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ABORIGINAL LAW IN CANADA

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Release No. 1, February 2026

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), 8 (Aboriginal Title and Indian Lands) and 20 (Practice Matters).

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Highlights

Cowichan Tribes. With this release, Aboriginal Law in Canada continues to be updated in multiple places to record the decision of *Cowichan Tribes v. Canada (Attorney General)*, 2025 BCSC 1490:

- **Honour of the Crown.** A Colonial Governor’s assurances that the Crown would treat an Indigenous group with justice and humanity so long as they remained at peace with the settlers, while falling short of a constitutional obligation, was found to be sufficiently similar to a constitutional obligation to engage the honour of the Crown: *Cowichan Tribes v. Canada (Attorney General)*, 2025 BCSC 1490, at paras. 1703, and 1722-1730. See Chapter 3, paragraph 3.1840.
- **Honour of the Crown.** Where the Crown, in a statute binding on the Crown, affirms its own understanding of a constitutional requirement for reconciliation, it may be required to act as though the principle of the honour of the Crown is engaged: *Renvoi relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2024 SCC 5, 2024 CarswellQue 353 (S.C.C.), at paras. 63-66. See Chapter 3, paragraph 3.1840.
- **Justification may be required for past Crown conduct.** The British Columbia Supreme Court found that justification is not a purely prospective exercise — infringement and justification do apply to Crown conduct that occurred prior to a declaration of Aboriginal title when there is ongoing infringement: *Cowichan Tribes v. Canada (Attorney General)*, 2025 BCSC 1490, at paras. 2566, 2572, and 2574-2575. See Chapter 8, paragraph 8.354 and 8.356.
- **Fee simple grants over Aboriginal Title land may be declared defective when lacking constitutional authority.** Fee simple grants over Aboriginal title lands may be declared defective and invalid where they have been issued without constitutional authority, as was the case in *Cowichan Tribes v. Canada (Attorney General)*, 2025 BCSC 1490, at paras. 1810, 1818 and 1838. See Chapter 8, paragraph 8.585.50.