

Aboriginal Tenure in the Constitution of Canada

Henderson, James Youngblood et al

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Aboriginal Tenure In The Constitution Of Canada

SA Dillow



Aboriginal Tenure In The Constitution Of Canada:

Aboriginal Customary Law: A Source of Common Law Title to Land Ulla Secher, 2014-12-01 Described as ground breaking in Kent McNeil's Foreword this book develops an alternative approach to conventional Aboriginal title doctrine. It explains that aboriginal customary law can be a source of common law title to land in former British colonies whether they were acquired by settlement or by conquest or cession from another colonising power. The doctrine of Common Law Aboriginal Customary Title provides a coherent approach to the source, content, proof and protection of Aboriginal land rights which overcomes problems arising from the law as currently understood and leads to more just results. The doctrine's applicability in Australia, Canada and South Africa is specifically demonstrated. While the jurisprudential underpinnings for the doctrine are consistent with fundamental common law principles, the author explains that the Australian High Court's decision in *Mabo* provides a broader basis for the doctrine, a broader basis which is consistent with a re-evaluation of case law from former British colonies in Africa as well as from the United States, New Zealand and Canada. In this context, the book proffers a reconceptualisation of the Crown's title to land in former colonies and a reassessment of conventional doctrines including the doctrine of tenure and the doctrine of continuity. With rare exceptions, the existing literature does not probe as deeply or question fundamental assumptions as thoroughly as Dr Secher does in her research. She goes to the root of the conceptual problems around the legal nature of Indigenous land rights and their vulnerability to extinguishment in the former colonial empire of the Crown. This book is a formidable contribution that I expect will be influential in shifting legal thinking on Indigenous land rights in progressive new directions. From the Foreword by Professor Kent McNeil to read the Foreword, please click on the sample chapter link.

Reconciling Canada Jennifer Anne Henderson, Pauline Wakeham, 2013-01-01 Truth and reconciliation commissions and official governmental apologies continue to surface worldwide as mechanisms for coming to terms with human rights violations and social atrocities. As the first scholarly collection to explore the intersections and differences between a range of redress cases that have emerged in Canada in recent decades, *Reconciling Canada* provides readers with the contexts for understanding the phenomenon of reconciliation as it has played out in this multicultural settler state. In this volume, leading scholars in the humanities and social sciences relate contemporary political and social efforts to redress wrongs to the fraught history of government relations with Aboriginal and diasporic populations. The contributors offer ground-breaking perspectives on Canada's culture of redress, broaching questions of law and constitutional change, political coalitions, commemoration, testimony and literatures of injury and its aftermath. Also assembled together for the first time is a collection of primary documents including government reports, parliamentary debates and redress movement statements prefaced with contextual information. *Reconciling Canada* provides a vital and immensely relevant illumination of the dynamics of reconciliation, apology and redress in contemporary Canada.

[Aboriginal Tenure in the Constitution of Canada](#) James Youngblood Henderson, Isobel M. Findlay, Benjamin A.

Ralston, Marjorie Lynne Benson, 2019 The work explores the origins of common law concepts of land ownership the attempts to reconcile European and Aboriginal traditions in the treaty process and the consequences of the application of British colonial law and Crown Site web de l diteur Protecting Indigenous Knowledge and Heritage Marie Battiste, James Youngblood (Sa'ke'j) Henderson, 2000-04-01 Whether the approximately 500 million Indigenous Peoples in the world live in Canada the United States Australia India Peru or Russia they have faced a similar fate at the hands of colonizing powers That has included assaults on their language and culture commercialization of their art and use of their plant knowledge in the development of medicine all without consent acknowledgement or benefit to them The authors paint a passionate picture of the devastation these assaults have wrought on Indigenous peoples They illustrate why current legal regimes are inadequate to protect Indigenous knowledge and put forward ideas for reform This book looks at the issues from an international perspective and explores developments in various countries including Canada the United States Australia New Zealand and also at the work of the United Nations and all relevant international agreements International Law and Indigenous Knowledge Chidi Oguamanam, 2006-01-01 Discusses the suitability of mainstream forms of intellectual property rights to indigenous knowledge and efforts to reconcile the Western concept of intellectual property with indigenous knowledge

The Colonial Problem Lisa Monchalin, 2016-01-01 In *The Colonial Problem* Lisa Monchalin challenges the myth of the Indian problem and encourages readers to view the crimes and injustices affecting Indigenous peoples from a more culturally aware position Let Right Be Done Hamar Foster, Heather Raven, Jeremy Webber, 2011-11-01 In the early 1970s many questioned whether Aboriginal title existed in Canada and rejected the notion that Aboriginal peoples should have rights different from those of other citizens But in 1973 the Supreme Court of Canada issued a landmark decision in the Calder case confirming that Aboriginal title constituted a right within Canadian law *Let Right Be Done* examines the doctrine of Aboriginal title thirty years later and puts the Calder case in its legal historical and political context both nationally and internationally With its innovative blend of scholarly analysis and input from many of those intimately involved in the case this book should be essential reading for anyone interested in Aboriginal law treaty negotiations and the history of the BC Indian land question *Indigenous Peoples and the Future of Federalism* Amy Swiffen, Joshua Nichols, 2023-12-18 As a settler state Canada's claims to sovereign control over territory are contested by Indigenous claims to land and to self determination *Indigenous Peoples and the Future of Federalism* presents legal analyses that explore forms of federalism and their potential to include multiple and divided sovereignties This collection aims to advance reconciliation with Indigenous peoples in Canada and elsewhere by developing jurisprudence on the possibilities for a nation to nation relationship between Indigenous nations and Crown sovereignty Contributors use legal creativity to explore how federalism can be structured to include the constitutional jurisdiction of Indigenous nations Several chapters are grounded in the Canadian context while others connect the issues to international law and other settler colonial jurisdictions recognizing how Indigenous resistance

to settler laws and government decisions can at the same time be the enactment of Indigenous legalities and constitutional cultures Ultimately Indigenous Peoples and the Future of Federalism offers innovative ways for Canada to move forward from this challenge using existing constitutional mechanisms to give life to a plurinational Canadian federalism inclusive of the jurisdiction of Indigenous peoples

Contested Constitutionalism James B. Kelly, Christopher P. Manfredi, 2010-01-01

The introduction of the Canadian Charter of Rights and Freedoms in 1982 was accompanied by much fanfare and public debate and the Charter remains the subject of controversy twenty five years later Contested Constitutionalism does not celebrate the Charter rather it offers a critique by distinguished scholars of law and political science of its effect on democracy judicial power and the place of Quebec and Aboriginal peoples in Canada Employing a diversity of methodological approaches contributors explore three themes governance and institutions policy making and the courts and citizenship and identity politics The influence of the Charter has been profound they conclude but has it been beneficial This thoughtful volume shifts the focus of debate from the Charter's appropriateness to its impact for better or worse on political institutions public policy and conceptions of citizenship

Canada: The State of the Federation 2017 Elizabeth Goodyear-Grant, Kyle Hanniman, 2019-10-16

In October 2015 the federal Liberals came to power with sweeping plans to revamp Canada's democratic and federal institutions a modernizing agenda intended to revitalize Canada's democratic architecture The centrepiece of the agenda was the replacement of Canada's first past the post electoral system but they also promised to revitalize relations with the provinces bring Indigenous Peoples into the intergovernmental fold and to change the ways in which senators and Supreme Court justices are appointed How has the reform agenda fared Has it resulted in a more effective and democratic set of political and federal institutions Or has it largely failed to deliver on these objectives What more broadly is the state of Canada's democratic and federal institutions The Queen's Institute of Intergovernmental Relations used the occasion of Canada's 150th birthday to examine these pressing issues The 2017 volume in the State of the Federation series focuses on enduring questions about the functioning of federalism and intergovernmental relations in Canada including how we should evaluate the quality of Canada's institutions and practices in light of our federal structure and how current institutional arrangements and their possible alternatives fare according to these criteria

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