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ABORIGINAL LAW IN CANADA

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What's New in this Update:

This release includes updates to case law and commentary in Chapters 3 (Federal Powers and Responsibilities), 5 (Aboriginal and Treaty Rights), 17 (Offences, Criminal Law, Sentencing and Young Offenders) and 21 (Treaties).

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Highlights

- **Whether Indigenous consent required for Alberta to secede.** The Court of King's Bench of Alberta has found that consent is required to change a party to the Numbered Treaties, particularly in light of the clear intent of the parties to the Numbered Treaties to create a relationship that would endure in perpetuity. Secession of a province from Canada would contravene the Numbered Treaties that apply within that province, both as a matter of law and as a practical matter, by removing Canada and substituting a new independent entity responsible for fulfilling treaty obligations. Such a contravention would constitute a *prima facie* infringement of treaty rights: *Chief Electoral Officer of Alberta v. Sylvestre*, 2025 ABKB 712. See Chapter 21, Section 21:1.
- **Fiduciary duty of the Crown to ensure safe drinking water and housing.** The Federal Court has found that the Crown has both a *sui generis* and *ad hoc* fiduciary duty, as well as a common law duty of care, to provide access to safe drinking water and adequate housing on reserve: *Shamattawa First Nation v. Canada (Attorney General)*, 2025 FC 1927, at paras. 177-180 (safe drinking water); *St. Theresa Point First Nation v. Canada*, 2025 FC 1926, at paras. 154, 195, 245 and 254 (adequate housing). Both cases are digested at Chapter 3, paragraph 3.1395.
- **Whether Indigenous laws can be raised as a defense to criminal contempt.** The B.C. Court of Appeal has held that in a criminal contempt proceeding, the accused cannot raise a "colour of right" defense, based on an honest belief that they were following a contradictory Indigenous law: *R. v. Cavanaugh*, 2025 BCCA 252 at para. 43, leave to appeal refused 2026 CarswellBC 1000 (S.C.C.). See also *R. v. Chief Dsta'hyl*, 2026 BCCA 176 at para. 75. Found at Chapter 17, paragraph 17.65.