

# Research Guide: Aboriginal Law

Aboriginal law has been increasing in prominence over the last few decades. As a federal power, it is given to the federal government under section 91 of the Constitution. While this guide primarily deals with Canada, there is also information on U.S. native law, as well as information on law in an international setting.

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## CANADA

### Primary Sources

#### Legislation

*Indian Act* R.S.C. ,1985, c. I.5 . Also available on the web at [justice Canada's website](#) or [CANLII](#).

Other places to look for legislation:

*Quicklaw* – This is the database to go to for almost anything in Canadian law. For the Indian Act ( or any other Act), go to **Legislation** and type the name of the Act in the *title*.

*Westlaw Canada* – under **Legislation**, you can search for the name of an Act and a specific section of that Act, or you can use various keyword combinations.

#### Case Law

To find relevant case law, you may want to check these sources:

- a. *Canadian Abridgement*, 3<sup>rd</sup> ed. Volume 1 – Aboriginal Law – The Canadian Abridgement gives abstracts of cases. It is arranged by topic. Also online in Westlaw-ecarswell.
- b. *Quicklaw* >> Source Directory >>Canada >> Topical Collection of Case Law and Commentary >> **Aboriginal Law Cases, Group Source (ABQ)**.
- c. *Westlaw-ecarswell* >> Cases
- d. Canada. *The...Annotated Indian Act and aboriginal constitutional provisions*. (Scarborough, ON: Carswell, 1998- ).  
LAW KF 8208.8 C35 – current year is on reserve
- e. Canadian Native Law Reporter - REP-CAN D572
- f. Canadian Native Law Cases (<http://library2.usask.ca/native/cnlch.html>) Compiled by the Native Law Centre at the University of Saskatchewan, this databases contains all reported aboriginal court cases from 1980-1991. A selection of cases from 1763-1978 is also included.

## Secondary Sources

These include sources such as treatises and journal articles. They are good places to start your research as they not only have opinions on primary sources, but also help you locate primary sources through their footnotes.

### Books

Bell, Catherine & Paterson, Robert K. eds. *Protection of First Nations Cultural Heritage: laws, policy and reform*. (Vancouver: UBC Press, c2009). LAW KF 8205 P765

Borrows, John. *Recovering Canada: the resurgence of Indian law*. (Toronto: University of Toronto Press, 2002). KF 8205 B68 2002 – LAW RESERVE

Cairns, Alan. *First Nations and the Canadian state: in search of coexistence*. (Kingston, ON: Institute of Intergovernmental Relations, Queen's University, 2005).  
LAW E 92 C223 2005

Canada. *The annotated Indian Act and annotated constitutional provisions*. (Scarborough, ON: Carswell, c1998-). LAW KF 8208.8 C35 -latest one is on reserve (2009)

Dickason, Olive Patricia. *Canada's first nations: a history of founding peoples from earliest times*, 3<sup>rd</sup> ed. (Don Mills, ON: Oxford University Press, 2002).  
LAW E 78 C2 D459 2002

Elliot, David W. *Law and Aboriginal Peoples in Canada*. 5<sup>th</sup> ed. (Concord, ON: Captus Press, 2005).  
LAW KF 8210 A2 L48 2005

Henderson, James Youngblood. *First Nations Jurisprudence and aboriginal rights: defining the just society*. (Saskatoon: Native Law Centre, University of Saskatchewan, 2006). LAW KF 8205 H475 2006

Henderson, James Youngblood. *Treaty rights in the Constitution of Canada*. Toronto: Thomson Carswell, 2007. LAW KF8205 H478 2007

Imai, Shin. *Aboriginal law handbook*, 3<sup>rd</sup> ed. (Toronto: Carswell, 1999).  
LAW RESERVE KF 8205 I43 2008

Imai, Shin., *Indigenous self-determination and the state*. (Toronto: Osgoode Hall Law School, York University, 2008) LAW KF 8210 S4 I48 2008

*Indigenous legal traditions*. Ed. Law Commission of Canada. (Vancouver: UBC Press, 2007).  
LAW KF 8220 I64 2007.

McNeil, Kent. *Emerging justice: essays on indigenous rights in Canada and Australia*, (Saskatoon: Native Law Centre, University of Saskatchewan, 2001).  
LAW KF 8208 M3295 2001

*Aboriginal law since Delgamuukw*. Maria A. Morellato ed. (Aurora, ON: Canada Law Book, c2009). LAW  
KF 8205 A79 2009

For books on aboriginal law in Canada, it is best to search the York Libraries catalogue as there are a great many titles on this area of law. Keywords you can use to search include “aboriginal rights”, “self-government” and “first nations”. For subject terms, you can use “Indians of North America—Legal status, laws, etc.—Canada” and “Indigenous peoples—Legal status, laws, etc.—Canada”.

Another database to search for books is Worldcat, which allows access to the catalogues of other libraries throughout the world.

## Journals

Articles on aboriginal issues are published in a wide variety of disciplines and journals, not just the ones you see below.

### Indigenous Law Journal

### Justice as healing: a newsletter on aboriginal concepts of justice

You can also find journals online using these databases:

*Quicklaw* – In Quicklaw, you can search Canadian legal journals, by simply clicking on the **journals** tab

Index to Canadian Legal Literature – This index will give you an idea of Canadian periodicals (not just journals) on any topic. It is available in print in the library and online in both Quicklaw and Westlaw-ecarswell.

Index to Legal Periodicals (ILP) – on the law library website. This database has mostly American, but also the main Canadian journals dealing with all matter of legal topics, including aboriginal law. Has some full text, but is mostly an index.

Legal Trac – on the law library website. This database, like ILP, has mostly American journals, but also has the main Canadian legal journals dealing with all legal topics, including aboriginal law. Has some full text, but is mostly an index.

## Newspapers

[First Perspective](#) – Newspaper published monthly dealing with Canadian aboriginal issues.

[Windspeaker](#) – Another of Canada's national aboriginal news magazines. It covers a variety of aboriginal issues. There is an archives of all the issues available online. However, to access it requires a subscription.

## Internet Sites

[A Select and Annotated Bibliography regarding Bill C-31, Indian registration and band membership, aboriginal identity, women and gender issues](#) – Done by the Department of Indian and Northern Affairs, this annotated bibliography focuses on aboriginal women and gender issues. Books and periodicals are included.

<http://www.library.ubc.ca/xwi7xwa/law.htm> The Xwi7xwa First Nations library, from the University of British Columbia, offers many links to Canadian, American and International sources of Aboriginal law

[Aboriginal Canada Portal](#) – This government website provides a window into First Nations programs and government services. There is also an interesting section on government policy with regard to aboriginals and statistical information.

[Assembly of First Nations](#) This is the main lobby group of aboriginal people in Canada. The website contains information on all of the activities of the AFN and their policies.

[Commission on First Nations and Metis Peoples and Justice Reform](#). This commission, which made its final report in 2004, was called by the Saskatchewan government to look into problems with justice issues for aboriginal peoples.

[Congress of Aboriginal Peoples](#). This group represents the rights and interests of aboriginals who live off-reserve and Metis people in Canada.

[Inuit Tapirit Kanatami](#) – This is the main organization for the Inuit peoples of Canada. It includes a section with publications that are downloadable in PDF format, such as their submission on the review of the Canadian Environmental Protection Act.

[Metis National Council](#) This is the main lobby group of the Metis people. It contains information on Metis rights, with links to the Pawley and Blais cases.

[National Centre for First Nations Governance](#) – This organization, attempts to educate first nations in rebuilding their people through knowledge and research in the area of self-governance. A number of research papers and an online library is on this site.

[Native Law Centre](#) – at the University of Saskatchewan

[Native Women's Association of Canada](#) This website deals with current issues facing aboriginal women, including women's health and violence against women. Interestingly, it also has information regarding various court challenges that the organization is currently involved in.

[Royal Commission on Aboriginal Peoples](#) This Royal Commission, completed in 1996, concerns government policy with regard to aboriginal peoples. It looks at the history of aboriginal peoples, the roots of the problems they face today, and offers suggestions on how to address these difficult issues.

[Office of the Treaty Commissioner](#) – This office helps to coordinate research on treaty issues in Saskatchewan, as well as coordinating open communications between the Federal Government and the Federation of Saskatchewan Nations.

[Truth and Reconciliation Commission](#) – The commission has a mandate to learn the truth about what happened in the residential schools in Canada. The site has some good links to resources about residential schools, the residential schools settlement agreement, and links to various aboriginal organizations.

## UNITED STATES

### Primary Sources

#### Legislation

For the United States, legislation is to be found not only in the statutes, but in the United States Code, or USC. The code is made up of legislation. This legislation is broken down by topic into different parts, called titles. Thus, different parts of one piece of legislation can be put into different titles of the code. For Native Americans, their legislation is under title 25.

#### Cases

*Westlaw Canada* >> Topical Materials by Area of Practice >> Native American law >> Federal Cases

*Quicklaw* >> Source Directory >> United States >> topic: Aboriginal law >> North Carolina Cherokee Courts. Quicklaw also has access to all other United States Courts, both federal and state.

*Lexis Nexis Academic*

### Secondary Sources

#### Books

Ashley, Jeffrey S. & Hubbard, Secody J. *Negotiated sovereignty: working to improve tribal-state relations* (Westport, Conn.: Praeger, c2004).  
LAW E 93 A85 2004

Canby, William C. 4<sup>th</sup> ed. *American Indian law in a nutshell*. (St. Paul, MN: Thomson/West, c.2004).  
LAW KF 8205 Z9 C36 2004

Garrow, Carrie E. & Sarah Deer. *Tribal Criminal law and procedure* (Walnut Creek, CA: AltaMira Press, c2004).  
LAW KF 8210 C7 G37 2004

Myers, Hardy & Clay Smith, eds. *American Indian law deskbook* (Boulder, Colo: University Press of Colorado, c2004).  
LAW KF 8205 A825 2004

Getches, David H, Wilkinson, Charles F. & Robert A. Williams Jr. *Cases and materials on federal Indian law*, 5<sup>th</sup> ed. (St. Paul, Minn.: Thomson/West, 2005).  
LAW KF 8204.5 G47 2005

Vinzant, John Harlan. *The Supreme Court's Role in American Indian Policy* (El Paso, TX: LFB Scholarly Pub., 2009) LAW KF 8205 V57 2009

Wildenthal, Bryan H. *Native American sovereignty on trial: a handbook with cases, laws and documents* (Santa Barbara, Calif.: ABC-CLIO, c2003).  
LAW KF 8205 Z9 W55 2003

For books on American aboriginal law, many of the keywords that are used are slightly different than Canadian aboriginal law. Keywords that could be used include “Indian law”, “tribal government”, “Native American law”.

## **Journals**

[American Indian Journal](#)

[American Indian Quarterly](#)

[American Indian Law Review](#)

[Tribal Law Journal](#) - From the University of New Mexico’s School of Law. It is an online journal, with free archives. Coverage is from 2000-present.

Other places to find journals:

*Westlaw Canada* >> Topical Materials by Area of Practice >> Native American Law >> Law Reviews, Legal Texts & Periodicals

*Quicklaw* >> Source Directory >> United States >> Topic: Aboriginal Law >> Legal Journals >> Native American law review **or** Source Directory >> United States >> Publication Type: Legal Journals >> Sources: Group Sources >> Law Reviews, CLE, Legal Journals & Periodicals, Combined

Index to Legal Periodicals – see above

Legal Trac – see above

## **Internet Sites**

<http://www.nesl.edu/research/native.cfm> New England School of Law Library – Native Law Research Guide – lots of primary research materials e.g. court cases, statutes etc.

[http://www.law.cornell.edu/wex/index.php/American\\_Indian\\_law](http://www.law.cornell.edu/wex/index.php/American_Indian_law) From Cornell’s Legal Information Institute (LII). This guide includes a host of court opinions, laws and internet sites.

[Bureau of Indian Affairs](#) – The Bureau has responsibility for helping to administer land management of all reserve lands for Indian tribes in the U.S. and provides infrastructure and economic development as well as education services for Indian tribes. The website also has numerous links dealing with areas of interest to Indian tribes.

[National Congress of American Indians](#) – This is the oldest Indian government organization in the United States. Founded in 1944, with over 250 member tribes, it aims to bring a collective voice to the various issues facing American Indians.

[National Tribal Justice Resource Center](#) – The Center provides resources for the development and enhancement of tribal court personnel. The page includes links to tribal codes and court opinions, as well as opinions on aboriginal cases from the U.S. Supreme Courts.

[Navajo courts](#) – The website of the Navajo court system of the Navajo nation. It offers information on how the Navajo court system is run, and provides full text access of Navajo code and court cases from the year 2000-present.

[University of Oklahoma College of Law: American Indian Legal Resources](#) – Compiled by the University of Oklahoma College of Law, this list of resources is on a wide range of sources dealing with American Indian law. It includes the Bureau of Indian Affairs, and other interesting documents such as the Constitution of the Iroquois Confederacy.

[University of New Mexico School of Law Library: Indian Law](#) – Contains a number of links to American Indian resources, including tribal resources, native American organizations, publication, and most interestingly, law school websites with other Indian resources.

[National Indian Law Library](#) – A public library devoted to U.S. Federal Indian and Tribal law.

## International

### Secondary Sources

#### Books

Anaya, S. James. *Indigenous peoples in international law*, 2<sup>nd</sup> ed. (Oxford: Oxford University Press, 2004). LAW K 3242 A76 2004

Brennan, Frank. *One land, one nation: Mabo – towards 2001*. (St. Lucia, Queensland: University of Queensland Press, 1995). LAW KF 8208 B74 1995

Gilbert, Jeremie. *Indigenous peoples' land rights under international law: from victims to actors*. (Ardley, NY: Transnational Publications, c2006). LAW K738 G55 2006

Castellino, Joshua and Walsh, Niamh. *International law and indigenous peoples*. (Leiden; Boston: M. Nijhoff, 2005). LAW K 3247 I583 2005

McHugh, Paul G. *Aboriginal societies and the common law: a history of sovereignty, status and self-determination*. (Oxford, New York: Oxford University Press, 2004). LAW K 3247M34 2004

#### Journals

[Indigenous Affairs](#) – Published by the International Work Group for Indigenous Affairs, this quarterly journal focuses on indigenous issues worldwide. You can download issues back from 1999 free on their website. Scott library has the print holdings from 1994 to the present. Call number HT 1501 I57

[The Indigenous World](#) – Published once a year by the International Work Group for Indigenous Affairs, this journal updates the state of indigenous people around the world. Back issues can be downloaded for free on the IWGIA from 2000. Scott Library has back issues from 1993/94 to the present. Call number HT 1501 I9

#### Internet Sites

[Waitangi tribunal](#) – This is the homepage of a tribunal which investigates and makes recommendations to the New Zealand government on claims made against the government by New Zealand's native inhabitants, the Maori. The website has the text of the Waitangi treaty, as well as downloads of recent recommendations made by the tribunal to the government.

[International Labour Organization](#) – Has a section on indigenous peoples. It includes copies of ILO conventions that specifically mention indigenous peoples, as well as programs run by the ILO to help improve lives.

[International Work Group for Indigenous Affairs](#) – This group promotes indigenous peoples' rights to self-determination, right to development and right to cultural integrity. They do this through research, publication, human rights, lobbying and projects.

[UN Declaration on the Rights of Indigenous Peoples](#) This declaration, adopted by the General Assembly in 2007, declares that indigenous peoples throughout the world have various rights just as any other.

[American Declaration on the Rights of Indigenous Peoples](#) – The Organization of American States is proposing their own declaration on the rights of indigenous peoples.

[Arctic Council](#) – This organization provides a forum to discuss common concerns and challenges facing Arctic nations. Members of this council include Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden and the U.S. Aboriginal groups, while not full members, have permanent participation status. These groups include the Inuit, Sami, and others.

[Center for World Indigenous Studies](#) – This organization conducts research into various issues affecting aboriginal peoples worldwide. They also help to formulate policy in dealing with aboriginal issues.

[UN Permanent Forum on Indigenous Issues](#) – This is an advisory body to the UN Economic and Social Council. They are mandated to provide advice to the Council with regard to indigenous issues on economic and social development, culture, health, education, the environment and human rights. The site includes papers published for the Forum on aboriginal issues.

## **Blogs**

[Aboriginal Rights Suite 101](#) – This blog features articles on indigenous issues from all over the world. Some of the commentary is quite political. Still, an interesting source if you are looking for commentary by native writers.

[Forestry Law Blog](#) – This blog, written by a Canadian lawyer at Lang Michener, has news and information concerning the forest industry and other aboriginal issues.

[National Indian Law Library](#) – A blog by a public law library in the states devoted to federal Indian and tribal law.

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