

Date Reviewed

January 2022

Course

[Law Studies 12](#)

Topic

Aboriginal Law

Big Idea

A society's laws and legal framework affect many aspects of people's daily lives.

Essential Question

How have landmark Supreme Court of Canada decisions impacted the lives of Indigenous peoples?

Content

Students are expected to know the following

- Canadian legislation concerning First Peoples

Curricular Competencies

Students are expected to be able to do the following

- Assess and compare the significance and impact of legal systems or codes

Core Competencies

[Communication](#) - I can name three landmark Supreme Court of Canada decisions regarding Indigenous land rights.

[Thinking](#) - I can explain what makes the cases significant.

[Personal and Social](#) - I can imagine the impact of these cases on future generations.

First People's Principles of Learning

Learning recognizes the role of Indigenous knowledge.

Introduction

- Read aloud each of the statements in [Myth or Fact?](#) After each statement have students predict whether it is a myth or fact. Then provide them with the factual explanations to refute the myths.

- Ask: Which fact(s) surprised you the most? Why?

Pre-Assessment

- Distribute the handout “Indigenous Law KWL Chart”. Have students fill in as much as they can at this point and then continue to fill it in throughout the lesson.
- In small groups, students can discuss these [Knowledge Check Questions and Answers](#) and discuss what they may not already know.

Interactive Learning Activities

Part 1: Terminology and Timelines

- Point out that there is a difference between the terms Indigenous Law and Aboriginal Law. Gunn and O’Neil’s article provides a clear distinction.
- Have students read Gunn & O’Neil’s article [Indigenous Law & Canadian Courts](#) and write in their own words the difference between Indigenous law and Aboriginal Law:
- Provide students with access to this [Terminology Guide: Research on Aboriginal Heritage](#) as it provides clear definition of terms.
- Explain that students will be examining timelines to determine significant events in the history of the Indigenous peoples of Canada.
- In groups, have students analyze the following timelines to compare and contrast the types of events shown. (e.g. legislation, case law, others):
 - [A legal timeline of Indigenous Rights in Canada - Nelligan Law](#)
 - [Appendix B: Indian Act Timeline](#)
 - [A Brief Timeline of the History of Indigenous Relations in Canada](#)
- Point out that the timelines contain significant court cases that have had an impact on the lives of Indigenous peoples.

Part 2: Landmark Cases

- Define a landmark case as a court decision that establishes an important new legal principle or concept, or which changes the previous interpretation of current law.
- Explain that students will be exploring three landmark cases dealing with Aboriginal Law and First Nations Rights.
- Note that two of the three landmark cases to be explored in this lesson are mentioned in the post from Simon Fraser University: [Supreme Court of Canada cases involving Indigenous peoples | SFU Library](#). Delgamuukw, the landmark case from 1997 and Case #2 in this lesson, mentions a 1888 case which is the Case #1 in this lesson. The students will see how previous court cases can influence future cases. They will have another opportunity to notice this in a later exercise when they are shown the Canadian Legal Information Institute (aka CanLII) database.

- Distribute the handouts for each of the three landmark cases:
 - Case 1: [St. Catherine’s Milling Co. v. The Queen](#)
 - Case 2: [Delgamuukw v. British Columbia](#)
 - Case 3: [Haida Nation v. British Columbia \(Minister of Forests\)](#)
- Have students work with a partner or in small groups using the websites provided to read about each landmark case and to answer the questions on the handouts.

Post-Assessment

- Distribute the handout “Aboriginal Law & Canadian Courts”. Have students work in partners or small groups to read the article and complete the questions in the chart.
- Provide students with the handout “Looking Ahead”. By answering the questions about each of the articles, students can look ahead to how the future of Indigenous Law could be shaping up.
- Have students complete their “Indigenous Law KWL Chart”.

Extension Activities

- Explain that the Canadian Legal Information Institute, (aka CanLII) provides additional information pertaining to indexed cases. The five tabs have the following headings. This brief description follows each heading.
 - Document = The Supreme Court of Canada judgment itself.
 - History = Lists previous court case decisions before ending up at the Supreme Court of Canada.
 - Cited Documents = Lists the cases used to support the current case.
 - Treatment = Provides a list of how the current case has been ‘treated’ in consequent cases. This list could grow in future years.
 - CanLII Connects = Provides background materials regarding the case. These are written by academics or law firms and are a good source of useful commentary on the case you are researching.
- Have students visit the [CanLII website](#) to explore the various tabs to see how each of the three landmark cases they studied earlier have been ‘treated’ in later cases.

[St. Catharines Milling and Lumber Co. v. R., 1887 CanLII 3 \(SCC\), 13 SCR 577](#)

[Document](#) | [History \(0\)](#) | [Cited documents \(7\)](#) | [Treatment \(94\)](#) | [CanLII Connects \(0\)](#)

[Delgamuukw v. British Columbia, 1997 CanLII 302 \(SCC\), \[1997\] 3 SCR 1010](#)

[Document](#) | [History \(9\)](#) | [Cited documents \(42\)](#) | [Treatment \(1,016\)](#) | [CanLII Connects \(4\)](#)

[Haida Nation v. British Columbia \(Minister of Forests\), 2004 SCC 73 \(CanLII\), \[2004\] 3 SCR 511](#)

[Document](#) | [History \(5\)](#) | [Cited documents \(32\)](#) | [Treatment \(907\)](#) | [CanLII Connects \(8\)](#)

Additional References

“8 First Nation reserve FAQs.” 2015. *Indigenous Corporate Training*. <https://www.ictinc.ca/blog/8-first-nation-reserve-faqs>

“A Brief History of Our Right to Self-Governance: Pre-Contact to Present.” 2021. *Centre for First Nations Governance*. <https://fngovernance.org/wp-content/uploads/2020/09/A-Brief-History-of-Inherent-Rights.pdf>

Arcand-Paul, B. 2021. “Indigenous laws are a critical part of Canada's legal landscape.” *Canadian Bar Association*. <https://www.nationalmagazine.ca/en-ca/articles/law/rule-of-law/2021/indigenous-laws-a-critical-part-of-canada-s-legal>

Banks, K. 2018. “The Rise of Aboriginal Law.” *University Affairs*. <https://www.universityaffairs.ca/features/feature-article/the-rise-of-aboriginal-law/>

Belshaw, J., Nickel, S., & Horton, C. [2020?]. “Histories of Indigenous Peoples and Canada.” *Thompson Rivers University*. <https://histindigenouspeoples.pressbooks.tru.ca/>

Borrows, J. 2005. “Indigenous Legal Traditions in Canada.” *Washington University Journal of Law & Policy*, 19(1), 13. https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1380&context=law_journal_law_policy

Canada. 2002. “Frequently Asked Questions about Aboriginal Peoples.” *Indian and Northern Affairs*. https://www.iogc-pgic.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/info125_1100100016203_eng.pdf

Canada. 2010. “Backgrounder: Aboriginal Title in Canada's Courts.” *Aboriginal Affairs and Northern Development*. <http://www.energybc.ca/cache/northerngateway/www.aadnc-aandc.gc.ca/eng/1100100016311.html>

Canada. 2021. “Backgrounder: United Nations Declaration on the Rights of Indigenous Peoples Act.” Justice Department. *Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act*. <https://www.justice.gc.ca/eng/declaration/about-apropos.html>

Canadian Online Legal Dictionary. 2022. *Irwin Law*. <https://irwinlaw.com/cold/>

Canada. 2019. “Exploring Indigenous Justice Systems in Canada and Around the World.” *Department of Justice*. <https://www.justice.gc.ca/eng/rp-pr/aj-ja/eijs-esja/rep-rap.pdf>

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

Henderson, W. B., & Bell, C. 2019. “Rights of Indigenous Peoples in Canada.” *The Canadian Encyclopedia*. <https://www.thecanadianencyclopedia.ca/en/article/aboriginal-rights>

“Indigenous Law.” 2021. *Fasken*. <https://www.fasken.com/en/knowledge/doing-business-canada/2021/10/20-indigenous-law>

Joseph, B. 2018. “21 Things You May Not Know About The Indian Act.” Port Coquitlam, B.C.: Indigenous Relations Press.

Napoleon, V. 2016. "What Is Indigenous Law? A Small Discussion." *University of Victoria. Law*. <https://www.uvic.ca/law/assets/docs/ilru/What%20is%20Indigenous%20Law%20Oct%2028%202016.pdf>

Napoleon, V., & Friedland, H. 2016. "An Inside Job: Engaging with Indigenous Legal Traditions through Stories." *McGill Law Journal*, 61:4: 725. <https://lawjournal.mcgill.ca/article/an-inside-job-engaging-with-indigenous-legal-traditions-through-stories/>

Queen's University Library. 2021. "A Note on Terms." *Aboriginal Law & Indigenous Laws*. <https://guides.library.queensu.ca/Aboriginal-and-Indigenous-law>

Queen's University Library. 2021. "Indigenous Laws and the Canadian Legal System." *Aboriginal Law & Indigenous Laws*. <https://guides.library.queensu.ca/Aboriginal-and-Indigenous-law/indigenous-laws-and-the-canadian-legal-system>

Shutt, S. 2013. "Aboriginal law rising." *Canadian Lawyer*. <https://www.canadianlawyermag.com/news/general/aboriginal-law-rising/268951>

The Aboriginal Justice Implementation Commission. [n.d.]. "Chapter 3 - An Historical Overview." *Justice System and Aboriginal People*. <http://www.ajic.mb.ca/volumel/chapter3.html>

"The Historic Roots of Canada's Three Legal Systems." [n.d.]. *University of Toronto Libraries*. <https://exhibits.library.utoronto.ca/exhibits/show/canadianlawandidentity/cdnlegalsystemhistory>

University of British Columbia. [n.d.]. "Global Indigenous Issues." *Indigenous Foundations Arts*. https://indigenousfoundations.arts.ubc.ca/global_indigenous_issues/

University of British Columbia. 2021. "Indigenous Peoples: Language Guidelines." http://assets.brand.ubc.ca/downloads/ubc_indigenous_peoples_language_guide.pdf

Wilson, K. 2018. "Pulling Together: Foundations Guide." Victoria, BC: BCcampus: <https://opentextbc.ca/indigenizationfoundations/>

Woodside, J. 2021. "Canada's Supreme Court recognizes Wet'suwet'en law. So how is Coastal GasLink moving ahead?" *Canada's National Observer*. <https://www.nationalobserver.com/2021/12/02/news/canadas-supreme-court-recognizes-wetsuweten-law-coastal-gaslink?fbclid=IwAR0vn9DgrisAwC6MFq2i0UEPyXc1oBzkmOiwL7Vilyp3lxtWgUV7SbmXCjs>

World Law Dictionary. [n.d.]. "Landmark Case meaning - Legal definition." *translegal.com*. <https://dictionary.translegal.com/en/landmark-case/noun>

Yoon-Maxwell, K. 2020. "Indigenous Law and Aboriginal Law: It's Past Time We All Knew the Difference. An Interview with Pivot Board Chair, Stephen Mussell." *Pivot Legal Society*. https://www.pivotlegal.org/_indigenous_law_and_aboriginal_law

Materials and Resources

Aboriginal Law KWL Chart

What do I know about Indigenous Law? <i>(Do you know what, who, when, where, why, or how?)</i>	What do I want to learn about Indigenous Law? <i>(What do you wonder? What have you heard but are not sure about?)</i>	What did I learn about Indigenous Law? <i>(What should everyone know?)</i>

Case 1: St. Catharine's Milling Co. v. The Queen

[St. Catharines Milling and Lumber Co. v. R.](#)

Collection Supreme Court Judgments

Date 1887-06-20

Report (1887) 13 SCR 577

Judges Ritchie, William Johnstone; Strong, Samuel Henry; Fournier, Téléphore; Henry, William Alexander; Taschereau, Henri-Elzéar; Gwynne, John Wellington

On appeal from Ontario

Subjects Aboriginal law

St. Catherine's Milling Co. v. The Queen

Judicial Committee of the Privy Council – [1888] 14 A.C. 46

[Ontario Aboriginal title Jurisdiction over Indians](#)

Summary

This decision from Canada's highest court had monumental impacts on the relation between Canada and Aboriginal peoples. It governed Canada's policy over Indian title for almost a century, until *Calder*, in 1973. The Council recognized that the *Royal Proclamation of 1763* gave the Indians only a right of occupancy, which encroached on the Province's title. Once this right is ceded to the Dominion, full proprietary interest reverts to the province.

[The Summary above is from: [St. Catherine's Milling Co. v. The Queen - Indigenous Jurisprudence Autochtone \(reseaudialog.ca\)](#).] [Visit that page to answer the questions in the chart below.](#)]

The decision is also on the CanLII website: [St. Catharines Milling and Lumber Co. v. R., 1887 CanLII 3 \(SCC\), 13 SCR 577](#)

Supreme Court of Canada

St. Catharines Milling and Lumber Co. v. R., (1887) 13 S.C.R. 577

Date: 1887-06-20

The St. Catharines Milling and Lumber Company, (*Defendants*) *Appellants*;

and

The Queen, on the Information of the Attorney General for the Province of Ontario, (*Plaintiff*) *Respondent*.

1886: November 19, 20 & 22; 1887: June 20.

Present: Sir W.J. Ritchie C.J. and Strong, Fournier, Henry Taschereau and Gwynne JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Indian Lands—Title to—Right of Occupancy—Lands reserved for Indians—B.N.A. Act sec. 91, subsec. 24—Sec. 92, subsec. 5—Secs. 109, 117.

The lands within the boundary of Ontario in which the claims or rights of occupancy of the Indians were surrendered or became extinguished by the Dominion Treaty of 1873, known as the North West Angle Treaty, No. 3, form part of the public domain of Ontario and are public lands belonging to Ontario by virtue of the provisions of the British North America Act^[1].

Only lands specifically set apart and reserved for the use of the Indians are “lands reserved for Indians” within the meaning of

[Page 578]

sec. 91, item 24 of the British North America Act^[2] Supreme Court of Canada.

The judgment of Boyd C. in the Chancery Division of the High Court of Justice for Ontario^[3] and of the Court of Appeal for Ontario^[4] affirmed. Strong and Gwynne JJ. dissenting,

APPEAL from a decision of the Court of Appeal for Ontario⁴, affirming the judgment of the Chancery Division³, which restrained the defendants from cutting timber on lands in Ontario claimed to be public lands of the Province.

See also: St Catherines Milling Case excerpt from Henderson, B. "A Brief Introduction to Aboriginal Law in Canada." Bloorstreet.com. January 15, 1996. <http://www.bloorstreet.com/200block/brintro.htm>.

<p>What?</p> <ul style="list-style-type: none"> • What is the issue? 	
<p>Who?</p> <ul style="list-style-type: none"> • Who decided the decision? 	
<p>When?</p> <ul style="list-style-type: none"> • When was the court case decided? 	
<p>Where?</p> <ul style="list-style-type: none"> • Where is the land in question? 	
<p>Why?</p> <ul style="list-style-type: none"> • Why is this considered to be a landmark case? 	
<p>What is one interesting fact you found out about this case?</p>	
<p>What further questions do you have?</p>	

Further Reading

Canada. Supreme Court of Canada Judgments. 2022. "St. Catharines Milling and Lumber Co. v. R." *Lexum*. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/3769/index.do>.

Drake, K. 2018. "The Impact of St Catherine's Milling." Articles & Book Chapters. 2682. *Osgoode Hall Law School of York University*. https://digitalcommons.osgoode.yorku.ca/scholarly_works/2682/.

Henderson, B. 1996. "A Brief Introduction to Aboriginal Law in Canada." *Bloorstreet.com*. <http://www.bloorstreet.com/200block/brintro.htm>.

"St. Catherine's Milling Co. v. The Queen, Judicial Committee of the Privy Council – [1888] 14 A.C. 46." *DIALOG*. [n.d.]. <https://jurisprudence.reseadialog.ca/en/case/st-catherines-milling-co-v-the-queen/>

Case 1: St. Catharine's Milling Co. v. The Queen – Answer Key

St. Catharines Milling and Lumber Co. v. R.

Collection Supreme Court Judgments

Date 1887-06-20

Report (1887) 13 SCR 577

Judges Ritchie, William Johnstone; Strong, Samuel Henry; Fournier, Téléspore; Henry, William Alexander; Taschereau, Henri-Elzéar; Gwynne, John Wellington

On appeal from Ontario

Subjects Aboriginal law

St. Catherine's Milling Co. v. The Queen

Judicial Committee of the Privy Council – [1888] 14 A.C. 46

Ontario Aboriginal title Jurisdiction over Indians

Summary

This decision from Canada's highest court had monumental impacts on the relation between Canada and Aboriginal peoples. It governed Canada's policy over Indian title for almost a century, until *Calder*, in 1973. The Council recognized that the *Royal Proclamation of 1763* gave the Indians only a right of occupancy, which encroached on the Province's title. Once this right is ceded to the Dominion, full proprietary interest reverts to the province.

[The Summary above is from: [St. Catherine's Milling Co. v. The Queen - Indigenous Jurisprudence Autochtone \(reseauaudio.ca\)](#).] [Visit that page to answer the questions in the chart below.](#)

The decision is also on the CanLII website: [St. Catharines Milling and Lumber Co. v. R., 1887 CanLII 3 \(SCC\), 13 SCR 577](#)

Supreme Court of Canada

St. Catharines Milling and Lumber Co. v. R., (1887) 13 S.C.R. 577

Date: 1887-06-20

The St. Catharines Milling and Lumber Company, (*Defendants*) *Appellants*;
and

The Queen, on the Information of the Attorney General for the Province of Ontario, (*Plaintiff*) *Respondent*.

1886: November 19, 20 & 22; 1887: June 20.

Present: Sir W.J. Ritchie C.J. and Strong, Fournier, Henry Taschereau and Gwynne JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Indian Lands—Title to—Right of Occupancy—Lands reserved for Indians—B.N.A. Act sec. 91, subsec. 24—Sec. 92, subsec. 5—Secs. 109, 117.

The lands within the boundary of Ontario in which the claims or rights of occupancy of the Indians were surrendered or became extinguished by the Dominion Treaty of 1873, known as the North West Angle Treaty, No. 3, form part of the public domain of Ontario and are public lands belonging to Ontario by virtue of the provisions of the British North America Act^[1].

Only lands specifically set apart and reserved for the use of the Indians are “lands reserved for Indians” within the meaning of

[Page 578]

sec. 91, item 24 of the British North America Act^[2] Supreme Court of Canada.

The judgment of Boyd C. in the Chancery Division of the High Court of Justice for Ontario^[3] and of the Court of Appeal for Ontario^[4] affirmed. Strong and Gwynne JJ. dissenting,

APPEAL from a decision of the Court of Appeal for Ontario⁴, affirming the judgment of the Chancery Division³, which restrained the defendants from cutting timber on lands in Ontario claimed to be public lands of the Province.

See also: St Catherines Milling Case excerpt from Henderson, B. "A Brief Introduction to Aboriginal Law in Canada." Bloorstreet.com. January 15, 1996. <http://www.bloorstreet.com/200block/brintro.htm>.

<p>What?</p> <ul style="list-style-type: none"> What is the issue? 	<p><i>"When a parcel of land ceased to be part of an Indian reserve, which jurisdiction owns the title: the provincial or the federal government?"</i></p>
<p>Who?</p> <ul style="list-style-type: none"> Who decided the decision? 	<p><i>Judicial Committee of the Privy Council</i></p>
<p>When?</p> <ul style="list-style-type: none"> When was the court case decided? 	<p>1888</p>
<p>Where?</p> <ul style="list-style-type: none"> Where is the land in question? 	<p>Ontario</p>
<p>Why?</p> <ul style="list-style-type: none"> Why is this considered to be a landmark case? <p>NOTE: At the time of this decision, (i.e. 1888), Canada's highest court was the Judicial Committee of the Privy Council.</p> <p>NOTE: The term "Indians" was the accepted terminology at the time [1888].</p>	<p>Answers could vary, but the <i>Summary</i> best expresses it:</p> <p>Summary <i>"This decision from Canada's highest court had monumental impacts on the relation between Canada and Aboriginal peoples. It governed Canada's policy over Indian title for almost a century, until Calder, in 1973."</i></p> <p><i>"The Council recognized that the Royal Proclamation of 1763 gave the Indians only a right of occupancy, which encroached on the Province's title. Once this right is ceded to the Dominion, full proprietary interest reverts to the province."</i></p>
<p>What is one interesting fact you found out about this case?</p>	

What further questions do you have?	
-------------------------------------	--

Further Reading

Canada. Supreme Court of Canada Judgments. 2022. "St. Catharines Milling and Lumber Co. v. R." *Lexum*. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/3769/index.do>.

Drake, K. 2018. "The Impact of St Catherine's Milling." Articles & Book Chapters. 2682. *Osgoode Hall Law School of York University*. https://digitalcommons.osgoode.yorku.ca/scholarly_works/2682/.

Henderson, B. 1996. "A Brief Introduction to Aboriginal Law in Canada." *Bloorstreet.com*. <http://www.bloorstreet.com/200block/brintro.htm>.

"St. Catherine's Milling Co. v. The Queen, Judicial Committee of the Privy Council – [1888] 14 A.C. 46." *DIALOG*. [n.d.]. <https://jurisprudence.reseaudialog.ca/en/case/st-catherines-milling-co-v-the-queen/>

Case 2: Delgamuukw v. British Columbia

Delgamuukw v. British Columbia

Supreme Court of Canada – [1997] 3 S.C.R. 1010 – “Delgamuukw”

British Columbia Aboriginal title

Summary:

Without a doubt one of the most known and quoted aboriginal law cases in Canada, *Delgamuukw* clarifies the nature and scope of the constitutional protection granted by section 35(1) of the *Constitution Act, 1982* to aboriginal title.

The justices confirmed that aboriginal title is a right to the land itself, that it allows activities other than customary, and that Aboriginals must be compensated in the event of a breach to this right. They also allowed for oral evidence.

[The Summary above is from: [Delgamuukw v. British Columbia - Indigenous Jurisprudence Autochtone \(reseaudialog.ca\)](#)] [Visit that page to answer the questions in the chart below.](#)]

[Another summary is included below. Note the names of the Indigenous Communities involved.]

[Delgamuukw v. British Columbia, \[1997\] 3 S.C.R. 1010](#)

Summary:

Gitksan or Wet'suwet'en hereditary chiefs claimed, among them, that over 58,000 square kilometers of British Columbia land should be under their jurisdiction. The government counterclaimed that the land should not be ceded, and instead the appellants should be pursuing compensation from the federal government.

Location:

British Columbia

Indigenous communities involved:

- Gitksan
- Wet'suwet'en (Walsh)

What? <ul style="list-style-type: none">• What is the name of the case you are reading about?	
Who? <ul style="list-style-type: none">• Who is the Indigenous group affected?	
When? <ul style="list-style-type: none">• When was the court case decided?	

<p>Where?</p> <ul style="list-style-type: none"> Where is the land in question? 	
<p>Why?</p> <ul style="list-style-type: none"> Why is this considered to be a landmark case? <p>See also: Kurjata, A. (2017, December 11). <i>20 years ago, this court case changed the way Canadians understood Indigenous rights.</i> Retrieved January 8, 2022, from CBC News: https://www.cbc.ca/news/canada/british-columbia/delgamuukw-vs-british-columbia-20-years-rights-titles-1.4440703</p>	
<p>What is one interesting fact you found out about this case?</p>	
<p>What further questions do you have?</p>	

Further Reading

Anderson, R.T. 2010. "Aboriginal Title in the Canadian Legal System: The Story of Delgamuukw v. British Columbia." *Indian Law Stories*. University of Washington School of Law Research Paper No. 2011-02. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1624387.

B.C. Treaty Commission. 1999. "After Delgamuukw: The Legal and Political Landscape." https://www.bctreaty.ca/sites/default/files/after_delgamuukw.pdf.

Canada. "Backgrounder - Aboriginal Title in Canada's Courts." 2010. *Aboriginal Affairs and Northern Development Canada*. <http://www.energybc.ca/cache/northerngateway/www.aadnc-aandc.gc.ca/eng/1100100016311.html>.

Community Legal Education Association. 2017. "Delgamuukw v. British Columbia, [1997] 3 SCR 1010." *Lesson Plans & Case Summaries*. <https://www.communitylegal.mb.ca/wp-content/uploads/2021/10/Delgamuukw-v-BC-1997.pdf>.

Henderson, B. 1996. "A Brief Introduction to Aboriginal Law in Canada." *Bloorstreet.com*.
<http://www.bloorstreet.com/200block/brintro.htm>.

Kurjata, A. 2017. "20 years ago, this court case changed the way Canadians understood Indigenous rights." *CBC News*. <https://www.cbc.ca/news/canada/british-columbia/delgamuukw-vs-british-columbia-20-years-rights-titles-1.4440703>.

Williams, B. 2015. "Delgamuukw at 10: An Insider's Tale." *CanLII Connects*.
<https://canliiconnects.org/en/commentaries/35971>.

Case 2: Delgamuukw v. British Columbia – Answer Key

Delgamuukw v. British Columbia

Supreme Court of Canada – [1997] 3 S.C.R. 1010 – “Delgamuukw”

British Columbia Aboriginal title

Summary:

Without a doubt one of the most known and quoted aboriginal law cases in Canada, *Delgamuukw* clarifies the nature and scope of the constitutional protection granted by section 35(1) of the *Constitution Act, 1982* to aboriginal title.

The justices confirmed that aboriginal title is a right to the land itself, that it allows activities other than customary, and that Aboriginals must be compensated in the event of a breach to this right. They also allowed for oral evidence.

[The Summary above is from: [Delgamuukw v. British Columbia - Indigenous Jurisprudence Autochtone \(reseaudialog.ca\)](#)] [Visit that page to answer the questions in the chart below.](#)]

[Another summary is included below. Note the names of the Indigenous Communities involved.]

[Delgamuukw v. British Columbia, \[1997\] 3 S.C.R. 1010](#)

Summary:

Gitksan or Wet'suwet'en hereditary chiefs claimed, among them, that over 58,000 square kilometers of British Columbia land should be under their jurisdiction. The government counterclaimed that the land should not be ceded, and instead the appellants should be pursuing compensation from the federal government.

Location:

British Columbia

Indigenous communities involved:

- Gitksan
- Wet'suwet'en (Walsh)

<p>What?</p> <ul style="list-style-type: none"> • What is the name of the case you are reading about? 	Delgamuukw v. British Columbia
<p>Who?</p> <ul style="list-style-type: none"> • Who is the Indigenous group affected? 	Houses of Delgamuukw and Haaxw (... thirty-eight Gitksan Houses and twelve Wet'suwet'en Houses)
<p>When?</p> <ul style="list-style-type: none"> • When was the court case decided? 	1997
<p>Where?</p> <ul style="list-style-type: none"> • Where is the land in question? 	Wet'suwet'en and Gitksan Nations in northern British Columbia
<p>Why?</p> <ul style="list-style-type: none"> • Why is this considered to be a landmark case? 	<p>Answers could vary. Summed up well in the <i>Summary</i>.</p> <p>Summary</p>

<p>See also: Kurjata, A. (2017, December 11). <i>20 years ago, this court case changed the way Canadians understood Indigenous rights</i>. Retrieved January 8, 2022, from CBC News: https://www.cbc.ca/news/canada/british-columbia/delgamuukw-vs-british-columbia-20-years-rights-titles-1.4440703</p>	<p>“<i>Delgamuukw</i> clarifies the nature and scope of the constitutional protection granted by section 35(1) of the <i>Constitution Act, 1982</i> to aboriginal title.”</p> <p>“The justices confirmed that aboriginal title is a right to the land itself, that it allows activities other than customary, and that Aboriginals must be compensated in the event of a breach to this right. They also allowed for oral evidence.”</p>
<p>What is one interesting fact you found out about this case?</p>	
<p>What further questions do you have?</p>	

Further Reading

Anderson, R.T. 2010. "Aboriginal Title in the Canadian Legal System: The Story of *Delgamuukw v. British Columbia*." *Indian Law Stories*. University of Washington School of Law Research Paper No. 2011-02. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1624387.

B.C. Treaty Commission. 1999. "After *Delgamuukw*: The Legal and Political Landscape." https://www.bctreaty.ca/sites/default/files/after_delgamuukw.pdf.

Canada. "Backgrounder - Aboriginal Title in Canada's Courts." 2010. *Aboriginal Affairs and Northern Development Canada*. <http://www.energybc.ca/cache/northerngateway/www.aadnc-aandc.gc.ca/eng/1100100016311.html>.

Community Legal Education Association. 2017. "*Delgamuukw v. British Columbia*, [1997] 3 SCR 1010." *Lesson Plans & Case Summaries*. <https://www.communitylegal.mb.ca/wp-content/uploads/2021/10/Delgamuukw-v-BC-1997.pdf>.

Henderson, B. 1996. "A Brief Introduction to Aboriginal Law in Canada." *Bloorstreet.com*. <http://www.bloorstreet.com/200block/brintro.htm>.

Kurjata, A. 2017. "20 years ago, this court case changed the way Canadians understood Indigenous rights." *CBC News*. <https://www.cbc.ca/news/canada/british-columbia/delgamuukw-vs-british-columbia-20-years-rights-titles-1.4440703>.

Williams, B. 2015. "*Delgamuukw* at 10: An Insider's Tale." *CanLII Connects*. <https://canliiconnects.org/en/commentaries/35971>

Case 3: Haida Nation v. British Columbia (Minister of Forests)

Haida Nation v. British Columbia (Minister of Forests)

Supreme Court of Canada – [2004] 3 S.C.R. 511

[British Columbia Consultation Honour of the Crown](#)

Summary

Haida is one of the most frequently cited cases regarding aboriginal rights.

Based on the principle of the honour of the Crown, which was elaborated by the Court, this decision affirms that the Crown must consult Aboriginals as soon as it has “real or constructive” knowledge “of the potential existence” of an Aboriginal right or title that may be adversely affected by the contemplated conduct.

[Summary is from: [Haida Nation v. British Columbia \(Minister of Forests\) - Indigenous Jurisprudence Autochtone \(reseauiaolog.ca\)](#)] *Visit that page to answer the questions in the chart below.*

[Another summary is included below. Note the names of the Indigenous Communities involved.]

[Haida Nation v. British Columbia \(Minister of Forests\), \[2004\] 3 S.C.R. 511, 2004 SCC 73](#)

Summary:

The Minister of Forests allowed the transfer of a "Tree Farm License" from one firm to another, prompting Haida to renew their objections to the license's coverage of the lands of Haida Gwaii, which had not been titled to them in any treaty, but to which they had long laid claim. The case considers the moral, if not legal, obligation for consultation with First Nations groups in this type of situation.

Location:

Haida Gwaii, British Columbia

Indigenous communities involved:

Haida (Walsh 2021)

What? <ul style="list-style-type: none">What was the issue?	
Who? <ul style="list-style-type: none">Who is the Indigenous group affected?	
When? <ul style="list-style-type: none">When was the court case decided?	

Where? <ul style="list-style-type: none"> Where is the land in question? 	
Why? <ul style="list-style-type: none"> Why is this considered to be a landmark case? 	
What is one interesting fact you found out about this case?	
What further questions do you have?	

Further Reading

"Haida Nation v. British Columbia (Minister of Forests)." 2012. *Raven*. <https://raventrust.com/haida-claim-to-haida-gwaii/>.

Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73 (CanLII), [2004] 3 SCR 511." Supreme Court of Canada. *CanLII Connects*. <https://www.canlii.org/en/ca/scc/doc/2004/2004scc73/2004scc73.html?autocompleteStr=hai&autocompletePos=1>

"Haida Nation v. British Columbia (Minister of Forests), Supreme Court of Canada – [2004] 3 S.C.R. 511." *DIALOG. Indigenous Jurisprudence Autochtone*. <https://jurisprudence.reseaudialog.ca/en/case/haida-nation-v-british-columbia-minister-of-forests/>.

"Haida Nation v. British Columbia (Minister of Forests)[1]– Supreme Court of Canada, 2004. 2014." *Indigenous Corporate Training, Inc.* <https://www.ictinc.ca/blog/haida-case>.

Hartley, J. 2005. "Case Note: 'Upholding the Honour of the Crown': Haida Nation v British Columbia (Minister of Forests) [2004] 3 SCR 511." [2005] *IndigLawB* 15; (2005) 6(9) *Indigenous Law Bulletin*. <http://www5.austlii.edu.au/au/journals/IndigLawB/2005/15.html>.

Henderson, B. 1996. "A Brief Introduction to Aboriginal Law in Canada." *Bloorstreet.com*. <http://www.bloorstreet.com/200block/brintro.htm>.

"The Council of the Haida Nation v. British Columbia, 2018 BCSC 277." *Haida Nation*. <https://www.haidanation.ca/wp-content/uploads/2021/02/2018-BCSC-277-The-Council-of-the-Haida-Nation-v.-British-Columbia.pdf>.

Walsh, J. 2021 "Supreme Court of Canada cases involving Indigenous peoples." *Simon Fraser University*. <https://www.lib.sfu.ca/help/research-assistance/subject/criminology/legal-information/indigenous-scc-cases>.

Case 3: Haida Nation v. British Columbia (Minister of Forests) – Answer Key

Haida Nation v. British Columbia (Minister of Forests)

Supreme Court of Canada – [2004] 3 S.C.R. 511

British Columbia Consultation Honour of the Crown

Summary

Haida is one of the most frequently cited cases regarding aboriginal rights.

Based on the principle of the honour of the Crown, which was elaborated by the Court, this decision affirms that the Crown must consult Aboriginals as soon as it has “real or constructive” knowledge “of the potential existence” of an Aboriginal right or title that may be adversely affected by the contemplated conduct.

[Summary is from: [Haida Nation v. British Columbia \(Minister of Forests\) - Indigenous Jurisprudence Autochtone \(reseaudialog.ca\)](#)] *Visit that page to answer the questions in the chart below.*

[Another summary is included below. Note the names of the Indigenous Communities involved.]

Haida Nation v. British Columbia (Minister of Forests), [2004] 3 S.C.R. 511, 2004 SCC 73

Summary:

The Minister of Forests allowed the transfer of a "Tree Farm License" from one firm to another, prompting Haida to renew their objections to the license's coverage of the lands of Haida Gwaii, which had not been titled to them in any treaty, but to which they had long laid claim. The case considers the moral, if not legal, obligation for consultation with First Nations groups in this type of situation.

Location:

Haida Gwaii, British Columbia

Indigenous communities involved:

Haida (Walsh 2021)

What? • What was the issue?	What are the Crown's obligations to consult and to accommodate Aboriginals when they are in the process of establishing an Aboriginal title?
Who? • Who is the Indigenous group affected?	<ul style="list-style-type: none">• Haida Nation• Guujaaw – might also be mentioned
When? • When was the court case decided?	2004

<p>Where?</p> <ul style="list-style-type: none"> Where is the land in question? 	<p>Hadia Gwaii Queen Charlotte Island</p>
<p>Why?</p> <ul style="list-style-type: none"> Why is this considered to be a landmark case? 	<p>Answers may vary. Main points are in the <i>Summary</i> and the <i>Decision</i>. The notion of “Duty of Consult” arose out of this court case.</p> <p>Summary “<i>Haida</i> is one of the most frequently cited cases regarding aboriginal rights.”</p> <p>“Based on the principle of the honour of the Crown, which was elaborated by the Court, this decision affirms that the Crown must consult Aboriginals as soon as it has it has “real or constructive” knowledge “of the <u>potential</u> existence” of an Aboriginal right or title that may be adversely affected by the contemplated conduct.”</p> <p>Decision Unanimous – In accordance with the honour of the Crown, there is an obligation to consult Aboriginals, even when their aboriginal rights have yet to be proven.</p>
<p>What is one interesting fact you found out about this case?</p>	
<p>What further questions do you have?</p>	

Further Reading

"Haida Nation v. British Columbia (Minister of Forests)." 2012. *Raven*. <https://raventrust.com/haida-claim-to-haida-gwaii/>.

Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73 (CanLII), [2004] 3 SCR 511." Supreme Court of Canada. *CanLII Connects*.
<https://www.canlii.org/en/ca/scc/doc/2004/2004scc73/2004scc73.html?autocompleteStr=hai&autocompletePos=1>

"Haida Nation v. British Columbia (Minister of Forests), Supreme Court of Canada – [2004] 3 S.C.R. 511." *DIALOG. Indigenous Jurisprudence Autochtone*. <https://jurisprudence.reseadialog.ca/en/case/haida-nation-v-british-columbia-minister-of-forests/>.

"Haida Nation v. British Columbia (Minister of Forests)[1]– Supreme Court of Canada, 2004. 2014." *Indigenous Corporate Training, Inc.* <https://www.ictinc.ca/blog/haida-case>.

Hartley, J. 2005. "Case Note: 'Upholding the Honour of the Crown': Haida Nation v British Columbia (Minister of Forests) [2004] 3 SCR 511." [2005] IndigLawB 15; (2005) 6(9) *Indigenous Law Bulletin*. <http://www5.austlii.edu.au/au/journals/IndigLawB/2005/15.html>.

Henderson, B. 1996. "A Brief Introduction to Aboriginal Law in Canada." *Bloorstreet.com*. <http://www.bloorstreet.com/200block/brintro.htm>.

"The Council of the Haida Nation v. British Columbia, 2018 BCSC 277." *Haida Nation*. <https://www.haidanation.ca/wp-content/uploads/2021/02/2018-BCSC-277-The-Council-of-the-Haida-Nation-v.-British-Columbia.pdf>.

Walsh, J. 2021 "Supreme Court of Canada cases involving Indigenous peoples." *Simon Fraser University*. <https://www.lib.sfu.ca/help/research-assistance/subject/criminology/legal-information/indigenous-scc-cases>.

Aboriginal Law & Canadian Courts

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? 	
<ul style="list-style-type: none"> • What have Canadian courts long accepted? 	
<ul style="list-style-type: none"> • Name the three areas of Recent Development in Canadian courts. 	
<ul style="list-style-type: none"> • In your own words, what are the Risks and Challenges as outlined by these authors? 	
<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>What further questions do you have?</p>	

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 “important for federal and provincial governments to take concrete steps to recognize and “make space” for Indigenous law?” 	<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>	

Looking Ahead

Read the following articles and respond to the questions in the chart below.

Arcand-Paul, B. 2021. "Indigenous laws are a critical part of Canada's legal landscape." *Canadian Bar Association*. <https://www.nationalmagazine.ca/en-ca/articles/law/rule-of-law/2021/indigenous-laws-a-critical-part-of-canada-s-legal>

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

Woodside, J. 2021. "Canada's Supreme Court recognizes Wet'suwet'en law. So how is Coastal GasLink moving ahead?" *Canadas National Observer*. <https://www.nationalobserver.com/2021/12/02/news/canadas-supreme-court-recognizes-wetsuweten-law-coastal-gaslink?fbclid=IwAR0vn9DgrisAwC6MFq2i0UEPyXc1oBzkmOiwL7Vilyp3lxtWgUV7SbmXCjs>

<p>What reasons does Arcand-Paul give for saying: "A good start would be for Canada to reserve a spot—or three—for an Indigenous jurist on the Supreme Court of Canada."?</p>	
<p>According to Gunn and O'Neil, what is the difference between Indigenous Law and Aboriginal Law?</p>	
<p>What do the Gunn and O'Neil say about Land Rights?</p>	
<p>How does Woodside describe the conflict?</p>	

LOOKING AHEAD – ANSWER KEY

Arcand-Paul, B. 2021. “Indigenous laws are a critical part of Canada's legal landscape.” *Canadian Bar Association*. <https://www.nationalmagazine.ca/en-ca/articles/law/rule-of-law/2021/indigenous-laws-a-critical-part-of-canada-s-legal>

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

Woodside, J. 2021. “Canada’s Supreme Court recognizes Wet’suwet’en law. So how is Coastal GasLink moving ahead?” *Canadas National Observer*. <https://www.nationalobserver.com/2021/12/02/news/canadas-supreme-court-recognizes-wetsuweten-law-coastal-gaslink?fbclid=IwAR0vn9DgrisAwC6MFq2i0UEPyXc1oBzkmOiwL7ViIyp3lxtWgUV7SbmXCjs>

<p>What reasons does Arcand-Paul give for saying: “A good start would be for Canada to reserve a spot—or three—for an Indigenous jurist on the Supreme Court of Canada.”?</p>	<p>Answers may vary, but the essence is in this quote from the article:</p> <p><i>“Now, as Canadian courts are increasingly applying, giving deference to or acknowledging Indigenous laws in their decisions—which is already occurring in areas such as elections, sentencing, and child and family services—the perspective of Indigenous Peoples about their own laws not only before the court but on the bench becomes critical. Indigenous laws must continue to be made by, and for Indigenous Peoples, or else the reconciliation that courts—as the guardians of Canada’s Constitution—have been tasked with, will become simply another forum for repeated colonization.”</i></p>
<p>According to Gunn and O’Neil, what is the difference between Indigenous Law and Aboriginal Law?</p>	<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>

<p>What do the Gunn and O'Neil say about Land Rights?</p>	<p>Students are likely to paraphrase the following text:</p> <p><i>"In Coastal GasLink Pipeline Ltd. v. Huson, members of the Wet'suwet'en Nation and their supporters argued their blockade constituted an expression of Wet'suwet'en law. The Court held that Indigenous laws are only effective under Canadian common law if they are first recognized through treaties, court declarations or statutory provisions. This decision, which represents a serious step backwards in the recognition of Indigenous law, might prove to be an outlier since it is inconsistent with Canadian courts' treatment of Indigenous law in other higher court decisions."</i></p>
<p>How does Woodside describe the conflict?</p>	<p>Answers will vary, but in a nutshell, he says:</p> <p><i>"The conflict is about the right to build a natural gas pipeline through the nation's unceded land. Coastal GasLink reached agreements with First Nation band councils along the project's route, including Wet'suwet'en bands, and British Columbia gave the company the green light to build in 2014. However, hereditary Wet'suwet'en chiefs oppose the project and their supporters are attempting to block access to the construction site."</i></p>