

Aboriginal Law & Canadian Courts – Answer Key

In your group, read this article and answer the questions in the chart.

Gunn, K., & O'Neil, C. 2021. "Indigenous Law & Canadian Courts." *First Peoples Law*.
<https://www.firstpeopleslaw.com/public-education/blog/indigenous-law-canadian-courts>

<ul style="list-style-type: none"> • What is the difference between Indigenous Law vs. Aboriginal Law? 	<p>Answers may vary [in length], but any part of the below statements by the authors would be correct: [Red text is the nutshell difference.]</p> <p><i>"Aboriginal law, created by Canadian courts and legislatures, is about the legal relationship between Indigenous Peoples and the Crown within the Canadian legal system."</i></p> <p><i>"Aboriginal law involves the interpretation of Indigenous rights recognized in the Canadian Constitution and other laws created by Canadian governments such as the Indian Act or self-government agreements. Most notably, this body of law includes defining the nature and scope of Aboriginal and Treaty rights under section 35 of the Constitution Act, 1982 and the Crown's corresponding obligations to Indigenous Peoples."</i></p> <p><i>"Indigenous law refers to Indigenous Peoples' own legal systems. This includes the laws and legal processes developed by Indigenous Peoples to govern their relationships, manage their lands and waters, and resolve conflicts within and across legal systems. As with Canadian law, Indigenous law is developed from a variety of sources and institutions which differ across legal traditions."</i></p>
<ul style="list-style-type: none"> • What have Canadian courts long accepted? 	<p>Answers may vary [in length]. The authors main points on this are mentioned under the heading, <i>Recognition in Canadian Law</i>.</p> <p><i>"Canadian courts have <u>long accepted</u> that prior to the arrival of Europeans, Indigenous Peoples lived on and exercised control over their territories in accordance with their own legal systems, and that <u>unless otherwise extinguished</u>, their laws are presumed to have survived the Crown's assertion of sovereignty."</i></p> <p><i>"Courts have further affirmed that the Constitution Act, 1867 did not extinguish <u>the continued existence</u> of Indigenous powers of self-government and that <u>this right exists</u> and is protected today by section 35 of the Constitution Act, 1982."</i></p>
<ul style="list-style-type: none"> • Name the three areas of Recent Development in Canadian courts. 	<ol style="list-style-type: none"> 1. Elections 2. Family law 3. Land rights

<ul style="list-style-type: none"> • In your own words, what are the Risks and Challenges as outlined by these authors? 	<p>Answers will vary in length.</p>
<ul style="list-style-type: none"> • Why is it <i>“important for federal and provincial governments to take concrete steps to recognize and <u>“make space”</u> for Indigenous law?”</i> 	<p>Answers may vary [in length]. Main points mentioned by the authors are under the heading, <i>Looking Ahead</i>.</p> <p><i>“These include the Crown’s obligations under the Canadian Constitution, the United Nations Declaration on the Rights of Indigenous Peoples and the findings of the Truth and Reconciliation Commission.”</i></p> <p><i>“:Perhaps most importantly, it is imperative that Canadian governments begin to acknowledge the role of Indigenous law in the formation and existence of Canada based on the growing call from Indigenous and non-Indigenous people alike to finally respect and be accountable to Indigenous laws on Indigenous lands.”</i></p>
<p>What further questions do you have?</p>	