CONSTITUTIONAL
CONVENTIONS

COURTS

Charter and. *See* CANADIAN
CHARTER OF RIGHTS AND
FREEDOMS
Constitution Act, 1867 provisions
re, 37
constitutional questions.
See CONSTITUTIONAL
QUESTIONS/ISSUES
Federal Court of Canada, 38
federal courts, 37
provincial and territorial courts,
39-40
 appeal courts, 39
 federally-appointed judges, 39
 provincially-appointed judges,
 40
 small claims/provincial courts,
 40
 superior courts, 39
 trial divisions, 39
Supreme Court of Canada, 37-38
Tax Court of Canada, 38

CRIMINAL LAW, 88-90, 125

CROWN

fiduciary relationship with
 aboriginals, 146, 158
honour of, 160

Queen, 33, 63, 64, 93-112

DEMOCRATIC RIGHTS, 185

DIVISION OF POWERS

doctrines re. *See*
 CONSTITUTIONAL
 INTERPRETATION
 DOCTRINES
federal level. *See* FEDERAL
EXECUTIVE POWERS;
FEDERAL GOVERNMENT
INSTITUTIONS; FEDERAL
LEGISLATIVE POWERS
powers, concepts re
 branches of government, 57
 Constitution Act, 1867, Part
 VI, 58
 Constitution Act, 1867,
 Preamble, 57
distribution of powers, theory
 re, 59
division of legislative powers,
 58
exclusivity, general rule re, 61
federal union, 57
legislative vs. executive
 powers, 62-63
levels of government, 57
nature of powers, 59, 61
scope of powers, 59-61
separation of powers doctrine,
 57
provincial level. *See*
 PROVINCIAL EXECUTIVE
 POWERS; PROVINCIAL
 LEGISLATIVE POWERS AND
 RESPONSIBILITIES
shared powers. *See* SHARED
FEDERAL/PROVINCIAL
POWERS

ELECTIONS, 95, 96

ENVIRONMENT. *See* SHARED
FEDERAL/PROVINCIAL
POWERS

EQUALITY RIGHTS. *See*
CANADIAN CHARTER OF
RIGHTS AND FREEDOMS

EQUALIZATION, 70, 105

**FEDERAL COURT OF
CANADA,** 38

**FEDERAL EXECUTIVE
POWERS**

common law, conventional and
statutory rule, 102
Constitution Act, 1867, executive
power in
courts and judges, re, 100
education, re, 100
federal legislative process, re,
100
House of Commons, re, 99
oaths, re, 100
provincial executive, re, 100
Senate, re, 99
Constitution Act, 1982, executive
power in
aboriginal matters, re, 101
constitutional amendments, re,
101
French versions of Constitution,
re, 102
minority language education
rights, 102
conventional executive, 94-99
cabinet, choice of, 98
coalition government, 97
direction of parliament and
civil service, 98
election candidates, 95
electoral system, 96
forming government, 96-97
majority government, 96
minority government, 97
party leader, choosing, 95
political parties, 95
prime minister, 97
responsible government, 94

federal executive, establishment and
organization, 93
formal executive, structure of,
93-94
Governor General, 93
Queen, 93
Queen's Privy Council, 93

**FEDERAL GOVERNMENT
INSTITUTIONS**

finances
Crown/government property/
assets, 68-69
customs and excise, 71
equalization, 70
offshore areas, 70
provincial debts, 71
provincial subsidies, 70
revenues, raising of, 67-68
House of Commons, 64-65
legislative process/procedures, 66
Parliament, 63
Senate, 64

**FEDERAL LEGISLATIVE
POWERS**

banking and paper money, 84
bankruptcy and insolvency, 85
Constitution Act, 1867, s. 91
powers, 72, 75
court interpretation of
federalist vs. provincial rights
judges, 74
general grant, 75
general principles, 73
"matter" of Act, 74
residual powers, 75
courts, power to create, 90
criminal law, 88-90
generally, 71
Indians and lands reserved for
Indians, 86
marriage and divorce, 87
militia, military and naval service,
and defence, 82
navigation, shipping and maritime
law, 83

- peace, order and good government, 75-77
- public debt and property, 78
- sea coast and inland fisheries, 83
- spending power, 91
- taxation, 81-82
- trade and commerce, regulation of, 78-81
- treaty power, 92
- unemployment insurance, 81
- FEDERALISM.** *See* DIVISION OF POWERS; SHARED FEDERAL/PROVINCIAL POWERS
- FREEDOMS.** *See* CANADIAN CHARTER OF RIGHTS AND FREEDOMS
- GOVERNMENTS.** *See* DIVISION OF POWERS
- GOVERNOR GENERAL,** 33, 63, 64, 93-12
- HOUSE OF COMMONS,** 31, 64-6, 99
- HUMAN RIGHTS CODES,** 169
- INTERPRETATION**
 - aboriginal rights, of, 149, 151
 - doctrines. *See* CONSTITUTIONAL INTERPRETATION DOCTRINES
 - federal legislative powers. *See* FEDERAL LEGISLATIVE POWERS
 - right, 208
- LANGUAGE RIGHTS.** *See* CANADIAN CHARTER OF RIGHTS AND FREEDOMS
- LAW, SOURCES OF**
 - case law, 42
 - positive law, 40
 - public vs. private law, 41
 - statutes, 41-42
- statutory interpretation, rules of, 41-42
- LEGAL RIGHTS.** *See* CANADIAN CHARTER OF RIGHTS AND FREEDOMS
- LEGISLATIVE POWERS.** *See* FEDERAL LEGISLATIVE POWERS; PROVINCIAL LEGISLATIVE POWERS
- LIEUTENANT GOVERNOR.** *See* PROVINCIAL EXECUTIVE POWERS
- LIMITATION ON RIGHTS AND FREEDOMS.** *See* CANADIAN CHARTER OF RIGHTS AND FREEDOMS
- MEECH LAKE ACCORD,** 20
- MOBILITY RIGHTS.** *See* CANADIAN CHARTER OF RIGHTS AND FREEDOMS
- NORTHWEST TERRITORIES.** *See* TERRITORIAL GOVERNMENT
- NUNAVUT.** *See* TERRITORIAL GOVERNMENT
- OFFSHORE JURISDICTION,** 70
- OVERLAPPING POWERS.** *See* SHARED FEDERAL/PROVINCIAL POWERS
- PARAMOUNTCY DOCTRINE,** 51, 126
- PARLIAMENT.** *See* FEDERAL EXECUTIVE POWERS; FEDERAL GOVERNMENT INSTITUTIONS; FEDERAL LEGISLATIVE POWERS; TERRITORIAL GOVERNMENTS

PEACE, ORDER AND GOOD GOVERNMENT, 75-77

POLITICAL BOUNDARIES, 11-14

POLITICAL PARTIES, 95, 115

POSITIVE LAW, 40

POWERS OF GOVERNMENT.
See DIVISION OF POWERS

PREMIERS, 113-114, 116

PRIME MINISTER, 97

PRIVY COUNCIL, 93

PROPERTY AND CIVIL RIGHTS, 110

PROVINCIAL COURTS. *See* COURTS

PROVINCIAL EXECUTIVE POWERS

aboriginal matters, 117
common law powers, 117
Constitution Act, 1867, executive powers under, 116
Constitution Act, 1867, ss. 58-68, 113
Constitution Act, 1982, executive powers under, 117
conventional executive, structure of, 113-116
 Lieutenant Governor, 115
 party leader, choosing, 115
 political parties, 115
 premier and cabinet, 114, 116
 responsible government, 115
delegation of powers by legislature, 118
establishment and organization of, 112
formal executive, structure of, 113
Lieutenant Governor, 112, 115
premier and cabinet, 113-114, 116

PROVINCIAL LEGISLATIVE POWERS AND RESPONSIBILITIES

Constitution Act, 1867, s. 92
powers, 103, 106
equalization and regional disparities, 105
exclusive provincial powers
 administration of justice in province, 111
 direct taxation within province, 107
 licensing, provincial, 109
 local works and undertakings, 109
 marriage, solemnization of, 109
 matters of local nature, 111
 municipal institutions, 108
 penal sanctions, 111
 property and civil rights within province, 110
 public lands, management and sale of, 108
exhaustiveness, doctrine of, 107
federal spending power issue, 103
federalism, dynamics of, 106
generally, 103, 106
residual federal power, 107
roles vs. responsibilities, 103
social policy reform, 104
social programs, 104

PURPOSIVE APPROACH, 171

QUEBEC NATIONALISM.
See CONSTITUTION;
CONSTITUTIONAL
AMENDMENT PROCEDURES

REFERENCES. *See*
CONSTITUTION;
CONSTITUTIONAL
AMENDMENT PROCEDURES;
CONSTITUTIONAL
QUESTIONS/ISSUES

- RESPONSIBLE GOVERNMENT**, 34-35, 94, 115
- RULE OF LAW**, 18-19
- SECESSION**. *See* CONSTITUTION; CONSTITUTIONAL AMENDMENT PROCEDURES
- SENATE**, 31, 64, 99
- SHARED FEDERAL/PROVINCIAL POWERS**
 agriculture and immigration, 121
 common law doctrines, 126-127
Constitution Act, 1867, specified powers, 119
 delegation of powers, 127
 education, 120
 effect of statutes, 126
 environment
 federal powers, 122-124
 provincial powers, 124
 natural resources, 119
 overlapping fields, 124-126
 concurrency, notion of, 124
 courts, 125
 criminal law, 125
 incidental effect doctrine, 124
 navigation and shipping, 126
 property, 125
 shared cost programs, 125
 paramountcy, doctrine of, 126
 pensions, 121
 pith and substance doctrine, 126
- SOCIAL PROGRAMS**, 104
- SOURCES OF LAW**. *See* LAW, SOURCES OF
- STARE DECISIS, DOCTRINE OF**, 53
- SUPERIOR COURTS**. *See* COURTS
- SUPREME COURT OF CANADA**. *See* CONSTITUTION; CONSTITUTIONAL AMENDMENT PROCEDURES; COURTS
- SUPREMACY OF CONSTITUTION**, 47, 48, 222-223
- TAX COURT OF CANADA**. *See* COURTS
- TAXATION**. *See* COURTS; FEDERAL LEGISLATIVE POWERS; PROVINCIAL LEGISLATIVE POWERS AND RESPONSIBILITIES
- TERRITORIAL GOVERNMENTS**
 aboriginal land claims and self-government agreements, 141
 executive powers, 139-141
 federal jurisdiction over, 132-133, 138
 generally, 129
 parliamentary representation, 135
 powers
 executive powers, 139-141
 federal disallowance power, 138
 interpretation of, 139
 legislative powers, 135-139
 official languages
 entrenchment, 137
 omissions from territorial powers, 136
 provincial powers vs., 138
 specific powers, 137
 statutes re, 129-132
 terminology re, 129-132
 Territorial Constitutions, 133-135
- TRADE AND COMMERCE**, 78-81

TREATIES, 92

**UNCONSTITUTIONAL
PURPOSE/EFFECT, 172**

UNWRITTEN RULES, 4

**YUKON. *See* TERRITORIAL
GOVERNMENT**